

CHAPTER SEVEN

**DISCUSSION OF THE REPORTS GIVEN BY VARIOUS
COMMISSIONS AND COMMITTEES FOR RESERVATION
TO BACKWARD CLASSES/SPECIAL BACKWARD
CLASSES**

In governing societies, public and administration both remained zealous to advance backward classes since beginning. During pre-independence period and in princely states separate measures were being taken and protection was being given to backwards for their advancement. Before independence the then Madras Government for welfare of oppressed and suppressed classes, in the year 1885, made Assistance (Grant) Code to provide special facilities to the students of oppressed classes and regulate financial assistance of educational institutions. In above context in the year 1921 legislative council passed a resolution and directed Madras Government to make rules for giving maximum representation to non-Brahmins in state services. In furtherance whereof, in the year 1927 all

the castees were classified in five classes and separate quota for each class was fixed.

In the year 1871 under Criminal Tribes Act, special provisions were made in various schemes for rehabilitation of notified criminal tribes.

In the year 1918 the then Mysore His Highness also constituted a Committee in chairmanship of Hon'ble Justice Sir L.C. Miller, Judge of the then Mysore High Court to device a scheme for giving adequate representation to backward castees. On the basis of recommendations of Miller Committee, in the year 1921 His Highness passed orders to grant special facilities to backward castees in State employment.

In the year 1919 first time managed efforts were made for welfare of oppressed classes on all India base by 'Montague Chelmsford reforms'.

In the year 1928, the then state of Bombay also constituted a special Committee in the chairmanship of Mr

O.H.B. State to suggest provisions to be made to give special facilities to the backward classes in education and state employment. The Committee submitted its report in the year 1930. The Committee classified backward classes in three main categories, viz., (1) Oppressed class, (2) Tribals & hilly class and (3) other backward class. The Committee also suggested provisions to be made to give special facilities to them in educational institutions and state employment.

The concept of socialism enshrined in Indian Constitution is to remove inequality, making provisions for working persons to lead proper life and protection of interest of weaker sects of the society. Part 16 of Indian constitution is committed to special provision for certain classes. During British era Scheduled castes and Scheduled Tribes were identified separately. With certain modifications it has been kept as it was in newly framed Constitution. For inclusion of castes in above two categories indicators have been prescribed in article 341

and 342. In the light of these provisions, the Union Government of independent India issued first list of Scheduled castes and Scheduled Tribes.

In India Act 1935 oppressed classes were notified as Scheduled castes and primitive tribes were notified as backward tribes.

After independence, in the year 1953 first Backward Classes Commission was constituted in the chairpersonship of Kaka Saheb Kalelkar. The commission suggested following criteria:

1. Low social position in the traditional caste hierarchy of Hindu society.
2. Lack of general educational advancement among the major section of a caste or community.
3. Inadequate or no representation in government services.
4. Inadequate representation in the field of trade, commerce and industry

Kaka Saheb Kalelkar submitted report in the year 1955.

Main recommendations of the commission were as under:

1. Undertaking caste-wise enumeration of population in the census of 1961.
2. Relating social backwardness of a class to its low position in the traditional caste hierarchy of Hindu society,
3. Treating all women as a class as 'backward';
4. Reservation of 70 per cent seats in all technical and professional institutions for qualified students of backward classes.
5. minimum reservation of vacancies in all Government services and local bodies for other Backward Classes on the following scale:

Class I = 25 per cent;

Class II = 33½ per cent;

Class III = 40% and

Class IV = 40 per cent.

Under the provision of Article 340(3), the Government placed the report of Kaka Kalelkar in the parliament. Government debated that it was necessary to search actual standards to identify social and educational backwardness. Consensus could not be formed on it and there had been sufficient ideological differences.

In the list submitted by Kaka Kalelkar, in all 2399 castes were nominated. As regards identification of many other castes and communities it was observed,-

"If entire communities, with some exceptions, are treated to be backward, actual needy would lose in the mob and they seldom attract attention towards them and get sufficient help. The intention of article 340 of the constitution will also not fulfill".

After thorough examination of Kaka Kalelkar's report, a copy of the report was placed in the parliament with action plan. In action plan it was suggested that for

removal of difficulties of socially and educationally backward classes cogent and practical indicators should be prescribed. However, the report gone indebted.

As regards certain castes of Rajasthan, it had been mentioned in Kaka Kalelkar's report that wanderer (restless movers) castes of Rajasthan, which were animal groom and animal breeder should be given special protection. (See page 158 paragraph 18).

LOKUR COMMITTEE:

In order to review the lists of Scheduled castes and Scheduled Tribes, the Government of India constituted Lokur Committee in the year 1965. Besides revision of lists the committee was also entrusted the task to suggest as to whether a caste which had been notified as scheduled caste or scheduled tribe for a particular area could be treated as such in other areas of that State or in other States? The Lokur Committee with reference to Rajasthan State has mentioned that some of the communities are

such that those cannot, in true sense, be understood as scheduled caste or scheduled tribe but those are entitled for special attention/protection. Inclusion of those communities in other backward classes would not be sufficient because those deserve more protection than that given to other backward classes. Those Communities, which attracted our attention, are, Gurjar, Gaddi and Banjara. (See page 47).

MANDAL COMMISSION:

The Central Government constituted second Backward Classes Commission in the year 1978 in chairpersonship of Shri B.P. Mandal. The following matter was referred for consideration to the commission:

- I. To prescribe indicators to define social and educational backwardness of classes;
- II. To make recommendation for taking measures for progress of socially and educationally backward classes of so defined citizens;

- III. To examine desirability or other to make arrangement of reservation in appointment and on posts for those backward classes of citizens who do not have adequate representation on the posts in Union Government or any State services; and
- IV. To submit the report to His Excellency the President of India containing discussion of the facts and having recommendation on it.

Mandal Commission suggested following 11 indicators (standards) of backwardness:

Social

1. Castees/classes considered as socially backward by others.
2. Castees/classes which mainly depend on manual labour for their livelihood.
3. Castees/classes where the percentage of married women below 17 is 25% above the state average in rural areas and 10% in urban areas; and that of

married men is 10% and 5% above the state average in rural and urban areas respectively.

4. Castees/classes where participation of females in work is at least 25% above the state average.

Educational

5. Castees/classes where the number of children in the age group of 5 to 15 years who never attended school is at least 25% above the state average.
6. Castees/classes where the rate of student drop-out in the age group of 5-15 years is at least 25% above the state average.
7. Castees/classes amongst whom the proportion of matriculates is at least 25% below the state average

Economic

8. Castees/classes where the average value of family assets is at least 25% below the state average.

9. Castees/classes where the number of families living in kachcha houses is at least 25 % above the state average.
10. Castees/classes where the source of drinking water is beyond half a kilometer for more than 50% of the households.
11. Castees/classes where the number of the house-holds having taken a consumption loan is at least 25% above the state average.

RECOMMENDATIONS OF MANDAL COMMISSION:

Scheduled Castees and scheduled Tribes constitute 22.5% of the country's population. Accordingly, a pro-rata reservation of 22.5% has been made for them. Since total quantum of reservation under Articles 15(4) and 16(4) of the Constitution should be below 50%. In view of this, the proposed reservation for OBCs would have to be pegged at a figure which when added to 22.5% for SCs and STs, remains below 50%. In view of this legal constraint, the

Commission is obliged to recommend a reservation of 27% only.

Special educational facilities made available to upgrade culture atmosphere of the students may also be made available to Other Backward Classes in steps where they are thickly populated. It is also very essential that special coaching facilities are arranged for all such students in our technical and professional institutions.

To upgrade competency of members of village vocational communities special programmes should be launched. It is very essential that separate financial institutions for providing financial and technical assistance are established for the backward classes who want to set up Small scale industries on their own.

Under production relation; farmers, agriculture labourers, village artisans depend upon dominant higher classes and they continue to remain in mental and material bondage of the higher castes and rich peasantry for their livelihood. In view of this, until the stranglehold of the

existing production relations is broken through radical land reforms and the land reforms are not strictly followed the object dependence of under-privileged classes on the dominant higher castes will continue indefinite. All the State Governments should give preference to fundamental land reform.

At present, no Central Assistance is available to any State Government for implementing any welfare measures for Other Backward Classes. Many State Governments pointed out that unless the Center is prepared to liberally finance all special schemes for the upliftment of OBCs, it will be beyond the available resources of the States to undertake any worthwhile program for the benefit of Other Backward Classes. The Commission fully shared the views of the State Governments in this matter and strongly recommends that all development programs specially designed for Other Backward Classes should be financed by the Central Government in the same manner and to the

same extent as done in the case of Scheduled Castees and Schedules Tribes.

Under the recommendation of Mandal Commission Gurjar, Banjara, Rebari, Gadia Lohar etc. castes of Rajasthan were included in Other Backward Classes. (Part vi page 203 of Mandal Commission)

**REPORT OF HIGH POWERED HON'BLE JUSTICE
JASRAJ CHOPRA COMMITTEE CONSTITUTED TO
CONSIDER DEMANDS OF GURJARS:**

State of Rajasthan by its notification dated 7th June 2007 constituted a committee in the chairmanship of Hon'ble Mr Justice Jas Raj Copra for inclusion of Gurjar community in Scheduled Tribe. The committee found that most of the Gurjars live in remote, isolated and uninhabitent areas like low laying land of hills, hilly areas etc. where development facilities are hardly available. Committee found that they, being herders and pastoralists, are extremely backward. The committee recommended

that Gurjars may be provided better facilities than Other Backward Classes.

**RAJASTHAN STATE ECONOMICALLY BACKWARD
(HON'BLE MR. JUSTICE SHASHIKANT SHARMA)
COMMISSION:**

State of Rajasthan constituted a commission headed by Hon'ble Mr Justice Shashikant Sharma on 26.05.2007 to identify Economically Backwards Class in the State of Rajasthan and to evaluate their need.

**The commission sent following
recommendations to the State of Rajasthan:**

1. As an interim measure, the commission recommends and advised to the State of Rajasthan that families (husband, wife and dependent wards will form one unit) of unreserved classes whose yearly income from all the sources is not more than 1.50 lac should be treated to be Economically Backward Class.

2. In the opinion of the Commission reservation for Financially Backward Class in Public Service Commission and educational institutions is their fundamental necessity. The Commission advised the State Government to immediately take lawful steps to give benefit of reservation to Economically Backward Class.
3. As an interim measure commission recommends that Economically Backward Class may be given 12% to 15% reservation in Government services and educational institutions.
4. Keeping in view the spirit of preamble of Indian Constitution and directive principles for states enshrined in Articles 38 and 46, the Commission recommends that for welfare of Economically Backward Class of unreserved classes the State Government should prepare a special package for education, health, protection, houses and employment for their families/persons as has been referred to by

the Commission in paragraph 30 to 34 of the report so that social harmony could be maintained and principle of natural justice could be followed.

It has been provided in sub-clause (4) of Article 15 of the Constitution of India that nothing said in Article 15 or Article 29(2) shall preclude States to make special provisions for development of groups of citizens of socially and educationally backward classes or Scheduled Castes and Scheduled Tribes.

While discussing on Article 15(4), Hon'ble Supreme Court in M.R. Balaji v/s State of Mysore (AIR 1963 SC 649), has held that this is a special provision and it should be reasonably applied. Regarding special provision for the advancement of socially and educationally backward classes of citizens it has been held that backwardness should be judged on valid basis as contemplated under Article 15(5). Backwardness for the purpose of Article 15(4) should be of both kinds, viz. social and educational. Only social or only educational backwardness will not attract provisions of

Article 15(4). Similarly, Hon'ble Supreme Court in *Indra Swahney v/s Union of India* (Supp (3) 1992 SCC 217) has held that reservation in the form of economically backwardness is ultra vires. According to the judgment referred to above Constitution does not permit a State to give reservation only on the basis of economically backwardness in backward castees/classes.

Hon'ble Rajasthan High Court in DB Civil Writ Petitions No. 13491/2009, 12810/2009 and 13884/2009 while examining validity of 12&-15% reservation to economically backward class as suggested by Economically Backward Class Commission has directed the State Government to first examine constitutional validity of the same.