



## **Conversion without Liberation: The Constitutional Case for Dalit Muslims**

### **Introduction**

The Constitution of India espouses the ideals of justice, equality, liberty, and fraternity at its core.<sup>1</sup> It guarantees equality across social, economic, and political spheres. The Constitution does not adhere to the ideals of blind equality but rather strives towards substantive equality. Formal equality demands treating all individuals the same, substantive equality recognizes historical disadvantages and seeks to redress them through affirmative action.<sup>2</sup> Among the most significant instruments of this affirmative action is the provision of reservations for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).

Equally fundamental to the Constitution is its commitment to secularism and religious freedom. Article 25 guarantees every individual the right to freely profess, practice, and propagate religion, including the right to convert.<sup>3</sup> However, a complex issue emerges at the intersection of freedom of religion and affirmative action, that of Dalit Muslims, SCs, Hindus who have converted to Islam and lost their SC status.

The denial of SC status to Dalit Muslims and Dalit Christians flows from the 1950 Presidential Order (1950 Order), which restricts SC status to Hindus, later extended to Sikhs (1956), and Buddhists (1990). Islam and Christianity were left out. This article examines the historical evolution of SCs, the lived realities of Dalit Muslims, and the constitutionality of the 1950 Order, before concluding that it requires urgent reconsideration.

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<sup>1</sup> The Constitution of India, 1950, Preamble.

<sup>2</sup> Sandra Fredman, 'Substantive equality revisited' vol 14 International Journal of Constitutional Law 712 (July, 2016).

<sup>3</sup> *Shafin Jahan vs. Asokan K.M.*, (2018) 16 SCC 368

## SCs and the need for their protection

The term ‘Scheduled Castes’ is closely associated with untouchability i.e., low status in the traditional Hindu caste hierarchy, which resulted in invidious treatment. Marc Galanter writes that it is the latest term in “a long line of official euphemisms for untouchables”<sup>4</sup>. In the early nineteenth century, they were called ‘depressed classes,’ but its use evaded any single meaning. A wide array of marginalized communities, untouchable castes, and aboriginal tribes were subsumed under the label. When concerns were raised for their political demands, many attempts were made for accounting of their total population. Since the 1911 census, there had been many committees estimating their actual population and used different criteria. The most notable of them is the 1931 Hutton’s Census.<sup>5</sup> The Census reported a total population of 50.2 million ‘Depressed Classes’.<sup>6</sup> The report made somewhat clear that the ‘depressed classes’ were only those who suffered from untouchability within the Hindu fold, though some of the groups were not strictly untouchables.

Until 1936, the government refrained from an official acknowledgment of their low status. They were finally acknowledged and listed in the Government of India (Scheduled Castes) Order, 1936 for special electoral representation under the Government of India Act, 1935. The list is said to reflect an admixture of untouchability, economic and educational disability, and local politics. The Constitution also eschewed any attempt to define SCs and merely states that SCs are those race, caste, or tribes, which are specified by the President as such. The 1950 Order was promulgated, largely re-enacting the 1936 Order.

The case for affirmative action rests on centuries of marginalization. Centuries of exclusion from education, land ownership, and dignified employment left them at the bottom of India’s social order. Even today, there are insurmountable barriers to literacy, employment, healthcare, and political representation.<sup>7</sup> The object of affirmative actions is ‘to see that backward classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. Reservation policies and protective laws are indispensable for their upward mobility. Even

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<sup>4</sup> Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* 105 (OUP, 1991)

<sup>5</sup> Census of India, Catalogue No. 31806, NADA (National Data Archive), Government of India  
<<https://censusindia.gov.in/nada/index.php/catalog/31806>> accessed Oct. 5, 2025

<sup>6</sup> *Ibid.*

<sup>7</sup> Devidas G. Maley, ‘Scheduled Castes Status to Dalit Christians and Dalit Muslims: Problems and Perspectives’ vol 2 Indian Journal of Law and Human Behaviour (2016)

though SC converts from Islam or Christianity face similar stigma and impediments, these protections are denied to them.

### ***Dalit Muslims: Existence and Realities***

The key question is whether Dalit Muslims exist as a recognizable social category. Empirical evidence suggests a clear “yes”. A 2008 report estimates that there are 32 lakhs Dalit Muslims and Christians living in the country.<sup>8</sup> They are Lalbegis, Halalkhors and Bakhos of Bihar and UP, Khatiks of Maharashtra, Dhobis of Andhra Pradesh, to name a few.<sup>9</sup> They are engaged in works like butchering, sanitation, leather hide factory, carrying dry excreta, etc. There are several such caste carrying the same name and work as their Hindu counterparts. As a matter of fact, Lalbegis were covered in the 1936 SC list, but now they are registered as Muslims.<sup>10</sup> Conversion did little to affect their social position as well as their caste-based occupation.

In 2007, the Justice Ranganath Mishra Commission for Religious and Linguistic Minorities<sup>11</sup> submitted its report. The report concluded that caste is a social phenomenon, and many castes are found simultaneously in different religious communities, facing social degradation and mistreatment not only from their own religion but also from others. Dalit Muslims and Christians also face discrimination from upper-caste Hindus. The report recommended that the 1950 Order should be deleted and SCs be made religion-neutral. It also recommended inclusion in SCs of those classes in Muslims and Christians whose counterparts in Hindus, Sikhs, and Buddhists are SCs. The 2006 Sachar Committee Report<sup>12</sup> had also observed that the social and economic conditions of Dalit converts did not change after conversion.

Apart from the social degradation, the denial of SC status to Muslims also has profound political consequences. If a Muslim-majority constituency is reserved for SCs (and it happens), it diminishes Muslim representation in the legislature, which is already abysmally low. Sikhs in the

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<sup>8</sup> National Commission for Minorities, ‘Dalits in the Muslim and Christian Communities: A Status Report on Current Social Scientific Knowledge’ (2018)

<sup>9</sup> Shireen Azam, ‘Scheduled Caste Status for Dalit Muslims and Christians: A Comprehensive Clarification’ *Economic & Political Weekly* (July 8, 2023)

<sup>10</sup> *Ibid.*

<sup>11</sup> Ministry of Minority Affairs, ‘Report of the National Commission for Religious and Linguistic Minorities’ (May, 2007).

<sup>12</sup> Prime Minister’s High Level Committee, ‘Social, Economic and Educational Status of the Muslim Community of India’ Sachar Committee Report (Nov, 2006).

Canadian parliament have better proportional representation than Muslims in India, despite India having the second-largest Muslim population in the world. SC status to Muslims would not only bring about the upliftment of downtrodden marginalized communities but also provide them with political representation. This would provide an avenue for legislative and policy changes, beneficial for both the SCs as well as religious minorities.

### ***Constitutionality of the 1950 Order***

The Supreme Court has previously considered aspects of this issue. In *Soosai v. Union of India* (1986)<sup>13</sup>, it upheld the exclusion of Dalit Christians, citing insufficient evidence that they faced the same disabilities as Hindu Dalits. However, the Court left the matter open for future reconsideration if adequate data emerged. With the Ranganathan Committee Report coming into picture, an array of cases has been filed before the Supreme Court and High Courts challenging the 1950 order. The exclusion of Muslims and Christians in the 1950 Order makes it vulnerable on various grounds and raises serious concerns under Articles 14, 15, 16, and 25.

Article 14 establishes equality before law and provides equal protection of law. However, the state can classify groups for the purpose of a specific legislation. Any such classification must pass the reasonable classification test.<sup>14</sup> It requires that any such law must have (i) an intelligible differentia in classification and (ii) rational nexus with the object sought to be achieved.<sup>15</sup> The exclusion of Dalit Muslims is based solely on religion, without any rational link to the objective of uplifting historically oppressed communities.

The centre argues that these two religions are egalitarian, casteless and do not practice “untouchability” and therefore, they do not require SC status. However, empirical evidence, including the Ranganath Mishra Committee Report, demonstrates that Muslim Dalits face similar social impediments and require equal protection. Considering this to be accurate, the classification fails to establish a rational nexus with the object and falls to the ground. It arbitrarily takes away the right of Dalit converts to several beneficial legislations, including the SCs and STs (Prevention of Atrocities Act), 1989.<sup>16</sup>

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<sup>13</sup> (1986) 2 SCC 45.

<sup>14</sup> *The State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

<sup>15</sup> *Ibid.*

<sup>16</sup> The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989).

Article 25 guarantees freedom of conscience and the right to profess, practice, and propagate religion, including the right to convert. The 1950 Order penalizes conversion by forcing Dalits to forfeit their SC status and related benefits.<sup>17</sup> This creates an indirect coercion: Dalits are effectively discouraged from converting to Islam or Christianity lest they lose constitutional protections. This imposition restricts their right to freedom of religion on grounds unfounded in the constitution. Such a restriction undermines secularism, which the Supreme Court has consistently recognized as part of the Constitution's basic structure.<sup>18</sup>

The centre has discredited the Ranganathan Report as 'flawed'<sup>19</sup> and constituted another committee under the chairmanship of K.G. Balakrishnan<sup>20</sup> (former CJI). The Supreme Court has extended the timeline of the Balakrishnan Committee to November 2025. The Committee's findings may significantly influence whether the 1950 Order survives constitutional scrutiny. Otherwise the 1950 order, as it stands now, is *prima facie* unconstitutional being violative of Articles 14 and 25.

## Conclusion

The 1950 Presidential Order, by excluding Dalit Muslims and Dalit Christians from SC status, reflects a non-empirical assumption that untouchability-related disabilities were confined to Hinduism. This assumption has been discredited by empirical evidence, which demonstrates the persistence of caste-based stigma across religions. The denial of SC status to Dalit Muslims not only perpetuates socio-economic marginalization but also distorts democratic representation. The pending Balakrishnan Committee Report may determine the fate of the 1950 Order. Yet, the constitutional vision of substantive equality and religious independence cannot be reconciled with the continued operation of the 1950 Order as it stands. To uphold both social justice and secularism, the Order must be made religion-neutral or struck down. This would be a necessary

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<sup>17</sup> The Constitution (Scheduled Castes) Order, 1950 (Constitutional Order No. 19), para 3.

<sup>18</sup> *Kesavananda Bharti v. State of Kerala*, AIR 1973 SC 1461; *S. R. Bommai v. Union of India*, (1994) 3 SCC 1.

<sup>19</sup> Abraham Thomas, 'SC status for Christians, Muslims: SC asks if panel's report in '07 can be relied upon', (Hindustan Times, 13 Apr, 2023) <<https://www.hindustantimes.com/india-news/supreme-court-to-examine-reliability-of-2007-ranganath-mishra-commission-report-on-sc-status-for-dalit-christians-and-muslims-centre-forms-new-panel-to-examine-the-aspect-101681324462625.html>> accessed Oct. 5, 2025

<sup>20</sup> 'Former CJI K.G. Balakrishnan to head Commission to inquire into demand for SC status to non-Hindu Dalits' (The Leaflet, 7 Oct, 2022) <<https://theleaflet.in/affirmative-action/former-cji-k-g-balakrishnan-to-head-commission-to-inquire-into-demand-for-sc-status-to-non-hindu-dalits>> accessed Oct. 5, 2025

step towards the constitutional promise of justice and equality for all citizens, irrespective of caste or creed.