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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 180 OF 2004

IN THE MATTER OF:

CENTRE FOR PUBLIC INTEREST LITIGATION AND ANR. ...PETITIONERS

VS.

UNION OF INDIA ...RESPONDENT

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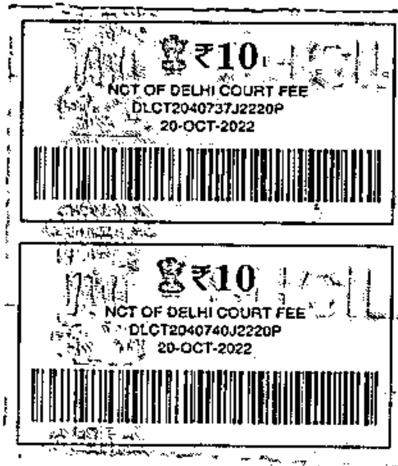

ADVOCATE FOR THE RESPONDENT : AMRISH KUMAR

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CENTRE FOR PUBLIC INTEREST LITIGATION
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COMPREHENSIVE REPLY ON BEHALF OF THE RESPONDENT NO. 1

I, Hariom working as Under Secretary in the Department of Social Justice and Empowerment, Ministry of Social Justice and Empowerment, Government of India, Shastri Bhawan, New Delhi, do hereby solemnly affirm and state as follows:

1. That in my official capacity I am acquainted with the facts of these cases, I have perused the record and am competent and authorized to swear this affidavit on behalf of the Union of India, Respondent No. 1.

2. That the contents of the present W.P. (C) No. 180 /2004 filed by the Petitioner (hereinafter referred to as the "**present W.P.(C)**") has been read over to me in a vernacular language and I have understood the contents thereof, save and except what is specifically admitted herein, no part in the present W.P. (C) which is not expressly dealt with shall be deemed to be admitted and I crave Leave to those paragraphs during the course of argument or as may be necessary.

3. Without prejudice to the above, I hereby deny and dispute all the facts stated, contentions raised and grounds urged in the present W.P. (C) except those which are specifically and unequivocally admitted in this reply.

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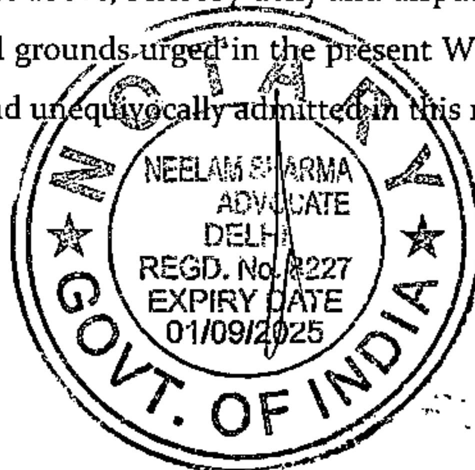

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SUBMISSIONS ON BEHALF OF THE UNION OF INDIA

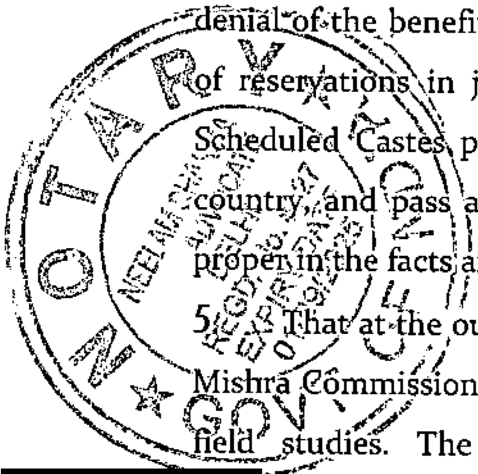
Scope of the petition

4. That in the present Writ Petition, the Petitioners have prayed that the Constitution (Scheduled Castes) Order 1950, as amended from time to time is discriminatory and violative of Articles 14 and 15 of the Constitution in as much as it discriminates against Scheduled Caste converts to religion other than the Hindu, the Sikh and the Buddhist.

The Petitioners have submitted that the social and economic disabilities of Scheduled Castes converts to Christianity continue to persist in most cases even after their conversion and in this regard, there cannot be any distinction between Scheduled Caste converts to Sikh and Buddhist religions and Scheduled Caste converts to the Christian religion.

The Petitioners have further contended that the theory that Christianity does not recognize castes cannot be a valid justification for excluding Christians since in theory even Sikhism and Buddhist also do not recognize castes.

The Petitioners have prayed to the Hon'ble Court to allow their petition and declare Clause 3 of the Constitution (Scheduled Castes) Order 1950 as unconstitutional and void, declare as unconstitutional and void, the denial of the benefits to Scheduled Caste converts to Christianity in respect of reservations in jobs, political reservations and other benefits given to Scheduled Castes persons under the various laws and notifications in the country, and pass any other order as the Hon'ble Court may deem fit and proper in the facts and circumstances of this case.



5. That at the outset it is submitted that the Report of Justice Ranganath Mishra Commission is flawed since the report bases its findings without any field studies. The findings of the Commission therefore cannot be

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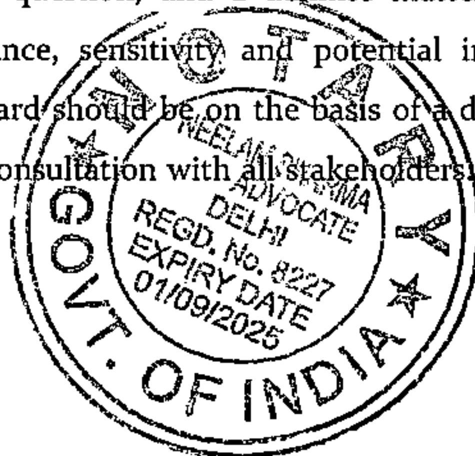
corroborated by actual situation on the ground since no field study was done. The Commission further has taken a myopic view of the social milieu in India and does not contemplate the impact of inclusions in the SC list on the present castes listed as Scheduled Castes. The findings of the said Commission have been therefore, not accepted by the Government.

6. That this Hon'ble Court in the case of ***Ghazi Saaduddin versus State of Maharashtra &Ors.***(Civil Appeal No(s) 329-330/2004) and other connected matters in its order dated 30.08.2022 inter-alia observed as under:-

> *"Learned Solicitor General submits that he would like to place on record the current position/ stand on the issue in question which deals with the prayer for extension of claim of reservation from Dalit communities to other religions other than the ones specified".*

7. That the Union of India has examined the matter and noted that certain groups of persons who have historically suffered social inequality, discrimination and the consequent backwardness resulting therefrom, have been declared to be Scheduled Castes by Presidential Orders issued from time to time under article 341 of the Constitution of India. It is further noted that certain groups have raised the question of revisiting the existing definition of Scheduled Castes by according the status to new persons who belong to other religions beyond those permitted through Presidential Orders, and in contrast, many other groups including certain representatives of the existing Scheduled Castes have objected to such granting of Scheduled Caste status to new persons.

8. It is noted that the said issue is a seminal and historically complex sociological and constitutional question, and a definite matter of public importance. Given its importance, sensitivity and potential impact, any change in definition in this regard should be on the basis of a detailed and definitive study and extensive consultation with all stakeholders. The Union



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of India has accordingly, in exercise of powers conferred by section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), decided to appoint a Commission consisting of following persons, namely:-

i) Justice (retd.) K.G.Balakrishnan, (Ex-Chief Justice of India) ....Chairperson

ii) Dr. Ravinder Kumar Jain, IAS(retd.)(1981, HP) ....Member

iii) Prof. (Dr.) Sushma Yadav, (Member, UGC ....Member

9. It is submitted that the terms of reference of the Commission shall be as follows:-

(i) to examine the matter of according Scheduled Caste status to new persons, who claim to historically have belonged to the Scheduled Castes but have converted to religion other than those mentioned in the Presidential Orders issued from time to time under article 341 of the Constitution;

(ii) to examine the implications on the existing Scheduled Castes, of adding such new persons as part of the existing list of Scheduled Castes;

(iii) to examine the changes Scheduled Caste persons go through on converting to other religions in terms of their customs, traditions, social and other status discrimination and deprivation, and the implication of the same on the question of giving them Scheduled Caste status; and

(iv) to examine any other related questions that the Commission deems appropriate, in consultation with and with the consent of the Central Government.

10. It is submitted that the Commission would submit its report within a period of two years from the date of taking over of the charge by the Chairperson and Headquarters of the Commission shall be at New Delhi. A

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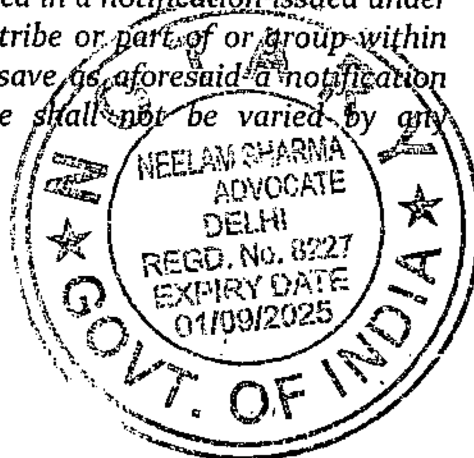
true copy of the Gazette Notification dated 06.10.2022, is attached herewith and marked as **Annexure-R-1 (Pages 71 to 73)**.

Background of identification of SC/STs

11. Without prejudice to the above, it is submitted that the term Scheduled Caste, for the first time, appeared in the Government of India Act, 1935. The said Act defined the Scheduled Castes as such castes, races or tribes or parts of or groups within castes, races or tribes, being caste, races, tribes parts or groups 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. In pursuance of provisions of the aforesaid Act in April, 1936, the Government issued the Government of India (Scheduled Castes) Order, 1936 specifying certain castes, races and tribes as Scheduled Castes.

12. That Article 366(24) of the Constitution defined 'Scheduled Castes' as "such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 of the Constitution of India to be Scheduled Castes for the purpose of the Constitution." The procedure of notification of Scheduled Castes is given in Article 341 which is reproduced below:-

> *"341(1): The President may with respect to any State or Union Territory and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.*
> *(2): Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."*



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13. That the test applied for inclusion in the list of Scheduled Castes is extreme social, educational and economic backwardness arising out of traditional practice of untouchability. It is submitted that in exercise of powers conferred by clause (1) of Article 341 of the Constitution of India, the President made six Orders from 1950 to 1978 specifying Scheduled Castes in relation to various States and Union Territories. Para 3 of these Orders inter-alia, states that "*no person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be a member of Scheduled Caste*".

14. That the historical background for inclusion of only three religions viz. the Hindu, the Sikh and the Buddhist in para 3 of the Constitution (Scheduled Caste) Order 1950 is described as under. During the 1931Census, the then Census Commissioner for India had given following instructions for identification of 'Depressed Classes': -

> *"I have explained depressed castes as castes, contact with whom entails purification on the part of high caste Hindus. It is not intended that the term should have any reference to occupation as such but to those castes which by reasons of their traditional position in Hindu society are denied access to temples, for instance, or have to use separate wells or are not allowed to sit inside a school house but have to remain outside or suffer similar social disabilities."*

15. Accordingly, the following tests were adopted for identification of Depressed Classes:-

(i) whether the caste or class in question can be served by clean Brahmans or not ;

(ii) whether the caste or class in question can be served by the Barbers, Water Carriers, Tailors etc. who serve the caste Hindus:

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(iii) whether the caste in question pollutes a high caste Hindu by contact or by proximity;

(iv) whether the caste or class in question is one from whose hands a caste Hindu can take water;

(v) whether the caste or class in question is debarred from using public conveniences, such as roads, ferries, wells or schools;

(vi) whether the caste or class in question is debarred from the use of Hindu temples;

(vii) whether in ordinary social inter course a well educated member of the caste or class in question will be treated as an equal by high caste man of the same education qualifications ;

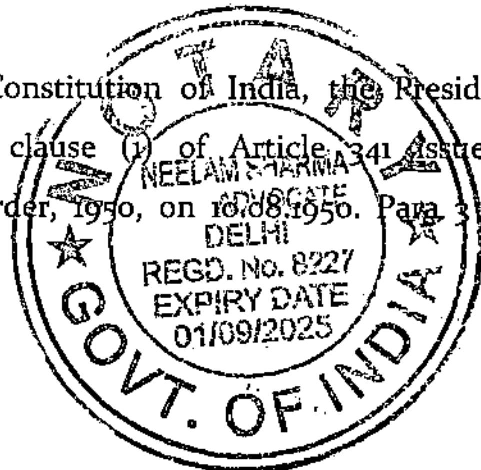
(viii) whether the caste or class in question is merely depressed on account of its own ignorance, illiteracy or poverty ; and but for that would be subject to no social disability;

(ix) whether it is depressed on account of the occupation followed and whether but for that occupation it would be subject to no social disability.

A copy of the relevant extract from the Census of India, 1931 is attached herewith as **Annexure –R 2 [Page 74 to 75]**.

16. That in para 3 of the Government of India (Scheduled Castes) Order, 1936, which in turn was the continuation of the earlier list of "*depressed classes*", it was specifically provided that "***no Indian Christian shall be deemed to be a member of a Scheduled Caste.***" A copy of the Government of India (Scheduled Castes) Order, 1936 is attached herewith as **Annexure – R 3 [Page 76 to 81]**.

17. After promulgation of the Constitution of India, the President in exercise of powers conferred by clause (1) of Article 341 issued the Constitution (Scheduled Castes) Order, 1950, on 10.08.1950. Para 3 of the



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Order inter-alia provided that, "*no person who professes a religion different from Hinduism shall be deemed to be a member of Scheduled Caste.Provided that every member of Ramdasi, Kabirpanthi, Mazhabi or Sikligar castes resident in Punjab or the Patiala and East Punjab States Union shall in relation to that State be deemed to a member Scheduled Caste, whether he professes the Hindu or the Sikh religions*". A copy of the Constitution (Scheduled Castes) Order, 1950 is attached herewith as **Annexure -R 4 [Page 82 to 83]**.

18. That the first Backward Classes Commission, which was also requested to recommend revision in the lists of Scheduled Castes and Scheduled Tribes had inter-alia, recommended removal of the proviso and addition of Sikh religion in para 3 of 1950 Order. Accordingly, in the year 1956, an amendment was made in the Constitution (Scheduled Castes) Order, 1950, and the Hindu and the Sikh religions were placed on the same footing with regard to specification of Scheduled Castes. A copy of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 is attached herewith as **Annexure -R 5 [Page 84 to 85]**.

19. That in the year 1990, another amendment was made in the Constitution (Scheduled Castes) Order, 1950 and the Buddhist religion was also brought under the realm of Scheduled Castes. As of now para 3 of the Constitution (Scheduled Castes) Order, 1950 inter-alia, states that "*no person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be a member of Scheduled Caste*". Similar provision exists in other five Presidential Orders. A copy of the Constitution (Scheduled Castes) Orders (Amendment) Act, 1990 is attached herewith as **Annexure -R 6 [Page 86 to 88]**.

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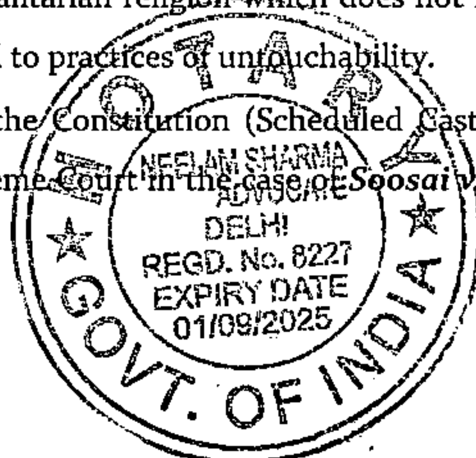
20. That the amendments referred to in the aforesaid paras were supported by the Explanation II of the Article 25 of the Constitution of India, which reads as under: -

> *"In sub-clause (b), the reference to 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."*

21. The dispensation in case of Sikhs and Buddhists converts cannot therefore be cited as a precedent for a similar treatment of Scheduled Caste converts to Christianity. Moreover, the nature of conversions to Buddhism has been different from that of conversions to Christianity. Scheduled Castes converts to Buddhism embraced Buddhism voluntarily at the call Dr. Ambedkar in 1956 on account of some innate socio political imperatives. The original castes/ community of such converts can clearly be determined. This cannot be said in respect of Christians and Muslims who might have converted on account of other factors, since the process of such conversions has been taken place over the centuries.

22. That the criteria followed in deciding whether a caste/ community is eligible for inclusion in the list of Scheduled Castes is extreme social, educational and economic backwardness arising out of traditional practice of untouchability, practised by Hindus since time immemorial. Since the caste system and associated customs and practices of untouchability are a feature of Hindu society, historically the system of special representation for Scheduled Castes was evolved specially in relation to position of castes in Hindu society who were affected by the practice of untouchability. In its conception, Christianity is an egalitarian religion which does not recognised caste and is therefore antithetical to practices of untouchability.

23. The legality of para 3 of the Constitution (Scheduled Castes) Order, 1950 was challenged in the Supreme Court in the case of ***Soosai v. Union of***



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India, **1985 Supp SCC 590.**This Hon'ble Court in its judgment, inter-alia, observed as hereunder:

> *"During the framing of the Constitution, the Constituent Assembly recognized that the Scheduled Castes were a backward section of the Hindu community who were handicapped by the practice of untouchability and that this evil practice of untouchability was not recognized by any other religion.*
>
> *Now it cannot be disputed that the caste system is a feature of the Hindu social structure. It is a social phenomenon peculiar to Hindu society. The division of the Hindu social order by reference at one time to professional or vocational occupation was moulded into a structural hierarchy, which over the centuries crystallized into a stratification where the place of individual was determined by birth. Those who occupied the lowest rung of the social ladder were treated as existing beyond the periphery of civilized society, and were indeed not even "touchable" This social attitude committed those castes to severe social and economic disabilities and cultural and educational backwardness and through most of Indian History the oppressive nature of the caste structure has denied to those disadvantaged castes the fundamentals of human dignity, human self respect and even some of the attributes of the human personality. Both history and later day practice in Hindu society are heavy with evidence of this oppressive tyranny, and despite the efforts of several noted social reformers, specially during the last two centuries, there has been a crying need for the emancipation of the depressed classes from the degrading conditions of their social and economic servitude".*
>
> *To establish that Paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against Christian members of the enumerated castes, it must be shown that they suffer from a comparable depth of social and economic disabilities and cultural and educational backwardness and similar levels of degradation within the Christian community necessitating intervention by the same caste continues after conversion. It is necessary to establish further that the disabilities and handicaps suffered from such caste membership in the social order of its origin- Hinduism- continue in their oppressive*

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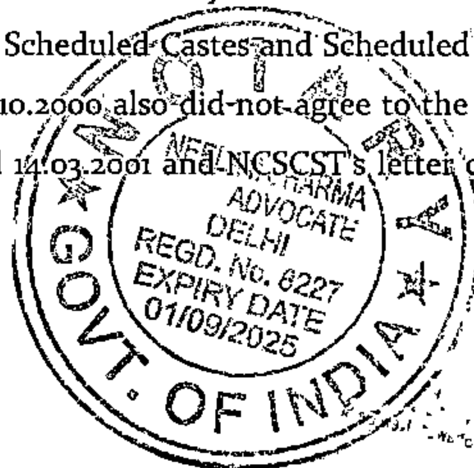
> *severity in the new environment of a different religious community. References have been made in the material before us in the most cursory manner to the character and incidents of the castes within the Christian fold but no authoritative and detailed study dealing with the present conditions of Christian society have been placed on the record in this case. It is, therefore, not possible to say that the President acted arbitrarily in the exercise of his judgment in enacting paragraph 3 of the Constitution (Scheduled Castes) Order, 1950. It is now well established that when a violation of Article 14 or any of its related provisions is alleged, the burden rests on the petitioner to establish by clear and cogent evidence that the State has been guilty of arbitrary discrimination. Having regard to the state of the record before us, we are unable to hold that the petitioner has established his case. The challenge must, therefore, fail."*

A copy of the judgment in ***Soosai v. Union of India*, 1985 Supp SCC 590**, is attached herewith and marked as **Annexure R – 7 [Page 89 to 96].**

24. It is submitted that the Government had laid down modalities in June 1999 and subsequently modified in June 2002 for deciding claims for inclusion in, exclusion from and other modifications in the Orders specifying Scheduled Castes and Scheduled Tribes.

25. That for the past few years, there has been demands from various quarters to specify the Scheduled Castes converted to Christianity as well as Islam, as Scheduled Castes.

26. That the requests were made to the Registrar General of India and the National Commission for Scheduled Castes and Scheduled Tribes to furnish their comments in this matter. The Registrar General of India (RGI) vide their letter dated 14.03.2001 did not agree to the proposal to include Scheduled Castes converts to Christianity in the list of Scheduled Castes. The National Commission for Scheduled Castes and Scheduled Tribes (NCSCST), vide their letter dated 19.10.2000 also did not agree to the proposal. A copy each of RGI's letter dated 14.03.2001 and NCSCST's letter dated 19.10.2000 is



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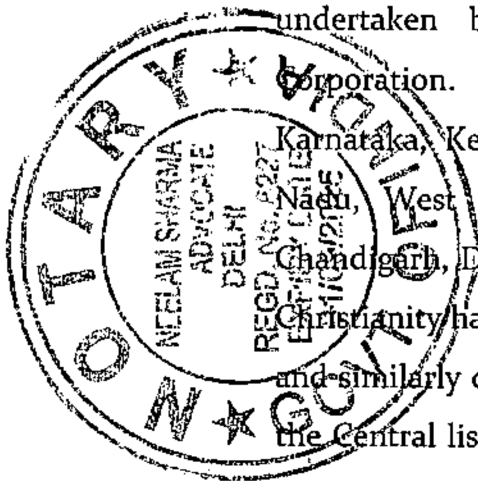
attached herewith as **Annexure –R 8 [Page 97 to 101]& R 9 [Page 102 to 105]** respectively.

27. That likewise, on the proposal of inclusion of Scheduled Castes converts to Islam religion in the list of Scheduled Castes, the Registrar General of India and the National Commission for Scheduled Castes and Scheduled Tribes did not agree vide their letters dated 03.04.2001 and 11.08.2003 respectively. A copy each of RGI's letter dated 03.04.2001 and NCSCST's letter dated 11.08.2003 is attached herewith as **Annexure –R 10[Page 106 to 111]& R 11[Page 112 to 114]** respectively.

28. It is submitted that the demands for inclusion of Scheduled Castes converted to Christianity and Islam religions in the list of Scheduled Castes were accordingly, rejected with the approval of competent authority on 28.06.2002 and 03.11.2003 respectively.

29. It is submitted that this Court in ***Indira Sawhney and others Vs. Union of India and others*** (W.P. (c) No.930 of 1980) upheld the reservation of 27% of vacancies in civil posts and services under the Government of India in favour of the Other Backward Classes. Besides the reservation, they also get benefits under developmental schemes for Other Backward Classes like Post-matric Scholarship, Hostels for Boys & Girls, Assistance to Voluntary Organisations and income generating activities undertaken by National Backward Classes Finance & Development Corporation. In the States of Andhra Pradesh, Assam, Bihar, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Punjab, Tamil Nadu, West Bengal, Chhattisgarh, Jharkhand and Union territories of Chandigarh, Daman and Diu and Puducherry Scheduled Castes converts to Christianity have been included in the Central list of Other Backward Classes and similarly certain communities converted to Islam have been included in the Central list of Other Backward Classes, in the States of Andhra Pradesh,



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Bihar, Himachal Pradesh, Madhya Pradesh, Maharashtra, Chhattisgarh and Jharkhand and Union territory of Delhi. It is further stated that Scheduled Caste converts to Christianity and Islam are also entitled to benefits of Schemes and Programmes being implemented by the Government for the Minorities. A statement showing States and Union territories wherein Scheduled Caste converts to Christianity and certain Muslim communities have been classified as OBCs in the Central list is attached as **Annexure-R 12 [Page 115 to 116]**.

30. That there is also no documented research and precise authenticated information available to establish that the disabilities and handicaps suffered by Scheduled Caste members in the social order of its origin (Hinduism) persists with their oppressive severity in the environment of Christianity/Islam. However, studies conducted by Rev. Samuel Mateer a British Missionary in Kerala and Tamil Nadu (i.e. erstwhile Princely State of Travancore. Cochin and Madras Presidency) during his stay of over 25 years in India, and published in the form of two books titled "Land of Charity" and "Native Life in Travancore" in 1870 and 1883, respectively, show that the "slave caste" (the present Scheduled Castes) converted to Christianity in these States became socially, educationally and economically in a better position than their brethrens who remained in Hinduism.

31. That Constitution (Scheduled Caste) Order, 1950 does not suffer from any unconstitutionality inasmuch as the exclusion of Christianity or Islam was due to the reason that the oppressive system of Untouchability which leads to economic and social backwardness of some Hindu castes was not prevalent in Christian or Islamic Society. There is authentic data to suggest that the oppressive environment which existed in Hindu Society for hundreds of years qua Scheduled Castes also existed in Christian or Islamic Society.

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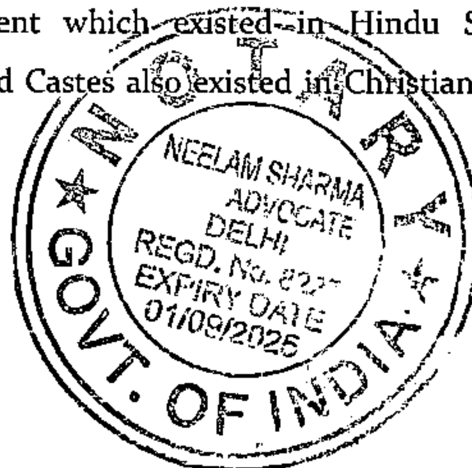

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32. That the Constitution (Scheduled Caste) Order, 1950 was based on historical data which clearly established that no such backwardness or oppression was ever faced by members of Christian or Islamic Society. In fact, one of the reasons for which people from Scheduled Castes have been converting to religions like Islam or Christianity is so that they can come out of the oppressive system of Untouchability which is not prevalent at all in Christianity or Islam. Therefore, once they have come out and ameliorated there social status by Converting themselves to Christianity or Islam they cannot claim to be backward since backwardness based on Untouchability is only prevalent in Hindu Society or its branches and not in any other religion.

33. That the petitioners have also stated that, "the discrimination is also clear from the fact that Scheduled Tribes converts to Christianity continue to remain within the purview of the Scheduled Caste Order 1950, while Scheduled Caste converts to Christianity are denied this benefit." In this context it is submitted that Scheduled Tribes do not come under the purview of the Constitution Scheduled Castes Orders but come under the Constitution Scheduled Tribes, Orders. Further, the criteria for specification of a community as a Scheduled Tribe are (i) primitive traits, (ii) distinctive culture,(iii) geographical isolation, (iv) shyness of contact with the community at large and (v) backwardness and that professing of any religion is not a point of consideration, whereas, in case of Scheduled Castes 'extreme social, educational and economic backwardness arising out of traditional practice of untouchability' is the criteria for specification of a caste as a Scheduled Caste.

Finality of Article 341 determination

34. It is submitted that Article 341(1) empowers the President of India to specify, in consultation with the Governor of the State, with respect to the

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State or Union Territory, or for a part of the State, District or region by public notification specify castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be "Scheduled Castes" in relation to the State or Union Territory as the case may be. Clause (2) of Article 341 empowers Parliament by law to include in or exclude from the list of Scheduled Castes specified in the notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. In other words, the constitutional mandate is that it is the President who is empowered, in consultation with the Governor of the State, to specify by a public notification the caste, race or tribe or parts or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory.

35. It is humbly submitted that the Hon'ble Courts, in their constitutional jurisdiction, have no power except to give effect to the notification issued by the President under Article 341. It is settled law that the Court would look into the public notification under Article 341(1) or Article 342(1) for a limited purpose. The notification issued by the President and the Act of Parliament under Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 and the Schedules appended thereto can be looked into for the purpose to find whether the castes, races or tribes are parts of or groups within castes, races or tribes shall be Scheduled Castes for the purposes of the Constitution. The power of the President and the Parliament in this regard is conclusive. The following are the cases on this proposition :

I. ***B. Basavalingappa Vs D. Munichinnappa,*** **(1965) 1 SCR 316 [5 judges]**

> *"5. Clause (1) provides that the President may with respect to any State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the*

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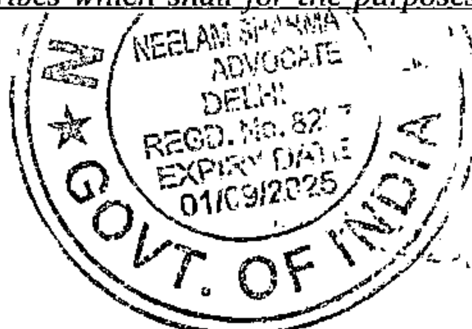

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Constitution be deemed to be scheduled castes in relation to that State. The object of this provision obviously is to avoid all disputes as to whether a particular caste is a scheduled caste or not and only those castes can be scheduled castes which are notified in the order made by the President under Art. 341 after consultation with the Governor where it relates to such castes in a State. Clause (2) then provides that Parliament may by law include in or exclude from the list of scheduled castes specified in a notification issued under cl. (1) any caste, race or tribe or part of or group within any caste, race or tribe. The power was thus given to Parliament to modify the notification made by the President under cl. (1). Further cl. (2) goes on to provide that a notification issued under cl. (1) shall not be varied by any subsequent notification, thus making the notification by the President final for all times except for modification by law as provided by cl. (2). **Clearly, therefore, Article 341 provides for a notification and for its finality except when altered by Parliament by law.** The argument on behalf of the appellant is based on the provisions of Art. 341 and it is urged that a notification once made is final and cannot even be revised by the President and can only be modified by inclusion or exclusion by law by Parliament. **Therefore, in view of this stringent provision of the Constitution with respect to a notification issued under cl. (1) it is not open to anyone to include any caste as coming within the notification on the basis of evidence-oral or documentary- if the caste in question does not find specific mention in the terms of the notification.** It is, therefore, urged that the Tribunal was wrong in allowing evidence to show that Voddar caste was the same as the Bhovi caste mentioned in the Order and that the High Court was in error when it held on the basis of such evidence that Voddar caste was the same as the Bhovi caste specified in the Order and therefore, respondent No. 1 was entitled to stand for election because he belonged to Voddar caste which was the same as the Bhovi caste."

II. Bhaiya Lal v. Harikishan Singh, (1965) 2 SCR 877 [5 judges]

"10. Mr Chattejee attempted to argue that it was not competent to the President to specify the lists of Scheduled Castes by reference to different districts or sub-areas of the States. His argument was that what the President can do under Article 341(1) is to specify the castes, races or tribes or parts thereof, but that

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must be done in relation to the entire State or the Union Territory, as the case may be. In other words, says Mr Chatterjee, the President cannot divide the State into different districts or sub-areas and specify the castes, races or tribes for the purpose of Article 341(1). In our opinion, there is no substance in this argument. The object of Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and educational are backwardness of the race, caste or tribe justifies such specification. In fact, it is well known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question. Therefore, Mr Chatterjee is in error when he contends that the notification issued by the President by reference to the different areas is outside his authority under Article 341(1)."

III. ***State of Maharashtra v. Milind,*** **(2001) 1 SCC 4 [5 judges]**

10. *Articles 341 and 342 of the Constitution of India read as under:*

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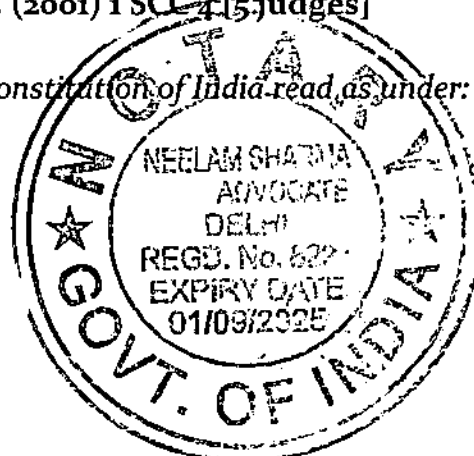

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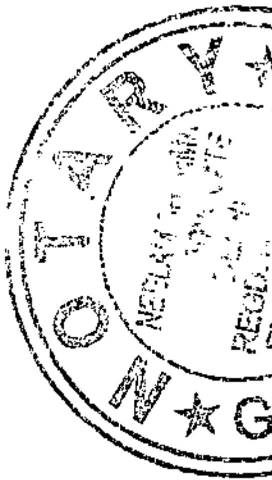
"341. Scheduled Castes.—(1) The President may with respect to any State or Union Territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342. Scheduled Tribes.—(1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."



11. By virtue of powers vested under Articles 341 and 342 of the Constitution of India, the President is empowered to issue public notification for the first time specifying the castes, races or tribes or part of or groups within castes, races, or tribes which shall, for the purposes of the Constitution be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or Union Territory, as the case may be. The language and terms of Articles 341 and 342 are identical. What is said in relation to Article 341 mutatis mutandis applies to Article 342. The laudable object of the said articles is to provide additional protection to the members of the Scheduled Castes and Scheduled Tribes having regard to social and educational backwardness from which they have been suffering since a considerable length of time. The words "castes" or "tribes" in the expression "Scheduled Castes" and "Scheduled Tribes" are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Articles 366(24) and 366(25). In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they

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are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution. Exercising the powers vested in him, the President has issued the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950. Subsequently, some orders were issued under the said articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued, by amendment Acts passed by Parliament.

12. *Plain language and clear terms of these articles show (1) the President under clause (1) of the said articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification specify the castes, races or tribes or parts of or groups within the castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes/Scheduled Tribes in relation to that State or Union Territory as the case may be; (2) under clause (2) of the said articles, a notification issued under clause (1) cannot be varied by any subsequent notification except by law made by Parliament.* ***In other words, Parliament alone is competent by law to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under clause (1) of the said articles. In including castes and tribes in Presidential Orders, the President is authorised to limit the notification to parts or groups within the caste or tribe depending on the educational and social backwardness. It is permissible that only parts or groups within them be specified and further to specify castes or tribes thereof in relation to parts of the State and not to the entire State on being satisfied that it was necessary to do so having regard to social and educational backwardness.*** *The States had opportunity to present their views through Governors when consulted by the President in relation to castes or tribes, parts or groups within them either in relation to the entire State or parts of State. It appears that the object of clause (1) of Articles 341 and 342 was to keep away disputes touching whether a caste/tribe is a Scheduled Caste/Scheduled Tribe or not for the purpose of the Constitution. Whether a particular caste or a tribe is Scheduled Caste or Scheduled Tribe as the case may be, within the meaning of the entries contained in the Presidential Orders issued under clause (1) of Articles 341 and 342, is to be determined looking to them as they are. Clause (2) of the said articles does not permit any one to seek modification of the said orders by leading evidence that the caste/Tribe (A) alone is mentioned in the Order but*

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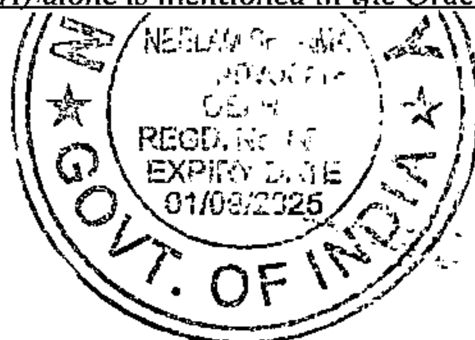

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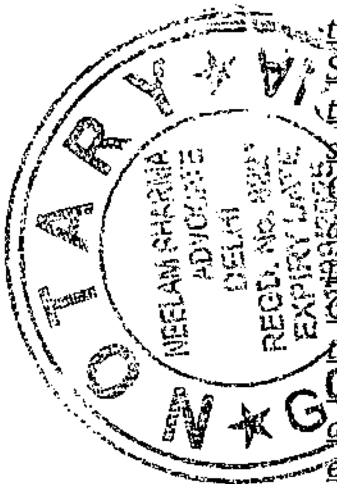
caste/Tribe (B) is also a part of caste/Tribe (A) and as such caste/Tribe (B) should be deemed to be a Scheduled Caste/Scheduled Tribe as the case may be. It is only Parliament that is competent to amend the Orders issued under Articles 341 and 342. As can be seen from the entries in the schedules pertaining to each State whenever one caste/tribe has another name it is so mentioned in the brackets after it in the schedules. **In this view it serves no purpose to look at gazetteers or glossaries for establishing that a particular caste/tribe is a Scheduled Caste/Scheduled Tribe for the purpose of Constitution, even though it is not specifically mentioned as such in the Presidential Orders. Orders once issued under clause (1) of the said articles, cannot be varied by subsequent order or notification even by the President except by law made by Parliament.** Hence it is not possible to say that State Governments or any other authority or courts or Tribunals are vested with any power to modify or vary the said Orders. If that be so, no inquiry is permissible and no evidence can be let in for establishing that a particular caste or part or group within tribes or tribe is included in Presidential Order if they are not expressly included in the Orders. Since any exercise or attempt to amend the Presidential Order except as provided in clause (2) of Articles 341 and 342 would be futile, holding any inquiry or letting in any evidence in that regard is neither permissible nor useful.

14. In the debates of Constituent Assembly (Official Report, Vol. 9) while moving to add new Articles 300-A and 300-B after Article 300 (corresponding to Articles 341 and 342 of the Constitution), Dr B.R. Ambedkar explained as follows:

"The object of these two articles, as I stated, was to eliminate the necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President in consultation with the Governor or ruler of a State should have the power to issue a general notification in the Gazette specifying all the castes and tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purpose of these privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this: that once a notification has been issued by the President, which, undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the list so notified or any addition was to be made that must be made by Parliament and not by the President. The object is to eliminate any kind of political



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factors having a play in the matter of the disturbance in the schedule so published by the President."

(emphasis supplied)

15. *Thus it is clear that States have no power to amend Presidential Orders. Consequently, a party in power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State services have been claiming as belonging to either Scheduled Castes or Scheduled Tribes depriving genuine and needy persons belonging to Scheduled Castes and Scheduled Tribes covered by the Presidential Orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness.* ***Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in clause (2) of the said article, it is expressly stated that the said Orders cannot be amended or varied except by law made by Parliament. The power to include or exclude, amend or alter Presidential Order is expressly and exclusively conferred on and vested with Parliament and that too by making a law in that regard. The President had the benefit of consulting the States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said Orders are to be amended, it is Parliament that is in a better position to know having the means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or courts or other authorities or Tribunals to hold inquiry as to whether a particular caste or tribe should be considered as one included in the schedule of the Presidential Order, when it is not so specifically included, may lead to problems.*** *In order to gain advantage of reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart, when no other authority other than Parliament, that too by law alone can amend the Presidential Orders, neither the State Governments*

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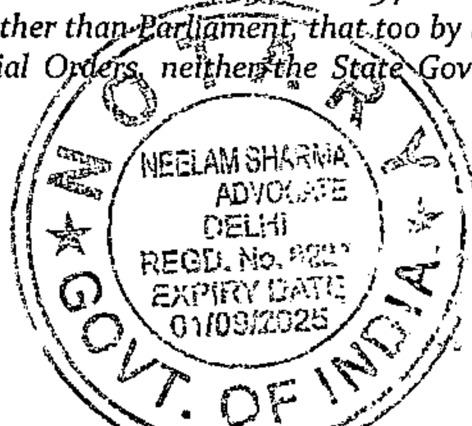

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nor the courts nor Tribunals nor any authority can assume jurisdiction to hold inquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in Presidential Orders in one entry or the other although they are not expressly and specifically included. A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any inquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.

28. *Being in respectful agreement, we reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no inquiry at all is permissible and no evidence can be let in, to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the entry concerned in the Presidential Order when it is not so expressly or specifically included. Hence, we answer Question 1 in the negative.*

35. *In order to protect and promote the less fortunate or unfortunate people who have been suffering from social handicap, educational backwardness besides other disadvantages, certain provisions are made in the Constitution with a view to see that they also have the opportunity to be on par with the others in the society. Certain privileges and benefits are conferred on such people belonging to Scheduled Tribes by way of reservations in admission to educational institutions (professional colleges) and in appointments in services of State. The object behind these provisions is noble and laudable besides being vital in bringing a meaningful social change. But, unfortunately, even some better-placed persons by producing false certificates as belonging to Scheduled Tribes have been capturing or cornering seats or vacancies reserved for Scheduled Tribes defeating the very purpose for which the provisions are made in the Constitution. The Presidential Orders are issued under Articles 341 and 342 of the Constitution recognising and identifying the needy and deserving people belonging to Scheduled Castes and Scheduled Tribes mentioned therein for the constitutional purpose of availing benefits of reservation in the matters of admissions and employment. If these benefits are taken away by those for whom they are not meant, the people for whom they are really meant or intended will be*

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<u>deprived of the same and their sufferings will continue. Allowing the candidates not belonging to Scheduled Tribes to have the benefit or advantage of reservation either in admissions or appointments leads to making mockery of the very reservation against the mandate and the scheme of the Constitution.</u>

36. In the light of what is stated above, the following positions emerge:

<u>1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.</u>

<u>2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.</u>

<u>3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (1) of Article 342 only by Parliament by law and by no other authority.</u>

<u>4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.</u>

5. Decisions of the Division Benches of this Court in Bhaiya Ram Munda v. Anirudh Patar [(1970) 2 SCC 825 : (1971) 1 SCR 804] and Dina v. Narain Singh [38 ELR 212 : (1968) 8 DEC 329] did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in Position (1) above no inquiry at all is permissible and no evidence can be let in, in the matter."

IV. *Bir Singh v. Delhi Jal Board,* (2018) 10 SCC 312 [5 judges]

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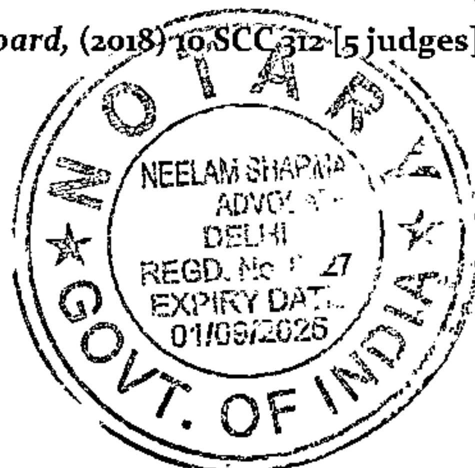

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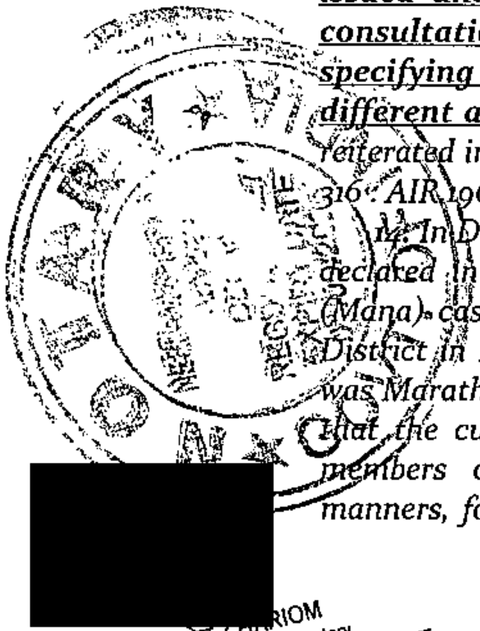
"102. When Parliament restricts the benefit of reservation by inclusion of a caste as a Scheduled Caste to a State or part of State i.e. certain specified districts in a State, the Court cannot express any opinion as to its correctness. Hence, as regards the inclusion of caste "Mochi" in the list of Scheduled Castes within a particular area as per the Constitution (Scheduled Castes) Order (Second Amendment) Act, 2002, it was held that it was not for the Court to render any opinion in regard to the correctness of the same. [Vide Shree Surat Valsad Jilla KMG Parishad v. Union of India [Shree Surat Valsad Jilla KMG Parishad v. Union of India, (2007) 5 SCC 360]."

V. *Nityanand Sharma v. State of Bihar,* (1996) 3 SCC 576

"13. The question then is: Whether Lohars could be considered by the Court as synonyms of Loharas or Lohras? This question is no longer res integra. In Bhaiyalal v. Harikishan Singh [(1965) 2 SCR 877 : AIR 1965 SC 1557], a Constitution Bench of this Court had considered in an election petition whether Dadar caste was a Scheduled Caste. ***It held that the President in specifying a caste, race or tribe has expressly been authorised to limit the notification to parts of or groups within the caste, race or tribes. It must mean that after examining the social and educational backwardness of a caste, race or a tribe, the President may come to the conclusion that not the whole caste, race or tribe, but parts of or groups within them should be specified as Scheduled Caste or Scheduled Tribe. The result of the specification is conclusive. Notification issued under Article 341(1), after an elaborate enquiry in consultation with the Governor and reaching the conclusion specifying particular caste, race or tribe with reference to different areas in the State, is conclusive.*** *The same view was reiterated in B. Basavalingappa v. D. Munichinnappa [(1965) 1 SCR 316 : AIR 1965 SC 1269].*

14. In Dina v. Narayan Singh [(1968) 38 ELR 212 (SC)], Dina declared in his nomination paper, as being a member of Gond (Mana) caste, a Scheduled Tribe in Godchiroli Taluka of Chand District in Maharashtra State. Evidence was led to show that he was Maratha Mana. Therefore, he was not Gond. The Court found that the customs, manners, forms of worship and dress of the members of Mana community are different from customs, manners, forms or worship and dress of Gonds. It was held that



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Manas are not Gonds and that, therefore, he was not a Scheduled Tribe under the Presidential Order entitled to get elected as a member of the Scheduled Tribes. In Srish Kumar Choudhury v. State of Tripura [1990 Supp SCC 220] a Bench of three learned Judges was called upon to consider whether Laskar community in State of Tripura is a Scheduled Tribe. In a representative petition under Article 226, they sought declaration that earlier to the Act and the Order, they were recognised as Scheduled Tribes by rulers of Tripura State and that they were Tripura/Tripuri/TripperaLaskar and that, therefore, they were entitled to the status as Scheduled Tribes. The High Court dismissed the writ petition. On appeal, this Court held that though evidence may be admissible to verify the entries in the Presidential Order to find a caste/tribe included in a particular tribe or caste, tribal communities, the admissibility of the evidence is confined within the limitations enacted in the order. ***It is not, however, open to the Court to make any addition or subtraction from the Presidential Order.*** *Laskars, therefore, as a community cannot be included as Scheduled Tribes. In Madhuri Patil v. Addl. Commr., Tribal Development [(1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259], a Bench of two Judges, to which one of us (K. Ramaswamy, J.) was a member, had to consider whether Kolis, a Backward Class in Maharashtra would be declared as Mahadeo Koli, a Scheduled Tribe in Maharashtra. Despite the cultural advancement, the genetic traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may have modernised and progressed but they would not be oblivious or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe.* ***The tribe or tribal communities, parts of or groups thereof have their peculiar traits. It was further held that Presidential declaration subject to amendment by Parliament is conclusive. No addition to it by way of declaration of castes, tribes or sub-caste, parts of or groups of tribes or tribal community is permissible.*** *After an elaborate survey of the constitutional purpose and the relative caste structures, customs, marriages etc. it was held that Kolis are Backward Class and Mahadeo Koli are Scheduled Tribes. The appellants therein being OBCs were held not entitled to status as Scheduled Tribes.*

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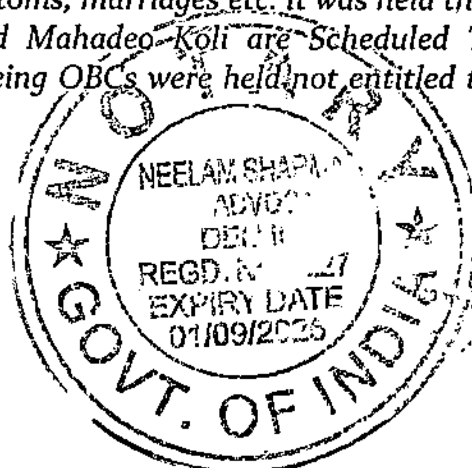

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15. *It is for Parliament to amend the law and the Schedule and include in and exclude from the Schedule, a tribe or tribal community or part of or group within any tribe or tribal community for the State, District or region and its declaration is conclusive. The Court has no power to declare synonyms as equivalent to the Tribes specified in the Order or include in or substitute any caste/tribe etc.It would thus be clear that for the purpose of the Constitution, "Scheduled Tribes" defined under Article 366(25) as substituted (sic) under the Act, and the Second Schedule thereunder are conclusive. Though evidence may be admissible to a limited extent of finding out whether the community which claims the status as Scheduled Caste or Scheduled Tribe, was, in fact, included in the Schedule concerned, the Court is devoid of power to include in or exclude from or substitute or declare synonyms to be of a Scheduled Caste or Scheduled Tribe or parts thereof or group of such caste or tribe.*

16. *In Valsamma Paul v. Cochin University [(1996) 3 SCC 545 : JT (1996) 1 SC 57] a Bench to which two of us (K. Ramaswamy and B.L. Hansaria, JJ.) were members have surveyed the retrograde attempts successively made by different communities in the country to wear the mask of status either of Scheduled Castes or Scheduled Tribes to secure constitutional benefits of reservations and other economic empowerments, intended for the Scheduled Castes and Scheduled Tribes and meant for the latter to accord to them economic, social and cultural advancement. In the Andhra Pradesh High Court decisions noted in the judgment of the Bench, Jangama, backward class sought to be recognised as Scheduled Caste taking the name as Bedajangama or Budagajangama, a Scheduled Caste. Equally Holva tried to be Holuva, i.e., from OBC to ST. Those attempts were judicially negated.This case is yet another instance, where Other Backward Class en masse seeks to get the status of the Scheduled Tribe. It is a retrograde step to corner the benefits intended for Scheduled Tribes. In Shambhu Nath case [CA No. 4631 of 1990, decided on Sept. 15, 1990] this Court, therefore, did not intend to lay down any law that Lohars are Scheduled Tribes. Unfortunately due to concession by the counsel for the Union, without due verification from English version, this Court accepted Hindi version placed before the Bench and held that they were included as Scheduled Tribes. There was an obvious mistake in accepting a*

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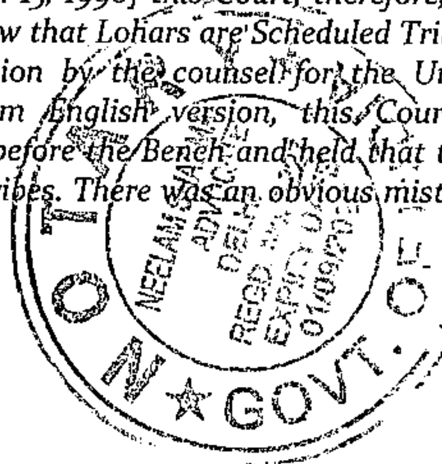

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mistaken fact. Therefore, this Court proceeded on that mistaken assumption without verification from the Act that Lohars are included in Part III of Second Schedule relating to the State of Bihar. Therein this Court stated thus:

"In view of the accepted position that Lohar community is included in the Scheduled Tribe from the date of the amendment of the list in 1976 we do not think that the Tribunal was justified in holding the view it has taken." "

VI. *State of Maharashtra v. Mana AdimJamat Mandal, (2006) 4 SCC 98*

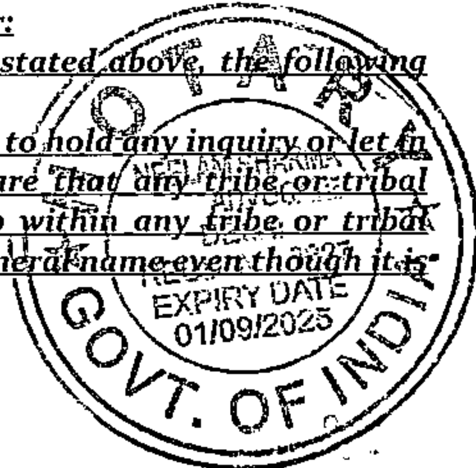
"9. It is now well-settled principle of law that no authority, other than Parliament by law, can amend the Presidential Orders. Neither the State Governments nor the courts nor the tribunals nor any authority can assume jurisdiction to hold inquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in the Presidential Orders in one entry or the other although they are not expressly and specifically included. A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342. It is not possible to hold that either any inquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within the Presidential Orders when it is not so expressly included or exclude a particular caste or tribe or group of castes or tribes when they are expressly included.

11. Per contra, Mr P.P. Rao, learned Senior Counsel contended that the decision of this Court in Dina II [(1980) 1 SCC 621] was overruled by the Constitution Bench of this Court in Milind case [(2001) 1 SCC 4 : 2001 SCC (L&S) 117] by necessary implication.

12. The Constitution Bench of this Court in Milind case [(2001) 1 SCC 4 : 2001 SCC (L&S) 117] after taking into consideration all the judgments, arrived at the conclusion at SCC pp. 30-31, para 36 as under:

"36. In the light of what is stated above, the following positions emerge:

1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is



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not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (1) of Article 342 only by Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in Bhaiya Ram Munda v. Anirudh Patar [(1970) 2 SCC 825] and Dina v. Narayan Singh [(1968) 38 ELR 212 (SC)] did not lay down law correctly in stating that the inquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in Position (1) above no inquiry at all is permissible and no evidence can be let in, in the matter."

20. We are, therefore, in agreement with the view of the High Court that the decision in Dina II [(1980) 1 SCC 621] is overruled by the Constitution Bench in Milind case [(2001) 1 SCC 4 : 2001 SCC (L&S) 117] by necessary implication. The contention of Mr Rao is sustained."

VII. Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar, (2008) 9 SCC 54

"21. Parliament, it is trite, alone can amend the law and the schedule for the purpose of including or excluding therefrom a tribe or tribal community or part of or group within the same in the State, district or region and the declaration made by Parliament is conclusive. For the said purpose, the court does not have any jurisdiction so as to enable it to substitute any caste and tribe.

22. It is not correct to contend that the Bombay High Court in Milind Sharad Katware [1987 Mah LJ 572 (Bom)] was not

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concerned with the question as to whether Halba-Koshti is a sub-tribe of Halba or Halbi. It in fact considered the said question in great depth. ***It referred to a large number of judgments. The doctrine of stare decisis was applied.***

23.Milind [(2001) 1 SCC 4 : 2001 SCC (L&S) 117] was applied in a large number of cases. Some of the judgments had been accepted by the Government. It is in the aforementioned backdrop, this Court in Milind [(2001) 1 SCC 4 : 2001 SCC (L&S) 117] opined: (SCC p. 26, para 31)

> *"31. The High Court applied the doctrine of stare decisis on the grounds that the decisions referred to above were considered judgments; even the Government accepted their correctness in the courts; the State Government independently took the same view after repeated deliberations for a number of years; taking a contrary view would lead to chaos, absurd contradictions resulting in great public mischief. In our view, the High Court was again wrong in this regard. The learned Senior Counsel for Respondent 1 was not in a position to support this reasoning of the High Court and rightly so in our opinion. Among the decisions listed above except the first two decisions, all other decisions were rendered subsequent to two Constitution Bench judgments (supra) of this Court. The first two judgments were delivered in 1956 and 1957. In this view, the High Court was not right in stating that the decisions were rendered during a long span of over 34 years by different Benches of different High Courts, consistently holding that 'Halba-Koshti' is 'Halba'. The rule of stare decisis is not inflexible so as to preclude a departure therefrom in any case but its application depends on facts and circumstances of each case. It is good to proceed from precedent to precedent but it is earlier the better to give quietus to the incorrect one by annulling it to avoid repetition or perpetuation of injustice, hardship and anything ex facie illegal, more particularly when a precedent runs counter to the provisions of the Constitution. The first two decisions were rendered without having the benefit of the decisions of this Court, that too concerning the interpretation of the provisions of the Constitution."*
>
> *It was categorically held that the High Court was not correct in invoking and applying the doctrine of stare decisis."*

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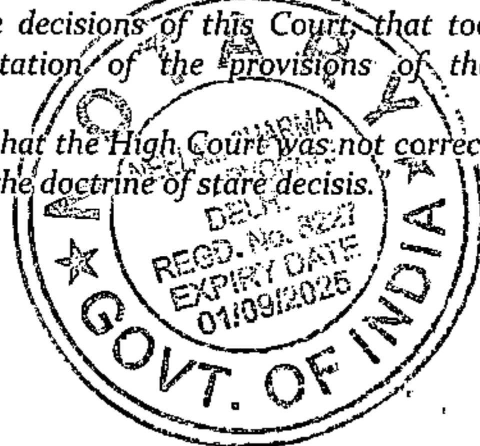

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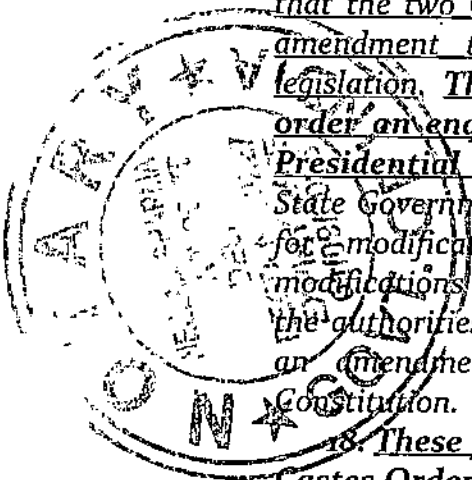
VIII. *Palghat JillaThandanSamudhayaSamrakshna Samithi v. State of Kerala*, (1994) 1 SCC 359

*"16. Article 341 empowers the President to specify not only castes, races or tribes which shall be deemed to be Scheduled Castes in relation to a State but **also "parts of or groups within castes, races or tribes"** which shall be deemed to be Scheduled Castes in relation to a State.**By reason of Article 341 a part or group or section of a caste, race or tribe, which, as a whole, is not specified as a Scheduled Caste, may be specified as a Scheduled Caste. Assuming, therefore, that there is a section of the Ezhavas/Thiyyas community (which is not specified as a Scheduled Caste) which is called Thandan in some parts of Malabar area, that section is also entitled to be treated as a Scheduled Caste, for Thandans throughout the State are deemed to be a Scheduled Caste by reason of the provisions of the Scheduled Castes Order as it now stands. Once Thandans throughout the State are entitled to be treated as a Scheduled Caste by reason of the Scheduled Castes Order as it now stands, it is not open to the State Government to say otherwise, as it has purported to do in the 1987 order.***

*17. We may usefully draw attention to the judgment of a Bench of three learned Judges of this Court in Srish Kumar Choudhury v. State of Tripura [1990 Supp SCC 220] . This judgment considered the Constitution Bench judgments in B. Basavalingappa v. D. Munichinnappa [(1965) 1 SCR 316 : AIR 1965 SC 1269 : 26 ELR 446] and Bhaiyalal v. Harikishan Singh [(1965) 2 SCR 877 : AIR 1965 SC 1557] and certain other judgments. It held that the two Constitution Bench judgments indicated that any amendment to the Presidential Orders could only be by legislation. **The Court could not assume jurisdiction and order an enquiry to determine whether the terms of the Presidential Order included a particular community.** A State Government was entitled to initiate appropriate proposals for modification in cases where it was satisfied that modifications were necessary and, if after appropriate enquiry, the authorities were satisfied that a modification was required, an amendment could be undertaken as provided by the Constitution.*



18. These judgments leave no doubt that the Scheduled Castes Order has to be applied as it stands and no enquiry can be held or evidence let in to determine whether or not

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some particular community falls within it or outside it. No action to modify the plain effect of the Scheduled Castes Order, except as contemplated by Article 341, is valid."

IX. ***Shree Surat Valsad Jilla K.M.G. Parishad v. Union of India*, (2007) 5 SCC 360**

"6. Submission of the learned counsel for the appellants, however, is that the superior courts should exercise a wider power of judicial review in respect of such a matter in view of the fact that the legislative power of Parliament under Article 341(2) of the Constitution of India is of special nature and not plenary. ***We do not agree.List prepared by the President under Article 341(1) of the Constitution of India forms one class of homogeneous group. Only one list is to be prepared by the President and if any amendment thereto is to be made, the same is to be done by Parliament.*** *Even the State does not have any legislative competence to alter the same.*

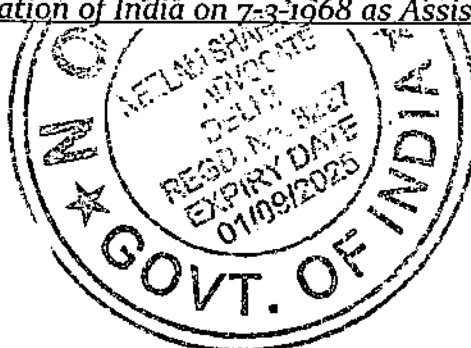
9. The Constitution provides for declaration of certain castes and tribes as Scheduled Castes and Scheduled Tribes in terms of Articles 341 and 342 of the Constitution of India. The object of the said provisions is to provide for grant of protection to the backward class of citizens who are specified in the Scheduled Castes Order and Scheduled Tribes Order having regard to the economic and educational backwardness wherefrom they suffer. ***The President of India alone in terms of Article 341(1) of the Constitution of India is authorised to issue an appropriate notification therefor. The Constitution (Scheduled Castes) Order, 1950 made in terms of Article 341(1) is exhaustive.***

10. ***It is, therefore, not for the court to render its opinion as to whether the President was correct in confining inclusion of the caste Mochi within a particular area.***

11. We, therefore, agree with the High Court that no case has been made out for declaring the impugned legislation as unconstitutional."

X. ***S. Swvigaradoss v. Zonal Manager, F.C.I.*, (1996) 3 SCC 100**

"1. The petitioner's parents initially belonged to Adi-Dravida caste hailing from Kattalai Village in Tirunelveli District, Tamil Nadu. Admittedly, before his birth, they had converted into Christian religion. He was born on 7-5-1941. He joined the service of the Food Corporation of India on 7-3-1968 as Assistant, Grade-



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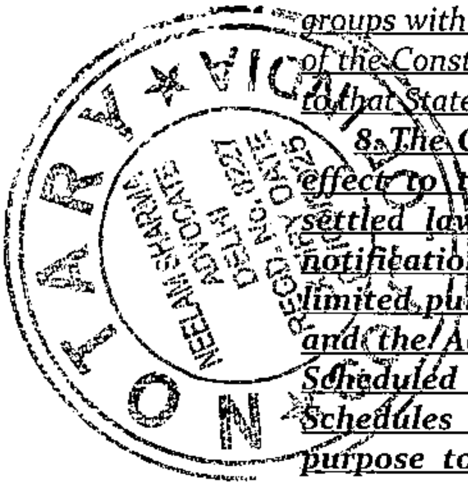
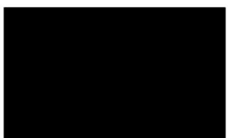
I. Subsequently, he had married on 14-2-1969 according to Christian rites in a church. On these facts, notice was given to the petitioner to show cause how the petitioner would be entitled to benefits and privileges extended to the Scheduled Caste candidates in future. Challenging it, he filed a suit. His case is that he was baptised when he was a minor. After he became major, he is continuing as an Adi-Dravida. The trial court though decreed the suit, on appeal it was reversed and in SA No. 270 of 1984, the High Court confirmed the same. Thus this special leave petition.

3. Article 341(1) empowers the President of India to specify, in consultation with the Governor of the State, with respect to the State or Union Territory, or for a part of the State, District or region by public notification specify castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be "Scheduled Castes" in relation to the State or Union Territory as the case may be. Clause (2) of Article 341 empowers Parliament by law to include in or exclude from the list of Scheduled Castes specified in the notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. In other words, the constitutional mandate is that it is the President who is empowered, in consultation with the Governor of the State, to specify by a public notification the caste, race or tribe or parts or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory.



8. The Courts, therefore, have no power except to give effect to the notification issued by the President. It is settled law that the Court would look into the public notification under Article 341(1) or Article 342(1) for a limited purpose. The notification issued by the President and the Act of Parliament under Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 and the Schedules appended thereto can be looked into for the purpose to find whether the castes, races or tribes are (sic or) parts of or groups within castes, races or tribes shall be Scheduled Castes for the purposes of the Constitution. Under the Amendment Act, 1976, again Parliament has included or excluded from schedules



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appended to the Constitution which are now conclusive. Schedule I relates to Scheduled Castes and Schedule II relates to Scheduled Tribes. Christian is not a Scheduled Caste under the notification issued by the President. In view of the admitted position that the petitioner was born of Christian parents and his parents also were converted prior to his birth and no longer remained to be Adi-Dravida, a Scheduled Caste for the purpose of Tirunelveli District in Tamil Nadu as notified by the President, petitioner cannot claim to be a Scheduled Caste. In the light of the constitutional scheme civil court has no jurisdiction under Section 9 of CPC to entertain the suit. The suit, therefore, is not maintainable. The High Court, therefore, was right in dismissing the suit as not maintainable and also not giving any declaration sought for.

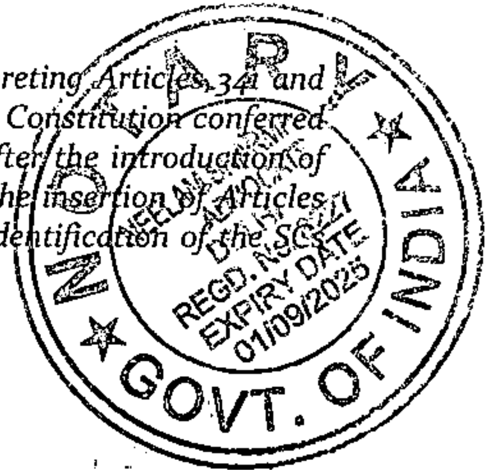
9. The SLP is accordingly dismissed."

XI. ***Srish Kumar Chodhury v. State of Tripura*, 1990 Supp SCC 220**

"16. These authorities clearly indicate, therefore, that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. It is, however, not open to the court to make any addition or subtraction from the Presidential Order."

36. It is submitted that therefore, there exists a finality attached to the Presidential identification of the SC/STs.As noted above, it is settled law that Court would look into the public notification under Article 341(1) or Article 342(1) for a limited purpose. The Courts, therefore, have no power except to give effect to the notification issued by the President. Moreover, it is relevant to note the observations made by this Hon'ble Court in ***JaishriLaxmanrao Patil v. Chief Minister &Ors.***, [2021 SCC OnLine SC 362], wherein *inter-alia* this Hon'ble Court opined that,

"577. The consistent view while interpreting Articles 341 and 342 has been that the power which the Constitution conferred is initially upon the President, who, after the introduction of the 65th and 89th Amendments and the insertion of Articles 338 and 338A, is aided in the task of identification of the SCs



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and STs, by two separate Commissions, to include or exclude members claiming to be SCs or STs. The view of this Court has been that once a determination has been done, no court can, by interpretive process, or even the executive through its policies, include members of other communities as falling within a particular class or described community or even in any manner extend the terms of the determination under Articles 341 or 342. The power to further include, or modify contents of the existing list (of SC/STs) is with Parliament only [by reason of Article 341(2) and Article 342(2)] This position has been consistently followed in a series of decisions. Likewise, in the interpretation as to which communities are categorized as SCs or STs, this Court has been definite, i.e. that only such classes or communities who specifically fall within one or the other lists, that constitute SCs or such STs for the purpose of this Constitution under Article 366(24) and Article 366(25). This has been established in the decision of this Court in Bhaiya Lal v. Harikishan Singh (1965) 2 SCR 877; Basavalingappa v. Munichinnappa (1965) 1 SCR 316 and Kishori Lal Hans v. Raja Ram Singh (1972) 3 SCC 1."

37. Thus, this leaves no further doubt that the executive or the judiciary have very limited say in terms of the handling of the Presidential Orders as under Article 341 and the same have to be followed as per the specifics mentioned within the order. Any variations or interpretational understandings which are not evinced at a primary instance from such order, cannot be attached to it by means of an order of a Court or any Executive Authority. The present petition, seeks modification of the said finality of orders under Article 341 and therefore deserves to be dismissed on the above stated count alone.

Purported breach of Article 14

38. It is submitted that the assertions of the Petitioners with regard to the breach of Article 14 are misconceived. It is respectfully submitted that equal protection of the laws guaranteed by Article 14 of the Constitution does not

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mean that all laws must be general in character and universal in application and that the legislature no longer has the power of distinguishing and classifying persons or things for the purposes of legislation. It is humbly submitted that the only requirement prior to making a particular classification or a special legislation is that the legislative classification must not be based on any arbitrary classification and should be based on an intelligible differentia having a reasonable relation to the object which the legislature seeks to attain. It is submitted that if the classification on which the legislation is founded fulfils the above said requirement, then the differentiation which the legislation makes between the class of persons or things to which it applies and other persons or things left outside the purview of the subject matter of legislation cannot be regarded as a denial of the equal protection of the law..

39. It is submitted that the limited question in the present case would be whether Scheduled Caste converts to other religions suffer from the same degree of oppressiveness as suffered by Scheduled Castes practicing Hinduism, Sikhism and Buddhism? It is submitted that unless the oppressive severity of such backwardness is conclusively established by the Petitioners, the present petition deserves to be dismissed. It is submitted that the Commission appointed by the Central Government will establish, one way or the other, whether the oppressive severity of backwardness remain the same or not, and till the time the same is established, it cannot be said that the impugned classification is discriminatory.

40. It is submitted that the Central Government has received representations which state thatthe basis of identification of a certain class of people as Scheduled Caste was also social, educational and economic backwardness arising from the age-old traditional practice of untouchability that flowed from a rigid caste system. The Central Government has further

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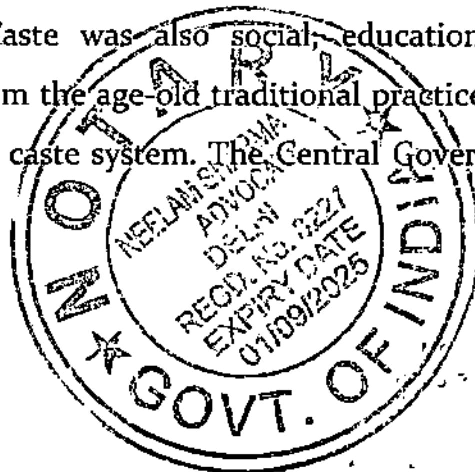

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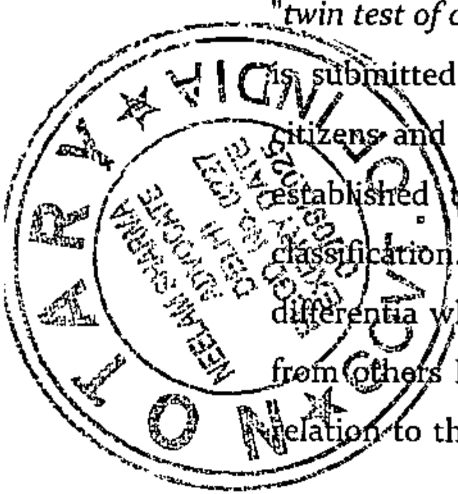
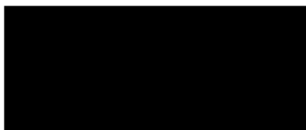
received representations claiming that the present question would also involve the limited rights of the present communities,who are recognised Scheduled Castes, considering that the benefits of reservation etc. are limited in nature. It is submitted that the Central Government has received representations which state that the recognition of classes of persons who converted from religions mentioned in 1950 Order have been recognized as OBC [specifically converts from Scheduled Castes] and the same is sufficient for their respective amelioration. It is submitted that the Central Government has received representations which state that religious minorities, enjoy special constitutional, legal and institutional protection/arrangements and therefore same may be taken in to account before extending any further benefits.

In light of the above, it is submitted that if the Commissions appointed by the Central Government, after field study and a holistic determination of the issue, concludes that there exists an*intelligible differentia* between the Scheduled Castes converts to other religions and the Scheduled Castes included in the Impugned Constitution Order, the classification would clearly be sustainable.

41. It is submitted that even after the authoritative pronouncement in ***ShayaraBano v. Union of India***reported in 2017 (9) SCC 1 (Para 101), the "*twin test of classification*", would be applicable in matters of classification. It is submitted that the present is a case of classification between Indian citizens and foreigners which cannot be doubted on any count. It is well-established that Article 14 forbids class legislation but does not forbid classification. Permissible classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and the differentia must have a rational relation to the object sought to be achieved by the statute in question. It is





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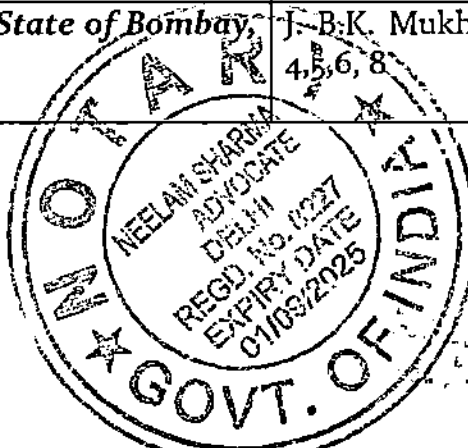
submitted that there exists a clear intelligible differentia between local contributions to the sector and foreign contributions. It is submitted that the jurisprudence laid down in the initial years by this Hon'ble Court, still holds the field on the subject.

42. It is submitted that the presence of "*twin test of classification*" would give content to the otherwise untrammelled expanse of "*manifest arbitrariness*". It is submitted that the "*twin test of classification*" was laid down by bench of higher combinations than ***ShayaraBanosupra.*** The "*twin test of classification*" states that Article 14 forbids class legislation but does not forbid classification. It is submitted that it postulates that permissible classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and the differentia must have a rational relation to the object sought to be achieved by the statute in question. It is submitted that the jurisprudence laid down in the initial years by this Hon'ble Court, still holds the field on the subject and the 'doctrine of manifest arbitrariness' cannot exist outside the law settled by numerous constitution benches of this Hon'ble Court. The following is a brief table on the subject :

Sr. No.	Name of the Case	Important Observations
1.	***Chiranjit Lal Chowdhuri v. Union of India,*** **1950 SCR 869** **[5 judges]**	J. Fazl Ali – Para 8 – 11, 20 J. Sashtri – Para 29-31 J. Mukherjea – Para 63-67
2.	***State of Bombay v. F.N. Balsara,*** **1951 SCR 682** [5 judges]	J. Fazl Ali – Para 37-42, 47, 62 All judges agreed with J. Fazl Ali.
3.	***Kathi Raning Rawat v. State of Saurashtra,*** **1952 SCR 435** **[7 judges]**	J. PatanajliSastri – Para 7 J. Fazl Ali – Para 19 J. Mukherjea – Para 32-36 J. S.R. Das – Para 44-47
4.	***Gurbachan Singh v. State of Bombay,*** **1952 SCR 737** **[5 judges]**	J. B.K. Mukherjea – Para 3-4,5,6, 8



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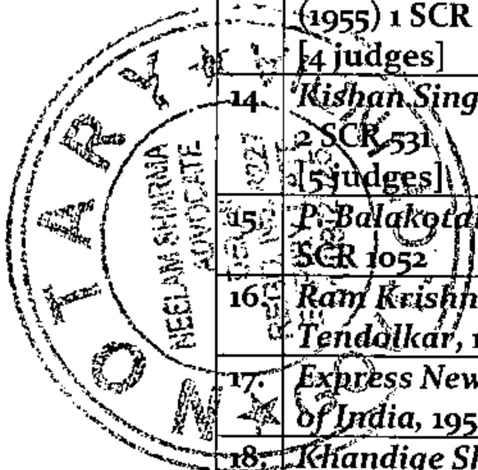
SR. NO.	NAME OF THE CASE	IMPORTANT OBSERVATIONS
5.	*State of Punjab v. Ajaib Singh,* 1953 SCR 254 [5 judges]	J. B.K. Mukherjea, Para 22
6.	*Habeeb Mohamed v. State of Hyderabad,* 1953 SCR 661 [5 judges]	J. B.K. Mukherjea – Para 4-6
7.	*Kedar Nath Bajoria v. State of W.B.,* 1954 SCR 30 [5 judges]	J. Patanjali Shastri - Para 7 - 17
8.	*Harman Singh v. Regional Transport Authority Calcutta Region,* 1954 SCR 371 [5 judges]	J. M.C. Mahajan – Para 7
9.	*BaburaoShantaram More v. Bombay Housing Board,* 1954 SCR 572 [5 judges]	J. S.R. Das – Para 6
10.	*Sakhawant Ali v. State of Orissa,* (1955) 1 SCR 1004 [6 judges]	J. N.H. Bhagwati – Para 9 - 10
11.	*Budhan Choudhry v. State of Bihar,* (1955) 1 SCR 1045 [7 judges]	J. S.R. Das – Para 5, 7 and 9
12.	*D.P. Joshi v. State of M.B.,* (1955) 1 SCR 1215 [5 judges]	J. V. Venkatarama – Para 14 - 16
13.	*Hans Muller of Nurenburg v. Superintendent, Presidency Jail,* (1955) 1 SCR 1284 [4 judges]	J. Vivian Bose – Para 13, 23 and 24
14.	*Kishan Singh v. Th. Ther Singh,* (1955) 2 SCR 531 [5 judges]	J. T.L. Vekatarama Aiyar – Para 3-5
15.	*P. Balakotaiah v. Union of India,* 1958 SCR 1052	J. T.R. Venkatarama Aiyar – Para 12 (IIa)
16.	*Ram Krishna Dalmia v. Justice S.R. Tendolkar,* 1959 SCR 279	J. S.R. Das – Para 11-17
17.	*Express Newspaper (P) Ltd. v. Union of India,* 1959 SCR 12	J. N.H. Bhagwati - Para 77-84
18.	*Khandige Sham Bhat v. Agrl. ITO,* (1963) 3 SCR 809	J. K. Subba Rao – Para 7-9
19.	*Raja Bira Kishore Deb v. State of*	J. Wanchoo – Para 5



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SR. NO.	NAME OF THE CASE	IMPORTANT OBSERVATIONS
	Orissa, (1964) 7 SCR 32	

43. It is submitted that while the said arguments may be relevant for the policy purpose, the samecannot be a matter of constitutionality challenge. It is submitted that the submissions of the Petitioners on the classification not be clear on based on unintelligible factors is misconceived. In ***Mohd. Hanif Quareshi v. State of Bihar*, 1959 SCR 629**, it was held as under :

> *15. The meaning, scope and effect of Article 14, which is the equal protection clause in our Constitution, has been explained by this Court in a series of decisions in cases beginning with Chiranjitlal Chowdhury v. The Union of India [1(1950) SCR 869] and ending with the recent case of Ramakrishna Dalmia v. Union of India [CAs Nos. 455-457 and 657-658 of 1957, decided on March 28, 1958] . It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification, it has been held, may be founded on different bases, namely, geographical, or according to objects or occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. **The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those***

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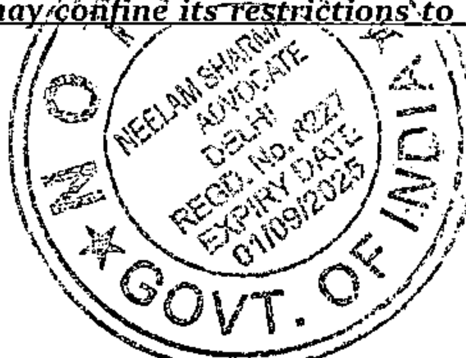

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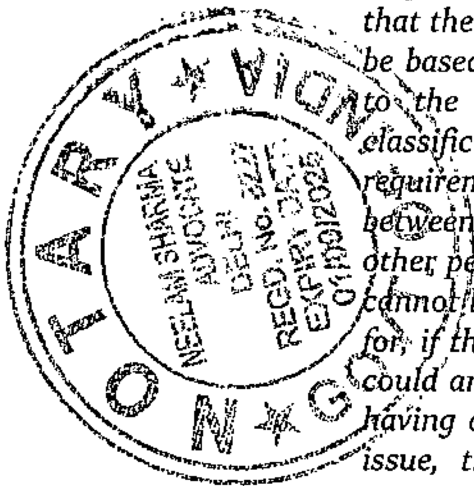
<u>*cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation. We, therefore, proceed to examine the impugned Acts in the light of the principles thus enunciated by this Court.*</u>

44. It is submitted that further it is settled law that a 'mathematical nicety' or 'perfect equality' are not required as per Article 14. Further, the constitutionality of a statute cannot be questioned on the basis of fortuitous circumstances arising out of peculiar situations. The Respondent seeks to rely on the following cases for the said purpose:

A. ***Kedar Nath Bajoria v. State of W.B.*, 1954 SCR 30 [5JB – J. Patanjali Sastri]**

"7. <u>*Now it is well settled that the equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation.*</u> *To put it simply all that is required in class or special legislation is that the legislative classification must not be arbitrary but should be based on an intelligible principle having a reasonable relation to the object which the legislature seeks to attain. If the classification on which the legislation is founded fulfils this requirement, then the differentiation which the legislation makes between the class of persons or things to which it applies and other persons or things left outside the purview of the legislation cannot be regarded as a denial of the equal protection of the law, for, if the legislation were all-embracing in its scope, no question could arise of classification being based on intelligible differentia having a reasonable relation to the legislative purpose. The real issue, therefore, is whether having regard to the underlying purpose and policy of the Act as disclosed by its title, preamble and provisions as summarised above, the classification of the offences, for the trial of which the Special Court is set up and a*



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special procedure is laid down, can be said to be unreasonable or arbitrary and therefore, violative of the equal protection clause.

...

9. Mr Chatterjee argues that the offences listed in the schedule do not necessarily involve the accrual of any pecuniary gain to the offender or the acquisition of other property by him or any loss to any Government, and that the classification cannot, therefore, be said to be based on that consideration. Counsel referred in particular to the offences included in the fifth paragraph, namely, forgery, making and possessing counterfeit seals, falsification of accounts, etc., as instances in point. It may, however, be observed that Section 9(1), which makes it obligatory on the Special Court to impose on persons tried and convicted by it an additional compensatory fine of the kind mentioned above, indicates that only those offences, which, either by themselves or in combination with others mentioned in the schedule, are suspected to "have resulted in such pecuniary gain or other advantage and, therefore, to merit the compensatory fine, are to be allotted to a Special Court for trial. It is well known that acts which constitute the offences mentioned in para 5 are often done to facilitate the perpetration of the other offences specified in the schedule, and they may well have been included as ancillary offences. ***Article 14 does not insist that legislative classification should be scientifically perfect or logically complete and we cannot accept the suggestion that the classification made in the Act is based on no intelligible principle and is, therefore, arbitrary."***

B. **Ganga Ram v. Union of India, (1970) 1 SCC 377 [6JB – J. I.D. Dua]**

"2. The right of equality is guaranteed by Articles 14 to 16 of our Constitution. The petitioners rely on Articles 14 and 16(1). Article 14 is an injunction to both the legislative and the executive organs of the State and other subordinate authorities not to deny to any person equality before the law or the equal protection of the laws. Article 16 is only an instance of the general rule of equality laid in Article 14. Sub-article (1) of Article 16 guarantees to every citizen equality of opportunity in matters of public employment thereby serving to give effect to the equality before the law guaranteed by Article 14. The equality of opportunity in the matter of services undoubtedly takes within its fold all stages of service from initial appointment to its termination including promotion but it does not prohibit the prescription of reasonable

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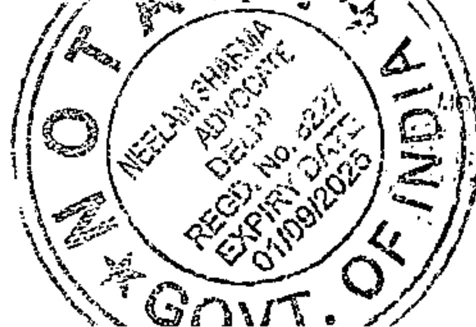

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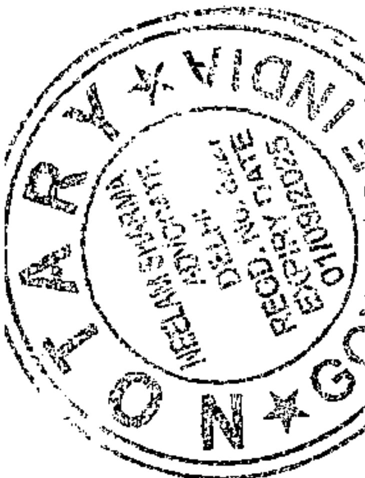
rules for selection and promotion, applicable to all members of a classified group. **Mere production of inequality is not enough to attract the constitutional inhibition because every classification is likely in some degree to produce some inequality. The State is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not be scientifically perfect or logically complete.** In applying the wide language of Articles 14 and 16 to concrete cases a doctrinaire approach should be avoided and the matter **considered in a practical way**, of course, without whittling down the equality clauses. *The classification, in order to be outside the vice of inequality, must, however, be founded on an intelligible differentia which on rational grounds distinguishes persons grouped together from those left out. The differences which warrant a classification must be real and substantial and must bear a just and reasonable relation to the object sought to be achieved. If this test is satisfied then the classification cannot be hit by the vice of inequality. It is in the background of this broad principle that the petitioners' grievance is to be considered."*

C. ***Anant Mills Co. Ltd. v. State of Gujarat*, (1975) 2 SCC 175**

"24. Apart from the above, we are of the opinion that classification by treating decided cases as belonging to one category and pending cases as belonging to another category is reasonable and not per se offensive to Article 14.

25. It is well-established that Article 14 forbids class legislation but does not forbid classification. Permissible classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and the differentia must have a rational relation to the object sought to be achieved by the statute in question. ***In permissible classification mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment.*** *Taxation law is not an exception to this doctrine.* ***But, in the application of***



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the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification so long as it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways (see Ram Krishna Dalmia v. Justice S.R. Tendolkar [AIR 1958 SC 538 : 1959 SCR 279] and Khandige Sham Bhat v. Agricultural Income Tax Officer, Kasaragod [AIR 1963 SC 591 : (1963) 3 SCR 809 : (1963) 48 ITR 21]) Keeping the above principles in view, we find no violation of Article 14 in treating pending cases as a class different from decided cases. It cannot be disputed that so far as the pending cases covered by clause (i) are concerned, they have been all treated alike. ...."

D. ***Mohan Kumar Singhania v. Union of India,*** **1992 Supp (1) SCC 594 [3JB – J. Ratnavel Pandian]**

"127. We shall now bestow our judicious thought over this matter and carefully examine the rival contentions of the parties in the light of the guiding principles, lucidly laid down by this Court in a series of decisions, a few of which we have already referred to hereinbefore. The selections for IAS, IFS and IPS Group 'A' services and Group 'B' service are made by a combined competitive examination and viva voce test. There cannot be any dispute that each service is a distinct and separate cadre, having its separate field of operation, with different status, prospects, pay scales, the nature of duties, the responsibilities to the post and conditions of service etc. Therefore, once a candidate is selected and appointed to a particular cadre, he cannot be allowed to say that he is at par with the others on the ground that all of them appeared and were selected by a combined competitive examination and viva voce test and that the qualifications prescribed are comparable. In our considered view, the classification of the present case is not based on artificial inequalities but is hedged within the salient features and truly founded on substantial differences. Judged from this point of view, it seems to us impossible to accept the submission that the classification rests on an unreal and unreasonable basis and that it is arbitrary or absurd.

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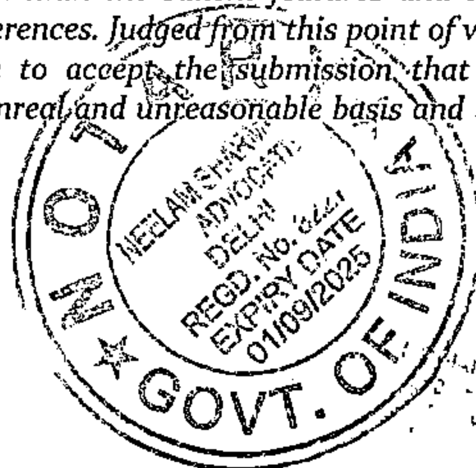

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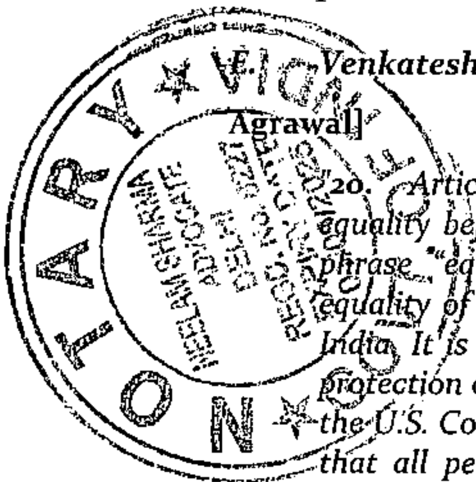
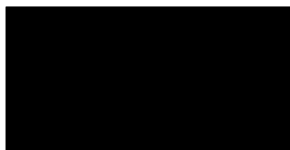
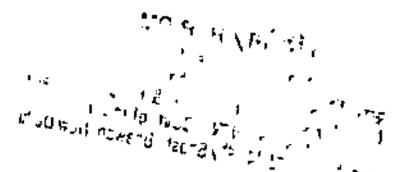
130. *Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The cherished principle underlying the above article is that there should be no discrimination between one person and another if as regards the subject matter of the legislation, their position is the same. (vide Chiranjit Lal Chowdhuri v. Union of India [1950 SCR 869 : AIR 1951 SC 41] or in other words its action must not be arbitrary, but must be based on some valid principle, which in itself must not be irrational or discriminatory (vide Kasturi Lal Lakshmi Reddy v. State of J&K [(1980) 4 SCC 1] . As ruled by this Court in Ameerunissa Begum v. Mahboob Begum [1953 SCR 404 : AIR 1953 SC 91] and Gopi Chand v. Delhi Administration [AIR 1959 SC 609 : 1959 Supp 2 SCR 87] that differential treatment does not per se constitute violation of Article 14 and it denies equal protection only when there is no rational or reasonable basis for the differentiation.* ***Thus Article 14 condemns discrimination and forbids class legislation but permits classification founded on intelligible differentia having a rational relationship with the object sought to be achieved by the Act/Rule/Regulation in question. The government is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not scientifically be perfect or logically complete. As observed by this Court more than once, every classification is likely in some degree to produce some inequality."***



V. Venkateshwara Theatre v. State of A.P., (1993) 3 SCC 677 [2JB – S.C. Agrawal]

"20. Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase "equality before the law" contains the declaration of equality of the civil rights of all persons within the territories of India. It is a basic principle of republicanism. The phrase "equal protection of laws" is adopted from the Fourteenth Amendment to the U.S. Constitution. The right conferred by Article 14 postulates that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its governmental power, has, of necessity, to make laws operating differently on different groups of persons





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within its territory to attain particular ends in giving effect to its policies, it is recognised that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is, however, required that the classification must satisfy two conditions, namely, (i) it is founded on an intelligible differentia which distinguishes those that are grouped together from others; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. ***It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpably arbitrary.*** *(See : Re, Special Courts Bill, 1978[(1979) 1 SCC 380 : (1979) 2 SCR 476, 534-36] .) If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. (See : Khandige Sham Bhat v. Agricultural I.T.O. [(1963) 3 SCR 809, 817 : AIR 1963 SC 591 : (1963) 48 ITR 21])*

21. Since in the present case we are dealing with a taxation measure it is necessary to point out that in the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. *(See: East India Tobacco Co. v. State of A.P.[(1963) 1 SCR 404, 411 : AIR 1962 SC 1733 : (1962) 13 STC 529] , P.M. Ashwathanarayana Shetty v. State of Karnataka [1989 Supp (1) SCC 696 : 1988 Supp (3) SCR 155, 188] , Federation of Hotel & Restaurant Association of India v. Union of India [(1989) 3 SCC 634 : (1989) 2 SCR 918, 949] , Kerala Hotel & Restaurant Association v. State of Kerala [(1990) 2 SCC 502 : 1990 SCC (Tax) 309 : (1990) 1 SCR 516, 530] and Gannon Dunkerley and Co. v. State of Rajasthan[(1993) 1 SCC 364, 397] .)*

22. Reference, in this context, may also be made to the decision of the U.S. Supreme Court in San Antonio Independent School District v. Rodriguez [411 US 1, 41 : 36 L Ed 2d 16 (1973)] wherein Justice Stewart, speaking for the majority has observed:

"No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well

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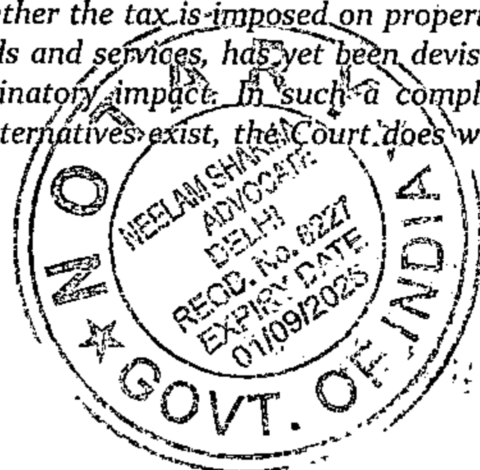

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not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause."

23. *Just as a difference in the treatment of persons similarly situate leads to discrimination, so also discrimination can arise if persons who are unequals, i.e. differently placed, are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law.*

29. *In the instant case, we find that the legislature has prescribed different rates of tax by classifying theatres into different classes, namely, air-conditioned, air-cooled, ordinary (other than air-conditioned and air-cooled), permanent and semi-permanent and touring and temporary. The theatres have further been categorised on the basis of the type of the local area in which they are situate. It cannot, therefore, be said that there has been no attempt on the part of the legislature to classify the cinema theatres taking into consideration the differentiating circumstances for the purpose of imposition of tax. The grievance of the appellants is that the classification is not perfect. What they want is that there should have been further classification amongst the theatres falling in the same class on the basis of the location of the theatre in each local area. We do not think that such a contention is well founded.*

F. *Ombalika Das v. Hulisa Shaw,* (2002) 4 SCC 539 [2JB – J. R.C. Lahoti]

"11. It is well settled that classification for the purpose of legislation cannot be done with mathematical precision. The legislature enjoys considerable latitude while exercising its wisdom taking into consideration myriad circumstances, enriched by its experience and strengthened by people's will. So long as the classification can withstand the test of Article 14 of the Constitution, it cannot be

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questioned why one subject was included and the other left out and why one was given more benefit than the other."

G. Dharam Dutt v. Union of India, (2004) 1 SCC 712 [2JB – J. R.C. Lahoti]

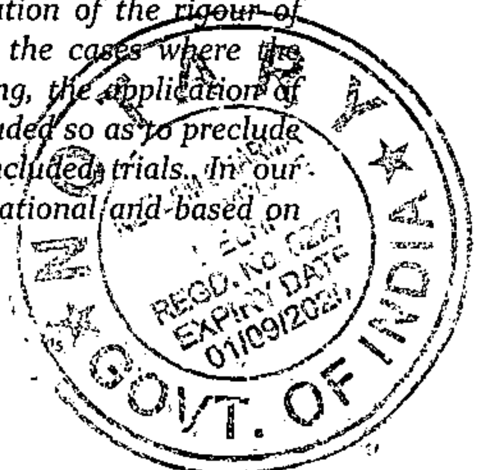
"56. Article 14 of the Constitution prohibits class legislation and not reasonable classification for the purpose of legislation. The requirements of the validity of legislation by reference to Article 14 of the Constitution are: that the subject-matter of legislation should be a well-defined class founded on an intelligible differentia which distinguishes that subject-matter from the others left out, and such differentia must have a rational relation with the object sought to be achieved by the legislation. The laying down of intelligible differentia does not, however, mean that the legislative classification should be scientifically perfect or logically complete."

H. Basheer v. State of Kerala, (2004) 3 SCC 609 [2JB – J. B.N. Srikrishna]

"20. Merely because the classification has not been carried out with mathematical precision, or that there are some categories distributed across the dividing line, is hardly a ground for holding that the legislation falls foul of Article 14, as long as there is broad discernible classification based on intelligible differentia, which advances the object of the legislation, even if it be class legislation. As long as the extent of overinclusiveness or underinclusiveness of the classification is marginal, the constitutional vice of infringement of Article 14 would not infect the legislation.

....

23. Thus, in our view, the Rubicon indicated by Parliament is the conclusion of the trial and pendency of appeal. In the cases of pending trials, and cases pending investigation, the trial is yet to conclude; hence, the retrospective mollification of the rigour of punishment has been made applicable. In the cases where the trials are concluded and appeals are pending, the application of the amended Act appears to have been excluded so as to preclude the possible contingency of reopening concluded trials. In our judgment, the classification is very much rational and based on



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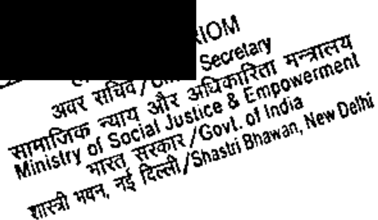
clearly intelligible differentia, which has rational nexus with one of the objectives to be achieved by the classification. There is one exceptional situation, however, which may produce an anomalous result. If the trial had just concluded before 2-10-2001, but the appeal is filed after 2-10-2001, it cannot be said that the appeal was pending as on the date of the coming into force of the amending Act, and the amendment would be applicable even in such cases. ***The observations of this Court in Nallamilli case [(2001) 7 SCC 708] would apply to such a case. The possibility of such a fortuitous case would not be a strong enough reason to attract the wrath of Article 14 and its constitutional consequences. Hence, we are unable to accept the contention that the proviso to Section 41 of the amending Act is hit by Article 14."***

45. It is respectfully submitted that the scope, expanse and width of application of Article 14 and the corresponding power of the Legislatures to make a reasonable classification which has a clear nexus with the object of an enactment, varies as per the subject matter of the classification. It is respectfully submitted that Courts have repeatedly held that in matters concerning social policy, economic policy, national interest, etc., wider latitude for classification is available to the Parliament/Legislature considering the subject matters of the challenge and the nature of the field which the Legislature seeks to deal with.

46. It is submitted that the object of the reservations and identification of Scheduled Castes is over and beyond the 'social and economic backwardness'. It is submitted that the identification of scheduled castes is centered around a specific social stigma [and the connected backwardness with such stigma] that is limited to the communities identified in the Constitution [Scheduled Castes] Order, 1950.

Judicial recognition of scheduled caste being limited to religions in the 1950 Order



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47. It is submitted that the Hon'ble Apex Court in ***The Principal Guntur Medical College, Guntur &Ors. v. Y. Mohan Rao***, [(1976) 3 SCC 411] wherein, it was observed as under:

> *"Since the caste is a social combination of persons governed by its rules and regulations, it may, if its rules and regulations so provide, admit a new member just as it may expel an existing member. The only requirement for admission of a person as a member of the caste is the acceptance of the person by the other members of the caste, for, as pointed out by KirshnaswamiAyyangar, J., in Durgaprasada Rao v. Sudarsanaswami7 , "in matters affecting the well being or composition of a caste, the caste itself is the supreme judge. (emphasis supplied).* ***It will, therefore, be seen that on conversion to Hinduism, a person born of Christian converts would not become a member of the caste to which his parents belonged prior to their conversion to Christianity, automatically or as a matter of course,*** *but he would become such member, if the other members of the caste accept him as a member and admit him within the fold"*

48. Therefore, in view of the above, it is clear that on conversion to another religion, *de-facto*, an individual loses his caste, and the only way it is reversed is if it is established that the person who has embraced another religion is still suffering from social disability, that he is following the customs and traditions of the community which he earlier belonged to and also be accepted by other members of the caste as a member of such tribe/ caste. In the absence of these principles, should all the converts/ convertees arbitrarily be given the perks of reservation meant exclusively for SC, without carefully examining the aforementioned aspects, it would cause grave injustice and an abuse of the process of law, that would consequently affect the rights of the SCs.

49. It is submitted that notably, in ***M. Arumugam V. S. Rajgopal and others***, **[(1976) 1 SCC 863]**this Hon'ble Court *inter-alia*, observed that, *"Once such a person ceases to be a Hindu and becomes a Christian, the social and*

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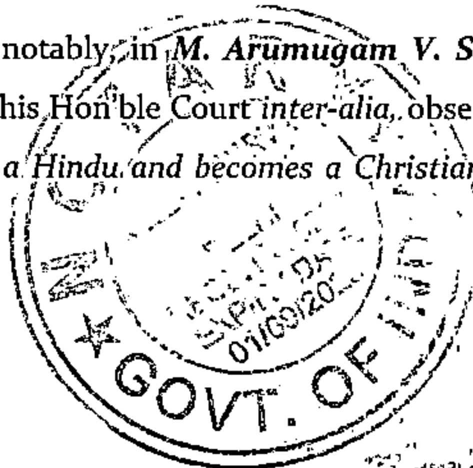

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economic disabilities arising because of Hindu religion cease and hence it is no longer necessary to give him protection and for this reason he is deemed not to belong to a scheduled caste."

Plenary social policy legislation

50. At the outset it is submitted that the Constitution (Scheduled Castes) Order, 1950 cannotbeequatedwith any other general legislation/notification. It was enacted with a clear objective to extend the constitutional recognition to a specific group of communities, with a specific social and religious history, to achieve a specific purpose. It is submitted that issues concerning identification of Scheduled Castes, within the wide mosaic of Indian society, is a delicate social issue, and the power in this regard under the Constitution, has been exercised with great caution. It is submitted that such social issues are undoubtedly not judicial interventions, however, it may be noted that this Hon'ble Court has consistently held that Courts must give due regard to the wisdom of the Parliament/President in these issues.

51. The said aspect of legislative policy and the contours of judicial review have been dealt with in the following cases in India. In ***Union of India v. Indian Radiological & Imaging Assn.***, (2018) 5 SCC 773, this Hon'ble Court held as under :

> *"16. Parliament which has the unquestioned authority and legislative competence to frame the law considered it necessary to empower the Central Government to frame rules to govern the qualifications of persons employed in genetic counselling centres, laboratories and clinics.* ***The wisdom of the legislature in adopting the policy cannot be substituted by the court in the exercise of the power of judicial review. Prima facie the judgment of the Delhi High Court has trenched upon an area of legislative policy****. Judicial review cannot extend to reappreciating the efficacy of a legislative policy adopted in a law which has been enacted by the competent legislature. Both the*

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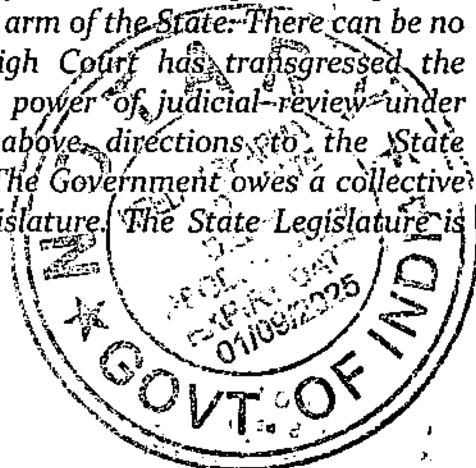
Indian Medical Council Act, 1956 and the PCPNDT Act are enacted by Parliament. Parliament has the legislative competence to do so. The Training Rules, 2014 were made by the Central Government in exercise of the power conferred by Parliament. Prima facie, the Rules are neither ultra vires the parent legislation nor do they suffer from manifest arbitrariness."

52. It is submitted that this Hon'ble Court in ***State of H.P. v. Satpal Saini***, (2017) 11 SCC 42, held as under :

"6. The grievance, in our view, has a sound constitutional foundation. The High Court has while issuing the above directions acted in a manner contrary to settled limitations on the power of judicial review under Article 226 of the Constitution. A direction, it is well settled, cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary constitutional power which is vested in Parliament and the State Legislatures under Articles 245 and 246 of the Constitution. The legislature as the repository of the sovereign legislative power is vested with the authority to determine whether a law should be enacted. The doctrine of separation of powers entrusts to the court the constitutional function of deciding upon the validity of a law enacted by the legislature, where a challenge is brought before the High Court under Article 226 (or this Court under Article 32) on the ground that the law lacks in legislative competence or has been enacted in violation of a constitutional provision. But judicial review cannot encroach upon the basic constitutional function which is entrusted to the legislature to determine whether a law should be enacted. ***Whether a provision of law as enacted subserves the object of the law or should be amended is a matter of legislative policy.*** *The court cannot direct the legislature either to enact a law or to amend a law which it has enacted for the simple reason that this constitutional function lies in the exclusive domain of the legislature. For the Court to mandate an amendment of a law — as did the Himachal Pradesh High Court — is a plain usurpation of a power entrusted to another arm of the State. There can be no manner of doubt that the High Court has transgressed the limitations imposed upon the power of judicial review under Article 226 by issuing the above directions to the State Legislature to amend the law. The Government owes a collective responsibility to the State Legislature. The State Legislature is*



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comprised of elected representatives. The law enacting body is entrusted with the power to enact such legislation as it considers necessary to deal with the problems faced by society and to resolve issues of concern. The courts do not sit in judgment over legislative expediency or upon legislative policy. This position is well settled. Since the High Court has failed to notice it, we will briefly recapitulate the principles which emerge from the precedent on the subject."

53. It is submitted that this Hon'ble Court in **Ravindra Ramchandra Waghmare v. Indore Municipal Corpn.**, (2017) 1 SCC 667, held as under :

*"46. In Union of India v. Deoki Nandan Aggarwal, this Court has laid down that courts cannot supply omissions to a statute and a court cannot invoke the principle of affirmative action to avoid discrimination so as to modify the **legislative policy**. In Padma Sundara Rao v. State of T.N., this Court held when casus omissus cannot be supplied by the Court. Reliance has also been placed upon the decisions in Jones v. Wrotham Park Settled Estates, Inco Europe Ltd. v. First Choice Distribution and Singareni Collieries Co. Ltd. v. VemugantiRamakrishan Rao which are the cases in which the Court has supplied omissions, the same is based upon the principle of true intent of the legislature and in order to give effect to the said intent, the courts can supply words which appear to be accidentally omitted or if the literal construction would in fact do violence to the legislative objective. For that, three conditions must be satisfied before this course can be adopted:*

(i) that the intended purpose of the statute is not being achieved by literal construction of the statute;

(ii) that by inadvertence the draftsmen and Parliament failed to give effect to that purpose in the provision; and

(iii) the substance of the provision Parliament would have made an (sic can) be known with precision, though not in exact language, had the error in the Bill been noticed.

There is no dispute with the principles laid down by this Court in the aforesaid dictums. However the language of Section 305 is plain, simple and clear. In our opinion there is no defect in the phraseology used. The exigencies when the notice can be issued including the vesting part and deeming fiction are very clear. In view of aforesaid discussion, we do not find any deficiency in the phraseology used in Section 305 of the 1956 Act, as such we do

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not venture to add, subtract, amend or by construction make up the deficiencies. We find that there is no omission or lacunae, much less casus omissus as submitted, in the provisions contained in Section 305 of the 1956 Act."

54. It is submitted that this Hon'ble Court in ***State of H.P. v. H.P. NiziVyavsayikPrishikshan Kendra Sangh***, (2011) 6 SCC 597, held as under :

*"21. The High Court has lost sight of the fact that education is a dynamic system and courses/subjects have to keep changing with regard to market demand, employability potential, availability of infrastructure, etc. No institute can have a legitimate right or expectation to run a particular course forever and it is the pervasive power and authority vested in the Government to frame policy and guidelines for progressive and legitimate growth of the society and create balances in the arena inclusive of imparting technical education from time to time. Inasmuch as the institutions found fit were allowed to run other courses except the three mentioned above, the doctrine of legitimate expectation was not disregarded by the State. Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. **The courts do not substitute their views in the decision of the State Government with regard to policy matters.** In fact, the court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution."*

55. It is submitted that the question of the identification of which groups [within which specific religions] can be regards as "Scheduled Castes" is a subject matter solely within the domain of the Presidential declaration by the President of India. It is submitted that the question of policy efficacy or the requirement of the Constitution [Scheduled Castes] Order, 1950 is based on factors which clearly fall outside the judicial realm. It is submitted that such decision are based on factors which not justiciable and merely because as per

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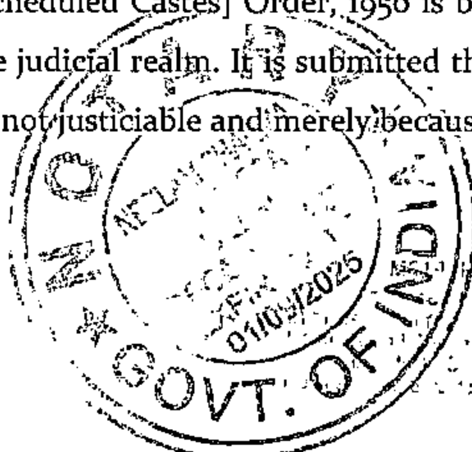

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the limited understanding of the Petitioners, the Impugned Constitution Order includes only some communities, the same does not become a ground for unconstitutionality. The question as to which groups [within which religions] are eligible to be identified as Scheduled Castes, is inherently a social question and cannot be adjudicated before the Hon'ble Courts. It is submitted that Hon'ble Courts in jurisdictions across the world have denied adjudicating upon such socio-political questions.

56. It is submitted that this Hon'ble Court, in a recent judgment in ***Dr. Ashwani Kumar v. Union of India and Anr.***, 2019 SCC OnLine SC 1144, in the context of a similar prayer, has held as under :

> *"26. Legislating or law-making involves a choice to prioritise certain political, moral and social values over the others from a wide range of choices that exist before the legislature. It is a balancing and integrating exercise to give expression/meaning to diverse and alternative values and blend it in a manner that it is representative of several viewpoints so that it garners support from other elected representatives to pass institutional muster and acceptance. Legislation, in the form of an enactment or laws, lays down broad and general principles. It is the source of law which the judges are called upon to apply. Judges, when they apply the law, are constrained by the rules of language and by well identified background presumptions as to the manner in which the legislature intended the law to be read. Application of law by the judges is not synonymous with the enactment of law by the legislature. Judges have the power to spell out how precisely the statute would apply in a particular case. In this manner, they complete the law formulated by the legislature by applying it. This power of interpretation or the power of judicial review is exercised post the enactment of law, which is then made subject matter of interpretation or challenge before the courts.*
>
> *27. Legislature, as an institution and a wing of the Government, is a microcosm of the bigger social community possessing qualities of a democratic institution in terms of composition, diversity and*

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accountability. Legislature uses in-built procedures carefully designed and adopted to bring a plenitude of representations and resources as they have access to information, skills, expertise and knowledge of the people working within the institution and outside in the form of executive.[31] *Process and method of legislation and judicial adjudication are entirely distinct. Judicial adjudication involves applying rules of interpretation and law of precedents and notwithstanding deep understanding, knowledge and wisdom of an individual judge or the bench, it cannot be equated with law making in a democratic society by legislators given their wider and broader diverse polity. The Constitution states that legislature is supreme and has a final say in matters of legislation when it reflects on alternatives and choices with inputs from different quarters, with a check in the form of democratic accountability and a further check by the courts which exercise the power of judicial review. It is not for the judges to seek to develop new all-embracing principles of law in a way that reflects the stance and opinion of the individual judges when the society/legislators as a whole are unclear and substantially divided on the relevant issues*[32]*. In Bhim Singh v. Union of India*[33]*, while observing that the Constitution does not strictly prohibit overlapping of functions as this is inevitable in the modern parliamentary democracy, the Constitution prohibits exercise of functions of another branch which results in wresting away of the regime of constitutional accountability. Only when accountability is preserved, there will be no violation of principle of separation of powers. Constitution not only requires and mandates that there should be right decisions that govern us, but equal care has to be taken that the right decisions are made by the right body and the institution. This is what gives legitimacy, be it a legislation, a policy decision or a court adjudication.*

28. It is sometimes contended with force that unpopular and difficult decisions are more easily grasped and taken by the judges rather than by the other two wings. Indeed, such suggestions were indirectly made. This reasoning is predicated on the belief that the judges are not directly accountable to the electorate and, therefore, enjoy the

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relative freedom from questions of the moment, which enables them to take a detached, fair and just view.[34] *The position that judges are not elected and accountable is correct, but this would not justify an order by a court in the nature of judicial legislation for it will run afoul of the constitutional supremacy and invalidate and subvert the democratic process by which legislations are enacted. For the reasons stated above, this reasoning is constitutionally unacceptable and untenable."*

57. It is submitted that one of the earliest pronouncements on the subject came from this Court in ***Rustom Cavasjee Cooper*** v. ***Union of India*** [(1970) 1 SCC 248] (commonly known as "*Bank Nationalisation case*") wherein this Court held that it is not the forum where conflicting policy claims may be debated; it is only required to adjudicate the legality of a measure which has little to do with relative merits of different political and economic theories. The Court observed as under:

> "*63. This Court is not the forum in which these conflicting claims may be debated. Whether there is a genuine need for banking facility in the rural sector, whether certain classes of the community are deprived of the benefit of the resources of the banking industry, whether administration by the Government of the commercial banking sector will not prove beneficial to the community and will lead to rigidity in the administration, whether the Government administration will eschew the profit-motive, and even if it be eschewed, there will accrue substantial benefits to the public, whether an undue accent on banking as a means of social regeneration, especially in the backward areas, is a doctrinaire approach to a rational order of priorities for attaining the national objectives enshrined in our Constitution, and whether the policy followed by the Government in office or the policy propounded by its opponents may reasonably attain the national objectives are matters which have little relevance in determining the legality of the measure. It is again not for this Court to consider the relative merits of the different political theories or economic policies. Parliament has under List I Entry 45 the power to legislate in respect of*

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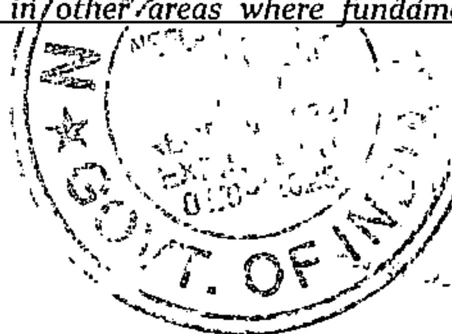
banking and other commercial activities of the named banks necessarily incidental thereto: it has the power to legislate for acquiring the undertaking of the named banks under List III Entry 42. Whether by the exercise of the power vested in the Reserve Bank under the pre-existing laws, results could be achieved which it is the object of the Act to achieve, is, in our judgment, not relevant in considering whether the Act amounts to abuse of legislative power. ***This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of Parliament in enacting a law. The Court cannot find fault with the Act merely on the ground that it is inadvisable to take over the undertaking of banks which, it is said by the petitioner, by thrift and efficient management had set up an impressive and efficient business organisation serving large sectors of industry.***"

58. In *R.K. Garg* [(1981) 4 SCC 675] this Hon'ble Court even observed that greater judicial deference must be shown towards a law relating to economic activities due to the complexityof economic problems and their fulfilment through a methodology of trial and error. As noted above, it was also clarified that the fact that an economic legislation may be troubled by crudities, inequities, uncertainties or the possibility of abuse cannot be the basis for striking it down. The following observations which refer to a couple of American Supreme Court decisions are a limpid enunciation on the subject:

"*8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental*



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human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud [1 L Ed 2d 1485 : 354 US 457 (1957)] where Frankfurter, J. said in his inimitable style:

> *'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events—self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.'"*

59. Similarly in ***Premium Granites* v. *State of T.N.*** [(1994) 2 SCC 691] this Hon'ble Court clarifiedthat it is the validity of a law and not its *efficacy* that can be challenged. This Hon'ble court, noted as under :

> *"54. It is not the domain of the court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right."*

60. In ***Delhi Science Forum* v. *Union of India*** [(1996) 2 SCC 405] a Bench of three learned Judges of this Court, while rejecting a claim against the opening up of the telecom sector reiterated that the forum for debate and discourse over the merits and demerits of a policy is Parliament. It restated that the services of this Hon'ble Court are not sought till the legality of the policy is disputed, and further, that no direction can be given or be expected from the courts, unless while implementing such policies, there is violation

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or infringement of any of the constitutional or statutory provisions. It held as under :

> "7. *What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in court of law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies.*"

61. In *BALCO Employees' Union* v. *Union of India* [(2002) 2 SCC 333] this Court further pointed out that the Court ought to stay away from judicial review of efficacy of policy matters, not only because the same is beyond its jurisdiction, but also because it lacks the necessary expertise required for such a task. Affirming the previous views of this Court, the Court observed that while dealing with economic legislations, the Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those cases where the view reflected in the legislation is not possible to be taken at all. The Court went on to emphasise that unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In *BALCO* supra, this Hon'ble Court took notice of the judgment in *Peerless General Finance and Investment Co. Ltd.* v. *RBI* [(1992) 2 SCC 343] and observed that some matters like price fixation are based on such uncertainties and dynamics that even experts face difficulty in making correct projections, making it all the more necessary for this Hon'ble Court to exercise non-interference:

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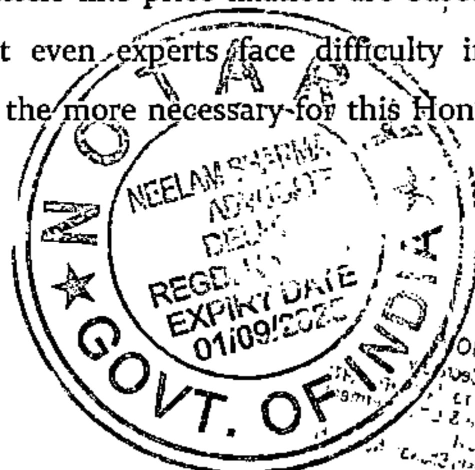

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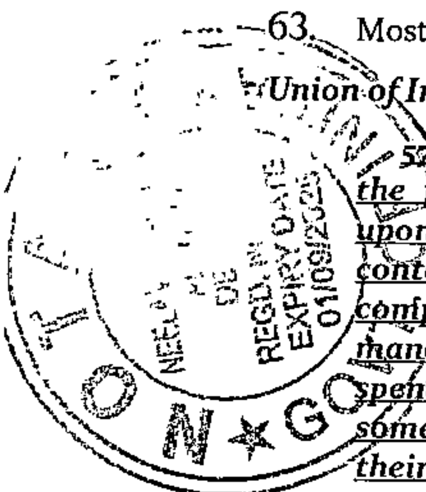
> "31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts."

62. On an environmental issue, this Hon'ble Court in ***State of M.P. v. Narmada BachaoAndolan*** [(2011) 7 SCC 639], held that the judiciary cannot engage in an exercise of comparative analysis over the fairness, logical or scientific basis, or wisdom of a policy. It specifically held as under:

> "36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power."

63. Most recently, in this regard, this Hon'ble Court, in ***Rajeev Suri v. Union of India***, 2021 SCCOnline 7, held as under :



> 570. Before we part, we feel constrained to note that in the present case, the petitioners enthusiastically called upon us to venture into territories that are way beyond the contemplated powers of a constitutional court. We are compelled to wonder if we, in the absence of a legal mandate, can dictate the government to desist from spending money on one project and instead use it for something else, or if we can ask the government to run their offices only from areas decided by this Court, or if we can question the wisdom of the government in focusing on

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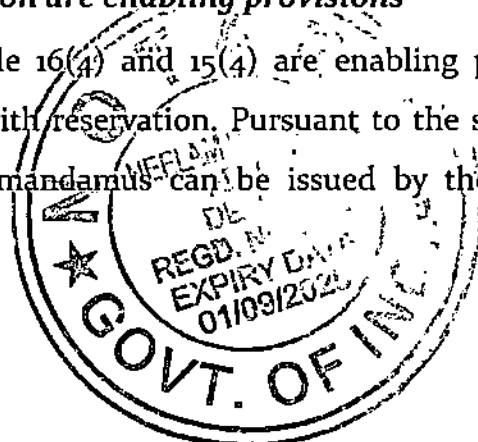
a particular direction of development. We are equally compelled to wonder if we can jump to put a full stop on execution of policy matters in the first instance without a demonstration of irreparable loss or urgent necessity, or if we can guide the government on moral or ethical matters without any legal basis. In light of the settled law, we should be loath to venture into these areas. We need to say this because in recent past, the route of public/social interest litigation is being increasingly invoked to call upon the Court to examine pure concerns of policy and sorts of generalised grievances against the system. No doubt, the Courts are repositories of immense public trust and the fact that some public interest actions have generated commendable results is noteworthy, but it is equally important to realise that Courts operate within the boundaries defined by the Constitution. We cannot be called upon to govern. For, we have no wherewithal or prowess and expertise in that regard.

571. The constitutionally envisaged system of "checks and balances" has been completely misconstrued and misapplied in this case. The principle of "checks and balances" posits two concepts - "check" and "balance". Whereas the former finds a manifestation in the concept of judicial review, the latter is derived from the well enshrined principle of separation of powers [As restated in Dr. Ashwani Kumar v. Union of India and Anr., 2019 SCC OnLine SC 1144- paras 8 to 19, 22 to 37, 43 and 44]. The political issues including regarding development policies of the Government of the day must be debated in the Parliament, to which it is accountable. The role of Court is limited to examining the constitutionality including legality of the policy and Government actions. The right to development, as discussed above, is a basic human right and no organ of the State is expected to become an impediment in the process of development as long as the government proceeds in accordance with law."

Provisions relating to reservation are enabling provisions -

64. It is submitted that Article 16(4) and 15(4) are enabling provisions since they concern themselves with reservation. Pursuant to the same, it is respectfully submitted that no mandamus can be issued by the Hon'ble



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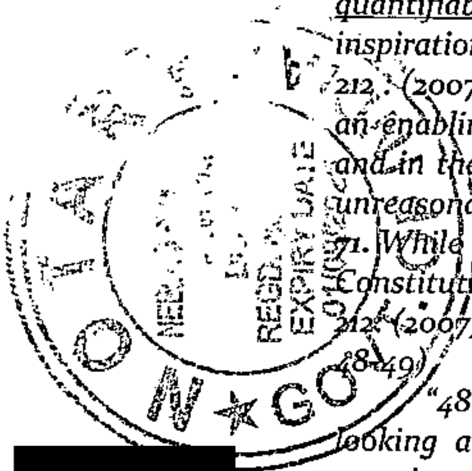
Courts in respect of the same provisions. In the case of ***U.P. Power Corpn. Ltd. v. Rajesh Kumar***, [(2012) 7 SCC 1], this Hon'ble Court observed as follows:

> *31. In Ajit Singh (2) v. State of Punjab [(1999) 7 SCC 209 : 1999 SCC (L&S) 1239] the Constitution Bench was concerned with the issue whether the decisions in Virpal Singh Chauhan [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and Ajit Singh Januja [(1996) 2 SCC 715 : 1996 SCC (L&S) 540 : (1996) 33 ATC 239] which were earlier decided to the effect that the seniority of general candidates is to be confirmed or whether the later deviation made in Jagdish Lal [(1997) 6 SCC 538 : 1997 SCC (L&S) 1550 : AIR 1997 SC 2366] against the general candidates is to be accepted. The Constitution Bench referred to Articles 16(1), 16(4) and 16(4-A) of the Constitution and discussed at length the concept of promotion based on equal opportunity and seniority and treated them to be the facets of fundamental right under Article 16(1) of the Constitution. The Bench posed a question whether Articles 16(4) and 16(4-A) guarantee any fundamental right to reservation. Regard being had to the nature of language employed in both the articles, they were to be treated in the nature of enabling provisions.* ***The Constitution Bench opined that Article 16(1) deals with the fundamental right and Articles 16(4) and 16(4-A) are the enabling provisions."***
>
> *68. The learned Senior Counsel has placed reliance on Ashoka Kumar Thakur v. Union of India [(2008) 6 SCC 1] to highlight that any privilege given to a class should not lead to inefficiency. Emphasis has also been laid on the term "backwardness" having nexus with the reservation in promotion and collection of quantifiable data in a proper perspective. He has drawn inspiration from various paragraphs in M. Nagaraj [(2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013 : AIR 2007 SC 71] to show that when an enabling provision is held valid, its exercise can be arbitrary and in the case at hand, the provisions are absolutely arbitrary, unreasonable and irrational.*
>
> *71. While dealing with reservation and affirmative action, the Constitution Bench opined thus: (M. Nagaraj case [(2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013 : AIR 2007 SC 71], SCC p. 250, paras 48-49)*
>
> *"48. It is the equality 'in fact' which has to be decided looking at the ground reality. Balancing comes in where the question concerns the extent of reservation. If the extent of*



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reservation goes beyond cut-off point then it results in reverse discrimination. Anti-discrimination legislation has a tendency of pushing towards de facto reservation. Therefore, a numerical benchmark is the surest immunity against charges of discrimination.

49. Reservation is necessary for transcending caste and not for perpetuating it. Reservation has to be used in a limited sense otherwise it will perpetuate casteism in the country. Reservation is underwritten by a special justification. ***Equality in Article 16(1) is individual-specific whereas reservation in Article 16(4) and Article 16(4-A) is enabling.*** *The discretion of the State is, however, subject to the existence of 'backwardness' and 'inadequacy of representation' in public employment. Backwardness has to be based on objective factors whereas inadequacy has to factually exist. This is where judicial review comes in. However, whether reservation in a given case is desirable or not, as a policy, is not for us to decide as long as the parameters mentioned in Articles 16(4) and 16(4-A) are maintained. As stated above, equity, justice and merit (Article 335)/efficiency are variables which can only be identified and measured by the State. Therefore, in each case, a contextual case has to be made out depending upon different circumstances which may exist Statewise."*

73. Thereafter, the Constitution Bench referred to the scope of the impugned amendment and the Objects and Reasons and, in para 86, observed thus: (M. Nagaraj case [(2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013 : AIR 2007 SC 71], SCC pp. 262-63)

"86. Clause (4-A) follows the pattern specified in clauses (3) and (4) of Article 16. Clause (4-A) of Article 16 emphasises the opinion of the States in the matter of adequacy of representation. It gives freedom to the State in an appropriate case depending upon the ground reality to provide for reservation in matters of promotion to any class or classes of posts in the services. The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4-A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4-A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4). Therefore, clause (4-A) will be governed by the two compelling reasons—'backwardness' and 'inadequacy of representation', as mentioned in Article 16(4). If the said two reasons do not exist then the enabling provision cannot come

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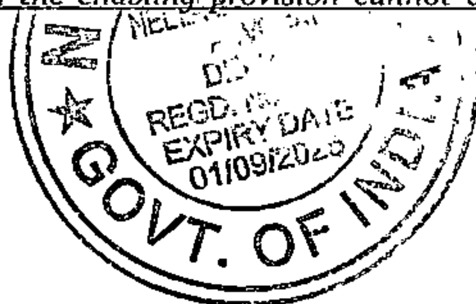

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into force. The State can make provision for reservation only if the above two circumstances exist. Further, in Ajit Singh (2) [(1999) 7 SCC 209 : 1999 SCC (L&S) 1239] this Court has held that apart from 'backwardness' and 'inadequacy of representation' the State shall also keep in mind 'overall efficiency' (Article 335). Therefore, all the three factors have to be kept in mind by the appropriate Government in providing for reservation in promotion for SCs and STs."

76. After so stating, it was observed that there is no violation of the basic structure of the Constitution and the provisions are enabling provisions. At that juncture, it has been observed as follows: (M. Nagaraj case [(2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013 : AIR 2007 SC 71], SCC pp. 270-71, para 107)

"107. ... Article 16(4) is enacted as a remedy for the past historical discriminations against a social class. The object in enacting the enabling provisions like Articles 16(4), 16(4-A) and 16(4-B) is that the State is empowered to identify and recognise the compelling interests. If the State has quantifiable data to show backwardness and inadequacy then the State can make reservations in promotions keeping in mind maintenance of efficiency which is held to be a constitutional limitation on the discretion of the State in making reservation as indicated by Article 335. As stated above, the concepts of efficiency, backwardness, inadequacy of representation are required to be identified and measured. That exercise depends on availability of data. That exercise depends on numerous factors. It is for this reason that enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimise these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment. This is amply demonstrated by the various decisions of this Court discussed hereinabove. Therefore, there is a basic difference between 'equality in law' and 'equality in fact' (See Affirmative Action by William Darity). If Articles 16(4-A) and 16(4-B) flow from Article 16(4) and if Article 16(4) is an enabling provision then Articles 16(4-A) and 16(4-B) are also enabling provisions. As long as the boundaries mentioned in Article 16(4), namely, backwardness, inadequacy and efficiency of administration are retained in Articles 16(4-A) and 16(4-B) as controlling factors, we cannot attribute constitutional invalidity to these enabling provisions. However, when the State fails to identify and implement the controlling factors then excessiveness

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comes in, which is to be decided on the facts of each case. In a given case, where excessiveness results in reverse discrimination, this Court has to examine individual cases and decide the matter in accordance with law. This is the theory of 'guided power'. We may once again repeat that equality is not violated by mere conferment of power but it is breached by arbitrary exercise of the power conferred."

65. Further, in the case of ***Mukesh Kumar and Anr. v. The State of Uttarakhand and Ors.*** **[Civil Appeal No. 1226 of 2020]**, the subject matter of challenge before this Hon'ble Court was with respect to the collection of quantifiable data pertaining to the adequacy or inadequacy of representation of persons belonging to Scheduled Castes and Scheduled Tribes in Government services. Relevant portion from the said judgment given by Hon'ble Justice Nageswara Rao has been reproduced hereinbelow:

*"**16**....In view of the law laid down by this Court, there is no doubt that the State Government is not bound to make reservations. There is no fundamental right which inheres in an individual to claim reservation in promotions. No mandamus can be issued by the Court directing the State Government to provide reservations. <u>It is abundantly clear from the judgments of this Court in **Indra Sawhney, Ajit Singh (II), M. Nagaraj and Jarnail Singh (supra)** that Article 16 (4) and 16 (4-A) are enabling provisions and the collection of quantifiable data showing inadequacy of representation of Scheduled Castes and Scheduled Tribes in public service is a sine qua non for providing reservations in promotions.</u> The data to be collected by the State Government is only to justify reservation to be made in the matter of appointment or promotion to public posts, according to Article 16 (4) and 16 (4-A) of the Constitution. <u>As such, collection of data regarding the inadequate representation of members of the Scheduled Castes and Schedules Tribes, as noted above, is a pre requisite for providing reservations, and is not required when the State Government decided not to provide reservations.</u> Not being bound to provide reservations in promotions, the State is not required to justify its decision on the basis of quantifiable data, showing that there is adequate representation of members of the Scheduled Castes and Schedules Tribes in State services. Even if the underrepresentation of Scheduled Castes and Schedules*

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Tribes in public services is brought to the notice of this Court, no mandamus can be issued by this Court to the State Government to provide reservation in light of the law laid down by this Court in C.A. Rajendran (supra) and Suresh Chand Gautam (supra). Therefore, the direction given by the High Court that the State Government should first collect data regarding the adequacy or inadequacy of representation of Scheduled Castes and Scheduled Tribes in Government services on the basis of which the State Government should take a decision whether or not to provide reservation in promotion is contrary to the law laid down by this Court and is accordingly set aside. Yet another direction given by the High Court in its judgment dated 15.07.2019, directing that all future vacancies that are to be filled up by promotion in the posts of Assistant Engineer, should only be from the members of Scheduled Castes and Scheduled Tribes, is wholly unjustifiable and is hence set aside."

Dissent Note in the Report of the National Commission for Religious and Linguistic Minorities

66. It is most reverentially submitted that there is no documented research and precise authenticated information available to establish that the disabilities and handicapssuffered by Scheduled Caste members inthe social order of its origin (Hinduism) persists with their oppressive severity in the environment of Christianity/Islam. In this regard reference may be drawn from the Dissent Note in Report of the National Commission for Religious and Linguistic Minorities (hereinafter referred to as the "**NCRLM Report**"). The NCRLM Report *inter-alia* gave its deliberations over the *"conferment of Scheduled Cast converts to Christianity and Islam"* whereby it noted as follows:

"...studies conducted by Rev. Samuel Mateer a British Missionary in Kerala and Tamil Nadu (i.e. erstwhile Princely State of Travancore. Cochin and Madras Presidency) during his stay of over 25 years in India, and published in the form of two books titled "Land of Charity" and "Native Life in Travancore" in 1870 and 1883, respectively, <u>show that the "slave caste" (the present Scheduled Castes) converted to Christianity in these States</u>

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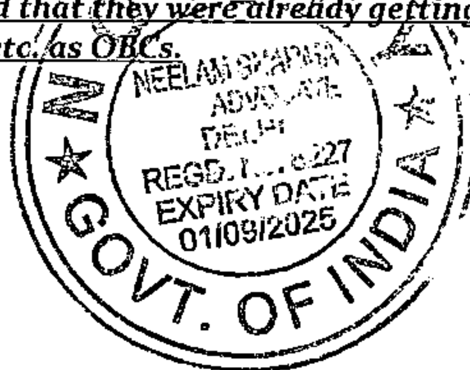
*<u>became socially, educationally and economically in a **better position** than their brethren's who remained in Hinduism.</u>"*

The NCRLM Report further elaborates as to how various social indicators are pointers to the fact that in terms of importantindices like literacy andwork participation, Christians are somewhatbetter off compared to their counterpartsin other religions while Muslims are by andlarge comparable.

> *"Both Islam and Christianity do not accept'caste system' which is a basic feature ofHinduism. It may also be mentioned thatdiscrimination on the grounds of caste/untouchability within a religious communitythat does not recognise, much less sanctify,caste system calls for internal reformswithin the religion and community-basedinterventionsrather that governmentalintervention for inducting them into thecaste system from which they chose to move to an egalitarian religion.<u>Granting Scheduled Caste status to such converts by the Government may amount to formal introduction of caste system in Islam/Christianity and changing the basic tenets of the religion, which will be outside the jurisdiction of both the Parliament and the Judiciary.</u>"*

> *"The NationalConvention of the Parliamentary Forum ofthe Scheduled Caste/Scheduled Tribes in1992 also passed a resolution for extendingreservation facility to persons of ScheduledCaste origin to Christianity. Constitution(Scheduled Caste) Order (AmendmentBill) was also prepared in 1996 thoughnever introduced. The views of the variousCentral Ministries/Departments and StateGovernments were obtained in this regard.They drew attention to the debate of theConstituent Assembly and pointed out theneed for determining the precise numberof persons who would be covered. Theabsence of any suggestion on the cut offdate for determining who would benefitwas also pointed out. <u>It was also mentioned by several States and Commissions that there was no justification for including Scheduled Caste converts to Christianity in the Scheduled Castes list. There would be enormous difficulty in identification of the original caste in the absence of authentic records. **Besides, their representation in services was adequate and that they were already getting the benefits of reservation etc. as OBCs.**</u>*



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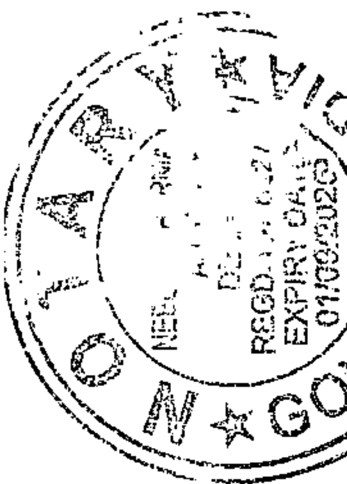
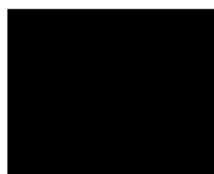
The NCRLM Report further states that both the concerned religions – Christianity and Islam are historically foreign religions and thereby do not recognize caste system as done in Hinduism. People belonging to these religious faiths came from foreign lands to India alongwith traders, invaders and preachers/missionaries over a period of time spanninghundreds of years before firmly establishingthemselves as more and more indigenouspeople, converted from their religion toIslam/ Christianity. The NCRLM Report states as follows in this regard:

> *"Both are religions that do not recognise caste. It may be extremely difficult to hazard a guess about the number of the progeny of such traders/ invaders/ preachers/settlers from foreign lands and Scheduled Castes who converted in the present population of Muslims/Christians in India. What can, however, be said with an element of certainty is that a vast majority of Muslims and Christians in India today comprise of the converts and their progeny. If this hypothesis is accepted, the identification of such Muslims/ Christians who were originally of SC origin will pose many problems as no authentic records have been maintained."*
>
> *"Any procedure adopted to identify theSC Converts to Christianity and IslamReport of the National Commission for Religious and Linguistic MinoritiesSC converts to Christianity and Islam atthis stage even if a cut off date is fixed is bound to produce innumerable problems that will hazard rational and equitable decision for identifying those truly eligible.The chances of abuse and of the ineligible siphoning benefits at the cost of deserving are tremendous. Even for the Castes thatare listed there is enough evidence thatfalse certificates are being obtained. In fact,what is necessary is to ensure equitabletreatment to converts from Hinduism orany other religion to another who continueto be socially and economically backward,for protection and access to services fortheir socio-economic upliftment.* ***Uniform law for dealing with untouchability already exists. PCR Act is applicable to all."***
>
> *"There is, therefore no justificationfor incorporating this abominable anddiscriminatory practice into other religions,notwithstanding that the religious tenets ofboth*





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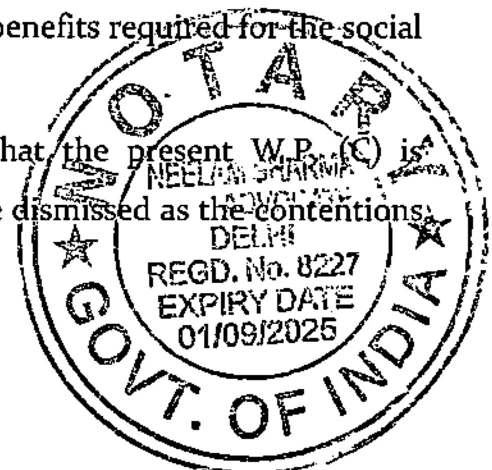
Christianity and Islam do not permitit, and notwithstanding the fact that thevery competence of the State – executive,Parliament or even judiciary – to introduce'caste' into religions that profess egalitarian regime is questionable.
Many Scheduled Caste organisations have opposed the grant of Scheduled Caste status to Scheduled Caste converts to Christianity and Islam on the grounds of their having embraced religions other than Hinduism only because of the discrimination faced by them on account of untouchability. Similarly, Buddhist organisations in severalStates represented that the Buddhists should not be included in the Scheduled Caste lists because they adopted or embraced Buddhism only because of the strong hold of the Caste system in Hinduism and the discriminatory practices against them. Representatives of Muslim Organisation in several States were vociferous in stating that Muslims cannot be termed "Scheduled Castes" but should be included in OBCs and given benefits. ***In view of the foregoing, the demand for grant of Scheduled Caste status per se is unjustified."***

67. A bare perusal of the aforementioned text makes it abundantly clear that SC converts to Christianity and Islam are not eligible for consideration as SC persons. A uniform law which deals with untouchability is already applicable to all persons regardless of their religious faith. The benefits accorded to Scheduled Caste converts are in tune with the benefits given to the OBC's.

68. It is reiterated that there exists an intelligible differentia that these classifications are not a mathematical nicety and the backwardness as pleaded by the instant Petitioners is duly taken care of by the respective State Governments by providing them benefits under the OBC class. It is pertinent to note that the instant WP gives the impression that the Scheduled caste converts to Christianity have been discriminated against. However, as stated above, each state has carved out the necessary benefits required for the social and economic upliftment of the needy.

69. It is therefore respectfully submitted that the present W.P. (C) is devoid of any merit whatsoever and liable to be dismissed as the contentions

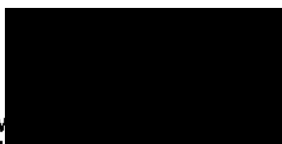


...ARIOM
...r Secretary
सामाजिक न्याय और अधिकारिता मन्त्रालय
Ministry of Social Justice & Empowerment
भारत सरकार/Govt. of India
शास्त्री भवन, नई दिल्ली/Shastri Bhawan, New Delhi

VERDICTUM.IN

made by the Petitioner herein are fallacious, baseless and inconsistent with the constitutional scheme.

I further submit that the Union of India reserves the right to file a more detailed affidavit with the leave of this Hon'ble Court, if necessary, at a later stage.

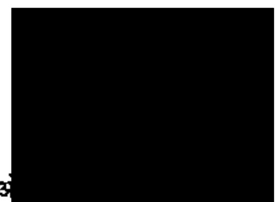


हरिओम/HARIOM
अवर सचिव/Under Secretary
सामाजिक न्याय और अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
भारत सरकार/Govt. of India
शास्त्री भवन, नई दिल्ली/Shastri Bhawan, New Delhi

DEPONENT

VERIFICATON

Verified at New Delhi on this 19th day of October, 2022, that the contents of the above affidavit are true and correct to my knowledge and belief derived from the official records. No part of the above affidavit is false and nothing material has been concealed there from.

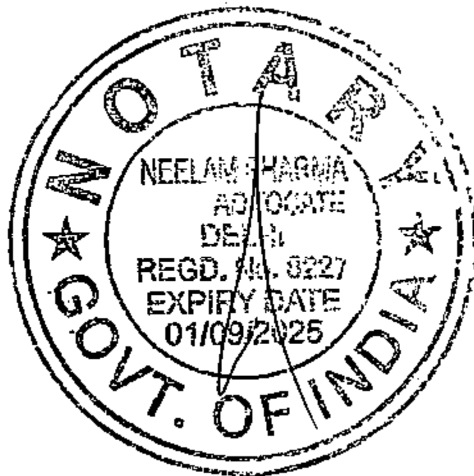


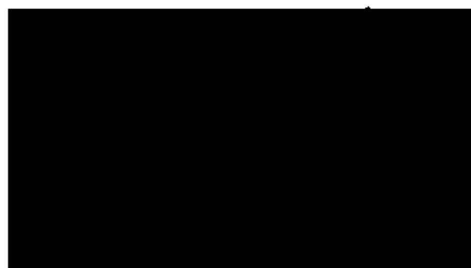
हरिओम
अवर सचिव/Under Secretary
सामाजिक न्याय और अधिकारिता मंत्रालय
Ministry of Social Justice & Empowerment
भारत सरकार/Govt. of India
शास्त्री भवन, नई दिल्ली/Shastri Bhawan, New Delhi

Filed by :

AMRISH KUMAR
[Advocate on Record for the Respondent]

I identified the deponent who has signed in my presence





Ch. No. ...
Patiala House Court
New Delhi-110001
9899408301

19 OCT 2022

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Annexure R-1

रजिस्ट्री सं. डी.एल.- 33004/99 REGD. No. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

सी.जी.-डी.एल.-अ.-06102022-239368
CG-DL-E-06102022-239368

असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 4532] नई दिल्ली, बृहस्पतिवार, अक्तूबर 6, 2022/आश्विन 14, 1944
No. 4532] NEW DELHI, THURSDAY, OCTOBER 6, 2022/ASVINA 14, 1944

सामाजिक न्याय और अधिकारिता मंत्रालय

(सामाजिक न्याय और अधिकारिता विभाग)

अधिसूचना

नई दिल्ली, 6 अक्तूबर, 2022

का.आ. 4742(अ).—ऐतिहासिक रूप से सामाजिक असमानता एवं भेदभाव को झेलते आ रहे तथा उसके परिणामस्वरूप पिछड़ेपन का सामना करने वाले कतिपय व्यक्ति समूहों को भारत के संविधान के अनुच्छेद 341 के तहत, समय-समय पर, जारी राष्ट्रपति के आदेशों द्वारा अनुसूचित जातियां घोषित किया गया है।

और जबकि कतिपय समूहों ने राष्ट्रपति के आदेशों के माध्यम से अनुमति प्राप्त धर्मों के अलावा अन्य धर्मों के नए व्यक्तियों को अनुसूचित जाति का दर्जा प्रदान करके अनुसूचित जाति की मौजूदा परिभाषा में संशोधन करने हेतु प्रश्न उठाया है तथा इसके विपरीत अनेक समूहों ने इसका विरोध किया है। मौजूदा अनुसूचित जातियों के कतिपय प्रतिनिधियों ने नए व्यक्तियों को अनुसूचित जाति का दर्जा प्रदान करने का विरोध किया है। और जबकि यह एक मौलिक एवं ऐतिहासिक रूप से जटिल समाजशास्त्रीय तथा संवैधानिक प्रश्न है और एक सार्वजनिक महत्व का निश्चित मामला है।

और जबकि इसके महत्व, संवेदनशीलता और संभावित प्रभाव को देखते हुए इससे संबंधित परिभाषा में कोई भी परिवर्तन विस्तृत और निश्चित अध्ययन तथा सभी हितधारकों के साथ व्यापक परामर्श के आधार पर होना चाहिए। अभी तक जांच आयोग अधिनियम, 1952 (1952 का 60) के अंतर्गत आयोग ने इस मामले की जांच नहीं की है।

अतः अब, केन्द्रीय सरकार जांच आयोग अधिनियम, 1952 (1952 का 60) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्वारा जांच आयोग नियुक्त करती है जिसमें निम्नलिखित व्यक्ति शामिल होंगे नामत: -

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अध्यक्ष

न्यायमूर्ति के.जी. बालाकृष्णन, (भारत के भूतपूर्व मुख्य न्यायधीश)

सदस्यगण

i) डॉ. रविन्दर कुमार जैन, आई.ए.एस. (सेवानिवृत्त) (एचपी-1981)

ii) प्रो. (डॉ.) सुषमा यादव, (सदस्य, यूजीसी)

2. आयोग के विचारार्थ विषय निम्नलिखित होंगे :-

i. संविधान के अनुच्छेद 341 के तहत, समय-समय पर, जारी राष्ट्रपति के आदेशों में उल्लिखित धर्मों के अलावा अन्य धर्म में धर्मान्तरित तथा ऐतिहासिक रूप से अनुसूचित जातियों से संबंध होने का दावा करने वाले नए व्यक्तियों को अनुसूचित जाति का दर्जा प्रदान करने संबंधी मामले की जांच करना;

ii. अनुसूचित जातियों की मौजूदा सूची के हिस्से के रूप में ऐसे नए व्यक्तियों को जोड़ने से मौजूदा अनुसूचित जातियों पर पड़ने वाले प्रभाव की जांच करना;

iii. अन्य धर्मों में धर्मान्तरण के बाद रीति-रिवाज, परम्परा सामाजिक तथा अन्य दर्जा संबंधी भेद-भाव करने व लाभवंचित करने, तथा अनुसूचित जाति का दर्जा प्रदान करने के प्रश्न पर पड़ने वाले इसके प्रभाव के संदर्भ में अनुसूचित जाति के व्यक्तियों में आए बदलावों की जांच करना; और

iv. किसी भी अन्य संबद्ध प्रश्न की जांच करना जो आयोग केंद्र सरकार के परामर्श और सहमति से उचित समझे।

3. आयोग का मुख्यालय नई दिल्ली में होगा।

4. आयोग अध्यक्ष द्वारा कार्यभार ग्रहण करने की तारीख से दो वर्ष के भीतर अपनी रिपोर्ट प्रस्तुत करेगा।

[फा. सं. आरएल-12016/9/2021-आरएल सैल]

सुरेन्द्र सिंह, अपर सचिव

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT

(Department of Social Justice and Empowerment)

NOTIFICATION

New Delhi, the 6th October, 2022

S.O. 4742(E).—Whereas certain groups of persons who have historically suffered social inequality, discrimination and the consequent backwardness resulting therefrom, have been declared to be Scheduled Castes by Presidential Orders issued from time to time under article 341 of the Constitution of India;

And whereas, certain groups have raised the question of revisiting the existing definition of Scheduled Castes by according the status to new persons who belong to other religions beyond those permitted through Presidential Orders, and in contrast, many other groups have also opposed the same; And whereas, certain representatives of the existing Scheduled Castes have objected to such granting of Scheduled Caste status to new persons; And whereas, this is a seminal and historically complex sociological and constitutional question, and a definite matter of public importance;

And whereas, given its importance, sensitivity and potential impact, any change in definition in this regard should be on the basis of a detailed and definitive study and extensive consultation with all stakeholders and no Commission under the Commissions of Inquiry Act, 1952 (60 of 1952) has so far inquired into the matter,

Now, therefore, in exercise of powers conferred by section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of following persons, namely:-

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Chairperson

Justice K. G. Balakrishnan, (Ex-Chief Justice of India)

Members

i) Dr. Ravinder Kumar Jain, IAS (Retd) (HP- 1981)

ii) Prof. (Dr.) Sushma Yadav, (Member, UGC)

2. The terms of reference of the Commission shall be as follows:-

(i) to examine the matter of according Scheduled Caste status to new persons, who claim to historically have belonged to the Scheduled Castes, but have converted to religion other than those mentioned in the Presidential Orders issued from time to time under article 341 of the Constitution;

(ii) to examine the implications on the existing Scheduled Castes, of adding such new persons as part of the existing list of Scheduled Castes;

(iii) to examine the changes Scheduled Caste persons go through on converting to other religions in terms of their customs, traditions, social and other status discrimination and deprivation, and the implication of the same on the question of giving them Scheduled Caste status; and

(iv) to examine any other related questions that the Commission deems appropriate, in consultation with and with the consent of the Central Government.

3. The Headquarters of the Commission shall be at New Delhi.

4. The Commission shall submit its report within a period of two years from the date of taking over of the charge by the Chairperson.

[F. No. RL-12016/9/2021-RL Cell]

SURENDRA SINGH, Addl. Secy.

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.

VERDICTUM.IN
Annexure R2

Census of India, 1931

VOL. I-INDIA

Part I-Report

J.H. Hutton, C.I.E., D.Sc. F.A.S.

Correspondeing Member of the

Anthropologiache Guallecha

To which is annexed

And

ACTUARIAL REPORT

By

L.S. Vaidyanathan L.I.A.

Delhi Manager of Publications 1933

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APPENDIX I.

Exterior Castes.

N.B.—No attempt has been made here to deal with events that have taken place since 1931.

This term for the Hindu castes hitherto known as " depressed " was originally suggested by the Census Superintendent for Assam and has been adopted in this report as the most satisfactory alternative to the unfortunate and depressing label " depressed class It has been criticised as being the same term as ' outcaste ' only of five instead of two syllables, and it must be admitted that ' exterior ' is but old ' out ' writ large. At the same time it is here submitted that outcaste, with an e, has not unnaturally attracted to its connotation the implications of the quite differently derived outcast, with no e.

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Outcaste correctly interpreted seems to mean no more than one who is outside the caste system and' is therefore not admitted to Hindu society, but since in practice the exterior castes also contained those who had been cast out from the Hindu social body for some breach of caste rules 'outcaste ' and 1 outcast ' were in some cases synonymous and the derogatory implications of obliquity attaching to' the latter term have unjustly coloured the former, a taint which is not conveyed by the substitution, of the word 1 exterior ', which may connote exclusion but not extrusion.

The instructions of the Government of India for the taking of this census concluded with the following enjoinder :—

"The Government of India also desire that attention should be paid to the collection of

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information conducive. to a better knowledge of the backward and depressed classes and of the problem involved in their present and future welfare."

In that connection the following instructions were issued to the various Superintendents of Census Operations in India :—

" For this purpose it will be necessary to have a list of castes to be included in depressed classes and all provinces are asked to frame a list applicable to the province. There are very great difficulties in framing a list of this kind and there are insuper¬able difficulties in framing a list of depressed classes which will be applicable to India as a whole."

A subsequent instruction ran as follows :—

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" I have explained depressed castes as castes, contact with whom entails purification on the part of high caste Hindus. It is not. intended that the term should have any reference to occupation as such hut to those castes which by reason of their traditional position in Hindu society are denied access to temples* for instance, or have to use separate wells or are not allowed to sit inside a school house but have to remain outside or which suffer similar social disabilities. These disabilities vary in different parts of India being much more severe in the south of India than, elsewhere. At the same time the castes which belong to tills class are generally known and can in most parts of India be listed for a definite area, though perhaps

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the lists_ for India as a whole will not coincide."

The question of the preparation of lists for each province was discussed at a meeting of the Superintendents of Census Operations in January 1931 before the census took place. It was agreed that each province should make a list of castes who suffered disability on account of their low social position and on account of being debarred from temples, schools or wells. No specific definition of depressed castes was framed and no more precise instructions were issued to the Superintendents of Census Operations, because it was realised that conditions varied so much from province to province and from district to district, even, within some provinces, that it would be unwise to tie down the Superintendents of Census

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Operations with too meticulous instructions. The general method of proceeding prescribed was that of local enquiry into what castes were held told depressed and why and the framing of a list accordingly. It was decided that Muslims and Christians should be excluded from the term " depressed class " and that, generally speaking, hill and forest tribes, who had not become Hindu but whose religion was returned as Tribal, should also be excluded and in the numbers of the exterior castes given below these principles have been followed. A note on the depressed and backward classes in Assam submitted to the Franchise Committee by the Superintendent of Census Operations for that province affords a very clear example of the way in which these principels were intended to be applied and have been applied by Superintendents of Census

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Operations, and an extract from it is given towards the end of this appendix.

Both for social and political, reasons it is obviously necessary to know the number of these classes not only in India as a whole but also in different provinces. The matter is of importance not only with reference to their representation in the body politic, but also with reference to any social work that is to be done towards raising them from their present backward position to one more nearly comparable with that of more advanced social groups.

The Census Commissioner in 1921 (Census of India, "Volume I, part I, paragraph 193) gave what he describes as minimum numbers of the Depressed Classes in various provinces, making a total of 52,680,000. This figure he states,

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must be taken as a low estimate, since it does not include all those who should have been included, and he says, " We may confidently place the numbers of these Depressed Classes all of whom are considered impure, at something between 55 and 60 millions in India proper". Of the 52 ½ million for which the Census Commissioner gave actual figures, less than 43 ½ million were to be found in British India. This figure agrees fairly well with the 42 million odd given as the figure of Depressed Classes by the Franchise Committee of 1919. It is also not greatly at variance with the 441 million estimated by the Nair Central Committee of 1929 as the figure of Depressed Classes in British India, but it varies very considerably from the Hartog Committee's figure of approximately 30 million Clearly it is time that some more definite figures were obtained than

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the estimates hitherto employed. There are however a considerable number of difficulties in arriving at a determined figure.

The definition to be used in arriving at the figure of Depressed Glasses is a very difficult matter. The following possible tests are to he considered :—

(1) Whether the caste or class in question can be served by clean Brahmans or not.

(2) "Whether the caste or class in question can be served by the barbers, water-carriers, tailors, etc., who serve the caste Hindus.

(3) "Whether the caste in question pollutes a high caste Hindu by - contact or by proximity.

(4) Whether the caste or class in question is one from whose hands a caste Hindu can take water.

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(5) Whether the caste or class in question is debarred from using public conveniences, such as, roads, ferries, wells or schools.

(6) Whether the caste or class in question is debarred from the use of Hindu temples.

(7) Whether in ordinary social intercourse a well educated member of the caste or class in question will be treated as an equal by high caste men of the same educational qualifications.

(8) Whether the caste or class in question is merely depressed on account of its own ignorance, illiteracy or poverty and but for that would be subject to no social disability.

(9) Whether it is depressed on account of the occupation followed and whether but for

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that occupation it would be subject to no social disability.

Now it is obvious that several of these tests themselves involve an unknown factor—What is a clean Brahman ? What is the line between a high caste and a low caste Hindu, since both adjectives may and ordinarily would have a merely comparative sense ? What constitutes pollution or what constitutes the right to use a temple, since here again there are grades from those who must remain entirely outside and not approach a temple at all to those who are admitted to the inner sanctuary ? In deciding what is an Exterior Caste, none of these tests can be taken alone. From the point of view of the State the important test is the right to use public conveniences—roads, wells and schools, and if this be taken as the primary best,

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religious disabilities and the social difficulties indirectly involved by them may be regarded as contributory only. Some importance must be attached to them, since obviously if the general public regards the persons of certain groups as so distasteful that concerted action is resorted to in order to keep them away, persons of those groups do suffer under a serious disability. It is not enough to say that a road is a public road, and that if A considers himself polluted by the presence of B at a distance of 30 yards and no compulsion rests on B to remove himself from the road to let A pass, the disability is A's and not B's, since A must leave the road or he polluted. That is all very well if B and his friends are in such a position as to be able to impose on A the position of being one to leave the road. If, however, it is possible for A and his friends by boycotting B and his friends for certain purposes

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to bring pressure on B to disregard his legal rights and to conform to A's religious prejudices and leave the road whenever A is seen at a distance; clearly B has in practice no freedom of action in the matter of the road whether his religious scruples are involved or not. This question of the use of roads has been taken as an illustration, but in point of fact the restriction of the use of roads is one which seems to be generally dis-appearing and has possibly disappeared to such an extent that the question may be ignored as far as Biritish India is concerned. The use of wells, however, is another matter and the disability of the exterior castes varies from not being allowed to approach the village well at all

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THE GOVERNMENT OF INDIA, (SCHEDULED CASTES) ORDER, 1936

AT THE COURT AT BUCKINGHAM PALACE,

The 30th day of April, 1936

Present

THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

Whereas by certain provisions in the First, Fifth and Sixth Schedules to the Government of Inia Act, 1935, His Majesty in Council is empowered to specify the castes, races or tiribee r part of or groups within castes, races or tribes which are to be treated as the scheduled castes for the purposes of those Scheduls:

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AND WHEREAS a draft of this Order was laid before Parliament in accordance with the provisions of subsection(1) of section three hundred and nine of the said Act and an Address has been presented by both House of Parliament praying that and Order may be made in the terms of this Order:

NOW, THEREFORE, His Majesty, in the exercise of the said powers and of all other powers enabling Him in that behalf, is pleased by an with the advice of His Privy Council to order, and it is hereby ordered, as follows:-

1. This Order may be cited as "The Government of India (Scheduled Castes) Order, 1936."

2. Subject to the provisions of this Order, for the purposes of the Firs, Fifth and Sixth Schedules to the Government of India Act,

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1935, the castes, races or tribes, or parts of or groups within castes, races or tribes specified in Parts I to IX of the Schedule to this Order shall, in the provinces to which those Parts respectively relates, be deemed to be scheduled castes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that Schedule.

3. Notwithstanding anything in the last preceding paragraph-

(a) no Indian Christian shall be deemed t be a member of a scheduled caste;

(b) in Bengal no person who professes Buddhism or a tribal religion shall be deemed to be a member of any scheduled caste;

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76c

and if any question should arise as to whether any particular person does or does not profess Buddhism or a tribal religion, that question shall be determined according to the answers which he may make, in the prescribed manner, to such questions as may be prescribed.

4. In this order the expression "Indian Christian " has the same meaning as it has for the purposes of Par I of the First Schedule to the Government of India Act, 1935, and the expression "prescribed" means prescribed by rules made by the Governor of Bengal, exercising his individual judgment.

5. Any reference in the Schedule to this Order to any division, district, subdivision, tahsil or municipality shall be construed as a

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reference to that division, district, subdivision, tahsil or municipality as existing on the first day of July, nineteen hundred, and thirty-six.

SCHEDULE

PART I.-MADRAS

(1) Scheduled caste thoughout the Province:-

Adi-	Gosangi	Paidi
Adi-	Haddi	Painda
Adi-Karnataka	Hasla	Paky
Ajila	Holeya	Pallan
Arunthnthi	Jaggali	Pambada.
Baira	Jambuvulu	Pamidi
Bakuda	Kalladi	Pancharna.
Bandi	Kanakkan	Paniyan
Bariki	Kodalo	Panniandi
Battada	Koosa	Paraiyan
Bavuri	Koraga	Paravan
Bellara	Kudumban	Pulayan
Byagari	Kuravan	Puthirai Vannan
Chachati	Madari	Raneyar
Chakkiliya	Madiga	Relli
Chalavadi	Maila	Samagara
Chamar	Mala	Samban
Chandala	Mala Das	Sapari
Cheruman	Matangi	Sernman
Dandasi	Moger	Thoti
Devendrakula	Much!	Tiruvalluvar
Ghasi	Mundala	Valluvan

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Godagali	Nalakeyava	Valmiki
Godari	Nayadi	Vettuvan
Godda.	Pagadai	

(2) Scheduled castes throughout the Province except in any special constituency constituted under the Government of India Act, 1935, for the election of a representative of backward areas and backward tribes to the Legislative Assembly of the province:-

Aranadan	Kattnnayakan	Kuruman
Dombo	Kudiya	Malasar
Kadan	Kudubi	Mavilan
Karimpalan	Kurichchan	Pano

PART II- Bombay:

Scheduled castes:-

(1) Throughout the Province :—

Asodi	Dhori	Mang Garudi
Baked	Garode	Meghvnl, or Menghwar
Bhambi	Halleer	Mini Madig
Bhangi	Halsar, or Haslar,	Mukri
Chakrawaijya-Dasar	Hulsavar	Nadia
Chalvadi	Holaya	Shenva, or Shindhava
Chamhhar, or Mochi-Khalpa		Shingdav, or Shingadyn

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'gar/or Somagar	Kolcha, or Kolgha	Sochi
Chena-Dasaru	Koli Dhor	Timali
Chuhar, or Chuhra.	Lingader	Turi
Dakaleru	Madig, or Mang	Vahkar
Dhed	Mahar	Vitholia
Dhegu-Megu		

(2) Throughout the Province except in the Ahemdabad, Kaira, Broach and Panch Mahals and Surat Districts- Mochi

(3) In the Kanara district-Kotegar

PART III- BENGAL

Scheduled castes throughout the Province:-

Agariya	Bhatiya	Dhoba
Bagd	Bhuimali	Doai
Bahelia	Bhuiya	Dom
Baiti	Bhumij	Dosadh
Bauri	Bind	Garo
Bediya	Binjhia	Ghasi
Beldar	Chamar	Gonrhi
Berua	Dhenuar	Hadi

Hajang	Konal	Namasudra
Halalkhor	Konwrar	Nat
Hari	Kora	Nuniya
Ho	Kotal	Oraon
Jalia Kaibartta	Lalbegii	Paliya
Jhalo Malo, or Malo	Lodha	Pan

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Kadar	Lohar	Pasi
Kan	Mahar	Patni
Kandh	Mahli	Pod
Kandra	Mal	Rabha
Kaora]	Mallsh	Rajbanshi
Kapuria	Malpahariya	Rajwar
Karenga	Mech	Santal
Kastha	Mehtor	Sunri
Kaur	Muchi	Tiyari
Khaira	Munda	Turi
Khatik	Musahar	
Koch	Nagesia	

PART IV- UNITED PROVINCES

Scheduled Castes:-

(1) Throughout the Province:-

Agariya	Chamar	Kharot
Ahcriya	Chero,	Kharwar (except Benbanai)
Badi	Dabgar	
Badhlk	Dhangar	Khatik
Baheliya	Dhanuk (Bhangi)	Kol
Bajaniya	Dharkar	Korwa
Bajgi	Dhobi	Lalbegi
Balahar	Dom	Majhwar
Balmiki	Domar	Nat..
Banmanus	Gharami	Pankha
Bansphor	Ghasiya	Parahiya
Banwar	Gual	Pasi
Basor	Habura	Patari
Bawariya	Hari	Rawat

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Beldar	Hela	Saharya
Bengali	Kalabaz	Sanaurhiya
Beriya	Kanjar	Samsiya
Bhantu	Kapariya	Shilpkar
Bhuiya	Karwal	Tharu
Bhuyiar	Khairaha	Turaiha
Boriya		

(2) Throughout the Province except in the Agra, Meerut and Rohilkhan divisions-

Kori

Part V- Punjab

Scheduled Castes throughout the province:-

Ad Dharmis	Marija, or Marecha	Khatik
Bawaria	Bangali	Kori
Chamar	Barar	Nat
Chuhra, or Balmiki	Bazigar	Pasi
Dagi and Koli	Bhanjra	Perna
Dumna	Chanal	Sapela
Od	Dhanak	Sirkiband
Sansi	Gagra	Meghs
Sarera	Gandhila	Ramdasis

PART VI= BIHAR

Scheduled Castes:-

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(1) Throughout the Province:-

Chamar	Halakhor	Mochi
Chaupal	Hari	Musahar
Dhobi	Kanjar	Nat
Dusadh	Kurariar	Pasi
Dom	Lalbegi	

(2) In the Patna and Tirhut Divisions and the Bhagalpur, Mor Palamau and Purnea districts:-

Bauri	Bhumji	Rajwar
Bhogta	Ghasi	Turi
Bhujya	Pan	

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Annexure R-4

The Gazette of India

EXRAORDINARY

PART II-SECTION 3

PUBLISHED BY AUTHORITY

NO.27) NEW DELHI, FRIDAY, AUGUST 11, 1950

MINISTRY OF LAW

NOTIFICATION

New Delhi the 10th August, 1950

S.R.O. 385- The following Order made by the President is published for general information-

THE CONSTITUTION (SCHEDULED CASTES) ORDER, 1950

In exercise of the powers conferred by clause (1)of Article 341 of the Comstitution of India the President after consultation with the Governors and Rapramukhs of the States

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concerned, is pleased to make the following Order, namely:-

1. This Order may be called the Constitution (Scheduled Castes) Order, 1950

2. Subject to the provisions of this Order, the castes, races or tribes, or parts of, or groups within, castes or tribes, specified in Parts I to XVI of the Schedule to this Order shall in relation to the States to which those parts respectively relate, be deemed to be scheduled Castes so far as regards members thereof resident in the localities specified in relation to hem in those parts of that Schedule.

3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from Hinduism shall be

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deemed to be a member of a Scheduled Caste.

Provided that every member of the Ramdasi, Kabirpanthi, Mazhabi or Sikligar caste resident in Punjab or the Patiala and East Punjab States Union shall, in relation to that State, be deemed to be a member of the Scheduled Castes whether he professes the Hindu or the Sikh religion.

4. Any reference in the Schedule to this Order to a district or other territorial division of a State shall be construed as a reference to that district of other territorial division as existing on the 26th January, 1950.

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THE SCHEDULE

PART I- ASSAM

Throughout the State: —

1 Bansphor
2 Bhuinmali or Mali
3 Brittial-Bania or Bania
4 Dhupi or Dhobi
5 Dugla or Dholi
6 Hira
7 Jhalo or Malo
8 Kaibartta or Jaliya
9 Lalbegi
10 Mahara
11 Mehtar or Bhangi
12 Muchi
13 Namasudra
14 Patni
15 Sutradhar

PART II-BIHAR

1. Throughout the State: —

1 Bauri
2 Bantar
3 Bhogta
4 Charnar
5 Chaupal
6 Dhobi
7 Dom .
8 Dusadh, including Dhari or Dharhi
9 Ghasi
10 Halalkhor
11 Hari, including Mehtar
12 Kanjar
13 Kurariar
14 Lalbegi
15 Mochi
16 Musahar
17 Nat
18 Pan
19 Pasi
20 Pajwar
21 Turi

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2. In Patna and Tirhut Divisions and the districts of Monghyr Bhagalpur, Purnea and Palamau:- Bhumji

3. In Patna, Shahabad Gaya and Palamau Districts:- Bhuiya

4. In Shahabad district:- Dadgar

PART III- BOMBAY

1. Throughout the State:—

1 Ager
2 Asodi
3 Bakad
4 Bhambi . . .
5 Bhangi
6 Chakrawadya-Dasar
7 Chalvadi.
8 Chambhar, or Moehigar, or Samagar
9 Chena-Dasaru
10 Chuhar or Chuhra
11 Dakaleru
12 Dhegu-Megu
13 Dhor
14 Garoda .
15 Halleer
16 Halsar, or Haslar, or Hul-savar
17 Holaya, or Garode
18 Kolcha, or Kolgha
19 Lingader
20 Machigar
21 Madig, or Mang
22 Mahar
23 Mahyavanshi
24 Mangarudi
25 Meghval, or Menghwar
26 Mini Madig'
27 Mukri-
28: Nadia
29. Rohit
30 Shenva, or Shindhaya
31 Shingdav, or Shingadya
32 Sochi
33 Timali
34 Turi
35 Vankar
36 Vitholia

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2. Throughout the State except in Gujarat division:- Mochi

3. In North Kanara District:- Kotegar

PART IV- MADHYA PRADESH

Scheduled Castes	Localities
1. Basor or Burud	}
2. Bahna or Bahana	}
3. Balahi or Balai	}
4 Chamar	}
5. Dom	}
6. Mang	}
7. Mehtar or Bhangi	}
8. Mochi	}
9. Satnami	}
10. Audhelia	} In Bilaspur District
11. Bedar	} In Akola, Amravati and Buldana Districts
12. Chadar	In Bhandara and Sagar districts
13. Dahait or Dahayat	In Damoh sub-division of Sagar District.
14. Dewar	In Bilaspur, Durg, Raipur, Bastar, Sarguja and Raigarh Districts.

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15. Dhanuk	In Sagar District except in Damoh sub-division thereof."
16. Dohor	In Akola, Amravati, Buldana, Yeotmal, Balaghat, Bhandara, Chanda, Nagpur and Wardha Districts.
17. Ghasi or Ghasia	In Akola, Amravati, Buldana, Yeotmal, Balaghat, Bhandara, Bilaspur, Chanda, Durg, Wardha, Nagpur, Raipur, Sarguja, Bastar and Raigarh Districts.
18. Holiya	In Balaghat and Bhandara districts.
19. Kaikadi	In Akola, Amravati, Buldana, Yeotmal, Bhandara, Chanda, Nagpur and Wardha Districts.

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Annexure R-5

THE SCHEDULED CASTES AND SCHEDULED TRIBES ORDERS (AMENDMENT) ACT, 1956 ACT NO. 63 OF 1956

An Act to provide for the inclusion in, and the exclusion from, the lists of Scheduled Castes and of Scheduled Tribes, of certain castes and tribes and matters connected therewith.

[25th September, 1956]

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

1. This Act may be called the Scheduled Castes and Scheduled, Tribes Orders (Amendment) Act, 1956.

2. In this Act,—

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(a) "article" means an article of the Constitution;

(b) "census authority" means' the Deputy Registrar General, India;

(c) "last census" means the census held in 1951;

(d) "prescribed" means prescribed by rules made under this Act. *

3.(1) The Constitution (Scheduled Castes) Order, 1950, is hereby amended in the manner and to the extent specified in Schedule I.

(2) The Constitution (Scheduled Castes) (Part C States) Order, 1951, is hereby amended in the manner and to the extent specified in Schedule II.

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4.(1) The Schedule to the Constitution (Scheduled Tribes) Order, 1950, is hereby amended in the manner and to the extent specified in Schedule III.

(2) The Schedule to the Constitution (Scheduled Tribes) (Part C States) Order, 1951, is hereby amended in the manner and to' the extent specified in Schedule IV.

5.(1) Where the list of Scheduled Castes or Scheduled Tribes in relation, to any State is varied by this Act, the population as at the last census of the Scheduled Castes or as the case may be, of the Scheduled Tribes in that State excluding the tribal areas, and the population in each autonomous district there-of) shall Be ascertained or estimated by the census authority in such manner as

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may be prescribed and shall be notified by that authority in the Gazette of India:

Provided that nothing in this section shall apply to any State in relation to which provision for redetermining the population of Scheduled Castes and Scheduled Tribes is made in section 42 of the States Reorganisation Act, 1956, or in section 15 of the Bihar and West Bengal (Transfer of Territories) Act, 1956.

(2) The population figures so notified shall be taken to be the relevant population figures as ascertained at the last census and shall supersede any figures previously published.

6 In addition to the duties imposed by section 44 of the States Reorganisation Act, 1956,

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and any other law on the Delimitation Commission constituted under section 43 of the said Act, it shall be the duty of that Commission.

(a) to redetermine, on the basis of the population figures notified under section 5 of this Act for any State, the number of seats to be reserved for the Scheduled Castes and Scheduled Tribes of that State in the House of the People and in the Legislative Assembly, if any, of that State, having regard to the relevant provisions of the Constitution and of the States Reorganisation Act, .1956;

(b) if on such redetermination the number of reserved seats of any class in any State is found to be different from the number fixed in Final Order No.1 of the former

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Delimitation Commission, to make such amendments in any of the orders made by that Commission under section 8 of the Delimitation Commission Act, 1952, as may be necessary for the purpose of giving proper representation to toe Scheduled Castes or the Scheduled Tribes, as the case may be, of that State; and

(c) to take into account the provisions of this section while preparing the Order referred to in sub-section (2) -of section 47 of the States Reorganisation Act, 1956.

7. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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Scheduled Castes and Scheduled Tribes Orders

[act 63 (Amendment)

SCHEDULE I

[See section 3 (I)]

AMENDMENTS TO THE CONSTITUTION (SCHEDULED CASTES) ORDER, 1950

1. For paragraph 3, substitute:—

"3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste."

2. Before the heading "PART I—ASSAM", insert:

"PART I—ANDHRA

Throughout the State:—

1. Adi Andhra
2. Adi Dravida
3. Arundhatiya
4. Bariki

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5. Bavuri
6. Chachati
7. Chalavadi
8. Chamar or Muchi
9. Chandala .
10. Dandasi
11. Dom, Dombara, Paid! or Pano
12. Ghasi, Haddi or Relli Chachandi
13. Godagali
14. Godari
15. Gosangi
16. JaggalJ
17. Jambuvulu
18. Madasi Kuruva or-Madari Kuruva
19. Madiga
20. Mala
21. Mala Dasu
22. Madiga Dasu and Mashteen
23. Matangi

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Annexure R-6

The Gazette of India

EXTRAORDINARY

PART II-Section 1

PUBLISHED BY AUTHORITY

NEW DELHI, MONDAY, JUNE, 4, 1990

No. 26

Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 4th June,1990

The following Act of Parliament received the assent of the President on the 3rd June, 1990, and is hereby published for general information:-

VERDICTUM.IN

THE CONSTITUTION (SCHEDULED CASTES) ORDERS (AMENDMENT) ACT, 1990

No. 15 of 1990

[3rd June, 1990]

An Act further to amend the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Castes) (Union Territories) Order, 1951 and to amend the Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956, the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962, the Constitution (Pondicherry) Scheduled Castes Order, 1964 and the Constitution (Sikkim) Scheduled Castes Order, 1978

Be is enacted by .Parliament in the Forty first Year of the Republic of India as follows:-

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1. This Act may be called the Constitution (Scheduled Castes) Orders (Amendment) Act 1990	Short title
Amendment to the Constitution (Scheduled Castes) Order, 1950	2. In paragraph 3 of the Constitution (Scheduled Castes Order, 1950, for the words "or the Sikh", the "word "the Sikh or the Buddhist" shall be substituted.
Amendment to the Constitution (Scheduled Castes) (Union Territories) Order, 1951	3. In paragraph 3 of the Constitution (Scheduled Castes) (Union Territories) Order, 1951 for the words "or the Sikh", the "word "the Sikh or the Buddhist" shall be substituted.
Amendment to the Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956	4. In the proviso to paragraph 2 of the Constitution (Jammu and Kashmir) Scheduled Castes Order, 1956 for the words "or the Sikh", the "word "the Sikh or the Buddhist" shall be substituted.
Amendment to the Constitution (Dadra and Nagar I-laveli) Scheduled Castes Order, 1962,	5. In the proviso to paragraph 2 of the Constitution (Dadra and Nagar I-laveli) Scheduled Castes Order, 1962 for the words "or the Sikh", the "word "the Sikh or the Buddhist" shall be substituted.

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Amendment to the Constitution (Pondicherry) Scheduled Castes Order, 1964	6. In the proviso to paragraph 2 of the Constitution (Pondicherry) Scheduled Castes Order, 1964for the words "or the Sikh", the "word "the Sikh or the Buddhist" shall be substituted.
Amendment to the Constitution (Sikkim) Scheduled Castes Order, 1978	7. In the proviso to paragraph 2 of the Constitution (Sikkim) Scheduled Castes Order, 1978 for the words "or the Sikh", the "word "the Sikh or the Buddhist" shall be

V.S. Rama Devi

Secy. to the Govt. of India

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Supreme Court of India
Soosai Etc vs Union Of India And Others on 30 September, 1985
Equivalent citations: 1986 AIR 733, 1985 SCR Supl. (3) 242
Author: R Pathak
Bench: Pathak, R.S.

PETITIONER:
SOOSAI ETC.

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT30/09/1985

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
BHAGWATI, P.N. (CJ)
SEN, AMARENDRA NATH (J)

CITATION:
1986 AIR 733 1985 SCR Supl. (3) 242
1985 SCC Supl. 590 1985 SCALE (2)773

ACT:

Constitution of India 1950, Articles 14 to 17 and 341 & Constitution (Scheduled Castes) Order 1950, Para 3.

Persons belonging to Schedule Caste - Conversion to Christianity Disentitlement to benefit of constitutional provisions relating to Schedule Castes - Whether legal, valid and constitutional.

HEADNOTE:

The Government of India set up a special Central Assistance Scheme for the welfare of Scheduled Castes. Consequent to a proposal under this Scheme, allotment of bunk free of Cost were to be made to cobblers by profession who worked on the roadside, by the State Government of Tamil Nadu in pursuance to G.O. No. 580 Social Welfare Department dated February 13, 1982. This Order specifically stated that persons belonging to the Scheduled Castes and converted to Christianity were not eligible for assistance under the scheme.

The petitioner, who was a Hindu belonging to the Adi-Dravida caste and on conversion to Christianity continued as a member of that caste,-contended in his writ petition to this court that he had been denied the benefit of the

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welfare assistance intended for Scheduled Castes on the ground that he professes the Christian religion, and that such discrimination had been affected pursuant to the provision contained in paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 and that the provision was constitutionally invalid as being violative of Articles 14 to 17.

In the connected writ petition, relief was sought against the Circular letter dated August 16/25, 1983 issued by the State Government of Tamilnadu to the State Public Service Commission stating that "Scheduled Caste" Christians who revert to Hinduism and on that basis obtain appointments to reserved seats in Government services and having done so change their religion once

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again after their entry into Government service were liable to have their selection cancelled, as being constitutionally invalid and violative of Articles 14 to 17.

On the question: whether the Constitution (Scheduled Castes) Order, 1950 is constitutionally invalid on the ground that only Hindu or Sikh members of the castes enumerated in the Schedule to that Order are deemed to be Scheduled Castes for the purpose of the Constitution of India.

Dismissing the writ petitions,

^

HELD: 1. It is not possible to say that the President acted arbitrarily in the exercise of his judgment in enacting paragraph 3 of the Constitution (Scheduled Castes) Order, 1950. [250 F]

2.Dr. J.H. Hutton, a Census Commissioner of India, framed a list of the depressed classes and that list was made the basis of an order promulgated by the British Government in India called the Government of India (Scheduled Castes) Order, 1936. The Constitution (Scheduled Castes) Order, 1950 was substantially modelled on the Order of 1936. The Order of 1936 enumerated several castes races or tribes in an attached schedule and they were, by paragraph 2 of the Order, deemed to be Scheduled Castes. Paragraph 3 of the same Order declared that the Indian Christians would not be deemed to be members of the Scheduled Castes. [249 C-D]

3. The President had before him material indicating that the depressed classes of the Hindu and the Sikh Communities suffered from economic and social disabilities and cultural and educational backwardness so gross in character and degree that the members of these Castes in the two communities called for the protection of the Constitutional provisions relating to the Scheduled Castes, and that in order to provide for their amelioration and advancement it was necessary to conceive of intervention by the State through its legislative and executive powers. [249 H; 250 B]

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4.(i) In discharge of the obligation imposed by clause (1) of Article 341 the President issued the Constitution (Scheduled Castes) Order, 1950. In its original form, paragraph 3 declared that (1) no person who professes a religion different from Hinduism would be deemed to be a member of a Scheduled Caste. There was a proviso to paragraph 3 which declared that every member of the Ramdasi, Kabirpanthi, Mazhabi or Sikligar caste
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resident in Punjab or the Patiala and East Punjab States Union would in relation to that State be deemed to be a member of the Scheduled Castes whether he professed the Hindu religion or the Sikh religion. Subsequently, Parliament enacted the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 which substituted for the original paragraph 3 the present paragraph 3, which declared :-

> "3. Notwithstanding anything contained in paragraph 2,no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste." [247 F; 248A]

(ii) For the purposes of the Constitution the constitutional provisions relating to Scheduled Castes are intended to be applied to only those members of the castes enumerated in the Constitution (Scheduled Castes) Order, 1950 who profess the Hindu or the Sikh religion. If a Christian belongs to one of those castes, he is barred by reason of paragraph 3, from being regarded as a member of a Scheduled Caste and is, therefore, not entitled to the benefit of the constitutional provisions relating to Scheduled Castes. [248 B-Cl

5. The declaration incorporated in paragraph 3 was a declaration made for the purposes of the Constitution. It was a declaration enjoined by clause (1) of Article 341 of the Constitution. To establish that paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against Christian members of the enumerated castes it must be shown that they suffer from a comparable depth of social and economic disabilities and cultural and educational backwardness and similar levels of degradation within the Christian community necessitating intervention by the State under provisions of the Constitution. It is not sufficient to show that the same caste continues after conversion. It is necessary to establish further that the disabilities and handicaps suffered from such caste membership in the social order of its origin - Hinduism continue in their oppressive severity in the new environment of a different religious community. No authoritative or detailed study dealing with the present conditions of Christian society have been placed on the record in this case. [250 B-E]

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JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 9596 of 1983 & 1017 of 1984.

(Under Article 32 of the Constitution of India.) F.S. Nariman, U.S. Prasad, Jose Verghese, N.P. Midha, V.A. A Bobde and L.R. Singh for the Petitioners.

Govind Das, M.M. Abdul Khadar, R. Thiyagarajan, Ms. A. Subhashini and A.V. Rangam for the Respondents.

The Judgment of the Court was delivered by B PATHAK, J. This and the connected writ petitions raise the important question whether the Constitution (Scheduled Castes) Order, 1950 is constitutionally invalid on the ground that only Hindu or Sikh members of the castes enumerated in the Schedule to that Order are deemed to be Scheduled Castes for the purposes of the Constitution of India.

The petitioner Soosai (in Writ Petition No. 9596 of 1983) states that he belongs to the Adi-Dravida Community and is a convert to Christianity. He is a cobbler by profession and works on the roadside at one of the cross- roads in Madras. In May, 1982, the officers of the Tamil Nadu Khadi and Village Industries Board surveyed the sites on which cobblers were working, including the place occupied by the petitioner, and subsequently on July 27, 1982 several cobblers were allotted bunks free of cost by the Regional Deputy Director, Khadi and Village Industries Board. The petitioner was not. On enquiry the E petitioner came to know that the allotment of bunks free of cost was consequent to a proposal under the Special Central Assistance Scheme of the Government of India for the welfare of Scheduled Castes. The funds for the purpose were provided from the Special Central Assistance of the Government of India set up for giving effect to schemes exclusively intended for Scheduled Castes under G.O.Ms. No. 580 Social Welfare Department dated February 13, 1982. It is pointed out that this Order specifically states that persons belonging to the Scheduled Castes and converted to Christianity are not eligible for assistance under the scheme. The petitioner points out that the said Order has been made in consonance with the Constitution (Scheduled Castes) Order, 1950, which specifically declares that no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste. The petitioner assails the validity of that Order on the ground that it violates Articles 14, 15 and 25 of the Constitution.

The essence of the petitioner's case is that he was a Hindu belonging to the Adi-Dravida caste and on conversion to Christianity he continues as a member of that caste. The Adi-Dravida caste is one of the castes enumerated in the Schedule to the Constitution (Scheduled Castes) Order, 1950. The petitioner alleges that he has been denied the benefit of welfare assistance intended for Scheduled Castes on the ground only that he professes the Christian religion, and he contends that inasmuch as such discrimination has been effected pursuant to the provision contained in paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, that provision is constitutionally invalid. The petitioner invokes Article 14, which is the central provision in the Constitution guaranteeing the right to equality before the law and the equal protection of the laws, and clause (1) of Article 15, which prohibits the State from discriminating against any citizen on the ground only, among others,

of religion. It is pointed out that when clause (4) of Article 15 permits the State, notwithstanding the prohibition contained in clause (1) of Article 15 to make special provision for the advancement of socially and educationally backward classes of citizens and for the Scheduled Castes and Scheduled Tribes, it envisages such special provision for the advancement of all members of such backward classes of citizens, Scheduled Castes and Scheduled Tribes. If any discrimination is exercised between the members of a Scheduled Caste on the ground of religion only so as to promote the welfare of one group of members and deny it to the others the denial will be invalid. Reference has also been made to Article 25 on the ground that a Christian convert will be tempted to re-convert to Hinduism or Sikhism in order to benefit from the constitutional provisions relating to Scheduled Castes and therefore paragraph 3 in its operation denies him freedom of conscience and the right freely to profess, practice and propagate his religion.

The framers of the Constitution have taken great care to ensure that sufficient provision is made for ameliorating the conditions of certain backward classes found in India who suffer from social and economic disabilities. Article 46 enjoins upon the State, as a Directive Principle of State policy, to promote with special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. In consonance with this objective they enacted a number of provisions in the Constitution, of which clause (4) of Article 15 is one. Besides, although clause (1) of Article 16 guarantees equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State, there is clause (4) of Article 16 which lays down that nothing in Article 16 will A prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Article 17 abolishes "Untouchability" and forbids its practice in any form, and declares that the enforcement of any disability arising out Of "Untouchability" will be an offence punishable in accordance with law. There are other provisions, such as Article 330 which provides for the reservation of seats in the House of the People for Scheduled Castes and Scheduled Tribes and Article 332 which makes similar provision for the reservation of seats for them in the State Legislative Assemblies We are concerned here with the advantages and benefits envisaged by the Constitution in respect of members of the Scheduled Castes.

The expression Scheduled Castes is defined in clause 24 of Article 366 to mean such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purpose of this Constitution . Clause (1) of Article 341 enjoins upon the President to specify by public notification the castes, races or tribes or parts of or groups within castes, races or tribes, which for the purposes of the Constitution are deemed to be Scheduled Castes in relation to a State or Union territory. Once such notification is issued by the President it cannot be varied by any subsequent notification except that, by virtue of clause (2) of Article 341, Parliament may by law include in or exclude from the list of Scheduled Castes specified in the notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe. In discharge of the obligation imposed by clause (1) of Article 341 the President issued the Constitution (Scheduled Castes) Order, 1950. In its original form, paragraph 3 declared that ....no person who professes a religion different from Hinduism- would be deemed to be 2 member of z

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Scheduled Caste. There was a proviso to paragraph 3 which declared that every member of the Ramdasi, Kabirpanthi, Mazhabi or Sikligar caste resident in Punjab or the Patiala and East Punjab States Union would in relation to that State be deemed to be member of the Scheduled Castes whether the professed the Hindu religion or the Sikh religion. Subsequently Parliament enacted the Scheduled Castes and Scheduled tribes orders (Amendment) Act, 1956 which substituted for the original paragraph 3 that present paragraph, which declares:-

> "3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste.

It is apparent that for the purpose of the Constitution the constitutional provisions relating to Scheduled Castes are intended to be applied to only those members of the castes enumerated in the Constitution (Scheduled Castes) Order, 1950 who profess the Hindu or the Sikh religion. Clearly, if it can be contemplated that a Christian belongs to one of those castes, he is barred by reason of paragraph 3, from being regarded as a member of a Scheduled Caste and is, therefore, not entitled to the benefit of the constitutional provisions relating to Scheduled Castes.

The main question debated before us is whether a Hindu belonging to a Scheduled Caste retains his caste on conversion to Christianity. Cases decided by this Court and by the High Courts bearing on the point have been cited on both sides of the line, and our attention has been invited to text books, commentaries and Commission Reports, some of which contain the observation that depressed groups and castes are to be found not only among Hindus and Sikhs but also among Muslims and Christians. It appears to us unnecessary in this case to enter upon that question and to decide whether a Hindu belonging to the Adi-Dravida caste continues to be a member of that caste on his conversion to the Christian religion. We shall assume, for the purposes of this case, that the caste is retained on conversion from one religion to the. Other. The real question is whether on the material before us it can be said that in confining the declaration to members of the Hindus and the Sikh religions, paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against members of the Christian religion.

Now it cannot be disputed that the caste system is a feature of the Hindu social structure. It is a social phenomenon peculiar to Hindu society. The division of the Hindu social order by reference at one time to professional or vocational occupation was moulded into a structural hierarchy which over the centuries crystallized into a stratification where the place of the individual was determined by birth. Those who occupied the lowest rung of the social ladder were treated as existing beyond the periphery of civilised society, and were indeed not even "touchable". This social attitude committed those castes to severe social and economic disabilities and cultural and A educational backwardness. And through most of Indian history the oppressive nature of the caste structure has denied to those disadvantaged castes the fundamentals of human dignity, human self respect and even some of the attributes of the human personality. Both history and latter day practice in Hindu society are heavy with evidence of this oppressive tyranny, and B despite the efforts of several noted social reformers, specially during the last two centuries, there has been a crying need for the emancipation of the depressed classes from the degrading conditions of their social and economic

servitude. Dr. J.H. Hutton, a Census Commissioner of India, framed a list of the depressed classes systematically, and that list was made the basis of an order promulgated by the British Government in India called the Government of India (Scheduled Castes) Order, 1936. The Constitution (Scheduled Castes) Order, 1950 is substantially modelled on the Order of 1936. The Order of 1936 enumerated several castes, races or tribes in an attached Schedule and they were, by paragraph 2 of the Order, deemed to be Scheduled Castes. Paragraph 3 of the same order declared that the Indian Christians would not be deemed to be members of the Scheduled Castes. During the framing of the Constitution, the Constituent Assembly recognised that the Scheduled Castes were a backward section of the Hindu community who were handicapped by the practice of untouchability , and that this evil practice of untouchability was not recognised by any other religion and the question of any Scheduled Caste belonging to a religion other than Hinduism did not therefore arise B. Shiva Rao: The Framing of India's Constitution: A Study p. 771). The Sikhs however, demanded that some of their backward sections, the Mazhabis, Ramdasias, Kabirpanthis and Sikligars, should be included in the list of Scheduled Castes. The demand was accepted on the basis that these sects were originally Scheduled Caste Hindus who had only recently been converted to the Sikh faith and "had the same disabilities as the Hindu Scheduled Castes (Supra p. 771). The depressed classes within the fold of Hindu society and the four classes of the Sikh community were therefore made the subject of the original Constitution (Scheduled Castes) Order, 1950. Subsequently in 1956 the Constitution (Scheduled Castes) Order, 1950 was amended and it was broadened to include all Sikh untouchables.

It is quite evident that the President had before him all this material indicating that the depressed classes of the Hindu and the Sikh communities suffered from economic and social H disabilities and cultural and educational backwardness so gross A in character and degree that the members of those castes in the two communities called for the protection of the Constitutional provisions relating to the Scheduled Castes. It was evident that in order to provide for their amelioration and advancement it was necessary to conceive of intervention by the State through its legislative and executive powers. It must be remembered that the declaration incorporated in paragraph 3 deeming them to be members of the Scheduled Castes was a declaration made for the purposes of the Constitution. It was a declaration enjoined by clause (1) of Article 341 of the Constitution. To establish that paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against Christian members of the enumerated castes it must be shown that they suffer from a comparable depth of social and economic disabilities and cultural and educational backwardness and similar levels of degradation within the Christian community necessitating intervention by the State under the provisions of the Constitution. It is not sufficient to show that the same caste continues after conversion. It is necessary to establish further that the disabilities and handicaps suffered from such caste membership in the social order of its origin Hinduism - continue in their oppressive severity in the new environment of a different religions community. References have been made in the material before us in the most cursory manner to the character and incidents of the castes within the Christian fold, but no authoritative and detailed study dealing with the present conditions of Christian society have been placed on the record in this case. It is, therefore, not possible to say that the president acted arbitrarily in the exercise of his judgment in enacting paragraph 3 of the Constitution (Scheduled Castes) order, 1950. It is now well established that when a violation of Article 14 or any of its related provisions is alleged, the burden rests on the petitioner to establish by

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clear and congent evidence that the State has been guilty of arbitrary discrimination. Having regard to the State of the record before us, we are unable to hold that the petitioner has established his case. The challenge must, therefore, fail.

In the connected writ petition No. 1017 of 1984 the submissions have proceeded substantially on the same grounds, and relief has been sought additionally against a Circular Letter No. 21711/ADWII/80-26 dated August 16/25, 1983 issued by the Government of Tamil Nadu to the Tamil Nadu Public Service Commission stating that "Scheduled Caste Christians who revert to Hinduism and on that basis obtain appointments to reserved seats in Government services, and having done 80 change their religion once again after their entry into Government service are liable to have their selection cancelled. On the considerations which have prevailed with us in dismissing the earlier writ petition, this writ petition must also be dismissed.

The writ petitions are dismissed but without any order as to costs.

N.V.K. Petitions dismissed.

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Annexure - R-8

Copy of Registrar General of India's letter dated

14.03.2001

J.K.Banthia 2, A, Mansingh Road, New

Registrar General of India Delhi 14th March, 2001

D.O.No. 8/1/2000-SS (Gen) Pt.

Dear Shri Panda,

Please refer to your do letter No. 12016/30/96-SCD (R.L.Cell) dated 19.07.2000 and the subsequent reminders dated 08,11.2000 and 13.12.2000 concerning demand of persons of Scheduled Castes origin and converts to Christianity for inclusion in Scheduled castes list. The comments of this Office on the proposal is sent herewith for appropriate action.

With regards,

Yours sincerely, Sd /-

(J.K.Banthia)

Shri S.K.Panda,
Joint Secretary,
Government of India
Ministry of Social Justice and Empowerment
Shastri Bhawan,
New Delhi.

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Comments of the ORG1 on the proposal of demand of persons of Scheduled Castes origin and converts to Christianity for inclusion in Scheduled Castes list.

Article 341 of the Constitution of India is explicit in the matter of specification of Scheduled Castes. According to clause (1) of Article 341 of the Constitution, the President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public modification, specify the castes, races or tribes or parts of or groups within the castes, races or tribes which shall for the purpose of 'the Constitution be, deemed to be Scheduled Castes in relation to that State or Union territory.

In drawing of the list of Scheduled Castes of any State or Union Territory the test applied was

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extreme social, educational and economic backwardness arising out of the traditional practice of untouchability'.

Further, Clause (2) of Article 341 of the Constitution provides provision that Parliament may by law include in or exclude from the list of Scheduled Castes specified-in a notification issued under Clause (1) any'caste, race or tribe or part of or group within any caste, race or tribe.

Thus, for the purpose of specification of Scheduled Caste(s) in relation to any State or Union Territory, stress has been given on social, educational and economic backwardness arising out of the traditional practice of untouchability and also for inclusion of a specific caste, race or tribe or part of or group within a caste, race or tribe in the Scheduled Castes list.

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As it is, well-known, the caste system and associated practice of untouchability was ;a feature of Hindu society and perhaps because of this reason the Constitution (Scheduled Castes) Order which was issued in 1950 under Article 341 of the Constitution stipulated as follow:-

> "...no person who profess a religion different from Hinduism shall be deemed to be a member of a Scheduled Caste."

However, it contained the following proviso:-'

> "Provided that every member of Ramdasi, Kabirpanthi. Mazhabi or Sikligar caste, resident in Punjab or the Patiala and East Punjab State Union shall in relation to that State be deemed to be a member of the Scheduled Castes whether he professes the Hindu or the Sikh religions."

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By an amendment made in September 1956 to the above presidential Order of 1950, the Hindu and the Sikh religions were placed on the same footing with regard to specification of the Scheduled Caste.

Later on, as per the amendment made in the Constitution (Scheduled Castes) Orders (Amendment) Act, 1990, the Buddhist religion was also brought under the realm of Scheduled Caste and the Hindu, the Sikh and the Buddhist religions were placed on the same footing with regard to the recognition of the Scheduled Castes.

It is important to point out that the members of the Scheduled Castes converted to Buddhist religion do not recognize caste system within them and prefer to recognize themselves as Nav Buddhists or Neo Buddhists as a single

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large religions entity. The Nav Buddhists/Neo Buddhists comprises of members of more than one Scheduled Caste. More recently the members of Scheduled Castes converted to Buddhism (prior to call themselves as Neo Buddhists.Nav Buddhist demanded to not to ask their Scheduled Caste(s) name during the population enumeration being carried out in the country for the purpose of Census of India 2001. as such the demand made by the members of Scheduled Castes converted to Buddhist religion to not to recognize them by their Scheduled Caste(s) name as spell out in the Scheduled Castes list for the purpose of population Enumeration is against the Constitutional provision of specification of a caste, race or tribe as Scheduled' Caste as mentioned under Clause (2) of Article 341 of the Constitution.

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Similar condition prevails among the Christians as well. The concept of castes, caste stratification or the social practice of ability-disability in performing socio-religious right(s) by their members are not recognized by the Christians as these are prevalent within the Hindu society. The Scheduled Caste persons who convert to Christianity may belong to one Scheduled Caste or more than one Scheduled Castes and after their conversion, they lose their caste identity. Their all members are generally considered equal in their socio-economic status and they are not subjected to any kind of social disability arising out of the traditional practice of untouchability. Therefore, as also in case of the persons of Scheduled Castes converted to Buddhist religion, after conversion to Christianity. The members of the Scheduled Castes professing Christian religion represent a

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religious entity comprising of more than one Scheduled Castes and they do not represent a single ethnic group. Since, the Clause (2) of the Article 341 provides, provision for inclusion of a caste, race or tribe or part of or group within a caste, race or tribe, in fact the group of the members belonging to more than one Scheduled Castes professing Christian religion ^does not fall under the purview of Clause (2) of the Article 341 of the Constitution.

In case of Soosai Vs. Union of India & Others (WP 9596 of 1983 and also in the WP No. 1017 of 1984). The .Supreme court of India has observed that to establish that paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 discriminates against Christian members of the enumerated castes, it must be shown that they suffer from a comparable depth of social and

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economic disabilities and cultural and educational backwardness and similar levels of degradation within the Christian community necessitating intervention by the State under the provisions of the Constitution. It is not sufficient to show that the same caste continues after conversion. It is necessary to establish that the disabilities and handicaps suffered from such caste membership in the social order of its origin- Hinduism -continue in their oppressive severity in the new environment of a different religious community. References have been made in the material before us in the most cursory manner to the character and incidents of the castes within the Christian fold but no authoritative and detailed study dealing with the present conditions of Christian society have been placed on the record in this case."

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Therefore, the above judgment of the Supreme Court of India on the question whether a Hindu belonging to a Scheduled Caste retains his caste on conversion to Christianity makes the position clear.

Earlier, in the year 1978 while sending the comments of this office, on the draft Cabinet Summary relating to the revision of the list of Scheduled . Castes and Scheduled Tribes to the then Ministry of Home Affairs, in response to Item (VI) relating to retention of Scheduled Caste status in respect of converts to Christianity and Buddhism. This office clearly stated that this issue involve policy decision the Social disability arising out of the traditional practice of untouchability are recognized by Hindu and Sikh religions only. No doubt, the converts from these communities to Buddhism

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and Christianity do not' show at least immediately after conversion any effective improvement in their social status or condition.......As Buddhism and Christianity do not recognise the practice of untouchability , the Neo Buddhist -the Mahars in Maharashtra (estimated more than 50 lakhs were given the status of OBC in the State. Before the suggestion is implemented, it would be advisable to thoroughly examine the socio-legal aspect of this measure. Besides, overall increase in the population of Scheduled Castes is also to be reckoned with. The population of Neo Buddhist as well as those of Christians converts from amongst Scheduled Castes will swell the population of this category considerably.

Stratification among Christians on the basis of Castes could well become a matter of

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international controversy and the opinion of the highest Christian authority (ies) in India as well as abroad is required to be sought in this connection before arriving on any decision. Otherwise it may be misunderstood internationally as if India is imposing its caste system among Christians. The ORGI's view on the proposal may be considered. Besides, the Ministry of Social Justice and Empowerment may examine the socio-legal aspect of this issue before taking any policy decision.

//TRUE COPY//

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Annexure R-9

2/99/96-SSW-

Telegram : CASTRICOM
Ph. : 4623959, 4601346
Fax : 011-4625378

भारत सरकार

राष्ट्रीय अनुसूचित जाति तथा अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES

पाँचवीं मंजिल, लोकनायक भवन,
नई दिल्ली-110003
5th Floor, LOK NAYAK BHAWAN,
NEW DELHI-110003

19-10-2000

To,

Shri S.K. Panda,
Joint Secretary,
M/o Social Justice & Empowerment,
Shastri Bhawan,
New Delhi

Sub:- Demand of persons of Sch. Castes origin and converted to christianity for their inclusion in the Sch. Castes list.

Sir,

I am to refer to your D.O. letter No. 12016/30/96 SCD (R.Cell) dated 19th July, 2000 on the above subject and to say that the matter was considered in the Commission in its 15th meeting held on 30-10-2000. Copy of relevant extract from the minutes of the meeting of the Commission are enclosed herewith for further necessary action at your end.

Yours faithfully,

(SURINDER SINGH)
DIRECTOR

VERDICTUM.IN

No.6/7/2000-C.Cell

Fax : 011-4625378
Telegram : CASTRICOM
Phone No.:

भारत सरकार
राष्ट्रीय अनुसूचित जाति एवं अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED CASTES & SCHEDULED TRIBES

पांचवीं मंजिल, लोकनायक भवन
खान मार्कीट, नई दिल्ली-110003
Vth Floor, Loknayak Bhawan
Khan Market, New Delhi - 110 003

Dated 11/10/2000

OFFICE MEMORANDUM

Sub: Minutes of 15th Meeting of National Commission for SCs & STs held on 3-10-2000 at 11.00 A.M.

The Minutes of 15th Meeting of National Commission for Scheduled Castes and Scheduled Tribes held on 03-10-2000 at 11.00 A.M. is sent herewith for information. The concerned Wing Heads are requested to take suitable follow up action and send action taken to the C.Cell within 15 days.

(S.P.Maurya)
Director

O/C

Chairman
Vice-Chairman
Member(L)
Member(HSK)
Member(CM)
Member(VN)
Member(CC)

Officers
Secretary
Joint Secretary
Director(Admn./APCR)
Director(SSW)
Director(ESDW)

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Minutes of Fifteenth Meeting of National Commission for SCs and STs held on 3.10.2000 at 11.00 A.M.

Fifteenth Meeting of National Commission for SCs & STs was held on 3.10.2000 at 11.00 A.M. in the Conference Hall. The following were present:

(1) Shri Dileep Singh Bhuria, Chairman (in chair)

(2) Shri Kameshwar Paswan, Vice-Chairman

(3) Ven. Lama Lobzang, Member

(4) Shri Chhotray Majhi, Member

(5) Smt. Veena Nayyar, Member

(6) Shri C. Chellappan, Member

Officers

(7) Smt. Malti S. Sinha, Secretary

(8) Shri B.S. Parsheera, Joint Secretary

(9) Shri S.P. Maurya, Director (Admn./APCR)

(10) Shri Surinder Singh, Director (SSW)

(11) Smt. Mridul Jain, Director (ESDW)

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Agenda Item No.4 Proposal for inclusion of Dalit Christians in the SC list – Comments of the Commission

The proposal received from the Ministry of Social Justice & Empowerment for inclusion of Dalit Christians in the SC list was considered by the Commission. After taking into consideration various relevant aspects, the Commission was of the view that inclusion of Dalit Christians in the list of SCs is neither desirable nor justifiable. It was decided to communicate the views of the Commission as contained in the note for the meeting.

VERDICTUM.IN

Annexure R-10

CENSUS OF INDIA 2001

Phone: (91) (11) 338 3761

€Fax: (91) (11) 338·3145

J.K. Banthia

Registrar General &

Census Commissioner, India

2A, Mansingh Road, New Delhi 1100

D. O. No. 8/1 2001 SS (Bihar)

3rd April, 2001

Dear Shri Panda,

Please refer to your DO. Letter No. 12016/3/2001-SCD (R.L. Cell)O dated 7th March, 2001 regarding inclusion of Dalit Muslims in the Scheduled Castes list of Bihar and also the Private Member Bill on the Constitution (Scheduled Castes) Order (Amendment of the Schedule) proposed by Dr. Raghuvansh Prasad Singh, M.P.

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The comments of this office on the proposal of Dalit Muslims in the scheduled Castes list of Bihar and also on the proposed amendment in the Constitution (Scheduled Castes) order 1950 are sent herewith for appropriate action.

Yours sincerely,

(J.K. Banthia)

Shri S.K. Panda,

Joint Secretary

Ministry of Social Justice and Empowerment,

Shastri Bhawan,

New Delhi

VERDICTUM.IN

Comments of the OPGI on the proposal of inclusion of 'Dalit Muslims in the list of Scheduled Castes of Bihar as proposed in the Private Member Bill by Shri Raghuvansh Prasad Singh, Member of Parliament (Lok Sabha)

The proposal of inclusion of Dalit Muslims in the SC's list of Bihar and also the proposal of omission of para 3 of the Constitution (Scheduled Castes) Order, 1950 are examined and the comments thereon are given below:-

(i) Dalit Muslims is it a caste or generic term?

The term Dalit Muslims' used by the Ministry of €SJ & E and also these of 'Dalits' or Muslim (Dalits)' as referred to in the Statement of Objects and Reasons of the proposed Bill are vague in nature. These are generic terms applied to a class or

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group of people or castes. According to Clause (2) of Article 341 of the Constitution, Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe. Therefore, the Ministry of SJ & E is required to see whether the proposal is regarding inclusion of Dalit Muslims as an entry, in the SCs list of Bihar or it relates to deletion of para 3 of 1950 Order and subsequently inclusion of 26 Muslim Communities in SCs list of Bihar as referred to in the proposed Bill.

(ii) Para 3 of the Constitution (Scheduled Castes) Order, 1950 its Constitutional Validity

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Para 3 of the constitution (Scheduled Castes) Order, 1950 is in fact, the crux of the Constitutional provisions made under Article 341 of the Constitution because is drawing of list of the Scheduled (Castes of any State or Union territory, the test applied was "extreme social, educational and economic backwardness arising out of the traditional practice of untouchability.

It is, further to be pointed out that as it is well known the caste system and associated practice of untouchability was a feature of Hindu society and perhaps because of this reason the Constitution (Scheduled Castes) Order, 1950 stipulated as follow under para 3.

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> "....no person who professes a religion different from Muslims shall be deemed to be a member of a Scheduled Caste."

However, it contained the following proviso:-

"provided that every member of Ramdasi, Kabirpanthi, Mazhabi or Sikligar caste, resident in Punjab or the Patiala and East Punjab State Union shall, in relation to that State be deemed to be a member of the Scheduled Castes whether he professes the Hindu or the Sikh religions.

By an amendment made in September 1956 to the above Presidential Order of 1950, the Hindu and the Sikh religions were placed on the same footing with regard to specification of the Scheduled Caste.

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Later on, as per the amendment made in the Constitution (Scheduled Castes) Orders (Amendment) Act, 1990, the Budhist religion was also brought under the realm of Scheduled Caste and the Hindu the Sikh and the Buddhist religions were placed on the same footing with regard to the recognition of the Scheduled Castes.

The Supreme Court of India, while examining a significant question whether in confining the declaration to members of the Hindu and the Sikh religions, para 3 of the Constitution (Scheduled Castes) Order, 1950 discriminate against members of the Christian religion, in the Writ Petition Soosai Vs. Union of India & Ors (WP No. 9596 of 1983 and also in the connected WP. No.1017 of 1984) explained the importance

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and also the basic objectives of the said para in greater detail. It is observed that it cannot be disputed that the caste system is a feature of the Hindu social structure. It is a social phenomenon peculiar to Hindu Society. The division of the Hindu social order by reference at one time to professional or vocational occupation was moulded into a structural hierarchy which over the centuries crystalised into a stratification where the place of the individual was determined by birth. Those who occupied the lowest rung of the social ladder were treated as existing beyond the periphery of civilized society and were indeed not even "touchable". This social attitude committed those castes to severe social and economic disabilities and cultural and educational backwardness.' And

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through most of Indian history the oppressive nature of the caste structure has denied to those disadvantaged castes the fundamentals of human dignity human self-respect and even some of the attributes of the human personality. Both history and latter day practice in Hindu society are heavy with evidence of this oppressive tyranny,' and despite the efforts of several noted social reformers, specially during the last two centuries, there has been a crying need for the emancipation of the depressed classed from the degrading conditions of then social and economic servitude. Dr. J.H. Hutton, a Census Commissioner of India trained a list of the depressed classes systematically and that list was made the basis of an order promulgated by the British Government in India called the Government

VERDICTUM.IN

of India (Scheduled Castes) Order, 1936. The Constitution (Scheduled Castes) Order, 1950 is substantially modeled on the order of 1936. The Order of 1936 enumerated several castes races or tribes in an attached Schedule and they were by paragraph 2 of the Order, deemed to be Scheduled Castes Paragraph 2 of the same Order declared that the Indian Christians would not be deemed to be members of the Scheduled Castes.

During the framing of the Constitution, Assembly recognized that the Scheduled Castes were a backward section of the Hindu community who were handicapped by the practice of untouchability, and that "this evil practice of untouchability was not recognized by any other religion and the

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question of any Scheduled Caste belonging to a religion other than Hinduism did not therefore arise. The Sikhs however, demanded that some of their backward sections. The Mazhabis, Ramdasias, Kabirpanthis and Sikligars, should be included in the list of Scheduled Castes. The demand was accepted on the basis that these seets were originally Scheduled Caste Hindus who had only recently been converted to the Sikh faith and had the same disabilities as the Hindu Scheduled Castes". The depressed classes within the fold of Hindu society and the four classes of the Sikh community were therefore made the subject of the original Constitution (Scheduled Castes) Order, 1950. Subsequently in 1956 the Constitution (Scheduled Castes) Order, 1950 was

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amended and it was broadened to include all Sikh untouchables.

It is quite evident that the President had before hin all this material indicating that the depressed classes of the Hindu and the Sikh Community suffered from economic and social disabilities and cultural and educational backwardness so gross in character and degree that the members of those caste in the two communities called for the protection of Constitutional Provisions relating to the Scheduled Castes.

It was evident that in order to provide for their amelioration and advancement .It was necessary to conceive of intervention by the State through its legislative and executive powers. It must be remembered that the declaration incorporated in

VERDICTUM.IN

paragraph 3 deeming them to be members of the Scheduled Castes was a declaration made for the purposes of the Constitution. It was a declaration ejoined by clause (1) of Article 341 of the Constitution. To establish that paragraph 3 of the Constitution (scheduled Castes) order, 1950 discriminate Christian members of the enumerated castes it must be shown that they suffer from a comparable depth of social and economic disabilities and cultural and educational backwardness and similar elvels of degradation within the Chrsitian community necessitating intervention by the State under the provisions of the Constitution. It is not sufficient to show that the same caste continues after conversion. It is necessary to establish further that the disabilities and handicaps

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suffered from such caste membership in the social order of its origin- Hinduism-continue in their oppressive severity in the new environment of a different religious community. References have been made in the material before us in the most cursory, manner to the character and incidents of the castes within the Christian fold, but no authoritative and detailed study dealing with the present conditions of Christian society have been placed on the record in this case. It is, therefore, not possible to say that the President acted arbitrarily in the exercise of his judgment in enacting paragraph 3 of the Constitution (Scheduled Castes) order, 1950. It is now well established that when a violation of Article 14 or any of its related provisions is alleged the burden rests on the petitioner to

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establish by clear and cogent evidence that the State has been guilty of arbitrary discrimination.

The Supreme Court of India, in the above judgment has, therefore, endorsed the validity of para 3 of the Constitution (Scheduled Castes) Order, 1950 for the purpose of recognition and specification of the Scheduled Castes. In view thereof, this office is not in favour of omission of said para from the Constitution (Scheduled Caste) Order, 1950 as proposed.

(iii) inclusion of 26 Muslim communities in SCs list of Bihar Comments thereon.

The concept of caste system, caste on stratification based on traditional occupations, the social practice of ability-

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disability in performing socio-religious right(s) by their members, etc. are not recognized by the Muslims as these are prevalent within the Hindu society, it will be a serious controversy and also discontentment within the Muslims, if their community are recognized at par with those of Hindu castes on the ground of backwardness arising due to traditional practice of untouchability, especially for the purpose of Article 341 of the Constitution of India. Therefore, the opinion of the highest Muslim authority in India as well as abroad is required to be sought in this connection before arriving on any decision. Otherwise, it may be misunderstood internationally as if India is imposing its caste system among the Muslims.

It is further pointed out that as per the Constitution (Scheduled Castes) Orders

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(Amendment) Act, 1990, the Hindu, the Sikh and the Buddhist religions are recognized for the purpose of specification of the Scheduled castes, and, therefore, it may not be possible to examine the proposal of communities professing Muslim religion for their inclusion in the list of Scheduled Caste of Bihar.

In view, thereof, this office does not support the present proposal. The Ministry of SJ & E may however, examine the socio- legal aspects of this issue before taking any policy decision.

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Annexure R-11

भारत सरकार
राष्ट्रीय अनुसूचित जाति एवं अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED CASTES & SCHEDULED TRIBES

सत्यमेव जयते

संयुक्त सचिव
Joint Secretary
L.B. SINATE
TEL: 24603669

पाँचवीं मंजिल, लोकनायक भवन
खान मार्किट, नई दिल्ली-110003
Vth Floor, Loknayak Bhawan,
Khan Market, New Delhi - 110 003

D.O. No. 3/14/2001-SSW V

11 August 2003

Dear Shri Murthy,

Kindly refer to your d.o. letter number 12016/3/2001.SCD (R.L. Cell) dated 24.7.2003 regarding views of the National Commission for SCs and STs on Private Member's Bill moved by Dr. Raghuvansh Prasad Singh for amendment to Constitution (Scheduled Castes) Order, 1950 and inclusion of Dalit Muslims in the SC list of Bihar. Since Commission has rejected the proposal contained in the Private Member's Bill in toto, the presumption of your Ministry about the applicability of the views of this Commission on inclusion of Dalit Muslims in the SC list of Bihar holds good in respect of other States/UTs of the country also.

With regards,

Yours sincerely,

(L.B. Sinate)

Shri P. Narayan Murthy
Joint Secretary,
Ministry of Social Justice & Empowerment,
Shastri Bhawan,
New Delhi

VERDICTUM.IN

भारत सरकार
राष्ट्रीय अनुसूचित जाति एवं अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED CASTES & SCHEDULED TRIBES

D.O. No. 3/14/3001-SSW V

संयुक्त सचिव
Joint Secretary

L B SINATE

पाँचवीं मंजिल, लोकनायक भवन
खान मार्किट, नई दिल्ली-110003
Vth Floor, Loknayak Bhawan,
Khan Market, New Delhi - 110 003

Dated 27th June 2003

Dear Shri *Murthy*.

Kindly refer to your D.O. letter No.12016/3/2001-SCD (R.L.Cell) dated 13.6.2003 regarding the views of the Commission on the subject matter of inclusion of Scheduled Castes converted to Islam religion in the list of the Scheduled Castes.

The matter has been considered by the Commission in their sitting held on 26.6.2003. A copy of the Resolution passed by the Commission is enclosed for information and for necessary action.

With warm regard

Yours sincerely,

(L.B.Sinate)

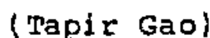
Shri P Narayana Murthy
Joint Secretary,
M/O Social Justice & Empowerment,
Shastri Bhawan,
New Delhi – 110001.

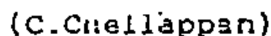
VERDICTUM.IN

Resolution

The Commission discussed the subject regarding inclusion of Muslim Dalits of Bihar to avail the facility of reservation as Scheduled Castes and the proposal of Private Member to amend the Section 3 of the Constitution (Scheduled Castes) Order, 1950.

It was noted that there was no justification for the proposal to add the Muslim Dalits of Bihar to the list of Scheduled Castes. The Commission, therefore, decided not to recommend the proposal of the Private Member to amend the Constitution (Scheduled Castes) Order, 1950





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Annexure R-12

States & UTs wherein Scheduled Castes converts to Christianity & certain Muslim communities have been classified as OBCs in the Central list.

Sr.No.	State/Union Territory	Entry in the Central List of other Backward Classes	Entry Number in the Central List
1	Andhra Pradesh	Mehtar(Muslim)	37
		Scheduled Castes converts to Christianity and their progeny.	60
2	Assam	Scheduled Caste persons converted to Christianity	22
3	Bihar	Dhobi (Muslim)	57
		Mehtar, Lalbegi, Halalkhor, Bhangi	92,
		Nat (Muslim)	63
		Christian converts from Scheduled Castes	120
4	Chandigarh	Christian converted from Scheduled castes	16
6	Daman & Diu	Christian Chamar	3
		Christian Mahar	4
	Dadra & Nagar Haveli	Makrana (Muslim)	9
7	NCT of Delhi	Julaha-Ansari (excluding those in SC list)	26
8	Goa	Mahar (excluding those who are already included SC list)	12
9	Gujarat	Khristi Gujarati-Christian (converts from Schedule Castes only).	36
10	Himachal Pradesh	Julaha, Ansari (other than those included n the list of SCs)	49
11	Karnataka	Scheduled Castes Converts to Christianity	151
12	Kerala	Scheduled Caste converts to Christianity	45
13	Madhya Pradesh	Islamic Groups: 1. Mochi, 2. Nat (Other than those included in the SC List)	59(1) to 59(27)
		Scheduled Castes who have embraced Christianity	58
14	Maharashtra	Khatik other than those who are included in the list of Scheduled Castes for Maharashtra	217
		Christians converted from Scheduled Castes	170
15	Odisha	Scheduled Castes converts to Christianity and their progeny,	187
16	Puducherry	Converts to Christianity from Scheduled Cast irrespective of the generation of conversion	4
17	Punjab	Christians(converted from Scheduled Castes)	63

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18	Tamilnadu	Converts to Christianity from Scheduled Caste irrespective of the generation of conversion for the purpose of reservation of seats in Educational Institutions and for seats n Public Services,	22
		Paravar including converts to Christianity (except Kanniya-kumari district and Shenocottah taluk of Tirunelveli district where the community is Scheduled Caste).	117
19	Uttar Pradesh	Qassab (Qureshi) Kasai	17
		Momin (Ansar, Ansari)	42
		Muslim Kayastha	44
		Bhisti-Abbassi	57
		Sheikh Sarvari(Pirai), Peerahi	67
		Teli Malik(Muslim)	23
20	West Bengal	Scheduled Castes converts to Christianity and their progeny	52
21	Chhattisgarh	Islamic group: Mochi	26
		Scheduled Castes who have embraced Christianity	57
22	Jharkhand	Christian converts from Scheduled castes	22
		Dhobi (Muslim)	32
		Mehtar (Muslim)	68
		Halalkhor (Muslim), Lalbegi (Muslim), Bhang Muslim)	52
		Nat(Muslim)	86