

Report On: The National Commission for Minority Educational Institutions (NCMEI) Act, 2004 and its Constitutionality

1. Introduction and Background

The educational system of India is unique in being pluralistic with a marked reflection of it in its very legal framework. Part III of the constitution of India, under the fundamental rights, which has provided fundamental rights to all citizen of India provide explicit cultural and educative safeguards for minority communities. One of these is Article 30(1) which ensures that all minorities, religious or linguistic, can establish and administer educational institutions.

Notwithstanding this strong constitutional protection, some Minority Educational Institutions (MEIs) faced serious problem at every stage of operation including administrative delay at every stage on the part of the government at the State level, unconstructive attitude in granting affiliation and granting of minority certificate to the Educational Institutions. In view of creating a gap between theory of the constitution and actual working in the context, the Parliament of India enacted National Commission for Minority Educational Institutions (NCMEI) Act, 2004.

The main purpose of the Act was to establish a new, highly specialized body of law for the protection of the autonomy of religious minority institutions, to place those institutions on a level of regulatory accommodation and to provide them with an easily available, authoritative, mechanism for dispute resolution.

2. Structural Framework & Key Provisions of the Act.

The NCMEI Act, 2004 provides for a detailed quasi-judicial and administrative mechanism which seeks to safeguard the interests of minorities against external encumbrances.

I. Building or Habitation & Landscape & Site Selection

The Act requires specifications about who shall make up the Commission and its background to help uphold its impartiality and expertise. The Chairman of the Commission is the religious minority member with a background of having served as a Judge in a High Court. The Commission also has some nominated members from religious minority groups who have eminence, usefulness and integrity. It is a significant difference from the Constitution that Article 30(1) addresses both religious minorities and the linguistic minorities whereas the statutory locus of the NCMEI Act, 2004 is for religious minorities which are recognized as such by the Central Government.

II. Powers that are quasi-judicial, or of a statutory nature.

The Commission has much more power than a typical advisory board and is responsible for enforcing the rules of the game it creates. The Commission has been vested with powers of a Civil Court, as mentioned in the Code of Civil Procedure, 1908 (CPC), to be able to perform its task. It has the full power and authority of a Superior Court to issue summonses, subpoenas, force the presence of any public official or witness, mandate the discovery and producing of documents and take evidence by affidavit.

Moreover, the Commission has an appellate jurisdiction. However, if the state level competent authority issues a denial or refuses to process the applications for a "No Objection Certificate" (NOC) or a Minority Status Certificate without any reasoning or justification within the given time then the institution may take appeal with the NCMEI which will make it final and binding. The Commission also has the authority to terminate the status of a minority under section 12C of the Act if it concludes that the character of administration, personnel or principal educational aims of the institution have changed so that it no longer represents a body of individuals of a minority group with the same dominant interest as it originally was. Last but not least, the provision in section 10 of the Act entitles minority educational institutions to seek direct affiliation with any Scheduled University of their choice without requiring their compliance with rules of regional or state universities or being interfered with by the state authorities.

3. Analysis of Constitutionality & Legal Validity.

The constitutional position of the NCMEI Act, 2004 can be assessed by the following methods: 1) its context of the legislation; 2) its fit as to federal principles and; 3) legal challenges raised against its provisions.

I: Legislative Competence and Federalism (Articles 246 & 254)

The Taxonomy of all subjects given in the Seventh Schedule of Indian Constitution indicates that education is assigned to Entry 25 of Concurrent List (List III). In this system Central Parliament and the State legislatures have both the power to enact educational laws. Parliamentary Paramountcy as also discussed in article 246 along with article 254 is strong holding of the federal validity of the NCMEI act. Where there are direct conflicts between the State educational policy and central regulations formed through the NCMEI Act, such policy will reign supreme to that extent, and the guarantee of protection for religious minorities will be the same throughout the country.

II. Interaction with Affirmative Action Policies (Article 15(5))

The purpose and the operation of the NCMEI Act changed quite a bit after the Constitution (Ninety-Third Amendment) Act, 2005 was enacted, which added Article 15(5). This provision permits the State to mandate special educational reservations for socially and educationally backward classes, Scheduled Castes (SCs) and Scheduled Tribes (STs).

Importantly, Article 15(5) expressly, and perhaps completely, disqualifies Article 30(1) minority educational institutions from these restrictions. This is the very important legal aspect that is necessary for the NCMEI to enforce and issue Minority Status Certificate is a fundamental regulatory 'gatekeeping' instrument. The Commission ensures that it knows which institutions are really minority and which are not, and thus avoids giving "minority" status to a non-minority institution in order to circumvent state reservation policies.

III. The Constitutionality of Section 2(f) & Macro-Minority Classifications

The key deficiency in the Act is in Section 2(f) which provides for the official designation of communities as "minorities" in accordance with the Act. The issue with this provision has been consistently raised in the Constitution in terms of Article 14 (Right to Equality) and Article 30, during litigations such as Ashwini Kumar Upadhyay vs Union of India.

This generates a conflict between both two classifications by central government and judicial demography. Communities are recognized as minorities on a macro level at the national level under Section 2(f), which usually ignores local (state) reality. As a result, the advantages to the majority populations in certain states become minority, and a local context is entirely overlooked.

Some have criticized the concept of a national standard being applied across the whole of Nepal, claiming that this is a rather arbitrary way to designate minorities and that it undermines the spirit of Article 30. Religious groups, for instance, like the Hindus are numerical minorities in States like Punjab, Mizoram, and Jammu & Kashmir, but have no access to minority educational concerns because they form the national majority. On the other hand, communities officialised as minorities at the national level do receive all institutions of protection of their status even in states where they are dominant.

This was defined by the Supreme Court in its landmark pronouncement in T.M.A. Pai Foundation vs State of Karnataka in an 11-judge bench ruling which has now established that a 'minority' for the purposes of Article 30 has to be defined on a State-wise basis because these issues pertain to the regional jurisdiction and so on. Because of this, the national classification system of Section 2(f), also, is approaching close scrutiny under Canada's courts, in relation to adherence to the principles of localized equality.

4. Judicial Landmarks and jurisprudence:

Duly, the scope, jurisdiction and interpretation of the NCMEI have been moulded by the key decisions of Supreme Court of India:

T.M.A. Pai Foundation vs State of Karnataka, (2002) 8 SCC 481:

This was the top-echelon (locus classicus) minority rights decision that decided that while unaided minority institutions must be transparent and not involved in capitation fees or profit-taking, they have a certain degree of autonomy in their internal activities, admissions and fee structure. It had decided that the state has a limited authority to impose academic standards and "cannot place its thumb on its scale and change the fabric of an institution to the point of destroying its core minority character.

N. Ammad v Manager, Emjay High School, 1998, 6 SCC 674:

the Supreme Court defined the concept of 'minority' as a 'factual' one, that is, established based on the fact of an educational institution's beginning and management by a minority community. The recognition by the Government or a Commission does not establish minority status, but only serves to acknowledge the fact established by the constitution.

NCMEI v. Cluny Women's College (2018) SCC Online SC 1331:

This decision set out to explore the limits of the Commission's original jurisdiction. Decision: The Supreme Court ruled that Section 11 and 12 of the Act entitles the NCMEI to proclaim the 'minority' status of an educational institution. This encompasses the authority to determine if an existing institution, set up as a non-minority, secular body can make changes to its administration and therefore qualify for minority status at a later time.

5. Comparative evaluation: Statutory intent and practical realities

A review of the Act identifies some areas where the intent in the Act is not the same as the practical and/or judicial realities in several dimensions.

Statutory intent (protection) with the NCMEI Act is very narrowly aimed at protecting religious minority groups. But, in practice this leaves linguistic minorities outside this framework, and solely dependent on piecemeal state level mechanisms or direct constitutional litigation under Article 30(1) to secure their language education rights.

With regard to federal balance, the intent of the statute was to create a superior system of administration to resolve complications of administration or to bypass the arbitrary decision making of a state official. But in fact, this system often leads to serious conflicts with State

Education Departments, especially with regard to allocation of seats locally, limits on fees, and limits on the control of syllabi.

Last but not least in the field of assessment of minorities, the Act makes for uniform national notification according to a mechanism laid down in its Section 2(f). This runs counter to the judicial logic that the Supreme Court laid out in the T.M.A. Pai case, where the claim of 'democratic minority' is defined state-by-state in terms of population rather than nationally.

6. Conclusion & Recommendations

An important legal mechanism however, enabling the implementation of the constitutional guarantee, enshrined in Article 30(1) of the Indian Constitution, is the National Commission for Minority Educational Institutions Act, 2004, which provides for a concrete and easily available administrative scheme. Politically it has a constitutional background as it is based on Parliamentary competence and legislatively in the Concurrent List and it helps to maintain the autonomy of institutions in India's intricate educational system for the benefit of minorities.

But for the Act to be resilient to meet new constitutional challenges in future, a structural problem of the Act must be tackled: the macro-level identification of the minorities in Section 2(f). A more than just state-centric approach would more closely reflect the demographic principles announced by the Supreme Court and help ensure that educational protections are fairly apportioned to the geographic communities deserving of those protections.