

REPORT OF THE ANDAMAN AND NICOBAR COMMISSION FOR OTHER BACKWARD CLASSES

The caste and community based inequalities inherent in Indian Society and the accompanying social, education and economic inequalities prompted the makers of Indian Constitution to include in the said constitution certain remedial measures. Thus Article 15 of the Constitution while prohibiting discrimination on grounds of religion, race, caste, sex or place of birth lays down in clause(4):

“(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 Caste and the Scheduled Tribes”.

Article 16 provides for equality of opportunity in matters of public employment; but, in clause (4) it provides as follows:-

“(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”.

The Article 38 (2) desires that “the State shall in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations”.

Article 46 contains directions with regards to “Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections” and it lays down as under:-

“ 46..... The State shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”.

Article 340 authorize, the President of India to appoint a Commission to investigate the condition of socially and educationally backward classes within the territory of India and

the difficulties under which they labour and to submit a report to the President containing their findings and recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition.

The article, further desired the President to cause a copy of the report together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

As per the requirement of Article 340, the Central Government appointed a Backward Class Commission in 1953. This Commission, known as Kaka Kalelkar Commission, submitted its report in March, 1955. This report was never discussed by the Parliament.

By order of the President another such Commission- popularly known as Mandal Commission- was set up in 1979. The terms of reference of the Commission were to (1) determine the criteria for defining the socially and educationally backward classes; (2) to recommend steps for their advancement socially and educationally; (3) to examine the desirability of making provision for reservation of appointments or posts in favour of such backward classes as are not adequately represented in public services and posts; and lastly, (4) to submit a report to the President. Mandal Commission submitted its report sometime in December, 1980. An Office Memorandum dated 13/08/1990 was issued to give effect to its recommendations. This Memorandum was followed by another Memorandum dated 25/09/1991 which modified the earlier Memorandum.

Meanwhile Writ Petitions has been filed before the Hon'ble Supreme Court against the first memorandum and some of them were also amended challenging the second Memorandum as well. These writ petitions being Writ Petition (Civil) No. 930 of 1990 (Indra Sawhney And Ors. Etc. etc. Versus Union of India and Ors. Etc. etc.) and many others were heard together by a Special bench of Nine Judges of the Hon'ble Supreme Court who delivered their judgement on 16/11/92. This judgement was reported in AIR 1993 S.C at page 477 onwards. The subsequent page references in this report are to this judgement. In this judgement the Hon'ble Supreme Court has thoroughly discussed the report submitted by Mandal Commission in all its aspects. While upholding the validity of the said report, the Hon'ble Court in the concluding paragraph of the judgement (para 123) directed the Government

of India, each of the State Governments and the Administrations of the Union Territories to constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under inclusion in the lists of other backward classes of citizens.

It is in pursuance of the above direction of the Hon'ble Supreme Court that the present Commission, viz., "Andaman and Nicobar Commission for Other Backward Classes" was set up as a permanent body, by the then Hon'ble Lt. Governor of these islands, Shri Vakkam Purushothaman by a Notification bearing No. 12/F No.1-611/93-TW dated 23.2.1994 in exercise of the powers conferred by Article 239, read with Article 16(4) of the Constitution of India. It was duly published by an extraordinary issue of Andaman and Nicobar Gazette bearing No.14 Port Blair dated 23.2.1994. The Commission was set up for (2) entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of Other Backward Classes of Citizens, identifying Other Backward Classes and, lastly, (3) tendering such advice to the Administration as it deems appropriate. The Commission was to consist of:

- a. A Chairperson, who is or has been a judge of a High Court of the Supreme Court.
- b. Chairperson, Andaman and Nicobar Social Welfare Advisory Board (Member Ex-Officio).
- c. Two non-official members, who have special knowledge in matters relating to backwards classes, to be nominated by the Administration.
- d. Secretary (Social Welfare), Andaman and Nicobar Administration (Member Secretary Ex-Officio). The Constitution was authorize to regulate its own procedure.

In pursuance of the above Notification the present incumbent was appointed as the Chairperson of the Commission by a Notification bearing No. F. No. 1-611/93-TW (Vol.II) dated 21.10.94 and he assumed charge on 12.12.94. Shri B.B.Lal-who has died since- and Shri B.K.Bose were appointed as the non-official members of the Commission. Mrs. Pratima Madhu Krishnan, the then Chairperson of the Social Welfare Advisory Board was appointed as a member of the Commission ex-official

and Shri Rajinder Singh, IAS, Secretary Tribal Welfare Department was appointed as the Secretary of the Commission ex-officio.

The Hon'ble Mr. Justice R.N.Prasad, chairman National Commission for Backward Classes visited the Islands in January, 1995 and a meeting of the Local Commission was held under His Lordship's Chairmanship on 11.1.1995. as per the decision taken in that meeting a general notice was published in the Local News Papers in various languages inviting applications from the people of Andaman and Nicobar Islands class/caste/community wise, for inclusion in the list of "Other Backward Classes" of Andaman and Nicobar Islands. These notices were published in March, 1995. Yet by 19.6.95 which was fixed as the last date for receiving the application only eight application had been received. The response having been very poor it was decided in a meeting held on 25.10.95 to extend the date of receiving the application upto 15.1.1996 and also to give wide publicity of the notice through Govt. and private media and Pradhans of the Gram Panchayats.

This time 45 application were received. In a meeting held on 4.7.96 it was decided that 13 applications out of the 45 application received could not be taken into consideration since these had been submitted by individuals whereas only applications from castes/classes/communities of people as a whole and not individuals could be considered for being declared as OBCs. Of the remaining 32 application an overwhelming number are from associations of persons of different castes and communities from the mainland who came to these Islands on their own for making their living here. The Commission felt that these people could not be considered for the OBC status of these Islands since-strictly speaking-they could not be considered as belonging to these Islands. They came to these Islands of their own as they found it profitable to do so. They have their roots not in these Islands but in the Mainland and they may and in all probability will return thereto when the going ceases to be good here. They cannot be treated as the sons of the soil out of whom only the OBCs of the Islands are to be selected. Many of these applying communities/castes deserve to be treated as OBCs and many of them have actually been listed as OBCs in their States of origin. We are not inclined however to consider their applications since though living in these Islands for the time being, they cannot be treated as the sons of the soil

of these Islands. This is the practice in the Mainland also. There also in a State people belonging to that particular State are considered for being listed as OBCs Caste-wise and people migrating into that State from other States are not considered for the status howsoever deserving they may be. We are of the view that this practice should also be followed here and that the OBCs are to be identified if at all-from amongst those belonging to these islands and not from amongst those who have come to these islands of their own and have been living in the islands for the time being simply because they find it profitable to do so.

Leaving the outsiders aside, who in these islands are then to be considered for being identified as OBCs? Who may be considered as the sons of the soil here? In the Main Land members of the eligible castes in between the upper three castes and the scheduled castes are considered for being identified as OBCs. That practice cannot be followed here since the society here is not divided or subdivided into so many castes and sub-castes as in the main Land and the Administration here also does not recognize any caste structure. Leaving side the outsiders and the Aborigines who have been given the status of Schedules Tribes by the Govt. of India and are thus beyond the area of operation of this commission, the people living in these Islands have been divided into two groups viz (1) Pre-1942 settlers and the (2) Post-1942 settlers and the descendants of both the groups.

The Pre-1942 settlers comprised first, the freedom fighters who had been transported to these Islands for taking part in the uprising of 1857, secondly, the convicts transported to these Islands for committing serious offences and thirdly, the Govt. servants, professional and businessmen who came to the Islands and settled here before 1942. Completely cut off from their moorings in the Mainland, and without any hope of going back thereto-at least in the case of the first two categories they got irretrievably mixed up amongst themselves and their descendants known as the 'Local Born' never grew up with any sense of caste or community. Though casteless, together they formed one community, the community of the Local Born. Born here, they live and die here and have nowhere else to go except for a short visit. Even during the Japanese occupation of the Islands during the second World War, they stuck to the Islands and suffered very serious consequences and brutalities at the hands of the occupying forces. They surely belong to the Islands and may in all fairness be considered as the children of the soil.

The (1) Mophlas and (2) Bhatu who had been transported to these Islands in 1921 and 1924 respectively and have been living here since then and their descendants also come under this Category of Pre-1942 settlers. So also do the (3) Karens who had been brought to these Islands in 1925 by the then Govt. from Burma as labourers. They were allowed to settle here and have been living in the Islands ever since. The Moplahs, Bhatu and Karens all come under the Category of Pre-1942 settlers. But since they have maintained their identity separately ever since their arrival all throughout and have not merged themselves with the 'Local Born', that is why they are being mentioned and considered separately.

Hardworking tribals from Bihar-known locally as Ranchis were brought into these Islands and settled here by the then Govt. in or about 1925 and they have been living here ever since. They also perhaps qualify for being considered as OBCs. We have not, however, taken up their case for consideration since they have not applied for the status. They are- so we are told bent upon getting the 'Scheduled Tribe' status and are not interested in getting OBC status. The Commission may take up their case for consideration as and when they apply for the OBC status.

The Post-1942 settlers are those who are or whose predecessor were brought to these Islands and settled and settled hereby the Central Govt. under various schemes of settlement and rehabilitation. The most numerous group amongst them were the displaced persons from East Pakistan-now Bangladesh-who starting from 1949 were brought to these Islands in batches and settled in various parts of these Islands. They were given land- agricultural, horticultural as well as homestead and building materials- agricultural implements and cattle and also financial help to enable them to start their lives anew here. They reconciled themselves to their new surroundings and struck their roots here and by utilizing the facilities extended to them by the Govt. in a proper way they-or least most of them-have become self supporting. Like the Local Born they also are tied to the Islands and have nowhere else to go. The Islands provide their only homes and means of subsistence and here they must live and die. Thus they may also be considered as children of the soil.

There are also a number of other families brought from other parts of the Mainland and settled in different parts of the Islands by the Central Govt. The commission did not receive any

application from them and as such did not deal with their cases. Cases of these settlers may be taken up by the Commission later as and when they apply for being identified as OBCs.

In view of all that has been stated above the Commission decided that for the time being the Commission could go ahead with the job of identification of the OBCs from amongst (1) the Pre-1942 settlers inclusive of the Local Borns, the Moplahs, Bhatus and Karens and their descendents and (2) the Post -1942 settlers comprising those amongst the settlers from erstwhile East Pakistan-now Bangladesh who were brought to these Islands and settled here by the Central Govt. under various rehabilitation schemes and their descendents.

Thereafter arose the question of framing the criteria or tests to identify the Other Backward Classes of the Islands-if any. The Hon'ble Supreme Court while discussing this question has observed:-

“.....backwardness being a relative term, must in the context be judged by the general level of advancement of the entire population of the country or the state as the case may be. More than this, it is difficult to say.....” it must be left to the commission/authority appointed to identify the backward classes to evolve a proper and relevant criteria and test the several groups, castes, classes and section of people against that criteria. One can start the process with the castes, wherever they are found, apply the criteria (evolved for determining backwardness) and find out whether it satisfied the criteria. If it does-what emerges is “ backward class of citizen” within the meaning of an for the purpose of article -16(4) ..Similar process can be adopted in the case other occupational groups, communities and classes, so as to cover the entire population.” (Page 561, l.h.c and r.h.c).

1. The above observation are very relevant for our present purpose. In the casteless and mostly classless society of the Islands it will be futile to search for comparable standards and the proper course, therefore, will be to compare the condition of the communities here with the condition prevailing in the mainland to find out what would have been their status in the social structure prevailing there. In other words, it has to be considered if the communities of the Islands under survey could be counted amongst the advanced or the backward classes

had they been living in the mainland. This then is the first criterion.

2. Economic condition of a community has also been adjudged to “be a consideration or basis along with and in addition to social backwardness.....”(see page 562,1.h.c)
3. The occupation-cum-income factor has also been recognized as “another method to find socially backward classes.” (see page 562, r.h.c). It is well known that in the mainland certain occupations have been considered as lowly and manual labour has also been traditionally recognized as the distinguishing factor between the Upper or the Advanced Classes and the lower or the Backward Classes. Lowly occupation results in low social position apart from generating poverty.
4. Educational standard is also a factor. True Art 16(4) does not require educational backwardness to be proved where social backwardness has already established; see the observations of the Hon’ble Court in page 556 and 557. But then as it has also been observed social backwardness leads to educational backwardness (see page 557,1.h.c) and therefore, the later may be considered as an identifier of backwardness.
5. The commission also feels that the inclusion of the counterparts of community in the mainland in the lists of SC/ST/OBC is also a factor, which should be treated as a criterion for deciding as to whether that community should be listed as an OBC of the Islands. This is a factor which may be taken into consideration alongwith the other factors; Page 561, r.h.c.
6. Lastly, it has also to be seen if the representation of a community in the services under the State is adequate or not, since inadequacy has been considered as a factor; see observation of the Hon’ble Court in para 89 at page 561-562.

The factors to be taken into consideration for deciding as to whether any of the communities in the Islands may be identified as OBCs or not are not therefore the following:-

- (i) Social backwardness is the main factor and such backwardness of the communities under survey has to be adjudged in the background of the general level of advancement of the entire population of the country as a whole or the State or the case may be.
- (ii) Economic condition of a particular community is a factor, which may be considered alongwith and in addition to social backwardness.
- (iii) The occupation-cum-income factor is another criterion;
- (iv) Standard of education is also a criterion;
- (v) Inclusion of a community in the list of SC/ST/OBCs in mainland is a factor which may also be taken into consideration.
- (vi) Adequacy or inadequacy of representation of a community in the services under the State is also a relevant factor.

Certain other criteria have also been incorporated in the classification tables prepared on the suggestions of Mr. Gehani, the Director of Statistics, A & N Administration.

The Commission required relevant data/information for deciding as to whether the communities of the Islands under survey or any of them deserved to be identified as OBCs/OBC of the Islands. At the request of the Commission, Shri M.K. Gehani, Director of Statistics, A & N Administration agreed to undertake a survey and collect relevant informations on social, economic and educational conditions of the Pre and Post – 1942 settlers and to draw up pro-formas on the basis of the guidelines approved by the Commission. He proposed to employ the same staff, who were to be employed by the Administration for carrying out the economic census on behalf of the Govt. of India. The field work was to start from 01/10/97 and after compilation, tabulation and consolidation the report could be – so he felt – prepared and submitted by the end of June, 1998. The aim was to cover each and every house of Pre and Post – 1942 settlers.

Shri B.K. Bose, who was appointed as one of the non-official members of the Commission never attended any of its meetings and he was replaced by Shri Lachman Singh who has retired earlier as the Director of Education under the Andaman and Nicobar Administration

Shri B.B. Lall – the other non-official member of the Commission also – breathed his last. Shri F.S. Riazuddin, a retired High official (Director, Tribal Welfare) of the A & N Administration was appointed as non-official member in his place in or about September 1997 – vide the Andaman and Nicobar Administration's Notification dated 03/09/1997.

The survey of households could not, however, be started before April, 1998 because of the General Elections from February to mid- March 1998. By January, 1999, 235 out of the total of 520 villages were covered, leaving about 63 villages (remaining 72 being small and situated in remote areas), 15856 households in urban and 35514 households in rural areas, in total 51,371 households out of a total 72000 were covered. The NIC, which was involved with the operation was desired by the Commission to complete the Data Entry on the basis of the informations gathered by the enumerators employed by the Director of Statistics and to bring out a report on a village on the required filled in pro-forma to be supplied by the Director.

The NIC completed data entry in respect of Diglipur and Ferrargunj Tehsil. It was found that the data for identification of OBCs as per the guidelines issued by the National Commission for OBCs were not being generated because of incomplete informations collected by the Enumerators. After some futile attempts to retrieve the situation the ambitious scheme of covering all the relevant households of the Islands was abandoned and the commission desired the Director of Statistics to carry out a sample survey of Pre-42 settlers inhabiting 12 villages and post -42 settlers inhabiting 18 villages. This work was completed sometime in October, 1999. The Commission decided to visit the villages covered by the sample survey to interact with the people and to verify the results arising out of the sample survey.

The Commission met with the representatives of the Bhatu at Ferrargunj on 30.10.1999 and the representatives of the Moplas at Stewart Gunj on 6.11.99 and the Bengali settlers at Shoal Bay on 6.11.99 and those of Guptapara on 8.11.99.