

Justice Panachand Jain's (Retd. Judge, Rajasthan High Court)

Letter To The Secretary, Press Council Referring To Mr. Bal Patil's Complaint To The Press Council Taking Strong Exception To The Hindu Report Dt. Nov.5, 2007 On Jains Being Included In The Scheduled Caste Category.

February 2, 2008

To

The Secretary
Press Council of India
Soochana Bhavan
8-C G.O. Complex
Lodhi Road
New Delhi 110 003

Sub: Central Governments reported move to give Scheduled Caste Status to Dalit Christians and Dalit Muslims.

Ref: Special Correspondent of the Hindu from Kochi in his report published in the Hindu dated 5th November, 2007 wherein he has mentioned quoting Vijay Sonkar Shastri, President of the All India SC Reservation Protection Forum that the Central Governments reported move to give Scheduled Caste Status to Dalit Christians and Dalit Muslims will deprive current Scheduled Castes (among Hindus, Sikhs, Jains and Buddhists) of their job and education quotas and comment on it by Dr. Bal Patil, Secretary General, All India Jain Minority Forum and Ex-Member, Maharashtra State Minorities Commission.

Dear Sir,

Dr Bal Patil, in the above referred matter has taken a strong exception to the clubbing of Jains amongst Dalits. In the opinion of Mr. Patil, clubbing together amongst the current Scheduled Castes "Hindus, Sikhs, Jains and Buddhists" with Jains is not only misleading but it is factually incorrect. It is in this manner a controversy is being raised and Jains are unnecessarily being dragged into the category of Scheduled Castes. In order to understand the controversy and to explain the correct position, it is desirable that we may first understand the concept of Scheduled Castes and Scheduled Tribes.

The Constitution treats Scheduled Castes and Scheduled Tribes in India with special favour and affords them with some valuable safeguards. The Scheduled Castes are the

depressed sections of the Hindus who have suffered for long under social handicaps and thus need special protection and help for the amelioration of the socio-economic and political condition. They are known as untouchables or Harijans and constitute nearly 15% of the population of India. The framers of the Constitution were determined to eradicate the scourge of untouchability. With this in view certain provisions in the Constitution were enacted. Article 17 abolishes untouchability and Article 25(2) (b) provides for opening of Hindu Temples to Harijans. To promote their educational and economic interests Article 15(4) and Article 16 provide for reservation of seats for them in educational institutions and in Government services.

The Constitution does not specify the Tribes or the Castes, which are to be called as Scheduled Castes or Scheduled Tribes. It leaves the power to listing these castes and tribes to the President, that is, the Central Executive. Scheduled Castes according to Article 366(24) read with Article 341 are those castes, race or Tribes or part thereof as President may notify. According to Article 341 (1) the President may, by public notification specify what castes, races or tribes or groups thereof in each State and Union Territory would be regarded as Scheduled Castes for the purpose of the Constitution. Thus listing of the Scheduled Castes may vary from State to State and from Territory to Territory.

To determine whether or not a particular caste is a Scheduled Caste or not, one has to look at the notification issued by the President under Article 341 and once such a notification is issued by the President it becomes final and any modification thereof can be made by way either of including or excluding from the list any caste, race or tribe or part or group thereof by law made by the Parliament. In this way, the Presidential notification is thus final unless altered by Parliament by law. Similarly, Scheduled Tribes according to Article 366(25) read with Article 342 are those Tribes or Tribal communities or parts or groups thereof as the President may notify.

Under the above mentioned provisions the President promulgated a number of orders listing the Scheduled Castes and Scheduled Tribes, that is, the Constitution (Scheduled

Castes) order 1950, the Constitution (Scheduled Tribes) order 1950, the Constitution (Scheduled Castes - Part C States) order, 1951 and the Constitution (Scheduled Tribes – Part C States) order 1951 etc. These orders did not give entire satisfaction to the people and the Central Government received a number of requests for revision and modification of the lists contained in these orders. The Central Government referred all these requests to the Backward Classes Commission. On the recommendation of the Commission, Parliament modified the Presidential orders by enacting the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1956.

Clause (3) of the Scheduled Cates Order 1950 provides that no person who professes a religion different from Hindus or the Sikh religion shall be deemed to be a member of the Scheduled Caste. This provisions has created a difficulty as illustrated in the case of Punjab Rao Vs. Meshram, AIR 1965 SC 1179 where it was held that under clause (3) of the order only a person professing the Hindu or the Sikh religion can belong to a Scheduled Caste and a person who became a Buddhist and declared that he had ceased to be a Hindu could not derive any benefit from the order. He could not thus contest election from a constituency reserved for the members of the Scheduled Castes. The Supreme Court also considered another interesting question when a member of a Scheduled Caste is converted to Christianity and thereafter is re-converted to Hinduism what is his status? The Court held that he belongs to his original caste if members of the caste accepts him as a member.

From the above statement of facts and law it is thus clear as to who is a Scheduled Caste. Jains cannot thus be considered to be falling within the definition of Scheduled Caste. Jain do not find any place in any of the Presidential orders, consequently cannot be regarded as Scheduled Caste.

In the Supreme Court appeal (civil) 9595 of 2003 in the case of Committee of Management Kanya Junior High School Bal Vidyalaya Management, Allahabad Vs. U.P. Basic Shiksha Parisad, Allahabad, decided on 21st August, 2006, the Hon'ble Supreme Court has held that Jain religion indisputably is not a part of Hindu religion and the

question as to whether the Jains are part of Hindu religion is not open to debate. This decision of the Supreme Court thus makes it clear that the Jains are not Hindus and therefore they cannot be considered to be falling under the category of Scheduled Caste.

Some times reference is made to Explanation (ii) appended to Article 25 of the Constitution of India. As per Explanation (ii) reference to Hindu has been construed as including a reference to person professing Sikh, Jain, Buddhist religion but they have been considered for the purpose as mentioned in clause (2) of Article 25 of the Constitution of India, that is, throwing open of Hindu religious institution of public character to all classes and sections of Hindus. Section 25(2) thus confers right on all classes and sections of Hindus to enter into a public temple. Some time back a National Commission was constituted by the Government of India for suggesting amendment and modifications in the Constitution. A representation was made by the Sikh community demanding the removal of clubbing of Sikhs, Jains and Buddhists before the Commission. The Commission has recommended the deletion of the explanation. Before the Constitution became effective on 26th January, 1950, a Jain delegation was led to the Prime Minister, Jawaharlal Nehru and other Central Leaders, the delegation drew the attention to the anomalous position of Jains under sub-clause (b)(ii) of Article 25 and a petition was submitted. In the reply to the said letter it was made clear that Article merely makes a definition. This definition is enforcing a specific constitutional arrangement and it was clearly explained that there is no doubt that Jains are a different religious community and there is no reason for thinking that Jains are considered as Hindus.

By an order made by the President of India in the year 1974, a Committee was constituted which is known as Mandal Commission. The Commission in paragraph 12.22 of its report, gave the percentage of distribution of the population of India by caste and religious groups as under:

1.	Scheduled Castes and Scheduled Tribes	20.00
2.	Non-Hindu Communities, Religious groups, Muslims, Christians, Sikhs, Buddhists and Jains	16.16

3.	Forward Hindu Castes and communities	56.30
4.	Other Backward Classes	<u>47.70</u>
	Total	<u>100.00</u>

The above distribution of population was confirmed by the Hon'ble Supreme Court in Indra Sawhney case, AIR 1993 SC 473. It is thus clear that the Jain community falls in non-Hindu religious group and as a religious community Jain stand on the same footing as that of Muslims.

Jain is a religious minority in view of Article 30 of the Constitution of India. Several High Courts of the country has recognized Jains as a religious minority community. The Supreme Court in T.M.A. Pai case 2002(8) SCC 418 has clearly stated that minority is to be determined state-wise and the Hon'ble Supreme Court has declared that in Punjab Sikhs are in majority, therefore, Hindus are a religious minority. Similarly, in Jammu & Kashmir Muslims are a religious majority, therefore, Hindus are the religious minority community. Since Jains are minority in all the states, therefore, Jains are religious minority community throughout the territory of India.

In this view of the matter the controversy raised by Shri Vijay Sonkar Shastri is not well founded. The inclusion of the Jain in the Scheduled Caste category is thus misleading. The Jain community is demanding religious minority character for the purpose of Article 30 of the Constitution of India which bestows on the minorities whether based on religion or language, the right to establish and administer an educational institution of their choice. The Central Government has declared Muslims, Sikhs, Christians and Buddhists as minorities, without defining as to what is meant by a minority and simply declared that any community shall be regarded as minority community which shall be notified by the Central Government by a notification published in the Gazette.

The move of the Central Government to give Scheduled Caste status to Dalit Christians and Dalit Muslims is not in conformity with the above referred Constitutional provisions. Shri Shastri is absolutely wrong when he clubs Jain with "current Scheduled Castes".

Jains stand for protecting Dalit Human Rights. These rights are enunciated under Article 21 Indian Constitution as well as under United Nations Convention such as Article 5(b) Convention on the Elimination of All Forms of Racial Discrimination, 1985 and Article 6 International Covenant on Civil and Political Rights, 1966 and hold particular importance for socially excluded communities such as Dalits.

Since the above matter is before the Press Council of India for consideration on the complaint of Mr. Patil, I am forwarding this opinion as it may be of some assistance in resolving the controversy.

Yours truly,

Panachand Jain

E-Mail response dated Feb.2, 2008

Dear Mr. Patil,

In reference to your email dated 7th Jan. 2008, my response in the form of letter to the Secretary, Press Council of India, is attached herewith.

With regards

Panachand Jain

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