

HUMAN RIGHTS FORUM

To
The Justice Dalava Subramanyam
Backward Classes Commission
Hyderabad

16/2/2005

Sir,

Sub: Muslim Reservations – criteria – gathering of information – regarding

The Judgement of the High Court in T.Muralidhar Rao vs State shows that it is crucial for the completion of the task assigned to the Commission to lay down criteria for backwardness, and gather information relevant to backwardness, before any decision can be arrived at. Apart from non-consultation with the Backward Classes Commission, the principal reason for the Court setting aside the G.O was that criteria and information relevant to the decision were not properly set out. Since consultation with the Backward Class Commission is now complied with, it remains to meet the objection relating to criteria for identification as backward class and the gathering of data relevant to the same.

This in fact requires three things. One, criteria for backwardness must be set out. Two, statistical data relevant for the criteria must be gathered. And three, the data must be analysed to decide whether the criteria for backwardness are fulfilled by the Muslim community or a part thereof. The criteria should be clear, and should be relevant to the issue of backwardness. Secondly, there should be sufficient information with the Commission to enable the Commission to come to a conclusion (on this, the view expressed in State of A.P vs U.S.V Balaram, (1972) 1 SCC 660 was cited and approved in Indira Sawhney vs Union of India, 1992 Supp (3) SCC 217, at para 709). Thirdly, of course, the Commission should deduce its conclusions logically from the information.

Regarding the methodology for doing this, the Supreme Court in Indira Sawhney approved (para 782*) of the methodology adopted by the Justice O. Chinnappa Reddy Commission appointed by the Karnataka Government. The Hon'ble Commission may obtain a copy of the same from the Karnataka Government. That may be of help in evolving a suitable methodology. However, at paragraph 783 of Indira Sawhney the Supreme Court clarified that approval of the methodology of the Justice O. Chinnappa Reddy Commission should not be construed to mean that it is the only procedure to be adopted. The Court said that there is no such thing as a standard or model approach/procedure. 'It is for the authority to adopt such approach and procedure as it thinks appropriate. (and) so long as the approach adopted by it is fair and adequate'. Nevertheless the Justice O. Chinnappa Reddy Commission's report may be useful.

*all references to the Indira Sawhney case are to 1992 Supp(3) SCC 217

The Supreme Court also approved of the methodology adopted by the Mandal Commission 'No objection can be taken to the validity and relevance of the criteria adopted by the Mandal Commission': para 788 of Indira Sawhney). The Mandal Commission had set out eleven criteria as relevant for backwardness. They are:

1. Perception of other people: Whether the community is considered backward by others
2. Preponderance of manual labour: Whether the community mainly depends on manual labour for its sustenance
3. Child marriages: Whether at least 25 percent females and 10 percent males above the State average get married below 17 years in the rural areas and at least 10 percent females and 5 percent males do so in urban areas.
4. Female participation in work: whether female participation in work is at least 25 percent above the State average.
5. Schooling: Whether the number of children in the age group 5-15 who never attended school is at least 25 percent higher than the State average.
6. School dropouts: Whether dropout rate of students in the age group 5-15 is at least 25 percent than the State average.
7. Education levels: Whether the proportion of matriculates among the community is at least 25 percent below the State average.
8. Property: Whether the average value of family assets in the community is at least 25 percent below the State average.
9. Whether the number of families of the community which are living in kutcha houses is at least 25 percent above the State average.
10. Whether the source of drinking water is beyond half a kilometer for more than 50 percent of the household.
11. Whether the number of households of the community which have taken consumption loans is at least 25 percent above the State average.

This shows that the Mandal Commission looked at criteria relevant to the perception of the rest of society, education, employment, economic situation, access to amenities of life (housing and water, for instance), and customs such as marriage and position of women. In most of the matters a degree of backwardness that is 25% more than the average for the State has been accepted as indicative of backwardness. Perhaps the methodology adopted by the Justice O. Chinnappa Reddy Commission would turn out to be similar.

In adopting such criteria, care should be taken to ensure that incommensurables are not compared. The Mandal Commissions compared the various indicators for the communities under study with the 'State average'. But since Muslims are predominantly urban, and urban indicators tend to be higher on average, comparison of the various indices pertaining to Muslims with the State average would give a misleading picture.

Their backwardness must be assessed in relation to their habitat, which is predominantly urban and semi-urban. A complex weighting of the data to get rid of the 'urban bias' can be designed by any competent Statistician, but a simpler procedure would be to compare with the State average for urban areas, and not the over all State average.

The Mandal Commission took into account employment and economic status by looking at degree of manual labour and average family income. It would be more in tune with the view taken by the Supreme Court in various cases to look at the community's employment profile not merely from the point of view of manual - non-manual work but the *nature* of the employment. That occupation-cum-income is a valid criterion for backwardness was held by the Supreme Court in *R.Chitralekha vs State of Mysore*. AIR 1964 SC 1823, and approved in *Indira Sawhney*, at para 800. That the pursuit of 'inferior occupations' is an index of backwardness was accepted by the Supreme Court even in *Balaji vs State of Mysore*, AIR 1963 SC 649, and in *R.Chitralekha vs State of Mysore*. reservations made on the basis of occupations such as inferior services, crafts, petty business etc was approved. Certain types of occupations, namely occupations in the unorganised/ traditional sector (rickshaw-pulling, street-hawking, agricultural labour), coupled with poverty have been recognised as indicative of social backwardness in *Indira Sawhney* at para 800. In *Vasanth Kumar vs State of Karnataka*, 1985 Supp SCC 714, Justice O. Chinnappa Reddy held (at para 52) that being engaged in 'lowly' occupations was an index of social backwardness. In the same judgement, Justice Venkataramaiah (at para 145) expressed the same view, echoing and approving of *Chitralekha*, AIR 1964 SC 1823.

Thus, criterion 2 above of the Mandal Commission may be replaced by the more comprehensive one of employment profile, namely whether the concentration in manual labour, rickshaw-pulling, street-hawking, very petty business, crafts, mechanic sheds, tea shops, etc is 25% more than the State's average in urban areas, together with the income criterion, namely whether per capita income in urban areas is more than 25% below the State's average in urban areas.

In looking at criterion 1 above, the role of organised prejudice may be taken into account. The Hon'ble Commission has already noted the large number of representations received by it which advise against the granting of reservations to Muslims. It would not have happened in relation to any other community. Hence the danger of a concerted campaign among the Hindu people to answer the question in criterion 1 in the negative may influence the sample. It is perhaps better to give it up, in the given situation.

Criterion 4 is very specific to Hindu society, that too north Indian Hindu society. Among Hindus, at least in the rural sector in north India, women of upper castes do not go out to work and hence larger proportion of women going out to work is an index of the community being backward. The criterion makes no sense with reference to Muslims. On the other hands an exactly opposite criterion would make social sense. Unwillingness of

the community as a whole to let women go out and work is an index of backwardness of Muslims as against Hindus, Christians etc. To the extent that the community has overcome this cultural inhibition it can be said to have moved out of backwardness in this regard. Hence criterion 4 can be reworded as: whether female participation in work is 25% *less* than for the State as a whole in urban areas.

Criteria 9 and 10 refer to the amenities of life. As laid down by the Mandal Commission, they refer obviously to a rural community. In re-formulating the same in a relevant manner in the context of a predominantly urban/semi-urban community, kutchha house or pucca house may not be the apt criterion. In urban areas even the poor, excepting recent migrants, often have pucca houses. Relevant criteria may be, the number of rooms in the house relative to the family size, for how many years the house has been without any renovation, etc. Similarly, in the matter of water, in urban areas the criterion may have to be not how far they have to go for drinking water, but whether the family has its own tap or depends on a street tap, how many hours on average they spend in getting drinking water for the family's needs, etc.

In case the Hon'ble Commission chooses to adopt the methodology of the Justice O. Chinnappa Reddy Commission for Karnataka after obtaining a copy of the same from that Government, similar changes in the criterion may have to be made to make the criteria suitable for a predominant for a predominantly urban/semi-urban community.

Once the criteria are determined, the next task would be the gathering of information relevant for the criteria. Many organisations have met the Hon'ble Commission and submitted their views. While their concern may not be doubted, such information as they may have provided would be impressionistic. Proper gathering of data and proper analysis would be required. That can only be done by competent bodies. If the assistance of such competent bodies is not taken, whatever conclusion the Commission arrives at can again be assailed on the most successful ground in the first round, namely that the Government did not have before it sufficient information to come to a reliable conclusion. Reference may in this context be made to para 667 of Indira Sawhney where the Court has indicated the method adopted by the Mandal Commission to gather information. Of course, the Mandal Commission was faced with a much bigger task, namely to identify all the backward classes for the country as a whole. This Hon'ble Commission is concerned only with one community, whether it or a part of it is backward in the sense of Art 15(4) and 16(4) of the Constitution of India. Nevertheless the association of expert bodies with the gathering of information would be necessary.

In matters relating to educational indicators the State Government's Department of School Education is itself the best source. If a specific question is formulated and answer sought, they can devise the sampling scheme and provide a reliable answer. In matters of life amenities, the Municipalities of the urban centers where Muslims are concentrated in

large numbers may be asked to gather the data needed by the Hon'ble Commission. Hyderabad, Adilabad, Nirmal, Bhainsa, Nizamabad, Bodhan, Karimnagar, Warangal, Kurnool, Adoni, Cuddapah, Raychoti, Anantapur, Kadiri, Guntur, Narsaraopet, Vijayawada and Visakhapatnam are among the main Municipalities in which large numbers of Muslims live. In matters relating to employment profile and economic well-being, the State Government's Bureau of Economics and Statistics would be ideal. They have the necessary infrastructure and expertise for devising a sampling scheme and gathering and analysing information. They bring out periodic Statistical Abstracts for the State whose reliability has never been challenged. They can also give the full list of the urban/semi-urban centers with sizable Muslim population.

Whatever criteria are adopted, reasonable gathering of data does not require a total survey of the community. An adequate sample will do. What kind of a sample is adequate is a technical issue. Sampling techniques are available for different situations. The Bureau of Economics and Statistics which routinely gathers data concerning various indicators of public welfare has competent members on the staff who can devise sampling schemes relevant for each criterion.

Another source of assistance can be the University departments, especially the departments of economics, education and sociology. They have trained researchers who can prepare a scientific sampling scheme, gather the data and analyse it to draw objective conclusions. While the powers of the Commission may not extend to the giving of orders to Universities in the matters, the State Government can do so and may be asked to do so.

We request the Commission to set out the criteria of backwardness, keeping the Justice O. Chinnappa Reddy Commission's report for Karnataka and the Mandal Commission report as models but modifying their criteria to suit the study of a predominantly non-agricultural, urban & semi-urban people in mind. And also keeping in view the fact that this Hon'ble Commission is not undertaking a comprehensive task of identifying backward classes for the whole country/State but only seeing whether a particular community is backward or not. Once the criteria are set out, the expertise of the Departments of Government, the Bureau of Economics and Statistics of the State Government, and University Departments may be sought for gathering information and analysing it.

Our opinion is that, as indicated above, by virtue of a line of judgements of the Supreme Court culminating in the brief observation in para 800 of Indira Sawhney, occupation-cum-income is by itself a sufficient criterion of backwardness. Being predominantly engaged in unorganised sector/technologically backward/ labour intensive modes of employment coupled with low income per head, is by itself a sufficient indicator of social backwardness. Educational backwardness is plainly revealed by low literacy levels, poor educational attainments, etc. While the broader range of indicators adopted by the

Mandal Commission and the Justice O. Chinnappa Reddy Commission may be followed by the Hon'ble Commission to obviate any criticism that the report is not comprehensive, in our view the employment profile, per capita income levels and educational profile of the Muslim community would be sufficient to make out a case that they are entitled to recognition and preferential treatment as backward class, minus the creamy layer whose identification is in any case mandatory after Indira Sawhney.

We wish to finally emphasise that apart from the factors that would in any case have to be taken into account for identifying backwardness on any class/community, in the case of Muslims the fact of their being a minority suffering particular prejudices will have to be also kept in mind. It is true that Articles 15(1) and 16(1) would not permit any special treatment exclusively on the ground of religion. Thus the sole ground of being a minority, even a minority subjected to debilitating prejudices, cannot be made the basis of special treatment. But it can be taken into account as an additional factor along with the criteria discussed above. While data may be difficult to come by in this regard, the prejudice suffered by Muslims which has a long history stemming from Partition and the communal disturbances that preceded and succeeded it, has undoubtedly affected the progress of the community in social life. And any special provision made including reservations would only help the community to not only close the gap but also overcome the prejudice to which it is subjected.

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