

REPORT OF THE SUB-COMMITTEE ON THE DEMAND TO
DECLARE HINDUS AS MINORITIES IN THE STATES WHERE
HINDUS ARE NOT IN MAJORITY.

A Writ Petition (Civil) No. 1064/2017 was filed by Shri Ashwani Kumar Upadhyay in the Supreme Court of India to declare Hindus as minorities in the States where they are not in a majority. The Supreme Court in its order dated 10.11.2017 has quoted the following:-

'Learned Counsel appearing the petitioner prays for liberty to withdraw this Writ Petition and instead approach the National Commission for Minorities. Liberty, as prayed for, is granted. The Writ Petition is accordingly closed on withdrawal with liberty as aforesaid'.

2. Thereafter, the representation dated 13.11.2017 was received from Shri Ashwani Kumar Upadhyay in which he has made the following prayers:-

- (a) Repeal the Notification on Minority Community (1993-SO No. 816 (E) F. No. 1/11/93- MC (D) dated 23.10.1993; as it is *ultra vires* the Constitution and its basic structure;
- (b) Exercise the power conferred by Section 2 (c) of the NCM Act and define 'Minority' in spirit of the United Nations General Assembly Resolution dated 18.12.1992 and the Supreme Court Judgement in Civil Appeal No. 4730/1999;
- (c) Frame guidelines for identification of minorities at State level and ensure that only those groups of persons which are socially economically and politically non-dominant and numerically inferior to the other groups, enjoy rights and protections guaranteed to minorities under Articles 29-30; and

- (d) In the alternative, exercise the power conferred by Section 2 © of the NCM Act to declare Hindus as the Minority for the States, where they don't form a majority population.

The same representation was also forwarded by MoMA as received from PMO vide letter dated 04.12.2017 for comments of National Commission for Minorities;

3. It was decided by the Commission that a Sub-Committee comprising of the following Members be constituted to examine the matter:-

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| (1) | Shri George Kurian` | - | VICE CHAIRMAN |
| (2) | Ms. Sulekha Kumbhare | - | Member |
| (3) | Shri Manjit Singh Rai | - | Member |

Shri Ajoy Kumar, Additional Secretary, NCM will assist the Sub-Committee as Secretary of the Sub-Committee.

4. Since then, the Sub-Committee met 7 times to examine the issue. In the meeting held on 14.06.2018, Shri Ashwani Kumar Upadhyay was also called by the Sub-Committee to hear his views on the matter.

5. Shri Ashwani Kumar Upadhyay had approached Hon'ble Supreme Court again seeking some relief vide Writ Petition No. 1064/2017. According to him, he had submitted a representation to NCM and not getting any response, has filed the present Writ Petition again on the basis of the liberty granted by the court's order dated 10.11.2017.

6. Hon'ble Supreme Court, instead of entertaining the Writ Petition, was of the view that at this stage, National Commission for Minorities should be asked to consider the representation filed by the petitioner and pass appropriate orders thereon. National Commission for Minorities should take a decision in the matter as early as possible, preferably, within a period of three months from the date of order i.e. 11.02.2019. Once the said exercise is completed, the petitioner will be free to avail of such remedies as available to him in law.

7. Thereafter, the Commission decided to form a new Sub-Committee with the following constitution to submit a report to the Government as desired by the Hon'ble Supreme Court:-

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| (i) | Shri George Kurian | - | Vice Chairman |
| (ii) | Shri Manjit Singh Rai | - | Member |
| (iii) | Shri Atif Rasheed | - | Member |

The new Sub-Committee has met 5 times from 28.02.2019 to 10.04.2019.

8. After going through the Petition and considering all the relevant judgements, the Sub-Committee is of the view that the prayers of the petitioner to the National Commission for Minorities are misplaced. In fact, the National Minority Commission does not have the jurisdiction to deal with the prayer of the petitioner. The repository of the powers to declare a community as 'a minority community' is vested with the Central Government. The said powers vested with the Central Government cannot be usurped by the National Commission for Minorities. Moreover, the definition of 'minority' in the relevant Act which is Section 2 (c) of the National Commission for Minorities Act, 1992 clearly states that a community is listed as 'minority' as notified as such by the Central Government. The said Section is reproduced hereunder:-

....2... (c) *"Minority", for the purposes of this Act, means a community notified as such by the Central Government;*

Apart from the above, on a careful reading of the judgement of the Hon'ble Supreme Court cited *infra*, it will be evident that the Supreme Court has discouraged the National Commission for Minorities from encouraging such claims from different communities. Instead, the Hon'ble Supreme Court has suggested the NCM to propose ways and means to help create such social conditions where the concept of majority and minority can be

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done away with altogether. Our answer to the specific prayers of the petitioner, are as follows:-

Prayer 'A' Repeal the Notification on 'Minority Community' (1993-SO No. 816 (F.No. 1-11-93 - MC (D) dated 23.10.1993) as it is *ultra vires* the Constitution and its basic structure.

Answer In **Bal Patil & Anr. Vs. Union of India & Ors. Case Appeal (Civil) No. 4730 of 1999**, the Hon'ble Supreme Court held that "the power under Section 2 (c) of the Act vests in the Central Government which alone, on its own assessment, has the right to accept or reject a claim for notifying a community as a minority community". Therefore, the prayer 'A' of the petitioner does not come into the jurisdiction of the NCM i.e. the Notification dated 23.10.1993 cannot be treated as invalid and *ultra vires* the Constitution.

Prayer 'B' Exercise the power conferred by Article 2 (c) of the National Commission for Minorities Act and define 'Minority' in the spirit of the UN General Assembly Resolution dated 18.12.1992 and the judgement of the Hon'ble Supreme Court in Appeal (Civil) No. 4730 of 1999.

Answer Hon'ble Supreme Court clearly stated"The Commission set up under the Act has several functions to perform, which are provided, in section 9. The functions entrusted are for ensuring

progress and development of minorities and protecting their religious, cultural and educational rights. There is no specific function conferred under Section 9 on the Commission to identify any community as a 'minority' and recommend to the Central Government that it be so notified under Section 2 (c) of the Act". (*Bal Patil & Anr. Vs. Union of India & Ors.* Appeal (Civil) No. 4730 of 1999) As per the said judgement of the Hon'ble Supreme Court, the Commission is not in a position to consider the Prayer (B) of the petitioner.

Prayer 'C' Frame guidelines for identification of minorities at State level and ensure that only those group of persons which are socially, economically and politically non-dominant and numerically inferior to the other groups, enjoy rights and protections guaranteed to minorities under Articles 29 and 30 of the Constitution.

Answer Hon'ble Supreme Court has held that "the constitutional ideal which can be gathered from the group of Articles in the Constitution under Chapters of Fundamental Rights and Fundamental Duties, is to create social conditions where there remains no necessity to shield or protect rights of minorities or majority. The above-mentioned constitutional goals have to be kept in view by the Minority Commissions set up at the Central or State levels. Commissions set up for minorities have

to direct their activities to maintain integrity and unity of India by gradually eliminating the minority and majority classes. If only on the basis of different religious thoughts or less numerical strength or lack of health, welfare, education, power or social rights, the claim of a section of society to the status of 'minority' is considered and conceded, there would be no end to such claims in a society as multi-religious and multi-linguistic as India is. A claim by one group of citizens would lead to a similar claim by another group of citizens and conflict and strife would ensue." (*Bal Patil vs Union of India*)

As per the judgement of the Hon'ble Supreme Court mentioned above, the NCM is not in a position to consider the prayer of the Petitioner.

Prayer 'D' In the alternative, exercise the power conferred by Section 2 (c) of the NCM Act to declare Hindus as the 'minority' where they do not form a majority of the population.

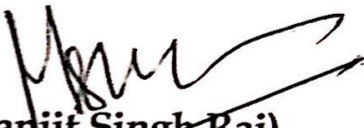
Answer The Hon'ble Supreme Court in *Bal Patil vs. Union of India* held that "the Minority Commission instead of encouraging claims from different communities for being added to the list of notified minorities under the Act, should suggest ways and means to help create social conditions where the list of notified

minorities is gradually reduced and done away with altogether."

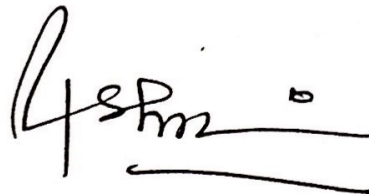
As such, the Hon'ble Supreme Court has directed the National Commission for Minorities to desist from taking any decision for notifying a community as a minority community. Therefore, the NCM is not able to take a decision about the prayers made by the Petitioner.



(George Kurian)
Chairman (Sub-Committee)



(Manjit Singh Rai)
Member



(Atif Rasheed)
Member