

## CHAPTER TEN

### CONCLUSION AND RECOMMENDATION

In pursuance of direction given by Rajasthan High Court in DB Civil Writ Petition No 13491/2009 Capt. Gurvinder Singh versus State of Rajasthan, DB Civil Writ Petition No 12810/2009 G. Sharma Singh versus State of Rajasthan and DB Civil Writ Petition No 13884/2009 All India Equality Forum versus State of Rajasthan decided on 22.12.2010 to Rajasthan Government, Social Justice and Empowerment Department vide its letter No. 44282 dated 13.06.2012 has sent report of quantifiable data to the Commission with request to give its report.

The thorough study made by the commission is based on the quantifiable data sent by the Institution of Development Study; data made available by State Government with regard to representation in government employment, students studying in various courses like professional courses, higher education course etc. in various Government Colleges and Universities; personal

hearing of representatives of concerned castes/classes; public representatives; representatives of various social organizations; material made available by the petitioners; various books; treatise and material from magazines.

Hon'ble Supreme Court in M. Nag Raj, Ashok Thakur, Suraj Bhan Meena and S.V. Joshi has observed that before giving decision on reservation/special reservation quantifiable data amongst other things should be looked into.

In M.R. Balaji versus State of Mysore 1963 reported in SC 649 Hon'ble Supreme Court has held that reservation should not cross the limit of 50%. But in subsequent decision given in Indra Swahney versus Union of India reported in Supplementary (3) 1992 SCC paged 217 it has been observed that in eventuality of special case being made out reservation can be granted in excess of 50%.

In M. Nagraj, Ashok Thakur, Surajbhan Meena and S.V. Joshi it has been observed that it is obligatory upon the State to submit quantifiable data showing that a class

or classes are more backward than notified Other Backward Classes to the Commissioner. Under above expectation, the Government has forwarded report of quantifiable data to the Commission.

In report submitted by Institution of Development Study, which is based on quantifiable data, backwardness index of five casteed/classes viz., Gadiya Lohar, Rebarir, Banjara, Gurjar and Gadariya have been found on the top. Above classes have been found to be most backward than all other Backward Classes in so far as social backwardness is concerned. This report further reveals that in category of socially backwardness, viewed from the angle of other social indicators like life style of wanderer/herdsman and educational backwardness, these classes are at lowest padle, which is sufficient reason to treat them in Special Backward Class. So far as consideration of secondary data is concerned, data submitted by the Government regarding representation of these classes in government employment from the year 2001 to 2012 in Categories I, II and III

services show that representation of Gadiya Lohar, Rebarir, Banjara, Gurjar and Gadariya are negligible in Group A (Class I) services and in total selection it is not only inadequate but extremely inadequate, that indicates Special Backwardness of these classes. These data are factual and therefore, are unaffected from any ifs and buts as is possible in case of survey. These data are sufficient to reasonably put nomadic/herdsman castes in Special Backward Classes. The report submitted by the Institution of Development Study on educational backwardness based on illiteracy indicator is evident of these classes being extremely backward. The factual data submitted by the State Government with regard to studying students also confirm that in the matter of education, more particularly in Medical, Technical and Professional, status of Gadiya Lohar, Rebarir, Banjara and Gadariya is lamented. With some high and low, status of Gurjar students is also in the same category. On the basis of above standards these classes can be categorized as extremely/backward Classes.

In reports of Kaka Kalelkar Commission, Lokur Committee and Chopra Committee (1) Gadiya Lohar, (2) Raaibari, (3) Banjara, (4) Gurjar and (5) Gadariya castees/classes have been defined as wanderer/herdsman classes and were found eligible for special protection. Institution of Development Study after considering quantifiable data has prepared backwardness index (table No. 12 in this report and table No.3 of Institution's report dated 26.10.2012) in which all these five communities, viz., Gadiya Lohar, Rebarir, Banjara, Gurjar and Gadariya figure at the bottom. Gurjar, Gadariya and Rebarir communities are wanderer herdsman community. The main reason assigned for backwardness of these castees is that Gurjar, Gadariya and Rebarir communities are wanderers herdsman communities; the Banjara community though in true sense is not herdsman community yet on the basis of trade, which is also somehow connected to animals and of wandering nature, it is also extremely backward and is cut off from main stream of society; and Gadiya Lohar community

assumes cart as their home and earn their livelihood moving place to place. The above factors are responsible for educational backwardness of those communities. The resultant conclusion is that they could not get adequate representation in government employment.

Kaka Kalelkar in his report submitted on social backwardness has prepared a list of Backward Classes and extremely Backward Classes. In that list, the Banjara and Baladiya have been described as '**pack carriers**' and have been placed at serial number 6 in extremely backward classes. Gadariya and Gayari have been described as '**sheppard**' and have been placed at serial numbers 42 and 43 respectively under extremely backward classes. Similarly, Rebarir has been described as '**cattle breeders**' and has been placed at serial number 88 under extremely backward classes.

Lokur Committee in his report (Chapter-IV page 23 paragraph 47) has mentioned that some castes like Gurjar, Gaddi and Banjara cannot be in true sense are

Scheduled Tribes and cannot be given status of Scheduled Castees and Scheduled Tribes but it would not be appropriate to treat them under Other Backward Class because those castees deserved much more protection than Other Backward Classes.

Looking to the fact that Banjara and Gadiya-Lohar are extremely backward the Rajasthan Government vide letter dated 17.10.1981 had made recommendation to the Central Government to grant them status of Schedule Tribe.

For considering the demands of Gurjar Community J.R. Chopra High Powered Committee was constituted, which while considering recommendations of Lokur Committee has mentioned at page 37 of the report that "under this scenario the Committee finds that village Gurjars of Rajasthan are comparatively leading very hard life because they resides in inaccessible areas. They not only deserve vocal sympathy but sturdious and positive action". The Committee has recommended that, "they are leading very poor life in inaccessible, remote and

uncomfortable areas such as caverns, ridges & hilly lands, forests and hills where nothing is there in the name of development. To give attention on the condition and problems of semi developed and inhabitants of in-facilitated areas special dispensation is required; the Committee suggests that a Board may be constituted for them." (Recommendation page 140).

A bare perusal of above reports reveals that all the five castes (1) Banjara/Baladiya/Labana, (2) Gadiya Lohar/Gadoliya, (3) Gujar/Gurjar, (4) Raika/Rebarir/Debasi and (5) Gadariya (Gadari)/Gayari are extremely backward.

In *Indra Swahney versus Union of India* reported in Supp (3) 1992 SCC 217 it has been observed that as a rule reservation should not be more than 50%, but at the same time in paragraph 810 it has also been observed that, ***"While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-***

*flung and remote areas the population inhabiting those areas might on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristically to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out".* Therefore, if special case is made out reservation can be given in excess of 50%. From the facts narrated above it is clear that Gadiya Lohar, Rebarir/Debasi, Banjara, Gurjar and Gadariya castees/classes having been wanderer/herdsman community and having been residing with animals at far flung areas like forests, low laying land of hills in search of fodder, have been cut off from the main stream of the societies. Although the Government is running many welfare schemes like extension of education, providing medical facility, veterinary facility and many more yet since they use to move from forests to forests hilly areas to

grazing land with animals in search of fodder, they could not be benefitted by the schemes. Since they are living away from main society in forests and on grazing land with cattle for a long period they remain unaffected from social up gradation. No change is seen in their livelihood, custom and tradition, superstition, values etc. Therefore, these castees/classes viz., Gadiya Lohar, Rebarir, Banjara, Gurjar and Gadariya fulfil all legal norms suggested in Indra Swahney's case and in such peculiar circumstances special case is made out in favour of these castees/classes. They are Special Backward Class. After analyzing quantifiable data and considering other indexes the Commission has come to the conclusion that for advancement of these five castees/classes viz., Gadiya Lohar, Rebarir, Banjara, Gurjar and Gadariya special case is made out to give them status of Special Backward Class. It is recommended that for advancement of these castees/classes these may be declared Special Backward Classes and be given 5% special

reservation in educational institutions and Government services.

Out of 81 surveyed backward communities no consideration has been made on 25 castes number of whose houses surveyed were 100. Their index of backwardness was not included for consideration because survey conducted by the Institution of Development Study was found to be insufficient and unequal. A detailed resurvey may be conducted of these 25 castes/classes and out of them if social, educational and over all backwardness of any caste/castes are found equal or high than these five castes recommendation would be made for those also.

In judgment dated 22.12.2010 given in DB Civil Writ Petitions No. 13491/2009, 12810/2009 and 13884/2009 Hon'ble Rajasthan High Court has further directed the State Government to reconsider the matter of 14% reservation given to Economically Backward Class. The Commission has also considered this aspect. The Commission is of the opinion that primarily jurisdiction of the Commission is

limited to the extent of making recommendation on inclusion and de-inclusion of backward classes from Other Backward Classes and Special Backward Classes. Determination of reservation to Economically Backward Class is not within the jurisdiction of the Commission. However, it is expedient to mention here that there is no provision in Constitution of India to provide reservation to Economically Backward Class. Hon'ble Supreme Court Indra Swahney's case has observed that a backward class of citizens cannot be identified only and exclusively with reference to economic criteria. Economic backwardness can be a relevant consideration for social backwardness but providing reservation solely on the basis of economically backwardness is not permissible under the Constitution.

***"... A backward class cannot be determined only and exclusively with reference to economic criterion. It may be consideration of basis along with and in addition to social backwardness, but it can never be the sole criterion. This is the view uniformly taken by***

***this Court and we respectfully agree with the same".***

(Indra Swahney v/s Union of India 1992 Supp (3) SCC 217 paragraph 799).

Hon'ble Rajasthan High Court has stayed the financial limit of creamy layer from Rs. 2.5 lacs to Rs 4.5 lacs and has directed the State Government to reconsider the same. In this matter the Commission is of the opinion that determination of financial limit of creamy layer is also not within the jurisdiction of the Commission.

Sd/-	Sd/-	Sd/-	Sd/-	Sd/-
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Member-Sec.	Member	Member	Member	Chairperson