

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 12TH DAY OF JULY 2021 / 21ST ASHADHA, 1943

W.P.(C) NO. 13730 OF 2021

PETITIONER:

HINDU SEVA KENDRAM REG. NO.563/IV/2019  
68/991, 2ND FLOOR, THARAKANS COMPLEX,  
K.K. PADMANABHAN ROAD, ERNAKULAM NORTH P.O.,  
KOCHI-682 018, REPRESENTED BY ITS TREASURER,  
SREEKUMAR MANKUZHY.

BY ADVS. SHRI R. KRISHNA RAJ  
SRI. E. S. SONI  
KUMARI SANGEETHA S. NAIR

RESPONDENTS:

1. UNION OF INDIA,  
REPRESENTED BY ITS SECRETART TO GOVERNMENT,  
HUMAN RESOURCE DEVELOPMENT,  
NEW DELHI-110 001.
2. STATE OF KERALA,  
REPRESENTED BY ITS CHIEF SECRETARY,  
KERALA GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695001.
3. THE NATIONAL COMMISSION FOR BACKWARD CLASSES,  
REPRESENTED BY ITS SECRETARY,  
TRIKOOT-1, BHIKAJI CAMA PLACE, NEW DELHI- 110 066.

R1 BY ADV. SRI. P. VIJAYAKUMAR,  
ASSISTANT SOLICITOR GENERAL OF INDIA  
R2 BY ADVOCATE GENERAL SRI. K. GOPALAKRISHNA KURUP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**"C.R."****JUDGMENT****S. Manikumar, CJ**

Instant public interest writ petition is filed for the following reliefs:

- (i) Issue a writ of mandamus or any other appropriate writ, order or direction, to declare that Muslims, Latin Catholics, Christian Nadars, and Scheduled Castes converted to any denomination in Christianity, are not entitled to be treated as backward classes/socially and educationally backward classes in the State of Kerala.
- (ii) Issue a writ of mandamus or any other appropriate writ, order or direction, commanding respondents 1 to 3, to remove Muslims, Latin Catholics, Christian Nadars and Scheduled Castes converted to any denomination in Christianity from the list of backward classes/socially and educationally backward classes and stop providing reservation to the members of those communities for employments in Government services and public sector undertakings and in any instrumentalities under the State, as well as for education, in the State of Kerala.
- (iii) Issue a writ of mandamus or any other appropriate writ, order or direction to the 3<sup>rd</sup> respondent, to prepare afresh the list of backward classes/socially and educationally backward classes of the State of Kerala eligible for reservation under Articles 15(4) (5) and 16(4) of the Constitution of India, taking into account the present social and economic status of these communities, within a time limit to be fixed by this Court.

- (iv) Issue a writ of mandamus or any other appropriate writ, order or direction to respondents 1 and 2, to stop all the financial aids given to Muslims, Latin Catholics, Christian Nadars, and Scheduled Castes converted to any denomination in Christianity for educational and other social welfare activities based on Sachar Committee and Paloli Committee reports considering them as socially and educationally backward.

2. Facts leading to the filing of instant writ petition are that petitioner is a registered trust established for the purpose of fighting injustice against Hindu community. This writ petition is filed against the reservation provided to certain communities, including Muslims, treating them as socially and educationally backward, in spite of the fact that they are not socially and educationally backward. Grievance of the petitioner is that Muslims and certain sections of Christians are provided with reservation in education, as well as in jobs, in the State of Kerala, treating them as socially and educationally backward, though majority of them are not socially or educationally backward.

3. Referring to Article 15(4) of the Constitution of India, petitioner has further stated that the State shall not be prevented from making any special provision for the advancement of any socially and educationally backward class of citizens. He also referred to Article 16(4) of the Constitution of India and submitted that the State shall not be prevented from making any provision for

the reservation of appointments or posts, in favour of any backward classes of citizens, which, in the opinion of the State, is not adequately represented in the services.

4. According to the petitioner, based on the above two provisions, the State of Kerala has decided to include Muslims, Latin Catholics and Nadars, included in S.I.U.C. (now the entire Christian Nadars), and Scheduled Castes converted to Christianity, in the list of other backward classes, for the purpose of providing education, as well as job. Hence, the primary condition of being backward class is, that particular caste should be socially and educationally backward, and the first criterion should be that the communities viz., Muslims, Latin Catholics and Christian Nadars of all denominations should be educationally and socially backward.

5. Petitioner has further stated that only if they are educationally and socially backward, they can be considered as backward class, enabling them for reservation under Article 16(4) of the Constitution of India. That is to say, only backward classes, as prescribed in Article 15(4), shall be considered to be eligible, for reservation of appointments, mentioned under Article 16(4).

6. Petitioner has further stated that State of Kerala had included the above communities, viz., Muslims, Latin Catholics, Christian Nadars of all the

denominations, and Scheduled Castes converted to Christianity (hereinafter called as 'Communities'), by virtue of Kerala State Commission for Backward Classes Act, 1993, and the Kerala State Backward Classes (Reservation of Appointments or Posts in the Services under the State) Act, 1995.

7. Inviting our attention to the meaning of the word 'list' in the Kerala State Commission for Backward Classes Act, petitioner has stated that list means the list of other backward classes declared as such by the Government from time-to-time, for the purpose of making provisions of reservations of appointments or posts in favour of backward classes of citizens which in the opinion of the Government are not adequately represented in the services.

8. Petitioner has also referred to Section 11 of the Act which prescribes that the Government may, at any time, and shall, at the expiration of 10 years from the coming into force of this Act, and every succeeding period of 10 years thereafter, undertake revision of the list, with a view to exclude from such list those classes, who have ceased to be backward classes or for including in such list new backward classes.

9. According to the petitioner, the question now raised before this Court is as to whether, the communities mentioned in this writ petition, can be treated as socially and educationally backward. For that purpose, several social

and educational indications are placed by the petitioner for consideration. As per 2011 census, the population of Muslim Community in Kerala is 26.56%. In Malappuram district, the population of Muslim Community is 70.24%, in Kasaragod district, it is 42.44%, in Kozhikode district, it is 35.4%, in Wayanad, it is 31.8%. As early as in the year 1970, 53.31 % of Muslim populations in Kerala are either employed, employers or salaried. Out of the total 200 aided colleges, that exists in the State of Kerala, 46 colleges are owned by Muslim Community. Out of 8183 (LP, UP, HS, HSS, VHSE) schools, 1500 schools belong to Muslims. Out of the total 297 self financing colleges, Muslim Community own 58 of them. The Government, both State as well as Central, are providing huge incentives to the students of the Muslims for their educational purpose. Because of these incentives the Government had given the educational status of the Muslims has increased especially after the Muslims started getting employment in Gulf countries. The inflow of finance has increased, especially from the Gulf countries, and the economic conditions of the Muslims have also increased after the inflow of gulf money.

10. Petitioner has further stated that as far as the Scheduled Castes converted Christianity is concerned, it is absolutely illegal and unjust as there is no caste exist in Christianity, and once a Scheduled Caste person converts to

Christianity, he ceases to be a Hindu, and therefore, he ceases to be a Scheduled Caste also. According to the petitioner, the reservation given to this group is effectively for the purpose of encouraging conversion.

11. Petitioner has further stated that at present, the situation in Kerala is that a person, who belongs to any forward caste in Hinduism i.e. Nairs or even Brahmins, who are not eligible for reservation, will become eligible for reservation if they convert as Muslim or Christian. Socially and educationally backward Hindus suffered untouchability in Kerala. However, neither the Muslims nor the Christians had any social backwardness, when compared to Scheduled Castes and backward Hindus. Hence, according to the petitioner, Muslims and Christians in Kerala never had any social disability or backwardness, at any point of time.

12. Petitioner has further stated that as far as education is concerned, the educational reach of Muslims and Christians have enhanced by leaps and bounds, especially after modernization of Muslim culture, and setting up of so many educational institutions by the Muslim Educational Society, and all the denominations of Christian Churches and wealthy individuals, and a group of individuals, from among the Muslims and Christians, under the protection of minority rights, guaranteed under Articles 29, 30 and 15(5) of the Constitution

of India. Hence, according to the petitioner, Muslims and Christians in Kerala are neither socially nor educationally backward, as per the criteria mentioned in Article 15(4) and 16(4) of the Constitution of India.

13. Petitioner has further contended that the Government is bound to review the status of the communities, as early as in the year 2003 and thereafter, 2013, to find out as to whether, there is any progress in the alleged backwardness of the communities. However, the Government have not done anything in the matter. Instead, they are simply keeping on granting reservation, without finding out as to whether they have progressed and ceased to be a backward class. Petitioner has placed reliance on Exhibit-P2 report of the Sachar Committee and submitted that the socio, economic, and educational status of the Muslim Community in India was studied by the Sachar Committee and in its report, it is stated that, in the year, 2006, Muslim Community, in the State of Kerala, has achieved educational forwardness, almost equal to the forward communities in Kerala as per 2001 census. As far as socially backwardness is concerned, the committee has not specifically reported the the Muslim Community in Kerala is socially backward, as compared to the forward communities.

14. Petitioner has also stated that in a study conducted in the Centre for



Development Studies, owned by the State Government, it was found that the total remittance of Muslim Community is far higher than Hindus, in spite of the fact that the population of Hindus is more double than that of the Muslim Community. It was also found that the above remittance rate is because 990383 numbers of Muslims as of 2014, are working abroad. In such circumstances, this writ petition is filed for the reliefs stated supra.

15. On the above pleadings, petitioner has raised the following grounds:

A. The Hon'ble Apex Court has categorically held that there is no restriction in granting reservation to a particular religion treating them as backward class. But, the Hon'ble Apex Court has categorically held that it can be done only if it is found by the Government on materials that those communities are socially and educationally backward. In the State of Kerala, the communities mentioned in the writ petition are treated as socially and educationally backward and are being given reservation for education and job treating them as Other Backward Classes. There was absolutely no reason for the communities mentioned in this writ petition to have any social or educational backwardness or disability since the date of inception of the State of Kerala. It is so because there was absolutely no social disability or backwardness pushing the members of these communities from having education. It was the self-imposed restriction of the Muslim community which has given more importance to Madrassa education which resulted in the backwardness in education among the Muslims in the earlier

period since its inception. But this as mentioned in this writ petition has changed especially after the migration of a large chunk of Muslims to the Gulf countries for employment. The financial as well as the mindset of the Muslims community at large has changed drastically since then which resulted in several Muslims organizations starting a lot of educational institutions resulting in the large-scale improvement of educational quality among the members of the communities mentioned in this writ petition, especially Muslims. As mentioned in the writ petition the number of educational institutions owned by the Muslim community would go to show that they are educationally, financially, and socially forward, compared to the majority Hindus. The educational institutions and the entrepreneurship owned by Muslim community are much higher in ratio compared to the Hindus in the State of Kerala though the Hindu community is marginally high in percentage of population. This shows that there is absolutely no justification in treating the Muslim community as a backward division in the year 2021.

B. It is contended in W.P.(C).No.19937/2019, the Muslim community is not adequately represented in the services, in the State of Kerala. Though they have a population of 26.56%, in the State of Kerala, they do not have representation compared to this percentage of population, and therefore, reservation of Muslims, in the services of the State of Kerala, has to be increased. It is humbly submitted that the representation in the service is not based on the population of the community, but it is based on the backwardness of the community.

C. It is further contended that as mentioned earlier, the data available with the State Government would go to show that majority of the Muslim community that exists in the State of Kerala are educationally and socially forward. There are absolutely no Ministry/Legislature that exists in the State of Kerala, without adequate representation from the Muslim communities, as Ministers and M.L.As. Hence, according to the petitioner, Muslim community is not only socially and educationally forward, but they are politically and financially forward also, when compared to other communities in the State of Kerala. The Muslims and Christians are adequately represented in the judiciary, in the State of Kerala. At present, there are 33 Muslim MLAs in the Assembly and there are a lot of IAS and IPS officers in the Kerala cadre.

D. It is further contended that Government of India have categorically prescribed the methods by which creamy layer in a community, which is included in the list of backward classes, is to be found out. It categorically says that the process has to be done by an Executive Magistrate not below the rank of Tahsildar. However, in the State of Kerala, the process is being carried out by the Village Officer. According to the petitioner, it is illegal and is being widely misused by the members of Muslim/Christian communities, as they are now able to suppress the fact that they are socially, educationally, and politically forward, to enable them to get the reservation, which they are not entitled to.

16. Based on the above, Mr. R. Krishna Raj, learned counsel for the petitioner, made submissions.

17. Inviting the attention of this Court to the questions framed by a Constitutional Bench of the Hon'ble Supreme Court in **Dr. Jaishri Laxmnrao Patil and others v. The Chief Minister & Others** [Judgment in Civil Appeal Nos.3123 of 2020 and other connected cases dated 5.5.2021] (hereinafter called as '**Maratha's** case', for short), and the answers to the same, in particular Point Nos. 4 & 5, Mr. K. Gopalakrishna Kurup, learned Advocate General, submitted that the subject issues are covered by the said decision; the President has not prepared and published a list under Article 342A of the Constitution of India; that the President i.e. the Central Government has the power to ultimately identify the socially and educationally backward classes; and that till such exercise is completed, the socially and educationally backward classes list prepared by the States would govern the field.

18. With reference to the above, learned Advocate General also invited the attention of this Court to Article 342A of the Constitution, which speaks about socially and educationally backward classes.

19. Inviting our attention also to the judgment of this Court in W.P.(C) Nos.35220 of 2017 and 19937 of 2019 dated 08.09.2020, learned Advocate General further submitted that when the abovesaid writ petitions were filed for issuance of a writ of mandamus, directing the Union of India, represented by

Secretary, Ministry of Social Justice and Empowerment, New Delhi, and State of Kerala, represented by the Chief Secretary, Thiruvananthapuram (respondents 1 and 2 therein), to publish the result of socio-economic survey, necessitating the disposal of Exhibits-P2 & P3 representations dated 06.05.2008 and 21.08.2012 respectively, and for other consequential reliefs, after considering the reports of Justice Rajinder Sachar Committee and Justice Narendran Commission, stand of the Census Department, Government of India, statutory provisions of Kerala State Commission for Backward Classes Act, 1993 (Act 11 of 1993), and Articles 338 and 342A of the Constitution of India, this Court has already issued directions to the Kerala State Commission for Backward Classes, as well as the Central Government, to finalise the evaluation of socially and educationally backward classes and submit recommendations to the State Government. Union and State Governments were also directed to take necessary steps for finalisation of socio-economic study, taking into account all the parameters required for identification of socially and educationally backward classes, within the State of Kerala, at the earliest, and submit a report.

20. Learned Advocate General further placed on record the Act, 1993, pertaining to the constitution of National Commission for Backward Classes and the rules framed thereunder, for perusal.

21. Inviting our attention to the Gazette Notification dated 10.09.1993, learned Advocate General submitted that some of the communities have been identified as backward classes/State-wise socially and educationally backward classes, and accordingly, reservation as per the orders of Government of India and State is provided. Learned Advocate General also submitted that as per the said notification, Mappila and Latin Catholics have already been identified as socially and educationally backward communities, for which reservation is provided.

22. Learned Advocate General further submitted that the prayers sought for by the petitioner in the instant writ petition are wholly misconceived. With reference to the Constitutional provisions, more so, Article 342A of the Constitution of India, he also submitted that the President of India is the authority to specify the socially and educationally backward classes. He further submitted that the Hon'ble Apex Court, at paragraph 121 of the judgment in ***Maratha's*** case, has issued directions.

23. Referring to Article 142 of the Constitution of India, learned Advocate General further submitted that the decision in ***Maratha's*** case is binding on all States and, therefore, instant writ petition, filed for the reliefs stated supra, is not maintainable.

24. He also submitted that without ascertaining the factual and legal position, as regards the power of the President of India, specifying the socially and educationally backward classes, with respect to any State or Union Territory, as provided in Article 342A of the Constitution of India, and as to how, reservation is extended to Mappila and Latin Catholics and other communities in the Government of India Gazette Extraordinary dated 10.09.1993, and hitherto followed by the State Government, as per the reservation policy, writ petition has been filed, without any research and on preponderance theory of allegedly causing injustice to the people belonging to a majority community. For the abovesaid reasons, he prayed for dismissal of the writ petition with costs.

25. Heard learned counsel for the parties and perused the pleadings and material on record.

26. On the facts pleaded, let us consider a few Constitutional provisions.

27. Article 15 of the Constitution of India speaks about prohibition of discrimination on the grounds of religion, race, caste, sex or place or birth, and it reads as under:

**“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place or birth.-**

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.



(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

*Explanation.*— For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage."

28. Article 16 of the Constitution of India, which speaks about equality of opportunity in matters of public employment, reads thus:

**"16. Equality of opportunity in matters of public employment.-**

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from

considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category."

29. Article 338 of the Constitution of India, which speaks about National Commission for Scheduled Castes, reads thus:

**"338. National Commission for Scheduled Castes**

(1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission —

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working

of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint

referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- (f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes.

(10) In this article, references to the Scheduled Castes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.”

30. Article 338A of the Constitution of India, which speaks about National Commission for Scheduled Tribes, reads thus:

**“338A. National Commission for Scheduled Tribes**

(1) There shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-

Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission —

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of

any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely: —

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;



(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.”

31. Article 338B of the Constitution of India speaks about National Commission for Backward Classes, and it reads thus:

**“338B. National Commission for Backward Classes**

(1) There shall be a Commission for the socially and educationally backward classes to be known as the National Commission for Backward Classes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission—

- (a) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;
- (c) to participate and advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;
- (d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and
- (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the State Government which shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- (f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting the socially and educationally backward classes.”

32. Article 340 of the Constitution of India, which speaks about the appointment of a Commission, to investigate the conditions of backward classes, reads thus:

**"340. Appointment of a Commission to investigate the conditions of backward classes.-**

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament."

33. Article 341 of the Constitution of India speaks about Scheduled Castes and it reads thus:

**“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 State 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.”

34. Likewise, Article 342 of the Constitution speaks about Scheduled Tribes and it reads thus:

**“342. Scheduled Tribes**

(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 tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

35. Article 342A of the Constitution of India, which speaks about socially and educationally backward classes, reads thus:

**"342A. Socially and educationally backward classes**

(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 socially and educationally backward classes, which shall for the purposes of the Constitution deemed to be socially and educationally backward classes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) and socially and educationally backward classes, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

36. Article 366 of the Constitution of India reads thus:

**“366. Definitions**

In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

xx xxx xxxx

(26C) “socially and educationally backward classes” means such backward classes as are so deemed under article 342A for the purposes of this Constitution.”

37. Now, we shall consider the relevant portions of the judgment in ***Maratha’s*** case, on the aspect of power of the State Government to legislate or classify in respect of “any backward classes of citizens” and also the power of the State Legislature to legislate in relation to “any backward class” under Article 15(4) and 16(4) of the Constitution of India. For brevity, we reproduce the points (4) and (5) considered by the Hon'ble Apex Court in the judgment in ***Maratha’s*** case and the decision thereof.

**“Re: Point No.4 Whether Article 342 of the Constitution abrogates State power to legislate or classify in respect of “any backward class of citizens” and hereby affect the federal policy/structure of the Constitution of India? And**

**Point No.4 Whether, States' power to legislate in relation to “any backward class” under Articles 15(4)**

**and 16(4) is anyway abridged by Article 342(A) read with Article 366(26c) of the Constitution of India?**

38. After considering the relevant Constitutional provisions, contentions of the parties therein, reports of the previous Commission set up to identify Socially and Educationally Backward Classes, interpretation of provisions similar to Article 342A, Articles 341 and 342 of the Constitution of India, Pre-102<sup>th</sup> Amendment to the Constitution of India, in relation to socially and educationally backward classes, and other issues, the Hon'ble Apex Court, at paragraphs 175 and 176 of the judgment in *Maratha's* case, held as under:

“175. This Court is also of the opinion that the change brought about by the 102nd Amendment, especially Article 342A is only with respect to the process of identification of SEBCs and their list. Necessarily, the power to frame policies and legislation with regard to all other matters, i.e. the welfare schemes for SEBCs, setting up of institutions, grants, scholarships, extent of reservations and special provisions under Article 15(4), 15(5) and 16(4) are entirely with by the State Government in relation to its institutions and its public services (including services under agencies and corporations and companies controlled by the State Government). In other words, the extent of reservations, the kind of benefits, the quantum of scholarships, the number of schools which are to be specially provided under Article 15(4) or any other beneficial or welfare scheme which is conceivable under Article 15(4) can all be achieved by the State



through its legislative and executive powers. This power would include making suggestions and collecting data – if necessary, through statutory commissions, for making recommendations towards inclusion or exclusion of castes and communities to the President on the aid and advice of the Union Council of Ministers under Article 342A. This will accord with the spirit of the Constitution under Article 338B and the principle of cooperative federalism [**Jindal Stainless Ltd. v. State of Haryana**, (2016 SCC OnLine SC 1260); **State of Rajasthan v. Union of India** (1978) 1 SCR 1] which guides the interpretation of this Constitution.

176. The President has not thus far prepared and published a list under Article 342A (1). In view of the categorical mandate of Article 342A – which has to be necessarily read along with Article 366(26C), on and from the date of coming into force of the 102<sup>nd</sup> Amendment Act, only the President, i.e. the Central Government has the power of ultimately identifying the classes and castes as SEBCs. This court is conscious that though the amendment came into force more than two years ago, as yet no list has been notified under Article 342A. It is also noteworthy that the NCBC Act has been repealed. In these circumstances, the Court holds that the President should after due consultation with the Commission set up under Article 338B expeditiously, publish a comprehensive list under 342A(1). This exercise should preferably be completed with utmost expedition given the public importance of the matter. Till such time, the SEBC lists prepared by the states would continue to hold the

field. These directions are given under Article 142, having regard to the drastic consequences which would flow if it is held that all State lists would cease to operate. The consequences of Article 342A would then be so severe as to leave a vacuum with respect to SEBCs' entitlement to claim benefits under Articles 15 and 16 of the Constitution."

39. Thus, from the above, it could be deduced that the Hon'ble Apex Court has categorically held that till the President, in exercise of the powers under Articles 342A of the Constitution of India, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes, in relation to that State or Union Territory, as the case may be, the SEBC lists prepared by the States would continue to hold the field.

40. In W.P.(C) No.19937 of 2019, Minority Indians Planning and Vigilance Commission Trust, represented by the Chairman, Aluva, has sought for the following reliefs:

- i. Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the 1<sup>st</sup> respondent State to revise the list of reservation of backward classes in accordance with Section 11 of the Kerala State Commission for Backward Classes Act, 1993.
- ii. Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the 2<sup>nd</sup> respondent,

Kerala State Commission for Backward Classes, Thiruvananthapuram to examine the complaint/representation of the petitioner and other backward class organisations in accordance with Section 9 of the Kerala State Commission for Backward Classes Act, 1993;

- iii. Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the respondents in view of Exhibits-P9 and P10 reply to make available a socio economic caste survey report forthwith;
- iv. Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the respondents to determine the degree of backwardness of Muslim Community and declare that the Muslim Community is entitled to get all benefits available to SC/ST;
- v. Issue a writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the 1<sup>st</sup> respondent State to conduct special recruitment for Muslim Backward Classes under Rule 17A of the Kerala State and Subordinate Service Rules, 1958;
- vi. Issue as writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the respondents to determine the degree of backwardness of SC/ST and fix their position in Exhibit-P3 Rotation Chart accordingly;
- vii. Issue as writ or order or direction in the nature of mandamus or any other appropriate writ/direction to the respondents to give the Muslim Community second chance after first open competition instead of 6<sup>th</sup> chance given in Exhibit P3 Rotation Chart and to raise the percentage of reservation of Muslim Community from 12% to 18%."

41. After considering the statutory provisions of Kerala State Commission for Backward Classes, 1993 (Act 11 of 1993), reports of Justice Rajinder Sachar Committee and Justice Narendran Commission, submissions of Census Operations, stand of the Central Government, amended Article 338 of the

Constitution of India, Article 338B by which National Commission for Backward Classes was constituted, and Article 342A of the Constitution of India, a Hon'ble Division Bench of this Court *vide* judgment dated 8.9.2020, at paragraphs 38 to 47, held as under:

"38. Section 9 coming under Chapter III of the Act speaks about the functions and Powers of the Commission and the same reads thus:

**"9. Functions of the Commission.-** (1) The Commission shall examine requests for inclusion of any class of citizens as a backward class in the list and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Government as it deems appropriate.

(2) The advice of the Commission shall ordinarily be binding upon the Government."

39. Section 11 of the Act reads thus:

**"11. Periodic revision of lists by Government.** (1) The Government may at any time, and shall at the expiration of ten years from the coming into force of this Act and every succeeding period of ten years thereafter undertake revision of the lists with a view to excluding from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes.

(2) The Government shall, while undertaking any revision referred to in sub-section (1) consult the Commission."

40. The scheme of the Kerala State Commission for Backward Classes Act, 1993, makes it clear that the Kerala State Commission for Backward Classes was constituted by the Government to exercise the powers conferred on and to perform the functions assigned to it under the Act. The Commission is headed by a Chairman, who is or has been a Judge of the Hon'ble Supreme Court or the High Courts appointed by

the Government and consists of the Secretary to Government in charge of backward classes, Welfare Department of the Government, and two persons having special knowledge in matters relating to backward classes to be nominated by the Government. The provisions contained in the Kerala State Commission for Backward Classes Act, 1993, make it amply clear that the Commission is an autonomous body functioning in order to identify the other backward classes declared as such by the Government from time to time for the purposes of making provisions for reservation of appointments or posts in favour of OBC citizens, which, in the opinion of the Government, are not adequately represented in the services under the Government and any local or other authority within the State or under the control of the Government. The intention, purpose and the purport of Act, 1993 are obviously to discharge the obligations of the Government, created under Articles 15 and 16 of the Constitution of India, which read thus:

**“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-**(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to--

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the

advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]”

**16. Equality of opportunity in matters of public employment.**-(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes, which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from

considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

41. That apart, Article 340 of the Constitution prescribes for the appointment of a Commission to investigate the conditions of and the difficulties faced by social and educationally backward classes, and to make appropriate recommendations, which read thus:-

**"340. Appointment of a Commission to investigate the conditions of backward classes.--**(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament."

42. Therefore, it is explicit and clear that by constituting the Commission under Act, 1993, it is duty bound to discharge the functions of identifying the backward classes, which is, by virtue of Article 340 of the Constitution of India, an obligation on the part of the Commission. However, the fact remains that without the report of socio economic study conducted by the respective statutory authorities of the Central and State Governments, and providing the report to the Commission after publication, the Commission may not be in a position to discharge its functions effectively and fruitfully. The correspondences exchanged by and between the parties, which are elaborately discussed above, would make it clear that the report of the socio economic study was being protracted by the authorities concerned, in spite of the earnest efforts made by the Commission. One thing is clear that after the decision of the Hon'ble Apex Court in Indira Sawhney's case (cited supra), State is duty bound to constitute the 3<sup>rd</sup> respondent Commission and undertake review of backward classes remaining in the State periodically, identify their backwardness and provide sufficient reservation in the public employment. The fact discussion made above would also make it clear that the 3<sup>rd</sup> respondent Commission under Act, 1993 in its exercise has found that some of the backward communities are entitled for reservation which was pointed out to the State Government. Therefore, it can be seen that there is a clear compelling situation that is remaining with the Commission to conduct an evaluation and advice the Government accordingly. But, for reasons aforesaid, the Commission is unable to review and advice the Government. In our considered opinion, there is no justification for the State Government to sleep over the matter of considerable importance,



representation in Government services, by providing reservation, and the obligation created on the State as per Articles 15 and 16 r/w. 340 of the Constitution of India.

43. It is very significant to note that Article 338 of the Constitution was amended and a new Article 338-B has been introduced by which, National Commission for Backward Classes was constituted. That apart, Article 342A after Article 342 have been brought into force, stipulating that 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 socially and educationally backward classes which shall for the purposes of the Constitution be deemed to be socially and educationally backward classes in relation to that State or Union Territory, as the case may be. Other significant provisions have been incorporated in the Constitution to protect the interest of socially and educationally backward classes. The National Commission for Backward Classes has been assigned with duties under Article 338B of the Constitution, which read thus:

**“(5) It shall be the duty of the Commission**

- (a) to investigate and monitor all matters relating to the safeguards provided for the socially and educationally backward classes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes;
- (c) to advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports the recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the socially and educationally backward classes as the President may, subject to the provisions of any law made by Parliament, by rule specify.”

44. On a reading of the said provision, it is clear that the National Commission is to participate and advice on the socio economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union and the State. Reading together, the provisions of Act, 1993, and the Amendment Act, 2018 as discussed above, would make it clear that there is a clear obligation and duty cast upon the Commission to study the socio-economic report and make necessary recommendation. However, it is equally important to note that unless and until a report is furnished to the Commission in respect to the socio-economic study, the Commission may not be able to proceed with, for the identification of socially and educationally backward classes, enabling the Commission to make necessary advice to the Government under Act, 1993 for making reservation in public services.

45. In view of the above, we are of the considered opinion that the issue can be sorted out only by the efforts of the Commission and other stakeholders, as discussed above. Therefore, the Commission cannot be directed to proceed with the enquiry to be undertaken as per

Act, 1993, without the receipt of a socio-economic study report from the appropriate authority. Therefore, the reliefs sought for by the petitioners in that regard cannot be granted as of now. However, the Union and the State Governments are directed to take necessary steps for finalisation of the report of socio-economic study taking into account all parameters required for identification of socially and educationally backward classes within the State of Kerala, at the earliest, and submit a report to the 3rd respondent Commission. After submission of the said report, by the authorities concerned, Kerala State Commission for Backward Classes and the Central Government shall take all earnest endeavour to finalise the evaluation and submit recommendations to the State Government. The above exercise, by all concerned, should be completed, within six months from today. Therefore, we hope that the State Government and all the stakeholders will do the necessary, in order to finalise the report of socio-economic study of socially and educationally backward classes, as observed and directed above.

46. Even though various statistics and figures are pointed out by the petitioners in the writ petitions, with respect to the percentage of backward classes and their shortfall in public services, those are all factual circumstances, which will have to be taken into consideration by the Commission, after receipt of the socio-economic study report. Moreover, such aspects are eclipsed by various facts and figures, which are unable to be deciphered by this Court, in exercise of its power under Article 226 of the Constitution of India, especially due to the fact that the adjudication done by this Court is only a summary nature of proceedings. Therefore, it is clear that without taking evidence and identifying the factual circumstances by a fact finding authority, the

relief sought for, with respect to percentage wise appointment, in the public services, cannot be undertaken by this Court.

47. Before parting, we also remind that the State Government is duty bound, as per Section 11 of Act, 1993 for periodical revision of list, at the expiration of ten years of coming into force of the Act and every succeeding period of ten years with a view to exclude from such list those classes, who have ceased to be backward classes or for including in such list new backward classes. As we have pointed out earlier, the State Government should bear in mind the said provision is a corollary of Articles 15 and 16 r/w. Article 340 of the Constitution of India and the Government is duty bound to discharge its obligations under the aforesaid provisions.

48. In view of the discussions made on the basis of the facts and figures available from W.P.(C) No.35220 of 2017, separate discussion in W.P.(C) No.19937 of 2019 is not required and, therefore, whatever observations and findings contained in W.P.(C) No.35220 of 2017 would *mutatis mutandis* would apply to W.P.(C) No.19937 of 2019.

Writ petitions are disposed of accordingly.”

42. To the knowledge of this Court, there is no appeal against the judgment in W.P.(C) No.19937 of 2019 dated 8.9.2020. As per Article 142 of the Constitution of India, which specifies that the Supreme Court, in exercise of its jurisdiction, may pass such decree or make such order, as is necessary for doing complete justice, in any cause or matter pending before it, and any decree so passed or order so made, shall be enforceable through the territory of

India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such matter as the President may by order prescribe, the decision in **Maratha's** case (cited supra) is binding on all States.

43. Now, let us consider the notifications/resolutions issued by the Central Government, notifying certain communities as Minority communities, backward and other backward classes.

44. Notification issued by the Joint Secretary, Ministry of Welfare, Government of India dated 22.10.1993, published in the Gazette of India on 23.10.1993, notifying minority communities, is extracted below:

"MINISTRY OF WELFARE

NOTIFICATION

New Delhi, the 22<sup>th</sup> October, 1993

S.O. 816(E).- In exercise of the powers conferred by clause (c) of Section 2 of the National Commission for Minorities Act, 1992 (19 of 1992), the Central Government hereby notifies the following communities as "the minority communities" for the purpose of the said Act, namely:-

1. Muslims
2. Christians
3. Sikhs
4. Buddhists
5. Zoroastrians (Parsis)

[F. No.1/11/93-MC(D)]  
P. K. MOHANTY, Jt. Secy."

45. Resolution issued by the Joint Secretary, Ministry of Welfare, Government of India, New Delhi, dated 10.09.1993, published in the Gazette of India Extraordinary, is extracted below:

"MINISTRY OF SOCIAL WELFARE  
RESOLUTION  
New Delhi, the 10<sup>th</sup> September, 1993

No.12011/68/93-BCC(C).- The Government of India have had under consideration the judgment of the Supreme Court dated 15.11.92 in the case of Indira Sawhney and Others Vs. Union of India and Others (No. 930 of 1990) relating to reservation of 27% vacancies in civil posts and services under the Government of India in favour of Other Backward Classes OBCs.

2. The OBCs for the purpose of the aforesaid reservation as per order of the Government of India issued vide O.M. No.36012/22/93-Estt. (SCT) of 8<sup>th</sup> September, 1993 by the Ministry of Personnel, Public Grievances & Pensions (department of Personnel & Training), would comprise, in the first phase, the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Government's Lists.

3. The Expert Committee on "Creamy Layer" headed by Justice (Rtd.) R.N.Prasad, was commissioned to prepare the Common Lists in respect of the following States which had notified the list (appendix Allahabad) of OBCs for the purpose of reservation in the State Services as on the date of judgment of the Supreme Court:

1. Andhra Pradesh
2. Assam
3. Bihar
4. Goa
5. Gujarat
6. Haryana
7. Himachal Pradesh
8. Karnataka
9. Kerala
10. Madhya Pradesh

xx xxx xxxx

4. The Common Lists prepared by the Committee has been accepted by the Government. The Government has decided to notify the annexed list of the Other Backward Classes in the context of implementation of the aforesaid O.M. The lists shall be deemed to have been taken effect from 8<sup>th</sup> September, 1993

5. The National Commission for Backward Classes, set up under the provisions of the National Commission for Backward Classes Act, 1993 in pursuance of the direction of the Supreme Court in the aforesaid case, shall entertain, examine, and recommend upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of Other Backward Classes of citizens.

#### **ORDER**

Ordered that a copy of the resolution be communicated to all State Governments, UT Administrations, Ministries/ Department of G Government of India.

Ordered also that the resolution be published in the Gazette of India for general information.

M.S. PANDIT, Jt. Secy.

APPENDIX  
List of States of OBCs  
STATE: KERALA

Sl No.	Name of Castes/ Communities/(including sub-castes/ synonyms) in the common list of S.R.B.Cs.	Entry No. in the State List	Entry No. in the Mandal List	Remarks
1.	Agasa	1	1	
2.	Amblakkaran	2	3	
3.	Anglo Indian	3	6	
4.	Aremahrati	6	9	
5.	Arya	7	10	
6.	Bandari	8	14	
7.	Billava	9	18	
8.	Chakkala	10	25	
9.	Chavalakkaran	12	31	
10.	Chetties	13	34	
	(Kottar Chetties,	13	34	
	Parakka Chetties,	13	34	
	Elur Chetties,	13	34	
	Attingal Chetties	13	34	
	Pudukkada Chetties	13	34	
	Iranial Chetties	13	34	
	Sri Pandara Chetties	13	34	
	Telugu Chetties	13	34	
	Udayamkulangara Chetties	13	34	
	Wayanadan Chetties and Kalavara Chetties)	13	34	
		13	34	
11.	Devadigi	14	37	
12.	Devanga	15	38	



13.	Dheevara (Araya, Arayavathi Mukkuvan or Mukayo- Mogaveera)	15A 15A 5A	39 7 38, 7, 8, 130, 129	
14.	Ezhava and Thiyya	16	44, 185	
15.	Ezhavathi	17	45	
16.	Ezhuthachan	18	46	
17.	Gamika	19	48	
18.	Gatti	20	50	
19.	Gowda	21	58	
20.	Hedge	22	60	
21.	Izhuvan (Illuvan or Ezhuvan)	24	64	
22.	Jogi	25	69	
23.	Kaduppattan	26	70	
24.	Kaikolan	27	71	
25.	Kelasi (Kalasi Panicker)	28	83	
26.	Kalari Kurup or Kalari Panicker	29	5	
27.	Viswakarma including Assari, Chaptogra Kallassari Kammala Karuvan Kitaran Kollan Malayala Kammala Pandi Kammala Moosari Perunkollan, Thattan, Pandithallan Vilkurup, Villasan, Viswabrahmanan or Viswabrahmanar and Viswakarmala	30 30 30 30 30 30 30 30 30 30 30 30 30 30 30	72, 28, 87, 157 72 72 72 87 157 72 72 72 72 157 72 72 72 72	
28.	Kannadiya	31	77	

29.	Kanisu or Kaniyar Panicker, Kani or Kaniyan (Ganaka) or Kanisan or Kamnan	32 32 32 32 32 32	74 74 74 74 74 74	
30.	Kavuthiyan	33	82	
31.	Kavugiyarm	34	81	
32.	Koteyar	36	98	
33.	Krishnanvaka	37	102	
34.	Kerala Mudali	38	84	
35.	Kudumbi	39	103	
36.	Kusavan (Kulala, Kulala Nair or Andhra Nair or Anthuru Nair)	40	104	
37.	Latin Catholic	42	106	
38.	Madivala	43	110	
39.	Mappila	44	121	
40.	Maravan	45	123	
41.	Maruthuvar	46	5	
42.	Nadar (Hindu Narar and Nadar included in S.I.U.C.)	49	134	
43.	NAIKKAN	50	136	
44.	ODAN	51	139	
45.	Scheduled Caste converts to Christianity	52	177	
46.	Pandithar	53	150	
47.	Panniyar	54	153	
48.	Pattariya	55	155	
49.	Peruvannan (Varanavar)	57	158	

50.	Pulluvan	58	164	
51.	Rajapur		165	
52.	Chakravar, Sakravar (Kavathi)	60	170, 24	
53.	Sourashtra	61	183	
54.	Sliya	62	171	
55.	Senai Thalavar (Elavaniar)	63	178	
56.	S.I.U.C (excluding Nadar Specified in item No.42 which is item 49 of State List.)	64	182	
57.	Tholkolan	65	186	
58.	Thottian	66	189	
59.	Vaduvans Vadugan Vadugar Vaduka (Vadukan)	67 " " " "	192 135 " " "	
60.	Velaan (Velaar)	69 "	198 "	
61.	Vanian (Vanika, Vanika Vaisya, Vanibha Chetty Vaniya Chetty Ayiravar, Nagarathar and Vaniyan)	70 " " " " " " "	195 " " " " " " "	
62.	Vaniyar	71	196	
63.	Vakkaliga	72	193	
64.	Veerasoiva (Yogi and Yogeeswar)	73	199	
65.	Veluthedathu Nair (Veluthedan and Vannathan)	74	200	

66.	Vilakkithala Nair (Vilakkithalvan)	75	201	
67.	Yadava (Kolaya, Ayar, Mayar, Maniyani and Iruman)	76	207	
68.	Ganjam Reddi (in Malabar district referred to in sub- section (2) of Sectionj 5 of the States Recognition Act, 1956)	2(3)	49	
69.	Vishavan (in Malabar district as referred to in sub- section (2) of Section 5 of the States Reorganisation Act, 1956)	2(4)	203	
70.	Kammara (excluding Malabar district as referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956)	3(1)	71	
71.	Malayekandi (excluding Malabar district as referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956)	3(3)	116	
72.	Reddiar/Reddian (excluding Malabar district as referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956)	3(4)	166	
73.	Marati	4(1)	124	

	(excluding Kasargod Taluk of Malabar District)			
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46. Resolution passed by the Joint Secretary, Ministry of Welfare, Government of India, New Delhi, dated 9.3.1996, published in the Gazette of India Extraordinary, is extracted below:

"MINISTRY OF SOCIAL WELFARE

RESOLUTION

New Delhi, the 9<sup>th</sup> March, 1996

S.O. No. 12011/96/94-BCC.-- The Government of India, vide the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) O.M. No. 36012/22/93-Estt. (SCI), dated the 8<sup>th</sup> September, 1993, have reserved 27 percent of vacancies in civil posts and services under the Central Government, to be filled through direct recruitment, in favour of the Other Backward Classes (OPCs). This O.M. also specifies that OBCs for the purpose of the aforesaid reservation would comprise, in the first phase, the castes/communities which are common to both the lists in the Report of the Mandal Commission and the State Government's list of OBCs.

2. The common lists of OBCs in respect of 14 States, namely, Andhra Pradesh, Assam, Bihar, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh, in the context of implementation of the aforesaid O.M., were notified in the Ministry of Welfare Resolution No. 12011/68/93-BCC(G)

dated the 10<sup>th</sup> September, 1993 and published in the Gazette of India—Extraordinary—Part. I, Section I No. 136, New Delhi, Monday September 13, 1993/Bhadra 22, 1915.

3. Subsequently, the common lists of OBCs in respect of 4 States and 3 Union Territories, namely, Orissa, Rajasthan, Tripura, West Bengal, Dadra and Nagar Havel, Daman and Diu and Pondicherry were notified in the Ministry of Welfare Resolution No. 12011/9/94-BCC dated the 19<sup>th</sup> October, 1994 and published in the Gazette of India Extraordinary—Part I Section I No.163, New Delhi, Thursday October 20, 1994/Asvina 28, 1916.

4. Subsequently, the common lists of OBCs in respect of States of Jammu and Kashmir, Manipur and Sikkim and the NCT of Delhi were notified in the Ministry of Welfare's Resolution No. 12011/7/95-BCC dated the 24<sup>th</sup> May, 1995 and published in the Gazette of India, Extraordinary Part-I, Section I, No.88. Thursday, May 25, 1995/Jyaishtha 4, 1917.

5. The National Commission for Backward Classes was set up under the provision of the National Commission for Backward Classes Act, 1993 to entertain, examine and recommend upon the requests for inclusion and complaints of over-inclusion and under-inclusion in the Central Lists of Other Backward Classes. The advice tendered by the Commission shall ordinarily be binding upon the Central Government.

6. The National Commission for Backward Classes have recommended names of castes/communities (including sub-castes/synonyms) for addition/inclusion/modification in the

Central Lists of OBCs in respect of the following States:

1. Andhra Pradesh
2. Kerala
3. Madhya Pradesh
4. Maharashtra
5. Orissa
6. Tamil Nadu
7. Tripura
8. Uttar Pradesh
9. West Bengal

The Government have accepted the recommendations of the Commission and have decided to notify annexed additions/inclusions/modifications in the Central Lists of OBCs in respect of aforesaid States. These additions/inclusions/ modifications shall take effect from the date of issue of this Resolution.

M.S. PANDIT, Jt. Secy.

State : Kerala : Central List of OBCs.

Names of castes/communities (including sub-castes/synonyms) in the Central List of OBCs.

Sl. No.	Old entry	New entry
1.	13. Dheevara (Araya, Arayavathi, Mukkuvan or Mukaya, Mogaveera)	12. Dheevara (Araya, Arayavathi, Mukkuvan or Mukara, Mogaveera, Valan, Bovi Mukayar, Nulayan, Valinijiar, and Paniakkal)
2.	-Nil-	36A. Kumbanan
3.	-Nil-	39A. Other Muslims excluding (I) Bohra (ii) Cutchi Menmon (iii) Navayat (iv) Turukkan (v) Dakhani Muslim.

47. Resolution passed by the Joint Secretary, Ministry of Social Justice and Empowerment, Government of India, New Delhi, dated 4.4.2000, published in the Gazette of India Extraordinary, is extracted below:

“MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT

RESOLUTION

New Delhi, the 4<sup>th</sup> April, 2000

**No. 12011/36/99-BCC.**—The Government of India, vide the Ministry of Personnel Public Grievances and Pension (Deptt. of Personnel and Training) OM No. 36012/22/93-Estt. (SCT) dated the 8<sup>th</sup> September, 1993, have reserved 27% of vacancies in Civil Posts and Services under the Central Government, to be filled through direct recruitment, in favour of the Other Backward Classes (OBCs).

2. The National Commission for Backward Classes (NCBC) was set up as per the provisions of the National Commission for Backward Classes Act, 1993 to entertain, examine and recommend upon the requests for inclusion and complaints of over inclusion and under inclusion in the Central List of Other Backward Classes.

3. The Common Central Lists of Other Backward Classes in respect of 26 States/UTs were notified vide Ministry of Welfare Resolutions No. 12011/68/93-BCC(c) dated the 10<sup>th</sup> September, 1993, No. 12011/96/941-BCC dated the 19<sup>th</sup> October, 1994, No.12011/7/95-BCC the 24<sup>th</sup> May 1995, 12011/99/94-BCC dated 11<sup>th</sup> Dec., 1997. The said lists were modified on the basis of the recommendations of the National



Commission for Backward Classes and notified from time to time vide resolutions No. 12011/96/94-BCC dated the 9<sup>th</sup> March, 1996 No.12011/44/96-BCC dated 6<sup>th</sup> December, 1996, No. 12011/13/97-BCC dated 3<sup>rd</sup> December, 1997, No. 12011/68/98-BCC dated 27<sup>th</sup> October, 1999, and No. 12011/88/99-BCC dated 6<sup>th</sup> December, 1999.

4. The National Commission for Backward Classes have subsequently recommended Castes/communities (including sub-Castes/synonyms) for inclusion/amendment in the Central List of OBCs in respect of Andhra Pradesh, Bihar, Delhi, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Pondicherry, Rajasthan, Sikkim, Tripura, Uttar Pradesh, and West Bengal.

5. The Government have considered and accepted the recommendations of the Commission. Accordingly the inclusions/amendments in the Central Lists of OBCs in respect of aforesaid State/UTs as given in the annexure, is hereby notified. These inclusions/amendments shall take effect from the date of issue of this Resolution.

S. K. PANDA, Jt. Secy.

(8) STATE OF KERALA

Sl. No.	Old Entry	New Entry
19.	42. Nadar (Hindu Nadar and Nadar included in SIUC)	42. Nadar (Hindu Nadar, Nadar included in the SIUC and Nadar belonging to Christian religious denominations other than the SIUC)

20.	56. SIUC (excluding Nadar specified in item No.42 which is item 49 of the State List)	56. SIUC (excluding Nadar specified in Item No.42 which is item No.49 of the State List)
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48. Notification dated 27.01.2014 issued by the Secretary, Ministry of Minority Affairs, Government of India, New Delhi, notifying the Jain community as a minority community, in addition to the five communities already notified, is extracted below:

"MINISTRY OF MINORITY AFFAIRS  
NOTIFICATION

New Delhi, 27<sup>th</sup> January, 2014

**S.O. 267(E).**- In exercise of the powers conferred by clause (c) of Section 2 of the National Commission for Minorities Act, 1992(19 of 1992), the Central Government hereby notifies the Jain community as a minority community in addition to the five communities already notified as minority communities viz., Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) *vide* Ministry of Welfare Notification No. S.O.816(E), dated 23.10.1993 for the purposes of the said Act.

[F. No.1-1/2009-NCM]  
LALIT K. PANWAR, Secy.

49. The Backward Classes Development Department, Government of India, has published a Central OBC List, which is extracted below:

SL.N o.	CASTE/COMMUNITY	GAZETTE RESOLUTION
1	Agasa	12011/68/93-BCC(C) dt.10.09.1993
2	Ambalakkaran	12011/68/93-BCC(C) dt.10.09.1993

3	Anglo Indian	12011/68/93-BCC(C) dt.10.09.1993
4	Aremahrati	12011/68/93-BCC(C) dt.10.09.1993
5	Arya	12011/68/93-BCC(C) dt.10.09.1993
6	Bandri	12011/68/93-BCC(C) dt.10.09.1993
7	Billava	12011/68/93-BCC(C) dt.10.09.1993
8	Chetties	12011/68/98-BCC dt.27.10.1999
9	Kottar Chetties	12011/68/98-BCC dt.27.10.1999
10	Parakka Chetties	12011/68/98-BCC dt.27.10.1999
11	Elur Chetties	12011/68/98-BCC dt.27.10.1999
	Attingal Chetties	12011/68/98-BCC dt.27.10.1999
	Pudukkada Chetties	12011/68/98-BCC dt.27.10.1999
	Iraniel Chetties	12011/68/98-BCC dt.27.10.1999
	Sri.Pandara Chetties	12011/68/98-BCC dt.27.10.1999
	Telugu Chetties	12011/68/98-BCC dt.27.10.1999
	Udayankulangara Chetties	12011/68/98-BCC dt.27.10.1999
	Wayanadan Chetties	12011/68/98-BCC dt.27.10.1999
	Kalavara Chetties	12011/68/98-BCC dt.27.10.1999
	Sadhu Chetties	12011/68/98-BCC dt.27.10.1999
	24 Manai Telugu Chetties	12011/68/98-BCC dt.27.10.1999
11	Devadiga	12011/21/1995-BCC dt. 15.05.1995
12	Devanga	12011/6893-BCC(C) dt. 10.09.1993
13	Dheevera	12011/12/96-BCC dt. 01.09.1997
	Araya	12011/12/96-BCC dt. 01.09.1997
	Arayavathi	12011/12/96-BCC dt. 01.09.1997
	Mukkuvan or Mukaya	12011/12/96-BCC dt. 01.09.1997
	Mogaveera	12011/12/96-BCC dt. 01.09.1997
	Valan	12011/12/96-BCC dt. 01.09.1997
	Bovi Mukayar	12011/12/96-BCC dt. 01.09.1997
	Nulayan	12011/12/96-BCC dt. 01.09.1997
	Valinjar and paniakkal	12011/12/96-BCC dt. 01.09.1997
14	Ezhava	12011/88/98-BCC dt. 06.12.1999

	Izhavan	12011/88/98-BCC dt. 06.12.1999
	Ishavan	12011/88/98-BCC dt. 06.12.1999
	Ezhavan	12011/88/98-BCC dt. 06.12.1999
	Ezhuva	12011/88/98-BCC dt. 06.12.1999
	Izhuva	12011/88/98-BCC dt. 06.12.1999
	Ishuvan	12011/88/98-BCC dt. 06.12.1999
	Ezhuvan	12011/88/98-BCC dt. 06.12.1999
	Izhava	12011/88/98-BCC dt. 06.12.1999
15	Ezhavathi	12011/68/93-BCC(C) dt. 10.09.1993
16	Ezhuthachan	12011/68/93-BCC(C) dt. 10.09.1993
17	Ganika	12011/21/1995-BCC dt. 15.05.1995
18	Gatti	12011/68/93-BCC(C) dt. 10.09.1993
19	Gowda	12011/68/93-BCC(C) dt. 10.09.1993
20	Hegde	12011/68/93-BCC(C) dt. 10.09.1993
21	Izhavan	12011/88/98-BCC dt. 06.12.1999
	Ishavan	12011/88/98-BCC dt. 06.12.1999
	Illuva	12011/88/98-BCC dt. 06.12.1999
	Illuvan	12011/88/98-BCC dt. 06.12.1999
	Irava	12011/88/98-BCC dt. 06.12.1999
	Iruva	12011/88/98-BCC dt. 06.12.1999
	Thiyyan	12011/88/98-BCC dt. 06.12.1999
	Thiyya	12011/88/98-BCC dt. 06.12.1999
22	Jogi	12011/68/93-BCC(C) dt.10.09.1993
23	Kaduppattan	12011/68/93-BCC(C) dt.10.09.1993
24	Kaikolan	12011/68/93-BCC(C) dt.10.09.1993
25	Kelasi (Kalasi Panicker)	12011/68/93-BCC(C) dt.10.09.1993
26	Kalari Kurup or Kalari Panicker	12011/68/93-BCC(C) dt.10.09.1993
27	Viswakarma including	12011/68/98-BCC dt. 27.10.1999
	Assari	12011/68/98-BCC dt. 27.10.1999
	Chaptegra	12011/68/98-BCC dt. 27.10.1999
	Kallassari	12011/68/98-BCC dt. 27.10.1999

	Kammala	12011/68/98-BCC dt. 27.10.1999
	Karuvan	12011/68/98-BCC dt. 27.10.1999
	Kitaran	12011/68/98-BCC dt. 27.10.1999
	Kollan	12011/68/98-BCC dt. 27.10.1999
	Malayala Kammala	12011/68/98-BCC dt. 27.10.1999
	Pandi Kammala	12011/68/98-BCC dt. 27.10.1999
	Moosari	12011/68/98-BCC dt. 27.10.1999
	Perumkollan	12011/68/98-BCC dt. 27.10.1999
	Thattan	12011/68/98-BCC dt. 27.10.1999
	Pandithattan	12011/68/98-BCC dt. 27.10.1999
	Vilkurup	12011/68/98-BCC dt. 27.10.1999
	Vilasan	12011/68/98-BCC dt. 27.10.1999
	Viswabrahman or Viswabrahmanar and Viswakarmala	12011/68/98-BCC dt. 27.10.1999
	Thachan	12011/68/98-BCC dt. 27.10.1999
	Kalthachan	12011/68/98-BCC dt. 27.10.1999
	Kamasala	12011/68/98-BCC dt. 27.10.1999
	Kannan	12011/68/98-BCC dt. 27.10.1999
28	Kannadiyan	12011/21/1995-BCC dt. 15.05.1995
29	Kanisu or Kaniyur Panicker, Kani or Kaniyan (Ganaka) or Kanisan or Kamnan	12011/68/93-BCC(C) dt. 10.09.1993
30	Kavuthiyan	12011/68/98-BCC dt. 27.10.1999
	Aduthon	12011/68/98-BCC dt. 27.10.1999
31	Kavudiyaru	12011/21/1995-BCC dt. 15.05.1995
32	Koteyar	12011/21/1995-BCC dt. 15.05.1995
33	Krishnanvaka	12011/68/93-BCC(C) dt. 10.09.1993
34	Kerela Mudali	12011/68/93-BCC(C) dt. 10.09.1993
35	Kudumbi	12011/68/93-BCC(C) dt. 10.09.1993
36.	Kusuvan	12011/68/93-BCC(C) dt. 10.09.1993
	Kulala	12011/68/93-BCC(C) dt. 10.09.1993

	Kulala Nair or Anthura Nair	12011/68/93-BCC(C) dt. 10.09.1993
36(A)	Kumbaran	12011/12/96-BCC dt. 01.09.1997
37	Latin Catholic	12011/68/93-BCC(C) dt. 10.09.1993
38	Madivala	12011/68/93-BCC(C) dt. 10.09.1993
39	Mappila	12011/68/93-BCC(C) dt. 10.09.1993
39(A)	Other Muslim excluding (I) Bohra (ii) Cutchi Menmon (iii) Navayat (iv) Turukkan (v) Dakhani Muslim	12011/96/94-BCC dt. 09.03.1996
40	Maravan	12011/68/93-BCC(C) dt. 10.09.1993
41	Maruthuvar	12011/68/93-BCC(C) dt. 10.09.1993
42	Nadar	12011/36/99-BCC dt. 04.04.2000
	Hindu Nadar	12011/36/99-BCC dt. 04.04.2000
	Nadar included in SIUC & Nadar belonging to Christian religious denominations other than the SIUC	12011/36/99-BCC dt. 04.04.2000
43	Naikkan	12011/68/93-BCC(C) dt. 10.09.1993
44	Odan	12011/68/93-BCC (C) dt. 10.09.1993
45	Scheduled Caste converts to Christianity	12011/68/93-BCC(C) dt. 10.09.1993
	Pandithar	12011/68/93-BCC(C) dt. 10.09.1993
47	Panniyar	12011/68/93-BCC(C) dt. 10.09.1993
48	Pattariya	12011/68/93-BCC(C) dt. 10.09.1993
49	XXX	12011/15/201-BC-II dt. 30.06.2016
50	XXX	12011/72014-BC-II dt. 23.01.2015
51	Rajapur	12011/68/93-BCC(C) dt. 10.09.1993
52	Chakravar	12011/68/93-BCC(C) dt. 10.09.1993
	Sarkravar (Kavathi)	12011/68/93-BCC(C) dt. 10.09.1993
53	Sourashtra	12011/68/93-BCC(C) dt. 10.09.1993
54	Saliya	12011/68/93-BCC(C) dt. 10.09.1993
	Chaliya (Chaliyan) (Whose caste profession is cotton weaving)	12015/05/2011-BC II dt. 17.02.2014
55	Senai Thalavar (Elavaniar)	12011/68/93-BCC(C) dt. 10.09.1993

56	SIUC (excluding Nadar Specified in item No.42 which is item No.49 of State List)	12011/36/99-BCC dt. 04.04.2000
57	Tholkolan	12011/68/93-BCC(C) dt. 10.09.1993
58	Thottian	12011/68/93-BCC(C) dt. 10.09.1993
59	Vaduvans	12011/68/93-BCC(C) dt. 10.09.1993
	Vadugan	12011/68/93-BCC(C) dt. 10.09.1993
	Vadukar	12011/68/93-BCC(C) dt. 10.09.1993
	Vaduka (Vadukan)	12011/68/93-BCC(C) dt. 10.09.1993
60	Velaan (Velaar)	12011/68/93-BCC(C) dt. 10.09.1993
61	Vanian	12011/68/93-BCC(C) dt. 10.09.1993
	Vanika	12011/68/93-BCC(C) dt. 10.09.1993
	Vanika Vaisya	12011/68/93-BCC(C) dt. 10.09.1993
	Vanibha Chetty	12011/68/93-BCC(C) dt. 10.09.1993
	Vaniya Chetty	12011/68/93-BCC(C) dt. 10.09.1993
	Ayiravar	12011/68/93-BCC(C) dt. 10.09.1993
	Nagarathar	12011/68/93-BCC(C) dt. 10.09.1993
	Vaniyan	12011/68/93-BCC(C) dt. 10.09.1993
62	Vakkaliga	12011/68/93-BCC(C) dt. 10.09.1993
63	Vakkaliga	12011/68/93-BCC(C) dt. 10.09.1993
	Veerasaiva (Yogi & Yogeewara)	12011/68/98-BCC dt. 27.10.1999
	Poopandaram/Maalapandaram and	12011/68/98-BCC dt. 27.10.1999
	Jangam	12011/68/98-BCC dt. 27.10.1999
64	Veluthedathu Nair (Veluthedan & Vannathan)	12011/6893-BCC (C) dt. 10.09.1993
	Vilakkithala Nair (Vilakkithalavan)	12011/6893-BCC (C) dt. 10.09.1993
	(Vilakkithalavan)	12011/21/1995-BCC dt. 15.05.1995
66	Yadava	12011/68/93-BCC (C) dt. 10.09.1993
	Kolaya	12011/68/93-BCC(C) dt. 10.09.1993
	Ayar	12011/68/93-BCC(C) dt. 10.09.1993
	Mayar	12011/68/93-BCC(C) dt. 10.09.1993

	Maniyani	12011/68/93-BCC(C) dt. 10.09.1993
	Iruman	12011/68/93-BCC(C) dt. 10.09.1993
67	Ganjam Reddi (in Malabar referred to in Sub-section (2) of Section 5 of the States Reorganisation Act, 1956)	12011/68/93-BCC(C) dt. 10.09.1993
68	Vishavan (in Malabar District as referred to in Sub-section (2) of Section 5 of the States Reorganisation Act, 1956)	12011/68/93-BCC(C) dt. 10.09.1993
69	Kammara (excluding Malabar District as referred to in Sub-section (2) of Section 5 of the States Reorganisation Act, 1956)	12011/68/93-BCC(C) dt. 10.09.1993
70	Malayekandi (excluding Malabar District as referred to in sub-section (2) of Section 5 of the States Reorganisation Act, 1956)	12011/68/93-BCC(C) dt. 10.09.1993
71	Reddiar/Reddian (excluding Malabar District as referred to in sub-section(2) of Section 5 of the States Reorganisation Act, 1956)	12011/68/93-BCC(C) dt. 10.09.1993
72	Marati (excluding Kasargod Taluk of Malabar District)	12011/68/93-BCC(C) dt. 10.09.1993
73	Thachar who are carpenters	12011/7/2014-BC-II dt. 23.01.2015
74	Vettuva Navithan	12011/68/98 BCC dt. 27.10.1999
75	Kongu Navithan	12011/68/98 BCC dt. 27.10.1999
76	Saraswat Non-Brahmin	12011/68/98 BCC dt. 27.10.1999
77	Odde	12011/68/98 BCC dt. 27.10.1999
	Boyan (in Malabar District as referred to in sub-section (2) of Section of the States Reorganisation Act, 1956)	12011/68/98 BCC dt. 27.10.1999
78	Moopar or Kallan Mooppan or Kallan Mooppar	12015/05/2011-BC II dt. 17.02.2014



79	Mukhari alias Moovari	12011/68/98-BCC dt. 27.10.1999
81	Kongu Vellala Gounder	12015/13/2010-B.C.II Dt. 08.12.2011
	Vellalla Gounder	12015/13/2010-B.C.II Dt. 08.12.2011
	Nattu Gounder	12015/13/2010-B.C.II Dt. 08.12.2011
	Pala Gounder	12015/13/2010-B.C.II Dt. 08.12.2011
	Poosari Gounder	12015/13/2010-B.C.II Dt. 08.12.2011
	Pala Vellalla Gounder	12015/13/2010-B.C.II Dt. 08.12.2011
82	Mahendra-Medara	12015/05/2011-BC II dt. 17.02.2014
83	Kuruba	12015/05/2011-BC II dt. 17.02.2014

50. Now, let us consider the principles of law summarised in the matter of Public Interest Litigation.

51. In **Guruvayur Devaswom Managing Committee & Anr. v. C.K.Rajan & Others** reported in (2003) 7 SCC 546, the Hon'ble Supreme Court has summarised the principles regarding filing of a Public Interest Litigation, and they are extracted hereunder:

“(i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.

The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfill its constitutional promises. [See **S.P. Gupta v. Union of India, People's Union for Democratic Rights v. Union of India, (1982) 2 SCC 494, Bandhua Mukti Morcha v. Union of India**

**and Others**, (1984) 3 SCC 161, and **Janata Dal v. H.S.Chowdhary** (1992) 4 SCC 305)]

(ii) Issues of public importance, enforcement of fundamental rights of a large number of the public vis-a-vis the constitutional duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. [See **Charles Sobraj v. Supdt., Central Jail, Tihar, New Delhi**, (1978) 4 SCC 104, and **Hussainara Khatoon and Others v. Home Secretary, State of Bihar** (1980) 1 SCC 81)]

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial. In **Mrs. Maneka Sanjay Gandhi v. Rani Jethmalani** (AIR 1979 SCC 468), it was held as under:

"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court

may weigh the circumstances.” [See also **Dwarka Prasad Agarwal (D) By Lrs. and Anr. v. B.D. Agarwal and Ors.** (2003) 5 SCALE 138]

(iv) The common rule of *locus standi* is relaxed so as to enable the Court to look into the grievances complained on behalf of the poor, the deprived (sic), the illiterate and the disabled who cannot vindicate the legal wrong or legal injury caused to them for any violation of any constitutional or legal right. [See **Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India**, (AIR 1981 SC 344), **S.P. Gupta (supra)**, **People's Union for Democratic Rights (supra)**, **Dr. D.C. Wadhwa (Dr) v. State of Bihar** [(1987) 1 SCC 378] and **BALCO Employees' Union (Regd.) v. Union of India and Others** [(2002) 2 SCC 333].

(v) When the Court is *prima facie* satisfied about variation of any constitutional right of a group of people belonging to the disadvantaged category, it may not allow the State or the Government from raising the question as to the maintainability of the petition.

(vi) Although procedural laws apply to PIL cases, but the question as to whether the principles of res judicata or principles analogous thereto would apply depends on the nature of the petition as also facts and circumstances of the case. [See **Rural Litigation and Entitlement Kendra v. State of U.P.**, 1989 Supp (1) SCC 504 and **Forward Construction Co. v. Prabhat Mandal (Regd.), Andheri and others** (1986) 1 SCC 100]

(vii) The dispute between two warring groups purely in the realm of private law would not be allowed to be agitated as a public interest

litigation. (See **Ramsharan Autyanuprasi v. Union of India and Others** 1989 Supp (1) SCC 251)

(viii) However, in an appropriate case, although the petitioner might have moved a court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See **Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and Others** (1987) 1 SCC 227).

(ix) The Court in special situations may appoint a Commission, or other bodies for the purpose of investigating into the allegations and finding out facts. It may also direct management of a public institution taken over by such a Committee. (See **Bandhua Mukti Morchai, Rakesh Chandra Narayan v. State of Bihar** [(1989) Suppl 1 SCC 644] and **A.P. Pollution Control Board v. Prof. M.V. Nayudu** [(1999) 2 SCC 718]. In **Sachidanand Panday and Another v. State of West Bengal and others** [(1987) 2 SCC 295], this Court held thus:-

"61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action on when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extent its jurisdiction under all available provisions for remedying the hardships and miseries of the need, the underdog and the neglected. I will be second to none in extending help when such is required. But this does mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

52. In an unreported judgment dated 30.06.2020 in **B. Radhakrishna Menon v. State of Kerala and Ors.** [W.P.(C) No.12109 of 2020], at paragraph 45, this Court held as under:

“45. Placing reliance on the above decisions, the learned Senior Government Pleader submitted that a public interest writ petition which lacks *bona fides*, lack of particulars satisfying the requirements of a PIL, deserves to be dismissed with costs. Having regard to decisions considered in **Mythri Residents Association v. Secretary, Tripunithura Municipality and Others** [2019 KHC 832], it has been summarised by the journal thus:

“(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining a PIL should ensure that the

PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind the filing of PIL.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

(9) The misuse of public interest litigation is a serious matter of concern for the judicial process.

(10) Both this Court and the High Courts are flooded with litigations and are burdened by arrears.

(11) Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes.

(12) This Court has a long list of pending cases where the personal liberty of citizens is involved.

(13) Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice.

(14) It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda.

(15) This has spawned an industry of vested interests in litigation.

(16) There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention.

(17) Worse still, such petitions pose a grave danger to the credibility of the judicial process.

(18) This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law.

(19) This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services.

(20) Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office.

(21) Courts resolve disputes about legal rights and entitlements.

(22) Courts protect the rule of law.

(23) There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space."

53. Judicial notice can also be taken that an advocate belonging to Roman Catholic community, questioning the award of merit scholarship, in the ratio of 80% (Muslims) : 20% (Latin Catholics), as arbitrary, has filed a Public Interest Litigation viz., W.P.(C) No.24355/2020, with a prayer to quash the Government order impugned therein. In the said writ petition, this Court had an occasion to consider the definition of the word "minority" under the National Commission for Minorities Act, 1992. As per Section 20 of the Act, 1992, minority, for the purpose of the Act means, communities notified as such by the Central Government. In the said case, we have also noticed that the Central Government, by notifications dated 22.10.1993 & 27.01.2014, have recognised six religious communities, viz., Muslims, Christians, Sikhs, Buddhists, Zoroastrians (Parsis), and Jains as minority communities, and accordingly, notified in the Gazette of India. Thus, in the light of the Constitutional and

statutory provisions, it is clear that certain communities have been recognised and treated as minorities, SC/STs, backward, and Other Backward communities, and accordingly, reservation is provided by the State/Central Government, as the case may be.

54. When the Central or State Government, as the case may be, have already issued notifications, declaring certain communities as minorities, Scheduled Caste/Scheduled Tribes, backward classes/socially and educationally backward classes, in the State of Kerala, as stated supra, and when the power of such declaration is conferred on the President of India, we are unable to comprehend as to how, the petitioner has sought for a declaration from this Court under Article 226 of the Constitution of India, to declare that Muslims, Latin Catholics, Christian Nadars, and Scheduled Castes, converted to any denomination in Christianity, are not entitled to be treated as backward classes/socially and educationally backward classes, in the State of Kerala.

55. On the averments and Constitutional provisions, and the decisions considered, we are of the view that prayer No.(i) sought for by the petitioner is wholly misconceived and untenable. For the same reasons, mandamus sought for against the National Commission for Backward Classes, represented by its Secretary, New Delhi (respondent No.3), to prepare afresh, the list of backward



classes/socially and educationally backward classes of the State of Kerala eligible for reservation under Articles 15(4)(5) and 16(4) of the Constitution of India, taking into account the present social and economic status of these communities, within a time limit to be fixed by this Court, cannot be granted.

56. The 3<sup>rd</sup> prayer made against respondents 1 & 2, viz., Union of India, represented by its Secretary to the Government, Human Resource Development, New Delhi; and State of Kerala, represented by its Chief Secretary, Thiruvananthapuram, to stop all the financial aids given to Muslims, Latin Catholics, Christian Nadars, and Scheduled Castes converted to any denomination in Christianity, for educational and other social welfare activities, based on Sachar Committee and Paloli Committee reports, considering them as socially and educationally backward, also cannot be granted for the reasons stated above.

57. In the light of the above discussion, we are of the view that the instant writ petition has been filed without any research, as to the legal position in **Maratha's** case, which is binding under Article 142 of the Constitution of India. Petitioner has projected a case, as if reservation is provided to the minority and other communities, in the State of Kerala, without any basis, and sought for a prayer to remove some of the communities from the list of

backward classes/socially and educationally backward classes, on the grounds that their inclusion is contrary to the provisions of the Constitution. Petitioner has also sought for a direction to stop all financial aids provided to Muslim, Latin Catholics, Christian Nadars, and Scheduled Castes converted to any denomination of Christianity, for educational and other social welfare activities based on the reports of Sachar and Paloli Committees.

58. Instant writ petition, filed for a declaration to cancel the reservation provided to certain communities, including Muslims, Latin Catholics, Christian Nadars and Scheduled Castes, as well as other prayers, deserves to be dismissed with costs. In this context, let us consider the decision of the Hon'ble Apex Court in **Indian Council for Enviro-Legal Action v. Union of India (UOI) and Ors.** [(2011) 8 SCC 161], wherein, at paragraphs 191 & 192, it was observed as under:

“191. In consonance with the principles of equity, justice and good conscience, Judges should ensure that the legal process is not abused by the litigants, in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorized or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has, in fact, incurred, in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one

should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

192. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases, realistic costs and compensation be ordered, in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases."

59. Accordingly, we dismiss the writ petition imposing Rs.25,000/- (Rupees twenty-five thousand only) as costs, to be deposited in the Account No.3922992468-4 of State Bank of India, Trivandrum City (70028), P. B. No.22, M. G. Road, Statue - 695001, created for providing financial aid to the children in the State of Kerala, suffering from rare diseases, within one month from the date of receipt of a certified copy of this judgment. In the event of default, proceedings under the Kerala Revenue Recovery Act, 1968, be initiated.

Sd/-  
**S. MANIKUMAR**  
**CHIEF JUSTICE**

Sd/-  
**SHAJI P. CHALY**  
**JUDGE**

**APPENDIX**

**PETITIONER'S EXHIBITS:-**

- P1:- COPY OF THE REPORT OF CDS DATED NIL.
- P2:- COPY OF THE RELEVANT PAGES OF THE REPORT OF SACHAR COMMITTEE DATED 17.11.2006.
- P3:- COPY OF THE REPORT OF PALOLI COMMITTEE DATED 21.02.2008
- P4:- COPY OF THE TRUST DEED DATED 10.12.2019.

**RESPONDENTS' EXHIBITS:-** 'NIL'

//TRUE COPY//

P.A. TO C.J.