[2026] 10 S.C.R. 468 : 2026 INSC 1129

The Secretary to Government
v.
Sameer Ahamed N. and Others

(Special Leave Petition (Civil) No. 25507 of 2026)

15 October 2026

[Prashant Kumar Mishra* and Shree Chandrashekhar, JJ.]

Issue for Consideration

Issue arose as regards the legal consequences of a person's conversion from Hinduism to Islam; whether a person belonging to a Backward Class, Most Backward Class, Denotified Community or Scheduled Caste prior to such conversion can, after embracing Islam, claim the status and consequential benefits of a Backward Class Muslim.

Headnotes†

Constitution of India – Art.16(4) – Conversion from Hinduism to Islam – Issuance of a community certificate – Entitlement of persons from specified backward categories to reservation benefits upon conversion to Islam – Respondent No.1, born to Hindu Parents, embraced Islam and changed his name and Sunnath Jamath issued a certificate for the same – Thereafter, respondent no.1 got married in accordance with Islamic customs – Respondent no.1 sought issuance of Backward Class (Muslim) community certificate as "Muslim Labbai", however, the same was rejected – Thereagainst, respondent no.1 filed writ petition – During pendency, the Government of Tamil Nadu issued G.O.(Ms.) No.314 dated 09.03.2024 which provided that a proselyte to Islam from Backward Classes, Most Backward Classes and Denotified Communities who were already availing the said reservation could, upon conversion into any of the seven recognised Backward Class Muslim communities, be issued a Backward Class Muslim community certificate – High Court held that a person who embraces Islam becomes a Muslim and cannot, merely by reason of such conversion, acquire membership of a particular Muslim community recognised as a Backward Class; declared the said G.O. unconstitutional, and sustained

* Author

the rejection of respondent no.1's application for the community certificate – Interference:

Held: Person who converts to Islam does not, by that act alone, become a member of any one of the seven notified Backward Class Muslim communities in the State – His former caste or community status cannot automatically be transposed into the Muslim Backward Class category, nor can a private religious body conclusively determine such statutory entitlement – Impugned G.O. cannot be sustained and has rightly been quashed by the High Court – It creates an artificial route by which a person moves from a pre-conversion backward social order into a notified Muslim backward class without establishing the necessary social and legal link – Thus, the declaration made by the High Court that the impugned G.O. is unsustainable in law calls for no interference – Backward Class Muslims under the Tamil Nadu Backward Class Muslims (Reservation of Seats in Educational Institutions including Private Educational Institutions and of Appointments or Posts in the Services under the State) Act, 2007 – Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993. [Paras 62-63]

Constitution of India – Art.16(4) – Conversion from a Hindu social order to a non-Hindu social order – Confernment of status of a backward class in the religion to which he has converted – Principles elucidated:

Held: Person who converts from a Hindu social order to a non-Hindu social order cannot claim affirmative action u/Art.16(4) merely on the basis of the social backwardness associated with his pre-conversion status; the backwardness suffered in the antecedent social order cannot, by itself, be carried forward so as to confer upon him the status of a backward class in the religion to which he has converted – By virtue of paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, a person who professes a religion other than Hinduism, Sikhism or Buddhism cannot be deemed to be a member of a Scheduled Caste – Consequently, upon conversion to a religion not specified therein, such person ceases to possess the Scheduled Caste status attached to his antecedent caste and cannot claim any affirmative-action benefit of a backward class u/Art.16(4) which is

predicated upon membership of a Scheduled Caste – Conversion to a non-Hindu social order does not, by itself, confer membership of any particular notified Backward Class community – Person's pre-conversion caste or community status cannot, merely by reason of conversion, be transposed into membership of a distinct notified Backward Class community in the post-conversion social order – Social backwardness which formed the basis of the person's pre-conversion status cannot, by itself, furnish the legal foundation for conferring upon him membership of a different notified Backward Class community after conversion – Conversely, where a person, after having converted from the Hindu social order to a non-Hindu social order, reconverts to Hindu social order, the question of his entitlement to affirmative action u/Art.16(4) cannot be determined merely by reference to his antecedent status – Such entitlement would require an independent, fact-specific determination by the competent authority as to whether the original caste or social identity has genuinely revived upon reconversion and whether the person satisfies the applicable constitutional and legal requirements for such affirmative action – No statutory benefit, protection, reservation or other entitlement u/Art.16(4), the enjoyment of which is predicated upon a particular Hindu social order, can be claimed or extended merely on the basis of such antecedent membership after the person has converted to Islam, Christianity or any other non Hindu social order – Such conversion severs the legal foundation of an entitlement which is specifically conditioned upon membership of that Hindu social order – Community certificate is declaratory of, and does not create or confer, the status which it purports to recognise – Neither the issuance of a community certificate nor an executive instruction can enlarge, modify or dispense with the substantive constitutional and statutory conditions governing membership of the class or entitlement to the benefits attached thereto. [Para 61]

Religion – Islam – Theology of Islam – Explained. [Paras 20-23]

Case Law Cited

Indra Sawhney and Others v. Union of India and Others **[1992] Supp. 2 SCR 454 : (1992) Supp. 3 SCC 217;** *Union of India v. Manjurani Routray* **(2023) 9 SCC 144;** *Kailash Sonkar v. Maya Devi* **[1984] 2 SCR 176 : (1984) 2 SCC 91;** *C. Selvarani v. Special Secretary-cum-District Collector and Others* **[2024] 11 SCR**

1504 : (2024) 16 SCC 537; *Chinthada Anand v. State of Andhra Pradesh and Others,* **2026 SCC OnLine SC 466;** *Ashoka Kumar Thakur v. Union of India and Others* **[2008] 4 SCR 1 : (2008) 6 SCC 1;** *Kumari Madhuri Patil and Another v. Addl. Commissioner, Tribal Development and Others* **[1994] Supp. 3 SCR 50 : (1994) 6 SCC 241;** *Vishwa Lochan Madan v. Union of India and Others* **[2014] 8 SCR 195 : (2014) 7 SCC 707 – referred to.**

G. Michael v. S. Venkateswaran, Additional Secretary to Government, Public (Elections) Department, **1951 SCC OnLine Mad 312 – approved.**

Books and Periodicals Cited

Holy Quran, Surah Al-Hujurat, Ayah (49:13); Farewell Sermon (Khubat alHajjat) of the Holy Prophet Muhammad (Peace be upon him); Ghaus Ansari, 'Muslim Caste in Uttar Pradesh: A Study of Culture Contract' Chapter 5, Pg. 35-51" (Ethnographic and Folk Culture Society, UP, Lucknow-1960); Ahmad, T. (2023). 'Politics of Recognition and Caste among Muslims: A Study of Shekhra Biradari of Bihar, India' CASTE A Global Journal on Social Exclusion, 4(1), Pg. 92–108; Imtiaz Ahmad, 'Caste and Social Stratification among Muslims in India' (2nd Edition, Manohar Publications, 1978) **– referred to.**

List of Websites

Surah Al-Huju Ayah (49:13), https://quran.com/al-hujurat/13; Imtiaz Ahmad, 'Is There Caste Among Muslims In India?' [Part of Thirteenth D. N. Majumdar Memorial Lecture 2015 delivered under the auspices of the Ethnographic and Folk Culture Society, Lucknow, on 20 March 2015, in the University of Lucknow.]: http://www.raoinseattle.com/library/17%20Indian%20Law/Ahmad%20I%202015%20Cast e%20among%20Muslims%20in%20India.pdf.

List of Acts

Constitution; Tamil Nadu Backward Class Muslims (Reservation of Seats in Educational Institutions including Private Educational Institutions and of Appointments or Posts in the Services under the State) Act, 2007; Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under

the State) Act, 1993; Constitution (Scheduled Castes) Order, 1950.

List of Keywords

Conversion from Hinduism to Islam; Person belonging to Backward Class, Most Backward Class, Denotified Community or Scheduled Caste prior to conversion; Embracing Islam; Benefits of Backward Class Muslim; Issuance of community certificate; Entitlement of persons from specified backward categories to reservation benefits upon conversion to Islam; Hindu Parents; Certificate by Sunnath Jamath; Islamic customs; Backward Class (Muslim) community certificate as "Muslim Labbai"; G.O.(Ms.) No.314 dated 09.03.2024 by Government of Tamil Nadu; Proselyte to Islam from Backward Classes, Most Backward Classes & Denotified Communities; Seven recognised Backward Class Muslim communities; Backward Class Muslim community certificate.

Case Arising From

EXTRAORDINARY APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 25507 of 2026

From the Judgment and Order dated 25.06.2026 of the High Court of Judicature at Madras at Madurai in WPMD No. 7127 of 2022

Appearances for Parties

Advs. for the Petitioner(s):
Mukul Rohtagi, Sidharth Luthra, Sr.Adv., Aravindh Raj, Ms. Jayasri, B. Karunakaran, Ms. Pooja Lakshmi, Ms. Somaya Gupta, Ms. Shwetang Parthasarthy.

Advs. for the Respondents(s):
Tushar Mehta, Solicitor General, Gopal Shankaranarayanan, Sr.Adv., Pooja Dhar,Shrutanjaya Bhardwaj, Ayushman Agrawal, Ms. Indumugi C, Joel James, Suvaroop Saha Roy, Ms. Shubhanshi Phogat, Ms. Yashi Bajpai, P V Yogeswaran, Bhakti Vardhan Singh, Mohamed Ismail, Narendra Kumar Pandey, J Tarun Kumar, Ankt Khatri, P. V. Yogeswaran, Ashish Kumar Upadhyay, Y. Lokesh, V. Kandha Prabhu, Ms. Dhatri Singh, Ms. Hari Preethi, Ms. Maitri Goal, Guneswaran Pv, Ms. Suchismita Bhuyan, K. Velmurugan, Bhuvan Kapoor, Pooja Dhar, Shrutanjaya Bhardwaj, Ayushman Agrawal, Ms. Indumugi C, Joel James, Suvaroop Saha Roy, Ms. Shubhanshi Phogat, Ms. Yashi Bajpai.

Judgment / Order of the Supreme Court

Judgment

Prashant Kumar Mishra, J.

1. The controversy in present proceedings though originating in the claim of an individual for a community certificate, travels far beyond the issuance of such certificate. It concerns the legal consequences of a person's conversion from Hinduism to Islam and, in particular, whether a person belonging to a Backward Class, Most Backward Class, Denotified Community or Scheduled Caste prior to such conversion can, after embracing Islam, claim the status and consequential benefits of a Backward Class Muslim.

2. Respondent No.1 was born on 12.04.1993 in Tuticorin District to Hindu Parents namely Narayanan and Gomathiammal. He was originally named Paramasivara, son of Narayanan. On 11.09.2015, the Sunnath Jamath, Kayathar issued a certificate recording that respondent no.1 had embraced Islam and had changed his name to Sameer Ahamed. This change of respondent no. 1's name was thereafter published in the Tamil Nadu Government Gazette on 02.11.2016. Thereafter, respondent no. 1 married Vahitha on 04.11.2016 in accordance with Islamic customs, and two children were born from the said marriage. Respondent no. 1 claims to profess and follow the faith of Labbai[1] Muslims and, on that basis, sought recognition as a "Muslim Labbai".

3. Subsequently, respondent no. 1 submitted an online application before the Kayathar Taluk Office, Thoothukudi District, seeking issuance of a Backward Class (Muslim) community certificate as "Muslim Labbai". However, the said application was rejected on 13.11.2020. The reason recorded for such rejection was that respondent no. 1 had converted from Hinduism to Islam and was seeking a Muslim Labbai certificate, but had "only converted to religion and not to the caste".

4. Aggrieved by the rejection, respondent no. 1 instituted W.P.(MD) No. 7127 of 2022 before the High Court of Judicature at Madras[2]

1 Also referred to as 'Lebbai'

2 For short, 'High Court'

under Article 226 of the Constitution, seeking quashing of the rejection of his application and a consequential direction to the authorities to issue him a community certificate as "Muslim Labbai". Notice was issued on 19.04.2022 and the matter was taken up on 16.06.2022.

5. While the writ petition remained pending, the Tamil Nadu Backward Class Commission[3], by letter dated 06.02.2024, considered the question of issuance of Backward Class Muslim community certificates to persons belonging to Backward Classes, Most Backward Classes, Denotified Communities and Scheduled Castes who converted to Islam. The TNBCC considered the position of persons who were already enjoying reservation benefits in their respective categories before conversion and recommended a mechanism for grant of Backward Class Muslim community certificates to eligible proselyte who embraced any of the recognised Backward Class Muslim communities.

6. Pursuant thereto, the Government of Tamil Nadu issued G.O.(Ms.) No. 31[4] dated 09.03.2024. The G.O. referred to 3.5% reservation provided for Backward Class Muslims under the Tamil Nadu Backward Class Muslims (Reservation of Seats in Educational Institutions including Private Educational Institutions and of Appointments or Posts in the Services under the State) Act, 2007[5] and the seven Muslim communities recognized as Backward Class Muslims under Section 3(a) of Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the Services under the State) Act, 1993[6]. The G.O. further provided that a proselyte to Islam from Backward Classes, Most Backward Classes and Denotified Communities who were already availing the said reservation could, upon conversion into any of the seven recognised Backward Class Muslim communities, be issued a Backward Class Muslim community certificate.

7. The aforesaid G.O. became material to respondent no. 1's pending writ petition. Respondent no. 1's counsel submitted before the High

3 For short, 'TNBCC'

4 For short, 'G.O.'

5 Hereinafter referred as 'Act 33 of 2007'

6 Hereinafter referred as 'Act 45 of 1994'

Court that it was only by virtue of the said G.O. that respondent no. 1's claim could be pressed. The High Court, upon examining the G.O., formed a *prima facie* view regarding its validity and, on 11.06.2026, *suo motu* impleaded the concerned Secretary of the State Government. The matter was thereafter taken up on 16.06.2026, 22.06.2026 and 23.06.2026, when the High Court examined the effect of conversion to Islam upon caste or community status and the position of the seven notified Backward Class Muslim communities.

8. *Vide* judgment dated 25.06.2026, the High Court held that a person who embraces Islam becomes a Muslim and cannot, merely by reason of such conversion, acquire membership of a particular Muslim community recognised as a Backward Class. It further held that the executive could not, through the G.O., alter the legal position declared in the earlier judicial decisions. The High Court accordingly declared the said G.O. unconstitutional, dismissed the writ petition and sustained the rejection of respondent no. 1's application for the community certificate. It further held that a person who converts to Islam cannot claim the status of Backward Class Muslim and is only a Muslim.

9. The State has assailed the aforesaid judgment before this Court, *inter alia*, contending that respondent no. 1's writ petition was directed against the rejection of his individual application and contained no substantive challenge to the constitutional validity of the G.O., nor any prayer seeking its quashing. The State questions the High Court's decision to travel beyond the individual certificate dispute and invalidate the G.O., which had been issued pursuant to the recommendation of the TNBCC and dealt with the entitlement of persons from specified backward categories to reservation benefits upon conversion to Islam.

SUBMISSIONS

10. Shri Mukul Rohatgi and Shri Sidharth Luthra, learned senior counsels appearing for the State of Tamil Nadu submitted that the impugned judgment travels beyond the pleadings and relief sought in the writ petition, inasmuch as the constitutional validity of the G.O. dated 09.03.2024 was never challenged by the writ petitioner. Learned senior counsels would argue that the said G.O. was relied upon by the writ petitioner himself, yet the High Court proceeded to examine

and invalidate it with State-wide consequences, without affording an effective opportunity to the State or hearing the persons and authorities likely to be affected thereby.

11. On merits, the written submissions filed by the State states that the impugned judgment proceeds on a fundamental conflation of two distinct propositions. On one hand, the State does not dispute with the findings of the High Court that mere conversion to Islam cannot, by itself, confer membership of a particular notified Muslim community such as Labbai, Rowther or Deccani Muslim, where such community membership is referable to birth and lineage. However, on the other hand, the State argues that the G.O. does not purport to confer such community membership upon a convert. Rather, it merely preserves the entitlement to backward-class reservation of a person who already belonged to a notified backward community before conversion.

12. It was further submitted that the above distinction is material because the constitutional scheme under Articles 15(4) and 16(4) of the Constitution concerns socially and educationally backward classes, and is not confined to caste-based identities. The State relied upon the decision of this Court in ***Indra Sawhney and Others vs. Union of India and Others***[7] to contend that backward classes may exist across religious communities and that conversion does not, by itself, obliterate the social and educational backwardness which formed the basis of the person's inclusion in the backward class.

13. Learned senior counsels would further submit that the decisions relied upon by the High Court concerning conversion and Scheduled Caste status under Article 341 of the Constitution, operate in a distinct constitutional field and cannot be mechanically applied to the determination of backward-class status under Articles 15(4) and 16(4) of the Constitution. The State accordingly contended that the impugned judgment erred in treating the consequences applicable to Scheduled Caste status as determinative of the question concerning continuation of backward-class entitlement.

14. Lastly, it was submitted that the G.O. dated 09.03.2024 does not extend any reservation benefit to a person belonging to a forward

7 (1992) Supp. 3 SCC 217

community merely because such person converts to Islam. Its operation is confined to persons who were already members of the identified backward communities prior to conversion. Thus, according to the State, the G.O. neither creates a new backward class nor confers membership of a Muslim community by conversion, but only recognises the continuance of an existing backward-class entitlement.

ANALYSIS

15. We have heard the learned senior counsels and have perused the written submissions advanced on behalf of the State and the materials placed on record. We have also carefully considered the challenge founded upon the jurisdiction of the High Court to examine the validity of the said G.O. in proceedings in which the original prayer was confined to the issuance of a community certificate.

16. The challenge before us, however, cannot be determined merely by asking whether the High Court travelled beyond the prayer made in the writ petition preferred by respondent no. 1. The validity and legal effect of the G.O. have necessarily arisen for consideration because the very right claimed by respondent no. 1 is founded upon it. A perusal of the record of proceedings would project that the High Court, after noticing the G.O., impleaded the State as a party, afforded it an opportunity to place its case, heard the learned Additional Advocate General of the State and proceeded to adjudicate upon the legal foundation of the relief claimed. The record itself shows that the High Court, on 11.06.2026, took the view that the G.O. might not withstand judicial scrutiny and thereupon impleaded the State.

17. It is true that ordinarily a court should not pronounce upon the validity of an instrument when the parties have not had notice of the challenge and no opportunity to meet it.[8] The principle which underlines herein is one of fairness wherein parties must know the case they are required to meet and a court should not ordinarily grant relief on a ground which has neither been pleaded nor put in issue. But the principle is not a mechanical prohibition upon a Constitutional Court examining an instrument whose validity becomes inseparable from the relief before it. The only question which is crucial herein is whether the affected party had notice of the issue

8 ***See:*** Union of India vs. Manjurani Routray, (2023) 9 SCC 144 at Para 10 to 14.

and a meaningful opportunity to address it. As far as the present case is concerned, the State was specifically impleaded after the High Court formed a prima facie view concerning the validity of the G.O. A counter affidavit was filed and the learned Additional Advocate General of the State appeared and addressed the Court on the very question. The High Court expressly recorded that the proceedings had, by then, reached the stage of final adjudication for the purpose of testing the validity of the G.O.

18. The present case is therefore distinguishable from a case where a Court, without notice, converts an ordinary dispute into a constitutional challenge and determines an issue on which the parties have neither pleaded nor led submissions. The objection of the State based upon the absence of a formal prayer consequently cannot, in the facts of the present case, prevent examination of the G.O. Indeed, once the State itself defended the validity and operation of the G.O. and relied upon it as the legal basis for respondent no. 1's entitlement, the Court could not be expected to grant relief on the assumption that the very instrument upon which that relief depended was beyond examination.

19. This now brings us to the substance of controversy in the present case. However, before examining the validity and legal effect of the impugned G.O., it would be apposite to notice the religious and social framework within which the controversy has arisen. This is necessary not to enter into matters of theology as an end in themselves, but to appreciate the distinction between religious identity, community affiliation and social status which lies at the heart of the controversy. The question before us concerns the consequences attributed by the impugned G.O. to a person's conversion to Islam and, in particular, the manner in which such conversion is sought to be connected with membership of a notified Backward Class Muslim community. The answer to that question cannot be divorced from an understanding of the concepts which the impugned G.O. seeks to bring together. We, therefore, consider, at the outset, the relevant religious and social features before turning to the constitutional and legal validity of the course adopted by the State.

A. THEOLOGY OF ISLAM

20. Islam rests, in its foundational theological conception, upon the equality of human beings and does not make birth, lineage or

descent the measure of human worth. The *Holy Quran* articulates this principle in clear terms in *Surah Al-Hujurat, Ayah (49:13)*[9]:

> "**O humanity! Indeed, We created you from a male and a female, and made you into peoples and tribes so that you may get to know one another. Surely the most noble of you in the sight of Allah is the most righteous among you. Allah is truly All-Knowing, All-Aware.**"
>
> (emphasis supplied)

21. The verse recognises the existence of peoples and tribes, but does not attribute to such distinctions any inherent superiority or inferiority. The criterion of nobility is expressly stated to be righteousness. The distinction, therefore, is between an identity arising from one's birth or lineage and the moral worth attributed to an individual; the former does not, in the conception embodied in the verse, determine the latter.

22. The same principle finds expression in the Farewell Sermon *(Khubat al-Hajjat)* of the Holy Prophet Muhammad (Peace be upon him), wherein he is recorded to have stated:

> "**All mankind is from Adam and Eve. An Arab has no superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab; a white person has no superiority over a black person, nor does a black person have any superiority over a white person, except by piety and good deeds. Learn that every Muslim is a brother to every Muslim and that the Muslims constitute one brotherhood.**"[10]
>
> (emphasis supplied)

23. The foundational proposition is thus one of equality notwithstanding differences of race, tribe, lineage or descent. The distinction which Islam recognises is not a hierarchy founded upon birth, but one founded upon piety and conduct.

---

9 Surah Al-Huju Ayah (49:13) https://quran.com/al-hujurat/13 (Also reproduced by High Court at Para 11 of Impugned judgment).

10 Para 11 of the impugned judgment.

24. The social organisation of Muslims in India, however, has historically displayed distinctions between different communities and groups. In his 1960 study on *Muslim Caste in Uttar Pradesh*, Sociologist Ghaus Ansari, while drawing upon the material contained in the decennial censuses, classified Indian Muslims into three broad categories, *Ashraf*, *Ajlaf* and *Arzal*.[11] The *Ashraf* were described as the "noble born", while the *Ajlaf* and *Arzal* comprised groups placed lower in the social hierarchy. These broad categories, however, comprised a plurality of distinct groups and were not themselves homogeneous communities.

25. The subsequent sociological material employs terms such as *biradari* and *zat* to describe a member of these groups. The evidence discussed by noted sociologist Imtiaz Ahmad[12] in his book titled *'Caste and Social Stratification among Muslims in India'* indicates that such groups were, in several instances, associated with particular occupations, observed endogamous practices and were constituted on the basis of birth. Membership in such a group was consequently not ordinarily a matter of individual choice or religious profession.

26. The distinction between community and caste assumes particular significance in the case of the three-fold classification of *Ashraf*, *Ajlaf* and *Arzal*. These terms describe broad gradations of social position and encompass numerous distinct communities. Within the *Ashraf*, for instance, there were different groups associated with identities such as *Sayyid*, *Shaikh*, *Pathan* and *Qureshi*, while the *Ajlaf* and *Arzal* categories likewise comprised different communities with their own occupational, social and local identities. The broad classification therefore cannot itself be treated as a description of three homogeneous castes.

27. At the same time, the fact that these communities were distinct does not mean that their social organisation was devoid of hierarchical or hereditary features. Among sections of Indian Muslims, membership in particular communities could be substantially hereditary; particular

---

11 Ghaus Ansari, *'Muslim Caste in Uttar Pradesh: A Study of Culture Contract'* Chapter 5, Pg. 35-51" (Ethnographic and Folk Culture Society, UP, Lucknow-1960; ***Also cited in***: Ahmad, T. (2023). *'Politics of Recognition and Caste among Muslims: A Study of Shekhra Biradari of Bihar, India'* CASTE A Global Journal on Social Exclusion, 4(1), Pg. 92–108.

12 Imtiaz Ahmad, *'Caste and Social Stratification among Muslims in India'* (2nd ed., Manohar Publications, 1978)

communities could be historically associated with particular occupations; marriage could predominantly take place within the group; and groups could occupy unequal positions in the local social order. These are features of social stratification which cannot be disregarded merely because the foundational religious doctrine is egalitarian.

28. Nor does the existence of a hereditary occupational association, considered by itself, establish the existence of caste. An occupation followed by successive generations may, over time, become associated with the identity of a community and may continue to influence matrimonial and social relations even after individuals cease to practise that occupation. Hereditary occupational association is therefore one relevant characteristic, but it cannot be treated as a sufficient test of caste in isolation.

29. The comparison with the classical caste order must also take account of the absence of a single, uniformly applicable religiously prescribed scheme in the social organisation of Indian Muslims. The boundaries and status of Muslim communities have not been uniformly fixed or equally rigid across regions and groups. Social identities could, in particular circumstances, be asserted, modified or reconfigured, including through processes of social mobility and changes in claims to status and lineage.

30. The possibility of such movement in social status has also been examined in the sociological literature through the concept of 'Ashrafisation'. The expression 'Ashrafisation' as stated by sociologist Imtiaz Ahmad[13] denotes a process whereby individuals, families or groups occupying a relatively lower position in the social hierarchy sought to enhance or reconstitute their social standing through the adoption of the customs, manners, titles or genealogical claims associated with the *Ashraf* (noble class). The concept illustrates that, notwithstanding the existence of hierarchical distinctions, claims to social status and lineage were not invariably immutable. Social position could, in particular circumstances, be negotiated, asserted

13 Imtiaz Ahmad, *'Is There Caste Among Muslims In India?'* [Part of Thirteenth D. N. Majumdar Memorial Lecture 2015 delivered under the auspices of the Ethnographic and Folk Culture Society, Lucknow, on 20 March 2015, in the University of Lucknow.]

See: http://www.raoinseattle.com/library/17%20Indian%20Law/Ahmad%20I%202015%20Caste%20among%20Muslims%20in%20India.pdf

or reconstructed. This possibility of upward social movement did not dissolve the underlying hierarchy; rather, it demonstrates that hierarchy and mobility could coexist within the same social order unlike the rigid stratification in the Hindu stratification.

31. The position that emerges is consequently a nuanced one. Among sections of Indian Muslims, there have existed communities whose organisation displays several characteristics ordinarily associated with caste, including hereditary membership, occupational association, endogamy and graded social status. Such characteristics establish the existence of social stratification and, in particular contexts, caste-like structures. They do not, however, warrant treating *Ashraf*, *Ajlaf* and *Arzal* as three homogeneous castes constituting a single and uniform system throughout Muslim society in India.

32. The distinction between religious prescription and social practice must therefore be maintained. The Islamic conception reflected in the Quranic verse and the Farewell Sermon of the Prophet, as discussed by us earlier, places the criterion of human worth in righteousness and conduct, and not in race, tribe or lineage. The social practices that developed among particular Muslim communities in India may depart from, or stand in tension with, that foundational conception. Their existence cannot, however, retrospectively convert a social practice into a theological command; equally, the absence of such a theological prescription cannot be taken to mean that caste-like forms of social stratification did not develop among Indian Muslims.

33. It is thus possible to recognise both propositions without contradiction. That the egalitarian principle is foundational to Islam, and that Muslim society in India has not been immune from social stratification. The appropriate characterisation is therefore not that Muslim society in India has been wholly untouched by caste, nor that it has reproduced in every respect the classical caste system. Rather, distinct Muslim communities have, in varying degrees and in different regions, developed forms of hereditary social stratification which may be analogous to caste, while remaining distinct communities whose boundaries and social positions have not been uniformly fixed.

34. The foregoing discussion assumes significance when the effect of conversion upon an existing claim to affirmative action is considered. The question is not merely whether social disadvantage may be found among persons professing Islam, nor whether a person

who has converted from Hinduism may continue to experience the consequences of disadvantages suffered in the past. The anterior question is whether the social circumstances which rendered a person backward in the social order from which he has converted can continue, after conversion, to furnish the basis of a constitutional claim to affirmative action. This, in turn, requires consideration of the manner in which backwardness is understood for the purposes of Article 16(4) of the Constitution and its relationship with the social structure in which it arises.

35. This Court in, ***Indra Sawhney*** *(supra)*, undertook a comprehensive examination of the concept of a "backward class" under Article 16(4), including the relevance of caste, the identification of social classes, and the circumstances in which groups outside the Hindu social order may constitute backward classes. This Court speaking through BP Jeevan Reddy J. (for MH Kania CJ, MN Venkatachaliah J, AM Ahmadi and himself) observed thus:

> "**796.-797.** We may now summarise our discussion under Question No. 3. (a) A caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purposes of Article 16(4). **Among non-Hindus, there are several occupational groups, sects and denominations, which for historical reasons are socially backward. They too represent backward social collectivities for the purposes of Article 16(4).** (b) Neither the constitution nor the law prescribe the procedure or method of identification of backward classes. Nor is it possible or advisable for the court to lay down any such procedure or method. It must be left to the authority appointed to identify. It can adopt such method/procedure as it thinks convenient and so long as its survey covers the entire populace, no objection can be taken to it. Identification of the backward classes can certainly be done with reference to castes among, and along with, other groups, classes and sections of people. One can start the process with the castes, wherever they are found, apply the criteria (evolved for determining backwardness) and find out whether it satisfies the criteria. If it does — what emerges is a "backward class of citizens" within

> the meaning of and for the purposes of Article 16(4). Similar process can be adopted in the case of other occupational groups, communities and classes, so as to cover the entire populace. The central idea and overall objective should be to consider all available groups, sections and classes in society. Since caste represents an existing, identifiable social group/class encompassing an overwhelming majority of the country's population, one can well begin with it and then go to other groups, sections and classes. **(c) It is not necessary for a class to be designated as a backward class that it is situated similarly to the Scheduled Castes/ Scheduled Tribes**. (d) 'Creamy layer' can be, and must be, excluded. (e) It is not correct to say that the backward class contemplated by Article 16(4) is limited to the socially and educationally backward classes referred to in Article 15(4) and Article 340. It is much wider. The test or requirement of social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes, who indubitably fall within the expression "backward class of citizens". The accent in Article 16(4) appears to be on social backwardness. Of course, social, educational and economic backwardness are closely intertwined in the Indian context. The classes contemplated by Article 16(4) may be wider than those contemplated by Article 15(4)."
>
> (emphasis supplied)

36. The aforesaid exposition also explains the significance of the proposition in ***Indra Sawhney*** *(supra)* that caste cannot, by itself, be the sole criterion for identifying a backward class. The proposition does not proceed on the assumption that caste is merely one factor amongst several unrelated considerations. In the Hindu social order, caste has historically constituted the principal basis upon which social status and the attendant disabilities have been organised and perpetuated. The requirement that other relevant circumstances must also be taken into account serves a different purpose. Mere membership of a caste cannot be treated as conclusive proof that every individual belonging to it continues to suffer the social backwardness which Article 16(4)

of the Constitution seeks to address. A person belonging to a caste historically regarded as backward may, by reason of education, occupation, economic/social advancement or an elevation in social standing, have ceased to suffer the disabilities which constitute the basis of affirmative action. It is for this reason that the identification of a backward class cannot rest upon caste alone, and that the other circumstances bearing upon the continuance of social backwardness must also be examined. The exclusion of the creamy layer is itself an illustration of this principle. The enquiry is thus directed towards identifying those who continue to suffer the relevant social disability and not towards treating caste membership as an immutable or conclusive constitutional status for affirmative action.

37. There is, however, a distinct question which did not arise for consideration in ***Indra Sawhney*** *(supra).* That decision considered the manner in which backward classes may be identified, including among non-Hindus, and recognised that occupational groups, sects and denominations among non-Hindus may, for historical reasons, constitute backward classes under Article 16(4). It did not consider the effect of a change of religion upon an existing claim to affirmative action founded upon the social backwardness within the Hindu social order. The question before us is therefore not whether persons professing a religion other than Hinduism can constitute a backward class. They plainly may, where the constitutional requirements are independently satisfied. The question is whether social backwardness arising within one social order or religion can continue to furnish the same constitutional entitlement upon a person's entry into another social order or religion.

38. The answer must necessarily have regard to the source of the social backwardness in question. In the Hindu social order, caste has been the foundational institution through which social hierarchy, birth-based status, hereditary occupation, social intercourse and access to social and educational opportunities have historically been structured. The several manifestations of social backwardness may therefore present themselves in different forms such as occupational, educational, economic or otherwise. But, apart from the euphemism by which such manifestations may be described, their historical and social foundation, where the backwardness in question is caste-based, lies in the caste order itself. The fact that ***Indra Sawhney*** *(supra)*

requires considerations other than caste to be taken into account does not permit this foundational fact to be disregarded.

39. It is in this context that the effect of conversion falls to be considered. Where a person was entitled to affirmative action under Article 16(4) of the Constitution by reason of the social backwardness within the Hindu social order, such entitlement is founded upon the disabilities which arose within, and were produced by, that social structure. Upon conversion to Islam or Christianity, or to any other non-Hindu social order in which caste is not recognised as the basis of social status and classification, that foundational basis ceases to operate in the same manner. The fact that the consequences of the earlier disability may continue in the form of educational deprivation, occupational disadvantage, economic hardship or other material circumstances cannot carry the antecedent social backwardness into the new religion. To permit such continuation would be to detach the consequences from the social structure which produced them and to transpose social backwardness of one religion into another religion in which such backwardness is not recognised as the basis of social classification. The constitutional benefit cannot be made to travel in this manner from the religion in which the relevant backwardness arose to a religion whose basic theological structure or otherwise does not recognise caste as its foundational basis.

40. The constitutional treatment of caste-based disadvantage furnishes further indication of the same principle. Paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, as originally made under Article 341 of the Constitution, restricted the Scheduled Caste status to persons professing the Hindu religion, the subsequent constitutional amendments extended the position to Sikhs and Buddhists, while persons professing Islam or Christianity remain outside its scope. The provision operates specifically in the field of Scheduled Caste status and cannot, by itself, determine every question arising under Article 16(4) of the Constitution. It nevertheless reflects the constitutional understanding that the status attached to caste-based disability is not wholly detached from the social and religious order within which that disability is constitutionally recognised. But a caste identity cannot be treated as an immutable personal attribute carrying with it, irrespective of a change in religious affiliation, every constitutional protection or benefit which was available on account of that identity and the social backwardness attaching to it.

41. Consequently, where a person was receiving affirmative action under Article 16(4) of the Constitution in the Hindu social order, upon conversion to Islam, Christianity or to any other non-Hindu social order brings such entitlement norms to an end.

B. VALIDITY OF G.O. DATED 09.03.2024

42. The distinction between religion and community assumes particular significance in the present case. The fact that a person professes Islam does not, by that circumstance alone, identify the particular Muslim community to which he belongs. Muslim social organisation in India has historically comprised a number of distinct groups, whose identities have, in different regions and contexts, been associated with descent, occupation, locality, ethnicity, customary affiliation and patterns of social association. The material placed before us also indicates that the communities with which the present controversy is concerned have had distinct social histories and identities; the Labbai, Rowther and Marakkayar, for instance, have been separately described in the literature on the social organisation of Tamil Muslims, even though they fall within the statutory entry relating to Labbais in the State's Backward Class list. The seven categories like Dekkani Muslims, Dudekula, Labbais including Rowthar and Marakayar, Mapilla, Sheik, Syed and Ansar are likewise not a single undifferentiated category of Muslims, but specifically identified communities within the State's scheme of backward-class classification. It is against this distinction between religious identity and membership of a particular notified community that the impugned G.O. must now be examined, for the question is not merely what follows from a person's conversion to Islam, but whether such conversion can, in law, furnish the basis for treating him as a member of a particular notified Backward Class Muslim community and extending to him the reservation attached to that class.

43. The fundamental premise of G.O. dated 09.03.2024 is that a person belonging, before conversion, to a Backward Class, Most Backward Class, Denotified Community or Scheduled Caste, who thereafter embraces Islam, may be treated as a Backward Class Muslim and may be issued a community certificate under one of the seven Muslim communities notified by the State for which the State has reserved 3.5% of seats and posts for Backward Class Muslims under Tamil Nadu Act 33 of 2007.

44. The distinction which lies at the heart of the matter is between continuance of a disadvantage and acquisition of membership of a particular backward class. The proposition does not follow that conversion by itself makes that person a member of a particular Muslim community already notified as a backward class. The impugned G.O. proceeds from precisely such a conflation. Respondent no. 1 was not seeking merely recognition of the fact that he had become a Muslim, rather a certificate was sought specifically one certifying him as a Muslim Labbai. This distinction is material as the certificate of conversion issued by the Sunnath Jamath, Kayathar, recorded that respondent no. 1 had embraced Islam and changed his name, however it did not itself establish that he was born into or had historically belonged to the Muslim Labbai community. The record shows that his application for a Muslim Labbai certificate was rejected on the ground that respondent no. 1 converted to a religion and not to a caste or community.

45. Before the High Court, the State sought to answer this difficulty by submitting that the seven communities are already notified as Backward Class Muslims and that the G.O. merely preserves the reservation benefit which the proselyte enjoyed before conversion. But this explanation does not answer the anterior question as to what is the legal basis upon which a person who was not a member of one of those Muslim communities before conversion becomes a member of that community after conversion. The answer to this cannot be found in the fact of conversion itself as conversion establishes religious affiliation and it does not, establish membership of a particular socio-historical community within that religion. To reflect on this distinction, we feel it imperative to place reliance on the observations made by the High Court in ***G. Michael vs. S. Venkateswaran, Additional Secretary to Government, Public (Elections) Department***[14] which had been approved by this Court in ***Kailash Sonkar vs. Maya Devi***[15] and ***C. Selvarani vs. Special Secretary-cum-District Collector and Others***[16]. The High Court in ***G. Michael*** *(supra)* had held that a Hindu converting to Islam ceased to belong to his original caste and became a Muslim, and that his

14 1951 SCC OnLine Mad 312

15 (1984) 2 SCC 91

16 (2024) 16 SCC 537

position in Muslim society was not determined by the caste to which he had belonged before conversion. The relevant observation made by the High Court are reproduced hereinbelow:

> "Christianity and Islam are religions prevalent not only in India but also in other countries in the world. We know that in other countries these religions do not recognise a system of castes as an integral part of their creed or tenets. Is it different in India? Mr. Venkatasubramania Aiyar frankly confessed that so far as Islam is concerned there is no question that it does not tolerate any difference based on caste distinction. A member of one of the castes or sub-castes when he is converted to Islam ceases to be a member of any caste. He becomes just a Mussalman and his place in Muslim society is not determined by the caste to which he belonged before his conversion. Learned Counsel also conceded that generally this is so even when there has been a conversion to Christianity. But he said that there were several cases in which a member of one of the lower castes who has been converted to Christianity has continued not only to consider himself as still being a member of the caste, but has also been considered so by other members of the caste who had not been converted. I am prepared to accept that instances can be found in which in spite of conversion, the caste distinctions might continue. This is somewhat analogous to cases in which even after conversion certain families and groups continue to be governed by the law by which they were governed before they became converts. But these are all cases of exception and **the general rule is conversion operates as an expulsion from the caste; in other words, a convert ceases to have any caste."**
>
> (emphasis supplied)

46. We are in agreement with the above proposition laid down in ***G. Michael*** *(supra)* that upon conversion from one religion to another religion, a person cannot be classified as a member of particular class or community which existed pre-converted social order.

47. From the above, it is clear that the principle relevant here in the present case is therefore narrower but decisive i.e., a change of religion cannot, by itself, establish a new birth-based community identity. The legal consequence of conversion cannot be treated as a one-way bridge by which the old caste is simultaneously extinguished for one purpose and transported into a different community for another purpose. This becomes particularly apparent when the seven notified communities in the instant case are examined in the context in which they have historically existed. They are not denominations of Islam in the theological sense comparable to Sunni, Shia or other schools of religious doctrine. The High Court, in the impugned judgment, correctly noticed that the nomenclature used in the statutory and executive lists corresponds to historically evolved Muslim social communities. The Court had referred, *inter alia*, to the Madras Census of 1901 and to the historical writings of Edgar Thurston, and concluded that communities such as Labbai, Rowther and Marakkayar were social communities rather than merely theological sects. According to us, this distinction is crucial as a religious denomination may ordinarily be entered by adherence to a set of religious beliefs, and a historical social community may instead be constituted by common ancestry, endogamy, traditional occupation, social recognition and a shared history.

48. If the identity of a particular Backward Class of Muslim community is historically constituted by social membership, the mere declaration of conversion cannot be treated as proof of such membership. Therefore, the defect in the G.O. impugned in the present case is not merely that a particular certificate was wrongly issued or wrongly refused. Rather, the defect lies deeper in the sense that the G.O. creates a rule by which the State treats the historical disadvantage of a person in one religion as sufficient proof of membership in a particular class in another religion.

49. Article 14 of the Constitution does not prohibit every classification, but it requires that a classification rest upon an intelligible differentia and bear a rational nexus to the object sought to be achieved. Reservation itself is founded upon substantive equality and therefore necessarily involves classification, however the class which receives the benefit must be identifiable by the disadvantage which the constitutional measure seeks to remedy. The impugned G.O. does not explain why a Hindu belonging to one Backward

Class community, another belonging to a Most Backward Class community, a member of a Denotified Community and a person formerly belonging to a Scheduled Caste should, upon conversion to Islam, become members of one or another of seven pre-existing Muslim communities. We feel that there is no common nexus being demonstrated by the said G.O. and everything is approved on mere presumption. The defect becomes more pronounced in the case of a person who was originally a member of Scheduled Caste. The Scheduled Caste status is governed by the specific constitutional mechanism contained in Article 341[17] and the Constitution (Scheduled Castes) Order, 1950, and is therefore not a matter which can be altered or recreated by an executive order of the State. This Constitution (Scheduled Castes) Order, 1950 specifies the castes deemed to be Scheduled Castes in relation to various States and Union territories. The said Order is reproduced hereinbelow:

> "Constitution (Scheduled Caste) Order, 1950
>
> 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 to [XXV] 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 member thereof resident in the localities specified in relation to them in those Parts of that Schedule.
>
> **3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu, the Sikh or the Buddhist] religion shall be deemed to be a member of a Scheduled Caste.**

17 "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 State8[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

> 4. Any reference in this Order to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division as constituted on the 1st day of May, 1976."
>
> (emphasis supplied)

50. A perusal of Paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 expressly provides that a person professing a religion other than Hindu, Sikh or Buddhist shall not be deemed to be a member of a Scheduled Caste. Thus, upon conversion to a religion outside those specified in Paragraph 3, the person cannot continue to claim Scheduled Caste status merely by reference to his caste of origin. This position has recently been reiterated by this Court in ***Chinthada Anand vs. State of Andhra Pradesh and Others***[18], wherein this Court, of which one of us (Prashant Kumar Mishra J.) was the part, held that the appellant's original Scheduled Caste status stood 'eclipsed' in the eyes of law upon his conversion to Christianity. The relevant observations are reproduced hereinbelow:

> "POSTULATES
>
> 55. Upon a cumulative reading of the aforesaid discussion and in the light of the Constitution (Scheduled Castes) Order, 1950 and Constitution (Scheduled Tribes) Order, 1950, the following principles emerge for determining the entitlement of a person to be recognised as a member of a Scheduled Caste or Scheduled Tribe:
>
> a) The claimant must demonstrably belong to a caste or tribe which is specifically notified and recognised under Clause 2 of the Constitution (Scheduled Castes) Order, 1950 and Constitution (Scheduled Tribes) Order, 1950, and such status must be established by clear, cogent, and unimpeachable evidence.
>
> **b) No person who professes a religion other than Hindu, Sikh or Buddhist shall be deemed to be a member of a Scheduled Caste. This bar under Clause 3 of the Constitution (Scheduled Castes)**

18 2026 SCC OnLine SC 466

Order, 1950 is categorical and absolute. Conversion to any religion not specified in Clause 3 results in immediate and complete loss of Scheduled Caste status from the moment of conversion regardless of birth.

c) No statutory benefit, protection, reservation, or entitlement under the Constitution or under any enactment of Parliament or State Legislature that is predicated upon the membership of a Scheduled Caste can be claimed by or extended to any person who, by operation of Clause 3 of the Constitution (Scheduled Castes) Order, 1950, is not deemed to be a member of a Scheduled Caste. This bar is absolute and admits no exception.

d) A person cannot simultaneously profess and practice a religion other than the ones specified in Clause 3 of Constitution (Scheduled Castes) Order, 1950 and claim membership of a Scheduled Caste at the same time. A person who professes and practices such religion for personal, social and spiritual purposes cannot in law, assert membership of a Scheduled Caste for the purpose of securing statutory benefits. The two positions are mutually exclusive and contrary to the Constitutional scheme."

(emphasis supplied)

51. Consequently, in the light of the Constitution (Scheduled Castes) Order, 1950 as well as the decision of this Court in ***Chinthada Anand*** *(supra),* we are clear that the impugned State G.O. cannot, by executive fiat, treat a person as continuing to belong to a Scheduled Caste after the constitutional condition governing such status has ceased to be satisfied. If such a person is sought to be brought within a different backward class on account of his conversion, that classification must independently satisfy the constitutional requirements, and it cannot derive legitimacy merely from his erstwhile Scheduled Caste status.

52. We next consider the State's argument that the G.O. does not create a new backward class but merely preserves an existing reservation

benefit. The distinction between preservation and acquisition is, in our view, artificial in the manner in which the G.O. operates. A community certificate, as sought to be issued in the present case to respondent no. 1, is not a document merely preserving a historical entitlement, and it is a statutory recognition of present community status. When the State directs that a person who was not previously a member of Labbai, Rowther, Marakkayar or another notified Backward Class Muslim community may, upon conversion from Hindu social order, be certified as belonging to one of them, it necessarily creates an artificial route to present membership of the notified class. The TNBCC's recommendation dated 06.02.2024 itself demonstrates that the measure, in the form of the impugned G.O. goes beyond mere clarification. By prescribing that converts from Backward Class, Most Backward Class, Denotified Communities or Scheduled Caste Hindu communities may be issued certificates as belonging to one of the seven notified Backward Class Muslim groups, it effectively determines eligibility for an existing reservation class. Any instruction from the State may at best regulate implementation where the underlying law permits it, but it cannot supply an absent legal foundation for membership of a statutory class. Even the recommendation of the TNBCC cannot cure this defect as even though an expert advice is undoubtedly entitled to due regard, but an expert recommendation is not legislation, and nor can it confer constitutional validity upon a classification which does not satisfy Articles 14, 15(4) and 16(4) of the Constitution. The inclination towards the recommendation of an expert cannot come at the expense of abdication of constitutional review. We therefore reject the submission that the impugned G.O. is immune from scrutiny merely because it was preceded by a recommendation of TNBCC. We are not concerned with whether the TNBCC acted in good faith or not, but our understanding as above is only on the aspect of conclusion reached and the mechanism recommended by TNBCC to be constitutionally unsustainable.

53. In ***Ashoka Kumar Thakur vs. Union of India and Others***[19], a Five-Judge Constitution Bench while examining the identification of socially and educationally backward classes, reiterated that the very conception of a 'class' postulates persons possessing common traits

19 (2008) 6 SCC 1 (Per opinion of Chief Justice K.G. Balakrishnan)

which distinguish them from others, and where social backwardness constitutes the connecting link, that characteristic must broadly be common to the class. Therefore, the Court said that the requirement is therefore not satisfied by assembling persons who share nothing beyond a historical or incidental circumstance, however the class must possess the common characteristic by reason of which the Constitution permits preferential treatment. As far as the present case is concerned, this principle assumes significance as the G.O. proceeds from the historical backwardness of a person in his pre-conversion community to his membership of a notified Muslim backward class but identifies no common social characteristic which connects the former class with the latter.

54. Therefore, the conversion itself cannot supply that missing connecting thread, and this difficulty is not answered by describing the G.O. as a measure intended to preserve an existing benefit. Reservation is attached to a constitutionally identified class and not to an individual as a transferable personal entitlement. The constitutional enquiry is directed to the class, its common characteristics and the disadvantage which binds its members together, and therefore, the State's argument in support of the G.O. that respondent no. 1's pre-conversion backwardness is sufficient cannot be accepted because it cannot itself establish that the person suffers from the social backwardness which stemmed or existed in his previous religion, upon conversion to the new religion, as the social backwardness suffered is unique to the circumstances which were present in the previous religion leading to an affirmative action under Article 16(4) of the Constitution.

55. In addition to the above, we must further highlight that the seven notified Backward Class Muslim communities themselves constitute distinct social groups, and the State's own framework recognises that not every Muslim is a Backward Class Muslim. Once that is a case, a person who belongs to none of the seven notified communities cannot claim the benefit merely because he professes Islam. Now once that is accepted, the requirement of proving membership of the particular notified Muslim community cannot disappear merely because the claimant was backward before conversion. A perusal of the impugned judgment would show that the State's answer before the High Court was that the identified sects follow particular practices and that the concerned Jamath would determine whether

a convert should be accepted into one of them, after which the Revenue Authority should not question the said determination by Jamath and issue the community certificate.

56. This brings us to another important difficulty that we see, when we test the G.O. on constitutional principles. There is no doubt on the proposition that the issuance of a statutory community certificate is a public function, but the State cannot abdicate the statutory determination to a private body like Jamath. The responsibility for determining entitlement of a person to a statutory reservation must remain with the competent public authority. In ***Kumari Madhuri Patil and Another vs. Addl. Commissioner, Tribal Development and Others***[20], this Court had laid down safeguards concerning the scrutiny and verification of social-status claims. The relevant excerpt is reproduced hereinbelow:

> "**13.** The admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. **It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:**

20 (1994) 6 SCC 241

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer higher in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the

local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6**. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply**, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such

representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. **A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.**

7. to 8…..

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. to 15……"

(emphasis supplied)

57. We must clarify that the principle underlying the decision of this Court in ***Kumari Madhuri Patil*** *(supra)* is not that every fact relevant to community status must originate from a State officer, but that the determination conferring a statutory benefit, like in the instant case be confirmed to be a member of one of the seven communities, must be made through an accountable public process capable of verification and scrutiny. This position becomes constitutionally untenable

where, as the State itself submitted before the High Court that the Revenue Authority is expected not to question the determination of the Jamath. In ***Vishwa Lochan Madan vs. Union of India and Others***[21], this Court has held that religious bodies may perform religious functions within their sphere, but they cannot constitute themselves as adjudicatory authorities whose determinations bind secular governmental authorities in matters affecting legal rights. The relevant observations of the Court are reproduced hereinbelow:

> **"13. As it is well settled, the adjudication by a legal authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself. The power to adjudicate must flow from a validly made law. A person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law are to ensue. These are the fundamentals of any legal judicial system. In our opinion, the decisions of Dar-ul-Qaza or the fatwa do not satisfy any of these requirements. Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his fatwa on anyone by any coercive method. In fact, whatever may be the status of fatwa during Mogul or British Rule, it has no place in independent India under our constitutional scheme. It has no legal sanction and cannot be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law.**

21 (2014) 7 SCC 707

> **It can simply be ignored. In case any person or body tries to impose it, their act would be illegal. Therefore, the grievance of the petitioner that Dar-ul-Qazas and Nizam-e-Qaza are running a parallel judicial system is misconceived.**"
>
> (emphasis supplied)

58. Drawing from the observations in ***Vishwa Lochan*** *(supra)* and ***Kumari Madhuri Patil*** *(supra)*, we are of the view that a private religious body cannot be vested with the authority to conclusively determine the community status of an individual for the purposes of statutory reservation. To recognise such authority in the Jamat would, in substance, permit it to determine whether a person belongs to a constitutionally recognised class and, consequently, his or her entitlement to a public benefit. Such a power, carrying consequences in the sphere of public law, must flow from law and cannot be assumed by a private religious body by virtue of its communal or religious authority. This is clear from the State's own submission, as recorded by the High Court, demonstrating the extent of the abdication of its duty. A Jamath may certify that a person has embraced Islam or may furnish whatever evidence is legitimately within its knowledge concerning the person's religion, however, it cannot, merely by issuing a testimonial, create or conclusively determine a statutory backward-class status.

59. Now, it is apposite for us to recap our analysis on distinctive understanding of the Hindu society and Muslim society. The distinction, according to us, is not between a Muslim society which is wholly free from social stratification and one which possesses a caste system identical to that found in Hindu society. Social formations among Indian Muslims, including the historically described categories of *Ashraf*, *Ajlaf* and *Arzal*, and the numerous *biradaris* and occupational groups associated with them, demonstrate that descent, occupation, endogamy and social status have, in particular regions and communities, operated as bases of social differentiation. At the same time, these categories cannot be treated as three homogeneous castes constituting a single, uniform or universally applicable hierarchy throughout Muslim society in India. Their content, boundaries and social significance have varied across regions and communities.

60. The constitutional inquiry must, therefore, remain anchored in the social reality of the particular class sought to be identified, rather than in either religious doctrine or a presumed religious-wide hierarchy. The fact that Islam does not prescribe a caste hierarchy religion based on birth does not, by itself, negate the existence of historically evolved forms of social disadvantage among particular Muslim communities; equally, the existence of such formations cannot justify treating every Muslim, or even every such formation, as belonging to one predetermined caste-like class. What is constitutionally relevant is the demonstrable social and educational backwardness of the particular group, established by relevant and objective criteria. This preserves the necessary distinction between what a religion doctrinally prescribes and how its adherents may, in particular social contexts, have organised themselves. Therefore, the idea of the State in the present case drawing parallels with caste-based stratification in Hindu system to that in Muslims is against the ethos of the Constitution.

C. POSTULATES

61. In this regard, and upon a cumulative reading of our discussion as well as the precedents of this Court relied by us, the following principles emerge:

a) A person who converts from a Hindu social order to a non-Hindu social order cannot claim affirmative action under Article 16(4) of the Constitution merely on the basis of the social backwardness associated with his pre-conversion status; the backwardness suffered in the antecedent social order cannot, by itself, be carried forward so as to confer upon him the status of a backward class in the religion to which he has converted.

b) By virtue of paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, a person who professes a religion other than Hinduism, Sikhism or Buddhism cannot be deemed to be a member of a Scheduled Caste. Consequently, upon conversion to a religion not specified therein, such person ceases to possess the Scheduled Caste status attached to his antecedent caste and cannot claim any affirmative-action benefit of a backward class under Article 16(4) of the Constitution which is predicated upon membership of a Scheduled Caste.

c) Conversion to a non-Hindu social order does not, by itself, confer membership of any particular notified Backward Class community. A person's pre-conversion caste or community status cannot, merely by reason of conversion, be transposed into membership of a distinct notified Backward Class community in the post-conversion social order. The social backwardness which formed the basis of the person's pre-conversion status cannot, by itself, furnish the legal foundation for conferring upon him membership of a different notified Backward Class community after conversion.

d) Conversely, where a person, after having converted from the Hindu social order to a non-Hindu social order, reconverts to Hindu social order, the question of his entitlement to affirmative action under Article 16(4) cannot be determined merely by reference to his antecedent status. Such entitlement would require an independent, fact-specific determination by the competent authority as to whether the original caste or social identity has genuinely revived upon reconversion and whether the person satisfies the applicable constitutional and legal requirements for such affirmative action.

e) No statutory benefit, protection, reservation or other entitlement under Article 16(4) of the Constitution, the enjoyment of which is predicated upon a particular Hindu social order, can be claimed or extended merely on the basis of such antecedent membership after the person has converted to Islam, Christianity or any other non-Hindu social order. Such conversion severs the legal foundation of an entitlement which is specifically conditioned upon membership of that Hindu social order.

f) A community certificate is declaratory of, and does not create or confer, the status which it purports to recognise. Neither the issuance of a community certificate nor an executive instruction can enlarge, modify or dispense with the substantive constitutional and statutory conditions governing membership of the class or entitlement to the benefits attached thereto.

CONCLUSION

62. We therefore affirm the central conclusion of the High Court, though our reasoning proceeds on the constitutional foundations set out above. A person who converts to Islam does not, by that act alone,

become a member of any one of the seven notified Backward Class Muslim communities in the State. His former caste or community status cannot automatically be transposed into the Muslim Backward Class category, nor can a private religious body conclusively determine such statutory entitlement.

63. Tested on that standard, we are of the view that the impugned G.O. cannot be sustained and has rightly been quashed by the High Court. It creates an artificial route by which a person moves from a pre-conversion backward social order into a notified Muslim backward class without establishing the necessary social and legal link. Therefore, the declaration made by the High Court that the impugned G.O. is unsustainable in law calls for no interference.

64. In view of our above analysis, the Special Leave Petition is accordingly ***dismissed.***

Pending applications, including the applications seeking intervention, stand disposed of.

Result of the case: Special Leave Petition dismissed.

†*Headnotes prepared by:* Nidhi Jain