

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO OF 2022
(PIL UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)
IN THE MATTER OF:
Devkinandan Thakur Ji

Mathura-281004.

Petitioner

versus

1. Union of India
Through the Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001,
 2. Union of India
Through the Secretary,
Ministry of Law & Justice (Legislative Department)
Shastri Bhawan, New Delhi-110001,
 3. Union of India
Through the Secretary,
Ministry of Minority Affairs,
CGO Complex, New Delhi-110003,
-Respondents

**PIL UNDER ARTICLE 32 TO CHALLENGE THE VALIDITY OF SECTION 2(C)
OF THE NCM ACT 1992 FOR BEING MANIFESTLY ARBITRARY AND
CONTRARY TO ARTICLES 14, 15, 21, 29 AND 30 OF THE CONSTITUTION**

To,

THE HON'BLE CHIEF JUSTICE

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE SUPREME COURT OF INDIA

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing this PIL under Article 32 to challenge the validity

of Section 2(c) of the NCM Act 1992, for not only giving unbridled

power to the Centre but also being manifestly arbitrary, irrational &

offending Articles 14, 15, 21, 29 and 30 of the Constitution of India.

2. The facts constituting cause of action accrued on 17.05.1992, when the Act came into effect and by using unbridled power under S. 2(c), Centre arbitrarily notified 5 communities viz. Muslims, Christians, Sikhs, Buddhists and Parsee as minority at national level against the spirit of TMA Pai ruling. Cause of action continues till date because followers of Judaism, Bahaism & Hinduism; who are real minorities in Laddakh, Mizoram, Lakshdweep, Kashmir, Nagaland, Meghalaya, Arunachal Pradesh, Punjab, Manipur, cannot establish & administer educational institutions of their choice because of non-identification of 'minority' at State level, thus jeopardizing their basic rights guaranteed under Article 29-30. Their right under Articles 29-30 is being siphoned off illegally to the majority community in the State because Centre has not notified them 'minority' under NCM Act. Followers of Judaism, Bahaism & Hinduism are being deprived of their basic rights to establish & administer educational institutions of their choice. On the other hand, Muslims are in majority in Lakshdweep (96.58%) & Kashmir (96%) and there is significant population in Laddhakh (44%), Assam (34.20%), Bengal (27.5%), Kerala (26.60%), UP (19.30%) & Bihar (18%); can establish & administer educational institutions of their choice. Christians are

majority in Nagaland (88.10%), Mizoram (87.16%) and Meghalaya (74.59%), and there is significant population in Arunachal, Goa, Kerala, Manipur, Tamil Nadu & West Bengal, can also establish & administer. Likewise, Sikhs are majority in Punjab and there is large population in Delhi, Chandigarh, Haryana, but they can establish & administer. Similarly, Buddhists are majority in Laddakh but they can establish & administer educational institutions of their choice.

3. The injury caused to the followers of Judaism, Bahaism & Hinduism is large because S. 2(c) is manifestly arbitrary irrational & contrary to Articles 14, 15, 21, 29 & 30. Hindus are merely 1% in Laddakh, 2.75% in Mizoram, 2.77% in Lakshdweep, 4% in Kashmir, 8.74% in Nagaland, 11.52% in Meghalaya, 29% in Arunachal Pradesh, 38.49% in Punjab, 41.29% in Manipur but Centre has not declared them 'minority', thus Hindus are not protected Articles 29-30 and cannot establish & administer educational institution of their choice. On the other hand, by using unbridled power under the Act, Centre has arbitrarily declared Muslims as minority, who are 96.58% in Lakshdweep, 95% in Kashmir, 46% in Laddakh. Similarly, Centre has declared Christians as minority, who are 88.10% in Nagaland, 87.16% in Mizoram & 74.59% in Meghalaya. Hence, they can

establish and administer educational institution of their choice. Likewise, Sikhs are 57.69% in Punjab and Buddhists are 50% in Laddakh and they can establish & administer educational institution of their choice but not the followers of Bahaism and Judaism, who are merely 0.1% and 0.2% respectively at national level. Therefore, Section 2(c) of the NCM Act 1992, which gives unbridled power to the Centre, is manifestly arbitrary, irrational & contrary to Articles 14, 15, 21, 29, 30 of the Constitution.

4. Amongst the questions which were formulated for answer by the eleven judges Bench in TMA Pai Case [2002 (8) SCC 481], the most important was: *"What is the meaning and content of the expression 'minority' in Article 30 of the Constitution of India?"* The answer in the opinion of majority in the Bench of eleven judges, speaking through Justice Kirpal, CJ (as he then was) is quoted hereinafter: *"Linguistic and religious minorities are covered by the expression 'minority' under Article 30 of the Constitution. Since reorganization of the States has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be State and not whole India. Thus, religious and linguistic minorities, who have been put on a par in Article 30, have to be considered state wise"*.

5. In exercise of the unbridled powers conferred by Section 2(c) of the NCM Act, the Central Government through the Notification dated 23.10.1993 arbitrarily notified five communities viz. Muslims, Christians, Sikhs, Buddhists and Parsis as 'minority' community, without defining 'minority' and framing guidelines for identification at State level. In 2014, Jains were added in the list as sixth minority, though the three judges' bench of this Hon'ble Court in Bal Patil Case had very categorically refused to grant minority status to Jains.
6. It is pertinent to state that after the judgment in TMA Pai Case, [(2002) 8 SCC 481] the legal position is very clear that the unit for determining status of linguistic and religious minorities would be State. This position is doubly clear not only from the answer given in conclusion to Question No-1 but also the observations contained in paras 76 and 81 of the majority judgment quoted hereinafter:
"76. If, therefore, the State has to be regarded as the unit for determining "linguistic minority" vis-a-vis Article 30, then with "religious minority" being on same footing, it is the State in relation to which the majority or minority status will have to be determined.
81. As a result of the insertion of Entry 25 into List III, Parliament can now legislate in relation to education, which was only a state

subject previously. The jurisdiction of Parliament is to make laws for the whole or a part of India. It is well recognized that geographical classification is not violative of Article 14. It would, therefore, be possible that, with respect to a particular State or group of States, Parliament may legislate in relation to education. However, Article 30 gives the right to a linguistic or religious minority of a State to establish and administer educational institutions of their choice. The minority for the purpose of Article 30 cannot have different meanings depending upon who is legislating. Language being the basis for the establishment of different States for the purposes of Article 30, a "linguistic minority" will have to be determined in relation to the State in which the educational institution is sought to be established. The position with regard to the religious minority is similar, since both religious and linguistic minorities have been put on a par in Article 30."

7. The Judgment in the TMA Pai Case is law of the land; hence, the identification of religious and linguistic 'minority' has to be done on State only and Centre has to exercise its power under NCM Act & NCMEI Act, not merely on the advice and recommendation of the National Commission for Minorities but also on consideration of

social cultural and religious conditions of the community in each State. Religious and linguistic minorities for the purposes of Articles 29-30 must be determined State-wise countenancing numeric proportions of various groups and communities in each State. However, despite the above unequivocal position of law, the Centre has completely failed to apply the above principle evenly by excluding not only Hindus but also the followers of Bahaism and Judaism from the purview of 'minority' status under Section 2(c) of the NCM Act and Section 2(f) of the NCMEI Act.

- 8.** Petitioner respectfully submits that for purpose of notifying a community as 'minority', Centre is empowered to consider claim of a particular community for being notified as such under S. 2(c) of the NCM Act and S. 2(f) of the NCMEI Act, and cannot shirk its statutory responsibility. The legal position explained by the majority view in the TMA Pai Case that States can determine the minority status of a community, does not render the power of Centre under Section 2(c) of the NCM Act and Section 2(f) of the NCMEI Act.
- 9.** It is respectfully submitted that denial of minority rights to the real minorities and arbitrary and unreasonable disbursement of minority benefits to the absolute majority, infringes upon the

fundamental right to prohibition of discrimination on the grounds of religion race caste sex and place of birth [Article 15]; impairs the right to equality of opportunity in the matters related to public employment [Article 16]; and offends freedom of conscience and right to freely profess practice and propagate religion [Article 25]. It also erodes the obligation of the State 'to endeavor to eliminate inequalities in status facilities opportunities' [Article 38]. Therefore, this Hon'ble Court may declare Section 2(c) of the NCM Act 1992 and Section 2(f) of the NCMEI Act 2004 void and unconstitutional.

- 10.** Article 30 inter-alia states that minorities whether based on religion or language shall have the right to establish-administer educational institutions of their choice, but the question is, to whom is this article applicable? There are around 300 religions in the world and around 30 exist in India as well. Can every single one of them be considered as a religious minority under Articles 29-30? If yes, then why not Centre has declared the followers of Bahaism and Judaism, as minority under the NCM and NCMEI Act?
- 11.** The Preamble proclaims to guarantee every citizen '*liberty of thought, expression, belief, faith, worship*'. Articles 25-30 guarantee protection of religious, cultural, educational rights to both- majority

and minority communities. Keeping in view the constitutional guarantees for protection of cultural, educational & religious rights of every citizen, 'minority' was not defined and instead of clearly defining 'minority' in the background of the constitutional scheme, Section 2(c) of the NCM Act and Section 2(f) of the NCMEI Act gives power to the Centre to notify any community as 'minorities', who might require special protection of religious, cultural & educational rights. Language of Section 2(c) of the NCM Act and Section 2(f) of the NCMEI Act is same and by using unbridled power under the Act, Centre arbitrarily notified 5 communities as minority on 23.10.1993.

- 12.** Articles 14, 15, 19, 21 are golden corners of our constitution. Therefore, Centre cannot arbitrarily grant minority status. Framers never contemplated to create a National Minority Commission and Minority Affairs Ministry on religion basis. Articles 25-30 guarantee cultural religious freedoms to majority & minority both. Moreover, unity & integrity is the goal of our Constitution. Hence, concept of religious minority at national level is very dangerous for unity and national integration. For the purpose of S.2(c) of the NCM Act and S.2(f) of the NCMEI Act, minority should be identified at State level in spirit of the Judgments in TMA Pai Case and Bal Patil Case.

13. Article 29 is assumed to relate to minorities but scope is not confined. It is available to *‘any section of the citizens residing in the territory of India or any part thereof having distinct language script or culture’*. Hence, may include the majority also, as Ray, CJ pointed out in Ahmedabad St. Xaviers Case [(1974) 1 SCC 717]. ‘Minority’ is *“a group or community, which is socially economically politically non-dominant, inferior in population and deserves protection from likely deprivation of their religious, cultural and educational rights by the majority communities, who are likely to gain political power in a democratic form of government based on election”*.
14. Although the word ‘minorities’ occurs in the marginal note of Article 29, it does not occur in the text. The original proposal of the Advisory Committee in Constituent Assembly recommended thus: *“(1) Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.”* [B. Siva Rao, “Select Documents” (1957) Vol. 2, Page 281] But after the clause was considered by the Drafting Committee on 1st November 1947, it emerged with substitute of ‘section of citizens’. [B. Siva Rao, Select Documents (1957) Vol. 3 pages 525-26, clause

23, Draft Constitution]. It was explained that the intention had always been to use 'minority' in a wide sense, so as to include (for example) Maharastrians who settled in Bengal. [7 CAD 923]

15. Petitioner respectfully submits that in Article 30(1), crucial words are: (a) minorities (b) establish and administer (c) educational institutions (d) of their own choice but the word 'minority' has not been defined in the Constitution. Motilal Nehru Report (1928) showed a prominent desire to afford protection to minorities but did not define the expression. Sapru Report (1945) also proposed, a Minority Commission but did not define minority [The Year Book on Human Right (1950), pg. 490].
16. The UN Sub-Commission on Prevention of Discrimination & Protection of Minorities has define 'minority' (by inclusive definition) thus: *(i) The term 'minority' includes only those non-document group in a population, which possess and which to preserve stable ethnic religious linguistic tradition or characteristics different from those of the rest of the population; (ii) such minorities should properly include a number of person sufficient by themselves to preserve such tradition or characteristics; and (iii) such minorities must be loyal to the State, which they are nationals.*

17. Article 27 of International Covenant on Civil-Political Rights give the rights as thus: *“In those States, in which ethnic, religious or linguistic minorities exists, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language”*.
18. After partition, Muslims & Christians, living in different parts, opted to continue to live in India. Therefore, at the time of giving final shape to the Constitution, framers felt it necessary to allay apprehensions & fears in their mind by providing special protection of religious, cultural, educational rights. At that time such protection was found necessary. The framers accepted common citizenship regardless of religion language culture faith and engrafted Articles 25-30 to give security to all and not for the appeasement to some.
19. The Constitution of India is by the Indians and for the Indians. Globally, there are 6000 plus languages. Can we consider Chinese or French speaking person a linguistic minority? If yes, then India would end up having 60+ linguistic minorities. Linguistic minorities are identified at State level & only Indian languages are considered for protection under Articles 29-30. A Hindi speaking person is

linguistic minority in Kerala and Tamil speaking in Bihar. The same notion may follow for religious minorities too and only India originated religions may be considered as religious minority. Petitioner submits that 'minority' means a 'socially economically politically non-dominant' group, which is inferior in population. It is relative term, represent very inferior numbers, sections or group.

20. VIOLATION OF ARTICLE 14 OF CONSTITUTION: In exercise of the unbridled powers conferred by the Act, Centre has notified Muslims, Christians, Sikhs, Buddhists Parsis & Jian as 'Minority' community without any study research and homework. The classification of religious minorities by the Center at pan India level has not only created a wave of inequality across different States but also encouraged those who did not belong to that minority religion, to convert themselves for the social, political and economic benefits. This Hon'ble Court through seven judges' bench in State of Kerala & anr vs. N. M. Thomas & Ors [1976 SCR (1) 906] held that the classification must be a reasonable and fulfill 3 conditions: **(i)** *it must have a rational basis (intelligible criterion)* **(ii)** *it must have a close nexus with object sought to be achieved;* **(iii)** *it should not select person for hostile discrimination at cost of others.*

- 21.** Rational basis of declaring certain religions as minority by Central Government as they have less population in the States is contravened when benefits of schemes for minority are acquired by those religious minorities in States where they are in majority and those religious communities who are actually minorities are not been given equal status. Muslims having majority in Lakshadweep and J&K, Sikhs having majority in Chandigarh and Haryana and Christians having majority in Mizoram, Meghalaya and Nagaland are still receiving minority benefits. Therefore, classifying majority Christians, Sikhs, Muslims as “equal” to States having said religions as minority violates basic principle of reasonable classification. The classification is not intelligible differentia and fails test of rationality.
- 22.** It is respectfully submitted that the object of Article 30 is explained by this Hon’ble Court in Ahmedabad St. Xaviers College Society and Anr. v. State of Gujarat and Anr [(1974) 1 SCC 717 at page 192] and reiterated in TMA Pai Foundation vs. State of Karnataka [(2002) 8 SCC 1]- *"Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right*

on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality.”

- 23.** **ARTICLE 14** is indeed a pillar on which rests securely foundation of our Secular, Democratic Republic. Right of equality is not merely of a few individuals. In **Kasturi Lal Lakshmi Reddy v. State of J&K** [(1980)4SCC 1], Bhagwati J. observed: “*14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid.*”
- 24.** This Hon’ble Court has recognized unarticulated liberties implied by Article 21 of the Constitution and has ruled that Right to Life and Personal Liberty includes Right to enjoy benefits exclusively conferred upon them by the Union and State Government’s schemes and other welfare programmes leading to a life of dignity. Denial of minority rights to the actual religious and linguistic minorities impairs Article 19(1)(a). Under Article 19(1)(a) read with Article 21 of the Constitution, every citizen have a right to live peacefully, to have right to leisure with all necessary ingredients of the right to life

guaranteed under Article 21 of the Constitution of India. Denial of minority rights to real minorities and arbitrary/unreasonable disbursement of minority benefits to the majority, infringes upon fundamental right to prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth [Article 15(1)]; impairs the right to equality of opportunity in matters related to public employment [Article 16(1)]; and freedom of conscience and right to freely profess, practice and propagate religion [Article 25(1)]. It also erodes the obligation of the State 'to endeavor to eliminate inequalities in status, facilities and opportunities' [Article 38 (2)].

25. Denial of minority rights to actual religious and linguistic minorities is a violation of right of minority enshrined under Articles 14 and 21. This constitutional boon is perhaps the highest blessing that the citizens of India secured from the paramount deed in Articles 14 and 21 of India's *suprema lex*, its Constitution. Right to live in a society free from any fear and discrimination is covered within the scope of Article 14 and 21. Any omission/commission by Executive /Legislator, which encourages arbitrariness and unreasonableness, infringes upon Articles 14 & 21. NCM is providing schemes like educational empowerment, economic empowerment, infrastructure

empowerment and other special needs, which is beyond the scope of Articles 29-30. The successive governments through the NCM intend to manage vote bank across Indian subcontinent.

- 26.** The central government has ignored the fundamental principle of equality, justice, liberty and secularism which plays an important role in ensuring “*Fraternity*”, “*Dignity of Individual*” and “*Unity and Integrity of Nation*” as mentioned in preamble of the Constitution. Hon’ble Justice Chandrachud in AADHAAR Case [WP(C) 494/ 2012] “**10.** *In my view, unity and integrity of the Nation cannot survive unless the dignity of every individual citizen is guaranteed. It is inconceivable to think of unity and integration without the assurance to an individual to preserve his dignity. In other words, regard and respect by individual for the dignity of the other one brings the unity and integrity of the Nation.* **11.** *The expressions “liberty”, “equality” and “fraternity” incorporated in the Preamble are not separate entities. They have to be read in juxtaposition while dealing with the rights of the citizens. They, in fact, form a union. If these expressions are divorced from each other, it will defeat the very purpose of democracy.* **12.** *In other words, liberty cannot be divorced from equality so also equality cannot be divorced from liberty and nor can*

liberty and equality be divorced from fraternity. The meaning assigned to these expressions has to be given due weightage while interpreting Articles of Part III of Constitution.”

27. Justice Dickson in *Hunter v. Southam* (1984) 2 SCR 145 (Canada):

“The task of expounding Constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and easily repealed. A Constitution, by contrast, is drafted with an eye to future. Its function is to provide a continuing framework for legitimate exercise of governmental power and when joined by a Bill or Charter of Rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. Judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind.”

28. In ***M.Nagaraj v. Union of India [(2006)8 SCC 212]***, speaking for the Constitution Bench, the then CJI Sh. S.H. Kapadia had observed:

“The Constitution is not an ephemeral legal document embodying a set of legal rules for the passing hour. It sets out principles for an

expanding future and is intended to endure for ages to come and consequently to be adapted to the various crises of human affairs. Therefore, purposive rather than strict literal approach to interpretation should be adopted. A constitutional provision must be construed not in a narrow and constricted sense but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that a constitutional provision does not get fossilized but remains flexible enough to meet newly emerging problems and challenges.” The definition of “Minority” as per Article 29-30 has left leakages in the hands of State, which shall be misused and are been misused for political benefits.

29. The Power Conferred by Article 32 of the Constitution of India

is in the widest terms and is not confined to issuing the high prerogative writs specified therein, but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, the Supreme Court would not be constraint to fold its hand in despair and plead inability to help the citizen who has come before it for judicial redress. The Court is not helpless to grant relief in a

case of violation of right to life and liberty and it should be prepared to “*forge new tools and device new remedies*”.

- 30.** For purpose of vindicating these precious fundamental rights, in so far as the Supreme Court is concerned, apart from Articles 32 and 142, which empower the Court to issue such directions as may be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by Supreme Court. Being protector of civil liberties of citizens, the Supreme Court has not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by **Part-III** in general and under Article 21 in particular, zealously and vigilantly. The Supreme Court and High Courts are the sentinels of justice and have been vested with extraordinary powers of judicial review to ensure that rights of citizens are duly protected. [**MANOHAR LAL SHARMA (2014) 2 SCC 532**]
- 31.** It is not merely right of individual to move the Supreme Court, but also responsibility of the Court to enforce fundamental rights. Therefore, if the petitioner satisfies the Supreme Court that his fundamental right has been violated, it is not only the ‘right’ and ‘power’, but the ‘duty’ and ‘obligation’ of the Court to ensure that

the petitioners fundamental right is protected and safeguarded.

[Ramchandran, Law of Writs, 6th Edition, 2006, Pg. 131, Vol-1]

- 32.** Power of the Supreme Court is not confined to issuing prerogative writs only. By using expression “in the nature of”, the jurisdiction has been enlarged. The expression “in the nature of” is not the same thing as the other phrase “of the nature of”. The former emphasis is essential in nature, latter is content with mere similarity. **[M. NAGRAJ & OTHERS v. UNION OF INDIA, (2006) 8 SCC 212]**
- 33.** **Supreme Court cannot refuse an application under Article 32,** merely on the grounds: **(i)** that such application has been made to Supreme Court in the first instance without resort to the High Court under Article 226 **(ii)** that there is some adequate alternative remedy available to petitioner **(iii)** that the application involves an inquiry into disputed questions of fact / taking of evidence. **(iv)** that declaratory relief i.e., declaration as to unconstitutionality of impugned statute together with consequential relief, has been prayed for **(v)** that the proper writ or direction has not been paid for in the application **(vi)** that the common writ law has to be modified in order to give proper relief to the applicant. **[K.K. KOCHUNNI v. STATE OF MADRAS, AIR 1959 SC 725 (729)] (vii)**

that the Article in part three of the Constitution, which is alleged to have been infringed, has not been specifically mentioned in petition, if the facts stated therein, entitle the petitioner to invoke particular article. **[PRESS TRUST OF INDIA, AIR 1974, SC 1044]**

34. Article 32 of the Constitution provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right because a person complaining of breach of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to undergo directory processes of proceeding from lower to the higher court as he has to do in other ordinary litigation. The Court is the protector defender & guarantor of fundamental rights of the people. It was held: *“the fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself.”* **[DARYAO v. STATE OF UP, AIR 1961 SC 1457]**

35. In another case, the Supreme Court held: *“the fundamental right to move this Court can therefore be described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In discharging the duties assigned to it, the Court has to play the role of a “sentinel on the qui vive” and it must always regard it as its solemn duty to protect the said fundamental right zealously and vigilantly.”* [**PREM CHAND GARG v. EXCISE COMMISSIONER UP AIR 1963 SC 996**].
36. **The Language used in Articles 32 and Article 226 is very wide** and the powers of the Supreme Court as well as of the High Court’s extends to issuing orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and

order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that regulate the exercise of jurisdiction in matter of granting such writ are observed [**T.C. BASAPPA v. T. NAGAPPA, AIR 1954 SC 440**]

37. An application under Article 32 cannot be thrown out simply

because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is sought in a particular form, nothing bars the Court from granting it in a different form.

Article 32 gives a very wide discretion in the matter of framing the writ to suit the exigencies of particular cases. [**CHARANJIT LAL**

CHOWDHURY v. UOI AIR 1951 SC 41] Even if petitioner has asked

for wider relief which cannot be granted by Court, it can grant such relief to which the petitioner is entitled to [**B.R. RAMABHADRIAH,**

AIR 1981 SC 1653]. Supreme Court has power to grant

consequential relief to do full and complete justice even in favor of those persons who may not be before the Court or have not moved

the Supreme Court. [**PRABODH VERMA, AIR 1985 SC 167**]

38. For the protection of fundamental right and rule of law, the Court

under this article can confer jurisdiction on a body or authority to

act beyond the purview of statutory jurisdiction or function,

irrespective of the question of limitation prescribed by the statute.

Exercising such power, Supreme Court entrusted the NHRC to deal with certain matters with a direction that the Commission would function pursuant to its direction and all the authorities are bound by the same. NHRC was declared not circumscribed by any condition and given free hand and thus act *sui generis* conferring jurisdiction of special nature [PARAMJIT KAUR AIR 1999 SC 340]

39. Simply because a remedy exists in the form of Article 226 for filing a writ in High Court, it does not prevent or bar an aggrieved person from directly approaching Supreme Court under Article 32. It is true that Court has imposed a self-restraint in its own wisdom on exercise of jurisdiction where aggrieved person has an effective alternative remedy in the form of Article 226. However, this rule which requires the exhaustion of alternative remedy is a rule of convenience and a matter of discretion rather than rule of law. It does not oust the jurisdiction of the Court to exercise its jurisdiction under Article 32. [MOHAMMED ISHAQ (2009) 12 SCC 748]
40. **The Supreme Court is entitled to evolve the New Principles of Liability** to make the guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person.

It was held that the court was not helpless and the wide powers given to the Court by Article 32 of the Constitution, which is fundamental right imposes a constitutional obligation on the Supreme Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables award of monetary compensation in appropriate cases, where that is the only redress available. The remedy in public law has to be more readily available when invoked by have-nots who are not possessed of the where withal for enforcement of their right in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, which more appropriate. Under Article 32, the Court can pass appropriate orders to do complete justice between parties even if it is found that petition filed is not maintainable in law. **[SAIHBA ALI (2003) 7 SCC 250]**

- 41.** Petitioner full name is Devkinandan Thakur Ji, Residence _____, Mathura-281004 Ph._____, Email: info@vssct.com, PAN:_____, AADHAAR:_____, Income Rs. __ LPA, Petitioner is Orator of Vedas Puranas Ramayana Bhagwat Geeta.

42. Petitioner has not filed any other petition either in this Court or in any other Court seeking same or similar directions as prayed.
43. Petitioner has no personal interests, individual gain, private motive or oblique reasons in filing this writ petition as PIL.
44. There is no civil, criminal or revenue litigation, involving petitioner, which has or could have legal nexus, with issue involved.
45. Petitioner has not submitted any representation to authorities as the issues involved are interpretation of the Constitution.

THE QUESTIONS OF LAW

1. *Whether Centre has disregarded the ruling in TMA Pai Case?*
2. *Whether Section 2(c) of National Commission for Minorities Act 1992 confers unbridled power to the Centre?*
3. *Whether there is a need to define the 'Minority' under Section 2(c) of National Commission for Minority Act 1992?*
4. *Whether declaring Muslims, Christians, Sikhs, Buddhists, Parsi and Jain as minority at national level, is arbitrary irrational and contrary to Articles 14, 15, 21, 29 and 30 of the Constitution?*
5. *Whether Centre has failed to apply TMA Pai & Bal Patil ruling evenly by excluding the followers of Bahaism, Judaism and Hinduism from purview of 'minority' status under Section 2(c) of the NCM Act?*

PRAYERS

It is respectfully prayed that this Hon'ble Court may be pleased to issue a writ order or direction or a writ in nature of mandamus to:

- a)** direct and declare that Section 2(c) of the National Commission for Minorities Act 1992, is void, unconstitutional and inoperative for being violative of Articles 14, 15, 21, 29 and 30 of the Constitution;
- b)** direct and declare that the Notification on Minority Community, issued by Ministry of Welfare, Government of India on 23.10.1993, is arbitrary irrational and contrary to Articles 14, 15, 21, 29, 30 of the Constitution, hence void, constitutional and inoperative;
- c)** direct the respondents to define '*minority*' and lay down '*guideline for identification of minorities at district level*', in order to ensure that only those religious and linguistic groups, which are socially economically politically non-dominant & numerically very inferior, get the benefits and protections guaranteed under Articles 29-30;
- d)** pass such other order(s) or direction(s) as Hon'ble Court may deem fit and proper in facts of the case and allow the cost to petitioner.

04.06.2022

(ASHUTOSH DUBEY)

NEW DELHI

ADVOCATE FOR PETITIONER

SYNOPSIS & LIST OF DATE

Religion wise population (%) of 9 States/UTs are as under:

Religion	Ladd.	Miz.	Laks	Kas	Nag.	Megh.	Arun.	Punj.	Man
Hindu	1	2.75	2.77	4	8.74	11.52	29.04	38.49	41.29
Islam	46	1.35	96.58	95	2.44	4.39	1.9	1.93	8.40
Christian	-	87.1	0.49	-	88.1	74.59	30.26	1.26	41.3
Budhism	50	8.51	0.02	0.20	0.34	0.33	11.76	0.12	0.25
Jainism	-	-	0.02	-	0.13	0.02	0.10	0.06	0.06
Sikhism	1	-	0.01	0.20	0.10	0.10	0.10	57.69	0.05
Judaism	-	-	-	-	-	-	-	-	0.07
Parsis	-	-	-	-	-	-	-	-	-
Others	2	0.23	0.01	0.60	0.24	9.05	27	0.35	0.38

Hindus are merely 1% in Laddakh, 2.75% in Mizoram, 2.77% in Lakshdweep, 4% in Kashmir, 8.74% in Nagaland, 11.52% in Meghalaya, 29% in Arunachal Pradesh, 38.49% in Punjab and 41.29% in Manipur but Central Government has not declared them 'minority' under Section 2(c) of the NCM Act and Section 2(f) of the NCMEI Act, thus Hindus are not protected under Articles 29-30 and cannot establish-administer educational institution of their choice.

On the other hand, by using unbridled power under S. 2(c) of the NCM Act and S2(f) of the NCMEI Act, Centre has arbitrarily declared Muslims as minority, who are 96.58% in Lakshdweep, 95% in Kashmir & 46% in Laddakh. Centre has declared Christians

as minority, who are 88.10% in Nagaland, 87.16% in Mizoram & 74.59% in Meghalaya so they can establish & administer education institution of their choice. Likewise, Sikhs are 57.69% in Punjab & Buddhists are 50% in Laddakh and they can establish & administer educational institution but not the followers of Bahaism & Judaism, who are merely 0.1% and 0.2% respectively. Therefore, petitioner is challenging validity of Section 2(f) of the National Commission for Minority Educational Institution Act 2004, for being arbitrary, irrational & contrary to Articles 14, 15, 21, 29, 30 of the Constitution.

In exercise of the unbridled powers conferred by Section 2(c) of the NCM Act, the Central Government through the Notification dated 23.10.1993 arbitrarily notified five communities viz. Muslims, Christians, Sikhs, Buddhists and Parsis as 'minority' community, without defining 'minority' and framing guidelines for identification at State level. In 2014, Jains were added in the list as sixth minority, though the 3 judges' bench of this Hon'ble Court in Bal Patil Case had very categorically refused to grant 'minority' status to them.

Followers of Judaism, Bahaism, Hinduism; who are minority in Laddakh, Mizoram, Lakshdweep, Kashmir, Nagaland, Meghalaya, Arunachal Pradesh, Punjab, Manipur; cannot establish & administer

educational institutions because of non-identification of 'minority' at State level in spirit of TMA Pai ruling, thus jeopardizing their rights guaranteed under Article 29-30. Their right under Articles 29-30 is being siphoned off illegally to majority population because Centre has not notified them 'minority' under the NCM & NCMEI Act. They are being deprived of their basic rights, guaranteed under Articles 29-30. On the other hand, Muslims are majority in Lakshadweep (96.58%) & Kashmir (96%) and there is significant population in Ladakh(44%), Assam(34.20%), Bengal(27.5%), Kerala (26.60%), UP (19.30%), Bihar (18%); are enjoying 'minority' status. Similarly, Christians are majority in Nagaland (88.10%), Mizoram (87.16%) Meghalaya(74.59%) and there is significant population in Arunachal Pradesh, Goa, Kerala, Manipur, Tamil Nadu & West Bengal but they are considered as 'minority'. Likewise, Sikhs are majority in Punjab and there is large population in Delhi, Chandigarh & Haryana. But, they are also treated as 'minority'. Buddhists are majority in Ladakh but they are treated as 'minority' under NCM Act and NCMEI Act.

Petitioner respectfully submits that for purpose of notifying a community as 'minority', Centre is empowered to consider claim of a particular community for being notified as such under S. 2(c) of

the NCM Act and S. 2(f) of the NCMEI Act, and cannot shirk its statutory responsibility. The legal position explained by the majority view in the TMA Pai Case that States can determine the minority status of a community, does not render the power of Centre under Section 2(c) of the NCM Act and Section 2(f) of the NCMEI Act.

It is respectfully submitted that denial of minority rights to the real minorities and arbitrary and unreasonable disbursement of minority benefits to the absolute majority, infringes upon the basic right to prohibition of discrimination on the grounds of religion race caste sex and place of birth [Article 15]; impairs the right to equality of opportunity in matters related to public employment [Article 16]; and also offends freedom of conscience and right to freely profess practice and propagate religion [Article 25]. Moreover, it erodes the obligation of the State 'to endeavor to eliminate inequalities in status facilities opportunities' [Article 38]. Therefore, Hon'ble Court may declare Section 2(c) of the NCM Act 1992 & Section 2(f) of the NCMEI Act 2004, arbitrary irrational void and unconstitutional.

Article 30 inter-alia states that minorities whether based on religion or language, shall have the right to establish and administer educational institutions, but the question is, to whom is this article

applicable? There are around 300 religions in the world and around 30 in India as well. Can every single one of them be considered as a religious minority under Articles 29-30? If yes, then why not Centre has declared the followers of Bahaism and Judaism, as minority?

The Preamble proclaims to guarantee every citizen '*liberty of thought, expression, belief, faith, worship*'. Articles 25-30 guarantee protection of religious, cultural, educational rights to majority and minority both. Keeping in view the constitutional guarantees for protection of cultural, educational & religious rights of every citizen, 'minority' was not defined in the Constitution. And instead of clearly defining 'minority' in the background of the constitutional scheme, Section 2(c) of the NCM Act and Section 2(f) of the NCMEI Act gives power to the Centre to notify any community as 'minorities', who might require special protection of religious, cultural & educational rights. Language of Section 2(c) of the NCM Act and Section 2(f) of the NCMEI Act is same and by using unbridled power under the Act, Centre arbitrarily notified 5 communities as minority on 23.10.1993.

Articles 14, 15, 19, 21 are golden corners of the Constitution. Therefore, Centre cannot arbitrarily grant minority status. Framers never contemplated to create a National Minority Commission and

Minority Affair Ministry on religion basis. Articles 25-30 guarantee cultural religious freedoms to majority & minority both. Moreover, unity & integrity is the goal of our Constitution. Hence, concept of religious minority at national level is very dangerous for unity and national integration. For the purpose of S.2(c) of the NCM Act and S.2(f) of the NCMEI Act, minority must be identified at State level in spirit of the Judgment in TMA Pai Case and Bal Patil Case.

Article 29 is assumed to relate to minorities but scope is not confined. It is available to *'any section of the citizens residing in the territory of India or any part thereof having distinct language script or culture'*. Hence, may include majority also, as Ray, CJ pointed out in Ahmedabad St. Xaviers Case [(1974) 1 SCC 717]. It is submitted that minority is *"a group/community which is socially economically politically non-dominant, inferior in population, deserves protection from likely deprivation of their religious, cultural and educational rights by the majority communities, who are likely to gain political power in a democratic form of government based on election"*.

Although the word 'minorities' occurs in the marginal note of Article 29, it does not occur in the text. The original proposal of the Advisory Committee in Constituent Assembly recommended thus:

“(1) Minorities in every unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.” [B. Siva Rao, “Select Documents” (1957) Vol. 2, Page 281]

But after the clause was considered by the Drafting Committee on 1st November 1947, it emerged with substitute of ‘section of citizens. [B. Siva Rao, Select Documents (1957) Vol. 3 pages 525-26, clause 23, Draft Constitution]. It was explained that the intention had always been to use ‘minority’ in a wide sense, so as to include (for example) Maharastrians who settled in Bengal. [7 CAD 923]

In Article 30(1), crucial words are: (a) minorities (b) establish and administer (c) educational institutions (d) of their own choice but the word ‘minority’ has not been defined in the Constitution. Motilal Nehru Report (1928) showed a prominent desire to afford protection to minorities but did not define the expression. Sapru Report (1945) also proposed, a Minority Commission but did not define minority [The Year Book on Human Right (1950), pg. 490].

The UN Sub-Commission on Prevention of Discrimination & Protection of Minorities has define ‘minority’ (by inclusive definition) thus: *(i) The term ‘minority’ includes only those non-*

document group in a population, which possess and which to preserve stable ethnic religious linguistic tradition or characteristics different from those of the rest of the population; (ii) such minorities should properly include a number of person sufficient by themselves to preserve such tradition or characteristics; and (iii) such minorities must be loyal to the State, which they are nationals.

Article 27 of the International Covenant on Civil and Political Rights does not define the expression but give the rights as under: “*In those States, in which ethnic, religious or linguistic minorities exists, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language*”. Petitioner submits that ‘minority’ means a ‘socially economically and politically non-dominant’ group, which is very inferior in population. It is relative term, represent the very inferior numbers, sections or group. In that sense, there may be political minority, religious minority and linguistic minority, etc.

After partition, Muslims & Christians, living in different parts, opted to continue to live in India. Therefore, at the time of giving final shape to the Constitution, framers felt it necessary to allay

apprehensions & fears in their mind by providing special protection of religious, cultural, educational rights. At that time such protection was found necessary. The framers accepted common citizenship regardless of religion language culture faith and engrafted Articles 25-30 to give security to all and not for the appeasement to some.

The Constitution of India is made by the Indians and for the Indians. Indian Constitution protects promotes propagates Indian languages not foreign languages, Indian religions not foreign religions, Indian traditions not foreign traditions, Indian culture not foreign culture. Globally, there are 6000 plus languages. Can we consider Chinese or French speaking person a linguistic minority? If yes, then India would end up having 100+ linguistic minorities. Linguistic minorities may be identified at State level and only Indian languages may be considered for protection under Articles 29-30 i.e. a Hindi speaking person is linguistic minority in Kerala and Tamil speaking in Bihar. The same notion may follow for religious minorities too & only India originated religions may be considered.

04.06.2022: S. 2(c) of the NCM Act 1992 is manifestly arbitrary,

irrational & contrary to Articles 14, 15, 21, 29, 30 of the

Constitution. Hence, this PIL in the interest of justice.