

# Union of Trinity: Equality, Liberty and Fraternity

Sana Irshad August 3, 2022



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Alongside celebrations of the tricolors, let us be reminded of Dr BR Ambedkar's 1949 speech in which he prescribed a 'union of trinity,' an integrated reading of liberty, equality and fraternity, for resolving a 'life of contradictions' in India. Sana Irshad and Sumit Baudh trace some of the outlines and contours of this trinity as it operates in some of the contemporary landscapes of law, anti-caste movements, queer mobilisings, reservation quotas, economically weaker sections, burqa bans and anti-conversion laws. This conversation, which is in the context, and an oblique critique, of the ongoing government campaign 'Har Ghar Tiranga,' took place over email.

**Sana Irshad:** What are your thoughts on the introduction of the 10% quota for the Economically Weaker Sections? Does it dilute the rationale of India's affirmative action policy?

**Sumit Baudh:** The rationales of reservation quotas are wide-ranging: they range from constitutional guarantees of equality, remedial functions of the law (to offset the historical discrimination), and welfare mechanisms of the state.

An older variation of the 10% quota for the Economically Weaker Sections (EWS) had appeared at the time of Mandal Commission in the early 1990s. In *Indra Sawhney v Union of India* (1992), the Supreme Court had ruled against the constitutionality of the 10% quota. Why? Because Clause 4 of Article 16 was held to be a provision of “equality of opportunity” and non-discrimination guaranteed in Clauses 1 and 2 of that article. So, the “backward class of citizens” in Clause 4 could be constituted on the basis of the categories that appear in Clause 2, namely “religion, caste, sex, descent, place of birth, residence, or any of them.” Note these categories do not include *class* or economic condition as a ground of non-discrimination.

The juridical idea of “backward classes” is further constituted by the qualification of social and educational as it appears in the text of Article 15 (4). This was when the 10% reservation quota was sought to be brought via a notification of the government.

Now the 10% EWS quota has been brought through an amendment to the Constitution. Then a question for the apex court to consider could be whether this amendment is at odds with the *basic structure* of the Constitution. This basic structure has been an intense moot point (within juridical ideas) ever since its conception in *Kesavananda Bharati v State of Kerala* (1973). So then, there are at least two juridical ideas that would apply to assessing the constitutionality of the EWS — the basic structure of the Constitution, and the rationale of reservation quotas. Both are moot, so are my thoughts on this matter.

**Irshad: How do you see the US Supreme Court decision in *Brown v Board of Education* (1954), which ruled the racial segregation in education as unconstitutional, in relevance to what happened in Karnataka with Muslim women?**

**Baudh:** Muslim women are being denied entry in educational institutions in Karnataka because of their religious attire (namely burqa, hijab, and variations of headscarves). This could be compared with the denial of entry to students of colour in *whites-only* segregated schools. *Brown v Board of Education* (1954) famously ended this racial segregation. Scholars have long pondered and poured over the underlying principle of this judicial decision. Is it the Liberty or the Equality clause, of the Fourteenth Amendment of the US Constitution? That is to say, is it a matter of equality and non-discrimination, for schools not to segregate on the basis of colour, or is it a reasonable restriction of associational rights/freedom/liberty of white students?

Similarly, it could be argued that the denial of entry of Muslim women in educational institutions is an infringement of their liberty (their freedom of religion) and equality (non-discrimination on the basis on religion and sex). These two strands of arguments operate very differently. Freedom of religion invokes the juridical *doctrine of essential practices* (in all its ambiguities) that does not consider burqa, hijab, and other variations of head scarves as an “essential practice” of Islam. Legal scholars have critiqued this doctrine as a judicial overreach into religious matters. The argument of equality and non-discrimination would necessitate an intersectional approach — of two prohibited grounds of discrimination: religion and sex (under Article 15 of the Constitution of India).

In addition to the rights rhetoric (of equality, non-discrimination, and liberty), there is something else about *Brown v Board of Education* (1954) that must be considered: the psychological harm that was inflicted upon children by the racial segregation in schools. It was shown that children had developed very early and sharp sense of superiority and inferiority based on their colour. The US Supreme Court denounced this idea of white supremacy that was implicit in segregated schools. There appears to be a comparable idea of Hindu supremacy in the ways in which religious minorities are being targeted in the sociopolitical milieu of India currently, and the state appears to be complicit in facilitating this.



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**Irshad:** How do you see the intersection of queer spaces and anti-caste movements, considering how upper caste/class people have hegemony on the queer movement?

**Baudh:** Marginalisation and the composition of any marginalised constituency is varied: it has internal hierarchies on the lines of existing sociopolitical structures. For example, anti-caste movements in some constituencies could be led by the more dominant segments. Say, the Gurjar caste groups in Backward Class (BC) categories could dominate over certain caste groups in the Scheduled Caste (SC) category; and within the SC category, the Jatav caste groups could dominate over groups such as Valmiki. These kinds of arrangements within social movements could be understood more broadly as inter-minority differences, that is, differences that exist amongst smaller units of minority/ disadvantaged groups that constitute the larger anti-caste movements.

Within these smaller units and segments, there could be other differences, say, on the lines of gender. Generally speaking, in a patriarchal set-up, men dominate over women. So then, any examination of, and commentaries on, queer movements and spaces could attempt a simultaneous examination of hegemonies within the anti-caste movements and spaces. The dominant caste and class composition of queer movements and spaces is therefore as interesting and remarkable as the heteronormative, cis-gendered, and patriarchal compositions of anti-caste movements in India.

In my [written works elsewhere](#) I have illustrated the dominant caste composition of an intervention in *National Legal Services Authority v Union of India* (2014). In this Public Interest Litigation (PIL), Lakshmi Narayan Tripathi (a name that declares its Brahmin caste location) represented transgender persons and communities. The Supreme Court decision did not explicitly acknowledge Tripathi's caste position as such, yet the way in which Tripathi's arguments appeared (in the juridical understanding) is such that it appears to favour ancient Hindu mythology, scriptures and cultures, which are said to be more accepting of transgender persons than the hostile British colonial subjectivity of the law. In this favourable view of ancient Hindu mythology, scriptures and cultures, there is no mention of the inequalities based on caste (the lowly stature assigned to certain caste groups such as Shudras and "untouchable" persons) and the virulent misogyny that is pervasive and integral to the very same cultures. In this illustration, dominant caste and class composition of a formal legal representation (via Tripathi) went unnoticed by the honourable Supreme Court of India, and the emerging juridical discourse was an implicit validation (and a kind of glorification) of ancient Hindu cultures.

Intersections of queer anti-caste movements could be understood much better by keeping an eye on the superstructures of the law and other power dynamics that prevail upon us.

**Irshad: 'Hindu' Dalits wanting to convert to other religions to escape caste violence, often find limited options, as conversion to Islam or Christianity leads to loss of the Scheduled Caste status. What are your views on this?**

**Baudh:** [Elsewhere](#), I have expressed some of my views on this matter; that the law must recognise the SC status of those who may not be Hindu. [I have also argued](#) that the legal nomenclature of SC is insufficient for engaging more fully with the social and political realities of caste discrimination and violence in India. When it comes to the SC status, there appears to be a narrow fixation over reservation quotas. The remedial functions of the law are not limited to reservation quotas. There is a preventive and protective framework of the law that operates through the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (known in short as PoA). While Dalit Muslims and Dalit Christians are subjected to caste violence and discrimination, they are denied the legal protection of PoA because of the denial of SC status to them.

In addition to the legal implications of this denial, there are psychological costs imposed upon those in the SC category. For example, some persons in the SC categories follow the tenets of Christianity in secrecy. It induces a duality, a falsehood, a routine fabrication of their lives; they are forced to withhold and lie about their religious persuasions. A religious closet of sorts, secretly practising Christians are effectively denied their *freedom of conscience and free profession, practice and propagation of religion* that is guaranteed in Article 25 of India's Constitution.

**Irshad: You have criticised the usage of the term 'ghar wapsi' and 'conversion' of religion. Could you please elaborate on this?**

**Baudh:** 'Ghar wapsi' translates as 'homecoming.' Home is sentimentally evocative, it evokes fuzzy sentiments of love and belonging; it implies an assurance of shelter and security. In a political deployment of 'ghar wapsi,' Hinduism is projected as home, and it assumes a certain prior location of people within this home, that is, Hinduism. It's a false assumption because there are myriad ways in which society and cultures have evolved. The "untouchable" persons were considered outside of the Hindu varna and jati anyways. The "untouchable" people were not allowed in this home, or they were brutally oppressed, exploited, abused, and held in bondage. Such a "home" is neither symbolic of shelter and security, nor a source of any love and belonging. 'Ghar wapsi' is therefore a paradoxical idea, especially in its application to Dalits.

"Conversion" implies some kind of change from one status to another. Individuals could be simultaneously located in more than one status or none at all. There could be a number of religious influences in our lives, and we might actively subscribe to some (of these influences) or we might steer clear of them. Individuals could be disbelievers, sceptics, atheists, agnostics at some points in their lives, and at other points, they might embrace and adopt some religious ideas. When this happens, they are not "converting" from one religious status to another, as much as they are declaring a religious status where none had existed previously. Every declaration of religious status is not a "conversion," sometimes it's a start, an awakening, a beginning. Sometimes it's nothing profoundly meaningful, it's a passing phase that passes without anyone making a brouhaha over it.

These are intensely personal matters that implicate a range of liberty provisions guaranteed in the Constitution that include basic associational rights (under Article 19), privacy and dignity (under Article 21), and freedom of religion (under Article 25). And also because these matters invoke certain categories of non-discrimination, namely religion, caste and sex (under Article 15), these are apt sites for the applications of 'union of trinity' — of equality, liberty and fraternity.

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