

**IN THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL WRIT JURISDICTION**  
**I. A. NO. 150430 OF 2022**  
**IN**  
**CIVIL WRIT PETITION NO. 180 OF 2004**

**IN THE MATTER OF:**

CENTRE FOR PUBLIC INTEREST LITIGATION & ANR. ...PETITIONER(S)

**VERSUS**

UNION OF INDIA & ORS

...RESPONDENT(S)

**AND IN THE MATTER OF:-**

JAMIAT ULAMA-I-HIND

REP. BY ITS PRESIDENT

MAULANA SYED MAHMOOD ASAD HUSAIN MADANI

...APPLICANT(S) /INTERVENER

**APPLICATION SEEKING INTERVENTION**

TO

HON'BLE THE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUDGES OF THE  
SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF  
THE ABOVE-NAMED APPLICANT

**MOST RESPECTFULLY SHEWETH:**

1. That the present Civil Writ Petition No. 180 of 2004 has been filed by the Petitioners under Article 32 of the Constitution of India in public interest challenging the Paragraph 3 of the Constitution (Scheduled Castes) Orders, 1950 as it stands today by which Scheduled Caste people professing and converting faith in religions different from Hinduism, Sikhism, and Buddhism are deprived of benefits prescribed under the law for the Scheduled Castes thus violating their fundamental rights under Article 14, 15 and 25 of the Constitution of India. The Petitioners therefore have challenged the constitutional validity of this Order. In

support of the Petition, the present Applicant is filing this Application with supporting documents and facts in relation to the prayer made in the Petition focusing the issue of exclusion of Muslim community.

**Re: The Applicant Herein**

2. That Applicant herein i.e. the Jamiat Ulama-i-Hind, a premier, renowned and socio-religious organization, established in the year 1919, Its members were actively involved in the freedom movement and also against the two-nation theory and opposed the partition, which happened in 1947. It has branches and units all over the country and this organization has more than 1 crore members in the entire country. The previous President of Jamiat Ulama-i-Hind, Late Maulana Asad Madani was an internationally renowned Muslim Leader and Scholar and has been a member of Rajya Sabha for the full three terms.
3. That Applicant Jamiat Ulama-i-Hind, had amongst its charter and duties the struggle for upliftment of the down trodden, neglected, weaker and deprived sections in general and specially amongst the Muslim community. It has been raising its voice for securing reservation for Muslims for admissions to educational institutions, employment in public services, State Legislative Assemblies, Parliament and also in various other civic bodies, right after the independence of the country.
4. That Applicant Jamiat Ulama-i-Hind played a crucial role in the enactment of the Muslim Personal Law (*Shariat*) Application Act, 1937 and the same has been duly noted in the Statement of Objects of the 1937 Act. The Muslim Personal Law (*Shariat*) Application Act, 1937 was enacted to govern the members belonging to the Muslim community. In the Statement of Objects of the Muslim Personal Law (*Shariat*) Application Act, 1937 itself it is mentioned that “*The Jamiat Ulama-i-Hind, the greatest Muslim religious body has supported the demand and invited the attention of all concerned to the urgent necessity of introducing a measure to this effect.*” That under the erstwhile Wakf

Act, 1954 (upto 1984), the members of the State Wakf Board were appointed from the persons representing associations such as State Jamiat Ulama-i-Hind and there used to be one post of member reserved in the U.P. Sunni Central Waqf Board under U.P. Muslim Waqf Act, 1960 from State Jamiat Ulama-i-Hind, Uttar Pradesh. The Applicant organization has state units in all the States and Union territories, which in turn has units at the district and village level.

5. The Applicant is acting through Maulana Mahmood Madani, a renowned Islamic scholar, known throughout the world for the understanding of religion and how religious principles can be applied in a diverse society like India, to spread harmony and peace. He has also served as a Member of Parliament.

#### **Re: Brief Background**

6. That under Article 341(1) of the Constitution of India, the President of India is conferred with the power to specify as to who are the Scheduled Castes. In exercise of the powers conferred by clause (1) of article 341 of the Constitution of India, the President, after consultation with the Governors and Rajpramukhs of the States concerned, issued the Constitution (Scheduled Castes) Order, 1950 to say that no person who professes a religion different from the Hindu [later added the Sikh or the Buddhist] religion shall be deemed to be a member of a Scheduled Caste. Through the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956 Dalit Sikhs were recognized as Scheduled Castes within the meaning. Later on, in 1990, another amendment was introduced further recognising Dalit Buddhists as Scheduled Castes.<sup>1</sup>. The effect of such an inclusion is crucial starting from these communities being eligible for various benefits provided to the Scheduled Castes in pursuance of our Constitutional mandate of

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<sup>1</sup> “<sup>4</sup> [3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu <sup>5</sup> [ the Sikh or the Buddhist] religion shall be deemed to be a member of a Scheduled Caste.]

4. Subs. by Act 63 of 1956, s. 3 and First Sch., for paragraph 3.

5. Subs. by Act 15 of 1990, s. 2, for "or the Sikh".”

affirmative action. It is submitted that while Constitution expressly prohibits any discrimination on the basis of religion under Articles 14, 15 and 16, whereas the Constitution Order of 1950 discriminates among Scheduled Castes on the basis of religion by depriving non-Hindus (except Sikhs and Buddhists) of benefits prescribed under the law for the Scheduled Castes.

<b>The Constitution (Scheduled Castes) Order, 1950</b>	
Religions	Whether the Status of 'Scheduled Caste' granted or not?
Hinduism	Yes
Sikhism	Yes
Buddhism	Yes
Islam	No
Christianity	No

A true copy of the Constitution (Scheduled Castes) Order, 1950 is attached herewith and marked as **ANNEXURE A-1 (See pg. .15.....to..31...)**.

7. That the Constitution of India prohibits discrimination against any citizen on grounds of only religion, race, caste, sex, descent, place of birth, residence, in regard to class or classes of employment or appointment to an office. However, it is common knowledge that there are reservations in recruitment to posts and services under the Government of India and special provisions are available for members of Scheduled Castes and Scheduled Tribes in all services. It is submitted that the same position is relevant in matters of reservation in educational institutions.
8. That the attention of this Hon'ble Court must be brought to the discriminatory situation where the Scheduled Castes Muslims are being denied various benefits including those of education and employment by means of the inherently discriminatory Constitution Order of 1950.

9. It is submitted that it appears that the genesis of the discriminatory distinction made in Para 3 of the 1950 Order is indisputably on the basis of Islam and Christianity perceived as “non-Indic” religions and on the other hand, Hinduism, Sikhism and Buddhism as “Indic”. It is submitted that this distinction has no legal basis as it creates a distinction between “religions originated outside India” and “religions originated in India” which is an absolutely unconstitutional distinction between two self-created categories of religions prevailing in India.

**Re: Indian Muslims & Caste**

10. It is submitted that it is correct that Islam, as a religion, is based on the principles of equality among all people as the non-negotiable principle and core doctrine of the faith. It is clarified that in Islamic core philosophy, the caste system is not acknowledged as the society in which the philosophy developed had no concept of ‘caste’. In our society, the truth of the caste system cannot be denied. The effect of society is inevitable on all the religious communities it inhabits. The core provisions of the Constitution of India recognize caste. Legislations have been passed on the issue. Thereafter, a vast jurisprudence has developed through the court process.
11. In this background, the observations of this Hon’ble Court in ***Indira Sawhney v. Union of India, (1992) Supp. 3 SCC 217*** are most suitable. This Hon’ble Court has observed in Para 82 to 86 of ***Indira Sawhney*** about the existence of caste system among Indian Muslims.<sup>2</sup>
12. That it is relevant to submit that recently the High Court of Madras has observed that “*this Court is of the considered opinion that conversion*

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<sup>2</sup> “84. It is said that the caste system is unknown to other communities such as Muslims, Christians, Sikhs, Jews, Parsis, Jains etc. in whose respective religion, the caste system is not recognised and permitted. But in practice, it cannot be irrefutably asserted that Islam, Christianity, Sikhism are all completely immune from casteism.

85. There are marked distinctions in one form or another among various sections of the Muslims community especially among converts to Islam though Islam does not recognise such kind of divisions among Muslims and professes only common brotherhood.”

*from one religion to another religion will not change the caste of a person which he belongs.”<sup>3</sup>*

13. It is submitted that the *Sachar Committee Report* (2006) demonstrates that the conditions of the general Muslim category are lower than the Hindu-OBCs who have the benefit of reservation. In terms of the “caste” hierarchy, the Report creates three groups i.e. “*ashrafs*”, “*ajlafz*” and “*arzals*” pointing out that the three groups of Muslims require different types of affirmative action. It is submitted that Dalit Muslims are those Dalits (belonging to the “lowest” strata of the Hindu caste hierarchy) who had converted to Islam. The Report states, “*by clubbing the arzals and the ajlafz among Muslims in an all encompassing OBC category, the Mandal Commission overlooked the disparity in the nature of deprivations that they faced. Being at the bottom of the social hierarchy, the arzals are the worst off and need to be handled separately. It would be most appropriate if they were absorbed in the SC list...*” The Report goes on further to state that “*the Arzals are the lowest comprising of those having similar traditional occupation as their Hindu counterparts in the list of Schedule Castes. It is widely believed that these communities are converts from the ‘untouchables’ among Hindus. Change in religion did not bring any change in their social or economic status. Because of the stigma attached to their traditional occupation, they suffer social exclusion. Despite this, they have been deprived of SC status available to their Hindu counterparts.*” A true copy of the Main Portion of the High Level Committee Report (Committee headed by Mr Rajinder Sachar) (2006) is attached herewith and marked as **ANNEXURE A-2 (See pg. ...<sup>32</sup>...to...<sup>302</sup>).**
14. That another report i.e. the Report of the National Commission for Religious and Linguistic Minorities (2007) under the chairmanship of Justice (Retd.) Ranganath Misra recommended that:

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<sup>3</sup> Order dated 17.11.2021 in W.P. No. 15193 of 2016.

*“we recommend that all those social and vocational groups among the minorities who but for their religious identity would have been covered by the present net of Scheduled Castes should be unquestionably treated as socially backward, irrespective of whether the religion of those other communities recognises the caste system or not.”<sup>4</sup>*

A true copy of Volume I of the Report of the National Commission for Religious and Linguistic Minorities (2007) (Justice Ranganath Misra Commission Report) is attached herewith and marked as **ANNEXURE A-3 (See pg. 303....to..496..)**.

15. In this background, it is crucial to submit that the term “backward class” used in Article 16(4) of the Constitution of India has not been defined anywhere in the Constitution of India. However, the ***Indira Sawhney v. Union of India, (1992) Supp. 3 SCC 217*** succinctly observes that *“the expression, ‘backward class of citizens’ occurring in Article 16(4) is neither defined nor explained in the Constitution. However, the backward class or classes can certainly be identified in Hindu society with reference to castes along with other criteria such as traditional occupation, poverty, place of residence, lack of education etc. and in communities where caste is not recognised by the above recognised and accepted criteria except caste criterion.”* The Scheduled Castes and Scheduled Tribes are also included in the expression “backward class of citizens”.

16. The *Ranganath Misra Report* further recommends the repeal the Para 3 of the Constitution (Scheduled Castes) Order 1950 while recording:

*“Para 3 of the Constitution (Scheduled Castes) Order 1950 does not at all speak of Scheduled Castes converting to Christianity or Islam. That a Scheduled Caste Hindu, Sikh or Buddhist on converting to any other religion must lose*

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<sup>4</sup> Para 16.1.8 of the Report of the National Commission for Religious and Linguistic Minorities (2007).

*his Scheduled Caste status is only a secondary effect of the said Para 3. Its main and more serious effect is that those sharing even by birth the same castes as are listed as Scheduled Castes are excluded from the net only because they are not Hindu, Sikh or Buddhist. In our opinion, this effect of Para 3 conflicts with the Constitutional guarantees of equality of status and opportunity and no religion-based discrimination and, therefore, we have recommended its repeal.”*

17. That another report i.e. ‘A Status Report on Current Social Scientific Knowledge: Dalits in the Muslim and Christian Communities’ prepared for the National Commission for Minorities (2008) records that among Dalits of different religions, nearly 47% of Dalit Muslims in urban India are in the below poverty line category, the Report noted from 2004-2005 data that this is a significantly higher percentage than Hindu Dalits and Dalit Christians. The Report further found out that in rural India, 40% of Dalit Muslims and 30% Dalit Christians are in the Below Poverty Line category.

A true copy of the Status Report on Current Social Scientific Knowledge: Dalits in the Muslim and Christian Communities’ prepared for the National Commission for Minorities (2008) is attached herewith and marked as ANNEXURE A-4 (See pg. 497....to..647.).

**Re: Article 14**

18. It is submitted that Para 3 of the 1950 Order is in the teeth of the constitutional principles enshrined under Article 14 of the Constitution of India. In the present issue, a person belonging to a Scheduled Caste is provided benefits if he is a Hindu, Sikh or Buddhist. However, if the same person is a Muslim, he will not be provided those benefits. This distinction is totally arbitrary and is sans any reasonable classification. In **R. K. Garg v. Union of India (1981) 4 SCC 675**, the test of



classification - reasonableness of classification under Article 14 was laid down. In order to pass the test, the classification must not be arbitrary and must be rational, ergo two conditions must be fulfilled, namely:

- a. *That the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and*
- b. *That differentia must have a rational relation to the object sought to be achieved by the Act*

It is further submitted that any classification which is illogical, unfair and unjust is an 'unreasonable' classification [See (1989) 2 SCC 145] and any arbitrary or unreasonable action of an "authority" under Article 12 of the Constitution of India would be violative of Article 14 of the Constitution of India. Article 14 strikes at arbitrariness because an action that is arbitrary must necessarily involve negation of equality [(1981) 1 SCC 722].

19. That this Hon'ble Court in ***Shayara Bano v. Union of India, (2017) 9 SCC 1*** expounded the doctrine of manifest arbitrariness wherein this Court observed that "the thread of reasonableness runs through the entire fundamental rights chapter. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14". In paragraph 101 of Shayara Bano's case, this Hon'ble Court has laid down the test of manifest arbitrariness, as extracted hereunder:

*"...The test of manifest arbitrariness, therefore, as laid down in the judgments (discussed in paras 88 to 101) would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and / or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. Thus, arbitrariness in the sense*

*of manifest arbitrariness as discussed above would apply to negate legislation as well under Article 14.”*

**Re: Article 15**

20. That Article 15 of the Constitution of India deals with “Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth”. On the other hand, the Constitution of India [See Article 14, 15 (4), 16 (4)] presses upon Affirmative action and Compensatory discrimination by the State for the advancement of women, children, socially and educationally backward classes of citizens or Scheduled Castes and the Scheduled Tribes<sup>5</sup>. It is submitted that it is apparent that the Constitution in India not only actively and vehemently prohibits discrimination on the bases of religion; conversely, it strongly focuses on the advancement of backward classes of citizens. The present issue emanates from a situation where a particular religious community i.e. Muslim community is being discriminated against and resultantly being pushed towards the farthest margins of Indian society. This is in clear contravention of the very basic principles of the Indian Constitution and negates the cherished rights enshrined in Part III of the Constitution of India.
21. It is submitted that the Constitution of India does not propagate the idea of uniform or identical treatment but the various provisions under Article 15 and Article 16 ensure a nuanced understanding of ‘Equality’. This Hon’ble Court has time and again observed and reiterated that Articles 15(4) and Article 16(4) are not exceptions to Articles 15(1) and 16(1) respectively but an emphatic statement of equality.<sup>6</sup> The Constitution of India provides affirmative action mechanisms to eliminate inequalities.
22. That assuming the rationale for not including ‘Muslims’ in Para 3 of the 1950 Order and not granting the Scheduled Caste status to Muslims lies

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<sup>5</sup>See (1984) 3 SCC 654, (1990) 3 SCC 130, 1992 Supp (3) SCC 217.

<sup>6</sup> (1976) 2 SCC 310, 1992 (Supp) 3 SCC 217.

in the argument that Islam is a caste-less religion falls flat when the members of the same Muslim community, rightly, are regarded as Other Backward Class with the sole basis on their “caste”. It is submitted that it is discriminatory and manifestly arbitrary that a person belonging to a caste that has been included in the list of Scheduled Caste shall stand excluded from being treated as ‘Scheduled Caste’ on the simple ground that he is Muslim. However, the same person from the Muslim community, if his caste gets included in the list of ‘backwards’ (again based on caste), shall stand included for the purpose of treating him ‘backward’ on the basis of his caste. The action of the State, thus, suffers from hostile discrimination against Scheduled Caste Muslims.

**Re: Article 25**

23. That Article 25 of the Constitution of India provides for “Freedom of Conscience and Free Profession, Practice and Propagation of Religion” to all persons equally. It is submitted that Para 3 of the impugned 1950 Order and the denial of the Scheduled Caste status to Scheduled Castes Muslims thereby depriving them of political, educational, and other benefits given to non-Muslim and non-Christian Scheduled Castes persons is a calculated historical wrong to restrain the free profession, practice, and propagation of religion.

A true copy of the News Report dated 15.02.2016 titled “SC status to Dalit Muslims, Christians will encourage conversion” is attached herewith and marked as **ANNEXURE A-5 (See pg. 648.....to..649.)**.

24. That the Sachar Committee Report tabled a detailed report on the causes of the ‘development deficit’ among Indian Muslims. The Committee Report noted that the gap between Muslims and other Socio-Religious Categories (SRCs) increases as the level of education increases and that unemployment among Muslim graduates is the highest among SRCs. The Report found that the literacy rate among Muslims in India was below the national average. Indian Muslims, at

many parameters, were marked at significantly worrying lower figures than other communities. Some of the figures from the Report in tabular forms are mentioned herein below:

<b>Children Currently Studying as a Proportion of Population by Age Groups – 2004-05</b>					
Age	Hindus			Muslims	Other Minorities
	Gen	OBC	SCs/STs		
6-13	19.1 (17.3)	36.1 (35.5)	25.7 (27.4)	14.0 (15.1)	5.1 (4.8)
14-15	24.3 (19.1)	36.1 (35.2)	21.4 (25.2)	12.2 (14.5)	6.0 (5.3)
16-17	28.9 (21.1)	33.7 (35.0)	20.2 (24.7)	10.7 (14.0)	6.3 (5.1)
18-22	34.0 (20.8)	30.5 (34.4)	17.7 (25.5)	10.2 (13.9)	7.6 (5.5)
23 & up	35.6 (23.9)	29.2 (35.1)	18.3 (24.1)	7.4 (10.9)	9.5 (5.9)

Note: Figures in parentheses show the proportion of the community in the respective age-group.

<b>Salaried Workers Employed in Government, Public &amp; Large Private Sectors (2004-05) (%)</b>		
	All	
	Govt	Pub/ Pvt
All	34.2	13.1
All Hindus	35.3	13.9
- SC/ST	39.4	9.5
- OBCs	30.4	12.8
- Upper Caste	37.4	17.1
Muslim	23.7	6.5
Others	35.8	12.8

25. It is submitted that the inclusion of Muslims within the List of SCs would increase the participation of the Muslim community in the political, educational, and employment sectors. It is submitted that this will systematically impact in breaching the structural lapses thus positively impacting the marginalization of Indian Muslims.

26. That the Applicant(s) submit that the documents/annexures which are being filed with the present Application were not forming part of the records below.
27. That the Applicant(s) state that the present Application is being filed *bona fide* and in the interests of justice.

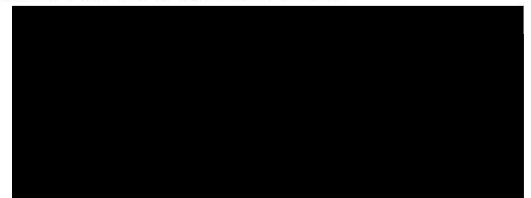
**P R A Y E R**

In the facts and circumstances of the case and in the interest of justice it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a. ALLOW the Applicant herein to intervene in Civil Writ Petition No. 180 of 2004; and
- b. PASS such other and further order as this Hon'ble Court may deem just and proper in the premises of this case.

**AND FOR THIS ACT OF KINDNESS THE APPLICANT(S) AS IN DUTY BOUND SHALL EVER PRAY.**

**DRAWN & FILED BY:**



**[M R SHAMSHAD]**

**ADVOCATE FOR THE APPLICANT**

NEW DELHI

DRAWN ON: 30.09.2022

FILED ON: 03.10.2022