

Ram Singh & Ors vs Uoi on 17 March, 2015

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Bench: Rohinton Fali Nariman, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 274 OF 2014

RAM SINGH & ORS.

...PETITIONER (S)

VERSUS

UNION OF INDIA

...RESPONDENT (S)

WITH

W.P. (C) No. 261 of 2014,

W.P. (C) No.278 of 2014,

W.P. (C) No.297 of 2014,

W.P. (C) No.298 of 2014,

W.P. (C) No.305 of 2014,

W.P. (C) No. 357 of 2014

&

W.P. (C) No.955 of 2014

J U D G M E N T

RANJAN GOGOI, J.

1. The challenge in the present group of writ petitions is to a Notification published in the Gazette of India dated 04.03.2014 by which the Jat Community has been included in the Central List of Backward Classes for the States of Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, NCT of Delhi, Bharatpur and Dholpur districts of Rajasthan, Uttar Pradesh and Uttarakhand. The said Notification was issued pursuant to the decision taken by the Union Cabinet on 02.03.2014 to reject the advice tendered by the National Commission for Backward Classes (NCBC) to the contrary on the ground that the said advice "did not adequately take into account the ground realities".

RESUME OF THE CORE FACTS :

2. Pursuant to several requests received from individuals, organisations and associations for inclusion of Jats in the Central List of Backward Classes for the States of Haryana, Rajasthan, Madhya Pradesh and Uttar Pradesh, the National Commission for Backward Classes (NCBC) studied their claims and submitted a report on 28.11.1997. It recommended inclusion in the Central List only of the Jats of Rajasthan, except the Bharatpur and Dhaulpur districts.

3. The NCBC also examined the claim for inclusion of Jats in the Central List for the State of Delhi, and tendered its advice rejecting their claim on 25.11.2010.

4. The significant developments that took place after submission of the aforesaid two reports may be relevant to be taken note of at this stage.

On 03.05.2011 the National Commission for Backward Classes (Power to Review Advice) Rules, 2011 was notified by the Ministry of Social Justice and Empowerment. By virtue of the aforesaid Rules, the NCBC was empowered to review its advice tendered to the Central Government under Section 9(1) of the Act. Rule 4 of the Rules provides that the "provision of Section 114 and Order 47 of the Code of Civil Procedure, 1908 shall mutatis mutandis apply to a review undertaken by the Commission."

5. In a meeting of the NCBC held on 20.06.2011, a large number of representations received from the Jat Community for review of the earlier advice of the NCBC was taken up for consideration. It was decided that consideration of all such representations be deferred till finalisation of the Socio-economic Caste Census (SCC) 2011 which was being conducted by the Registrar General of India all over the country for enumerating castewise population of the country. However, in a meeting held on 19.07.2011 the NCBC decided to approach the Indian Council of Social Science Research (ICSSR) to conduct a full-fledged survey in the States of Uttar Pradesh, Haryana, Madhya Pradesh, Rajasthan, Himachal Pradesh and Gujarat to ascertain the socio-economic status of the Jat Community. The said decision was prompted by the necessity to have adequate quantifiable data to enable the NCBC to consider the request of the Jat Community for inclusion in the Central List of Other Backward Classes in the concerned States.

6. What happened to the survey entrusted to the ICSSR would not be very relevant except that in October 2012 the NCBC decided to reduce the comprehensive survey to a 2% sample survey which work, once again, was entrusted to the ICSSR.

7. It appears that in the midst of the aforesaid exercise the office of the Prime Minister addressed a communication dated 04.06.2013 to the Ministry of Social Justice and Empowerment to the effect that a decision has been taken to constitute a Group of Ministers chaired by the Finance Minister and comprising, inter alia, of the Home Minister for the following purpose:-

- (i) To interact with the representatives of the Jat Community with regard to their demand for inclusion and to keep them apprised of the progress in the matter.

(ii) To monitor the expeditious completion of the survey undertaken by the NCBC through the ICSSR and to facilitate an early decision in the matter by the NCBC.

8. The Group of Ministers in its meetings held on 28.10.2013 and 30.10.2013, upon consideration of the matter, perceived that two options were available to it. The first was to request the NCBC to reconsider its earlier decision of conducting the sample survey and to tender its advice on the basis of materials already available. The second was that the survey work which had already begun in Gujarat would be restricted to confirmed list of Jat variants and on the basis of the results of the survey done by the ICSSR the NCBC will tender its advice." Thereafter, in a meeting of the Cabinet held on 19.12.2013, decision was taken to request NCBC to go ahead with first option i.e. to tender its advice based on existing material. The cabinet further took the decision that the cases of States of Bihar, Uttarakhand and NCT of Delhi be also included in the reference made to the NCBC.

9. On the basis of the aforesaid decision of the cabinet communicated to the NCBC, the Commission took the view that as it did not have sufficient expertise in the matter, the ICSSR be requested to set up an Expert Committee to conduct an extensive literature survey on the subject in order to collect sufficient materials for the impending exercise. Thereafter, the NCBC forwarded all reports/documents received by it in this regard including representations for and against the inclusion of the Jat Community to the ICSSR. The expert body constituted by the ICSSR submitted its report (hereinafter referred to as the report of the ICSSR) in the matter which primarily was based on the reports of the various State Commissions submitted to the respective State Governments in connection with the inclusion of the Jat Community in the OBC list of the concerned States. The ICSSR, apparently, did not undertake any study of the other materials by way of books/literature/representations. The report of the ICSSR, noticeably, did not make any recommendations but only set out the existing facts. The said report of the ICSSR was, thereafter, discussed by the NCBC in several of its meetings. Simultaneously, the NCBC addressed letters to the State Governments for fixing public hearings in the respective State capitals. As there was no response from the States in this regard, the NCBC published notices for conducting public hearings fixing different dates for hearing the claims and counter-claims (objections). The public hearings were to be held in Siri Fort Auditorium, New Delhi on two sets of dates in February, 2014.

10. On conclusion of the public hearings, which appear to have received what may at best be termed as a mixed response, the NCBC submitted its advice/opinion/report dated 26.02.2014 to the Central Government stating that the Jat Community had not fulfilled the criteria for inclusion in the Central List of OBCs. It observed that merely belonging to an agricultural community cannot confer backward status on the Jats. It suggested the need for a non-caste based identification of backward classes. The NCBC found that the Jats were not socially backward. They were also not educationally backward. It similarly rejected the claim of inadequate representation in public employment, finding them adequately represented in armed forces, government services and educational institutions.

11. Thereafter, the Union Cabinet in a meeting held on 02.03.2014 decided that the advice tendered by the NCBC did not adequately take into account the "ground realities." The Cabinet, therefore, resolved not to accept the said advice and instead to include the Jat Community in the Central List

of Backward Classes for the States of Bihar, Gujarat, Haryana, Himachal Pradesh and NCT of Delhi, Bharatpur and Dholpur districts of Rajasthan, Uttar Pradesh and Uttarakhand. Thereafter, the impugned notification came to be issued on 04.03.2014.

12. At this stage it may be relevant to notice the dates on which the Jat Community was included in the List of OBCs in the States in question which are set out herein:

"(1) 03.11.1999 State of Rajasthan (2) 10.03.2000 State of Uttar Pradesh (3) 31.05.2000 NCT of Delhi (4) 06.11.2000 State of Bihar (5) 24.01.2002 State of Madhya Pradesh (6) 16.11.2002 State of Himachal Pradesh (7) 22.03.2010 State of Uttarakhand (8) 24.01.2013 State of Haryana-As Special OBC (9) Gujarat Not included"

Relevant Constitutional and Statutory Provisions

13. The relevant Constitutional and Statutory provisions in the light of which the issues arising will have to be determined may be taken note of at the outset:

Article 15 of the Constitution prohibits discrimination on ground of religion, race, caste, sex or place of birth. Clause (4) of Article 15 provides that "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 Castes and the Scheduled Tribes". Article 16 which provides for equality of opportunity in matters of public employment provides in Clause (4) thereof that "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".

14. Reference to the provisions of Article 38 and 46 of in Part IV of the Constitution may also be made. Article 38 of the Constitution enjoins a duty on the State to endeavour to promote the welfare of the people by securing and protecting as effectively as it may a social order by, inter alia, eliminating inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people either residing in different areas or engaged in different vocations. Article 46 casts upon the State a duty to promote the educational and economic interests of the weaker sections of the population particularly of the Scheduled Castes and Scheduled Tribes and to protect such citizens from social injustice and exploitation. Article 340 of the Constitution envisages the creation of a Commission, inter alia, to investigate the conditions of the socially and educationally backward classes and the difficulties under which such classes labour; and to make recommendations as to the steps that should be taken to remove such difficulties and improve their conditions etc.

15. The National Commission of Backward Classes Act, 1993 was enacted following the decision of this Court in *Indra Sawhney & Ors. Vs. Union of India & Ors.*[1] which visualised the necessity of

establishment of a permanent/specialised body to which complaints of non-inclusion or wrong inclusion of groups, classes and sections in the list of Other Backward Classes can be made from time to time. In this regard, the following part of the opinion of Justice Jeevan Reddy in Indra Sawhney case (supra) may be noticed :-

"We are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of Other Backward Classes can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its advice/opinion should ordinarily be binding upon the Government. Where, however, the Government does not agree with its recommendation, it must record its reasons therefor. Even if any new class/group is proposed to be included among the other backward classes, such matter must also be referred to the said body in the first instance and action taken on the basis of its recommendation. The body must be composed of experts in the field, both official and non-official, and must be vested with the necessary powers to make a proper and effective inquiry. It is equally desirable that each State constitutes such a body, which step would go a long way in redressing genuine grievances. Such a body can be created under Clause (4) of Article 16 itself - or under Article 16(4) read with Article 340 - as a concomitant of the power to identify and specify backward class of citizens, in whose favour reservations are to be provided. We direct that such a body be constituted both at Central level and at the level of the States within four months from today. They should become immediately operational and be in a position to entertain and examine forthwith complaints and matters of the nature aforementioned, if any, received. It should be open to the Government of India and the respective State Governments to devise the procedure to be followed by such body. The body or bodies so created can also be consulted in the matter of periodic revision of lists of O.B.Cs..."

(para 847)

16. The National Commission for Backward Classes Act, 1993 (for short "the Act") contain provisions for the constitution of the National Commission For Backward Classes (NCBC), its powers and functions and other allied matters. The salient features of the Act which will require to be specifically noticed may be set out hereunder.

Section 2(a) and 2(c) provides as follows:

"2(a) - "backward classes" means such backward classes of citizens other than the Scheduled Castes and Scheduled Tribes as may be specified by the Central Government in the lists;

2(c) - "lists" means lists prepared by the Government of India from time to time for purposes of making provision for the reservation of appointments or posts in favour

of backward classes of citizens which, in the opinion of that Government, are not adequately represented in the services under the Government of India and any local or other authority within the territory of India or under the control of the Government of India".

Section 3 deals with constitution of NCBC. It provides that the NCBC shall consist of the following persons nominated by the Central Government. A Chairperson, who is or has been a Judge of the Supreme Court or of a High Court;

A social scientist;

Two persons, who have special knowledge in matters relating to backward classes; and A Member-Secretary, who is or has been an officer of the Central Government in the rank of a Secretary to the Government of India.

Sections 9 and 11 of the Act read as under:

"9. Functions of the Commission The Commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over- inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate. The advice of the commission shall ordinarily be binding upon the Central Government.

11. Periodic Revision of Lists by the Central Government (1) The Central Government may at any time, and shall, at the expiration of ten years from the coming into force of this Act and every succeeding period of ten years thereafter, undertake revision of the lists with a view to excluding from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes.

(2) The Central Government shall, while undertaking any revision referred to in sub-section (1), consult the Commission."

17. Section 8 of the Act empowers the Commission to lay down its own procedure while Section 10 enumerates the powers of the Commission while performing its functions under Section 9(1) of the Act. There is no specific provision in the Act which empowers the Central Government to override the advice/recommendation of the Commission.

Arguments on Behalf of Petitioners

18. To begin with, learned counsel for the petitioners seeks to attribute legal malice to the decision making process resultantly vitiating the decision taken by the Union Government. The manner in which the decision was taken commencing with the conferment of the review power in the year 2011 by enactment of the extant Rules; the constitution of Group of Ministers to oversee the matter; the exercise of the first option available and the repeated requests made by the Government to the

Commission to tender its advice indicate the pre-determined manner in which the Central Government was proceeding in the matter, it is urged. The meeting of the cabinet on a Sunday (2.3.2014); the publication of the notification on 4.3.2014 when the General Elections were notified on the next day i.e. 5.3.2014 has been mentioned to contend that the impugned notification is based on wholly extraneous considerations and is actuated by political motives, namely, to gain electoral advantages.

19. It is contended that the impugned notification dated 04.03.2014 has been issued in derogation of the provisions of Section 9(2) of the Act which provides that "advice of the Commission shall ordinarily be binding upon the Central Government". Even in a situation contemplated by Section 11 of the Act the views of the NCBC would be equally compulsive and binding and should commend for acceptance of the Central Government except in situations where there are strong compelling and overwhelming reasons not to do so. None of the aforesaid situations do exist in the present case, it is claimed on behalf of the petitioners.

20. It is submitted that the earlier reports of the NCBC dated 28.11.1997 and 25.11.2010 were founded on an elaborate reasoning and upon a comprehensive consideration of all relevant materials. Not only the circumstances leading to the submission of the report dated 26.2.2014 of the NCBC make the decision of the Union Government to reject the same wholly premeditated, even otherwise, the decision of the Central Government to override the advice tendered by the NCBC is not supported by any reasons recorded or by notings in the file. Neither the said decision can be said to be a reasonable or possible conclusion that could have been reached by the Union Government on the available materials.

21. The decisions in Barium Chemicals Ltd. Vs. Company Law Board[2]; Rohtas Industries Ltd. Vs. S.D. Agarwal & Ors.[3]; Shri Sitaram Sugar Co. Ltd. & Anr. Vs. Union of India & Ors.[4] and Gazi Saduddin Vs. State of Maharashtra & Anr.[5] have been relied upon to contend that the satisfaction of the Central Government is open to challenge and within the reach of the judicial scrutiny both on grounds of its legal fragility and ex facie unreasonableness. Learned counsel for the petitioners has very elaborately taken us through the advice/report of the NCBC dated 26.02.2014 to contend that the exhaustive report of the said body contain a detailed analysis of the facts recorded in the reports of the various State Commissions. The said exercise clearly demonstrates that the Jats are a forward community in all the States in question. The contrary view of the Union Government is wholly unsupported by any adequate, reasonable and relevant grounds or basis. The decision of the Union Government is also not based on any relevant quantifiable data or material to enable recognition of the Jat Community as backward within the meaning of Article 16(4) of the Constitution. Learned counsel for the petitioners has elaborately placed the relevant materials on record in respect of each of the States under consideration and has contended that the said materials cannot reasonably sustain the decision to include Jats in the Central lists of other Backward Classes of the concerned States.

22. In reply, the learned Attorney General has argued that the power to make provisions for reservation by inclusion of the eligible classes in the Central lists flow from Article 16(4) of the Constitution. The advice of the NCBC, according to the learned Attorney General, would not be very

material inasmuch as even dehors the provisions of the NCBC Act the Union Government would not be denuded of its powers to add or subtract from the Central Lists of Other Backward Classes. The learned Attorney has alternatively contended that the present exercise of inclusion of Jats in the list of Other Backward Classes is not pursuant to any exercise undertaken under Section 9 of the NCBC Act so as to 'bind' the Union to the advice tendered by the NCBC. It is also argued that the inclusion of classes or groups in the State OBC Lists will be a strong and compelling factor for inclusion of such classes in the Central Lists also inasmuch as the considerations which had weighed with the State Government to include a particular class as an other backward class would always be relevant for being taken into account for inclusion of the said class in the Central List of Other Backward Classes. Such a course, according to the learned Attorney, is necessary for purposes of consistency and uniformity of action by the Union and the States.

23. Pointing out the facts antecedent to the submission of the report/advice of the NCBC on 26.2.2014, the learned Attorney General has drawn the attention of the Court to the fact that the process of tendering such advice had really commenced in the year 2011 and the delay that has occurred is attributable to the NCBC. The NCBC has been vacillating from time to time as would be evident from its decisions, firstly, to defer consideration of the matter till finalisation of the Caste Census Survey conducted by the Registrar General of India and thereafter in deciding to approach the ICSSR for a full survey in the six States and subsequently its decision to opt for a 2% sample survey. It is pointed out that even after the decision to go for a sample survey, nothing had happened for over a year. It is only in December 2013 after the Central Government had 'reminded' the NCBC of the matter that the NCBC had decided to entrust the ICSSR to carry out a study based on the available literature, books/documents. There was no undue haste in the process claims the learned Attorney General who also points out that timing of the notification i.e. on the eve of the commencement of the General Elections would not, by itself, be sufficient to hold the decision taken to be vitiated in law or by legal malice.

24. The learned Attorney General has taken us through the exhaustive materials on record i.e. the report dated 26.2.2014 of the NCBC; the reports of the various State Commissions; and report of the ICSSR including the report of the IIPA relied upon by the ICSSR. It is submitted, on the basis of the said materials, that there is overwhelming evidence to permit a conclusion to be reached that the Jat Community should be included in the Central Lists of Other Backward Classes in the States in question. It is only after such consideration that the impugned notification dated 04.03.2014 came to be issued. The conduct of the NCBC in entrusting the responsibility of carrying out a literature survey to the Expert Body i.e. ICSSR on the ground that the NCBC itself is not equipped to perform the task and, thereafter, in acting as an Appellate Body sitting in judgment over the views of the said Expert Body has come in for sharp criticism by the learned Attorney General. By referring to the specific conclusions of the NCBC recorded in its report dated 26.02.2014, it has been contended that the conclusions reached are wholly untenable and unacceptable being contrary to specific findings recorded by the ICSSR or in the reports of the State Commissions with regard to the social, economic as well as educational status of the Jats.

25. The above submission advanced by the learned Attorney General have been echoed by the learned counsels appearing on behalf of the other respondents in the writ petitions i.e. Akhil

Bharatvarshiya Jat Mahasabha, Jat Aarakshan Sangharsh Samiti and the Jat Sabha Zila, Meerut. The limited scope of judicial review that will be available to this Court to scrutinise the decision taken by the Union Government has been particularly urged by Shri Mohan Parasaran, learned senior counsel appearing for the Akhil Bharatvarshiya Jat Mahasabha. In so far as Jat Sabha Zila, Meerut is concerned, Shri Jayant Bhushan, learned senior counsel has further urged that the test for determining social, educational and economic backwardness laid down in Indra Sawhney case (supra) are fully satisfied by the Jat Community so as to make its members eligible for inclusion in the Central lists of OBCs.

26. What weight-age the advice/recommendation tendered by the NCBC should receive in the decision making by the Union Government is a crucial determination that this Court is required to make in the present case. The observations in Indra Sawhney (extracted above) and the expressed provisions contained in Section 9 of the NCBC Act clearly indicate that the advice tendered by the NCBC is ordinarily binding on the Government meaning thereby that the same can be overruled/ignored only for strong and compelling reasons which reasons would be expected to be available in writing. As the constitution of the NCBC is traceable to the opinion rendered in Indra Sawhney (extracted above) there can be no doubt that even when the exercise undertaken by the Central Government is one under Section 11 of the Act, the views expressed by the NCBC in the process of the consultation mandated by Section 11, would have a binding effect in the normal course.

27. It will, therefore, be necessary to note what had prevailed with the NCBC in tendering its advice in the instant case not to include the Jat community in the Central Lists of other backward classes in the nine States in respect of which the reference was made to the Commission. A lengthy narration is unavoidable for it is only upon setting out the relevant facts and circumstances in their proper conspectus that the intrinsic merit of the advice tendered by the NCBC can be determined.

28. The NCBC had entrusted the task of the survey of the relevant literature to an Expert Committee constituted by the ICSSR. On completion of the task the said Committee had submitted its report in the matter to the NCBC. The State-wise summary of the findings of the Expert Body of the ICSSR may be extracted below:

SUMMARY OF FINDINGS OF ICSSR BIHAR "The analysis is based on the Bihar State Backward Classes Commission Report (1999) which had recommended the inclusion of Jats in State OBC list. The estimated population of Jats in Bihar from independent sources is about 80 thousand in 1988. Jats reside in selected districts- in the State and there are both Hindu and Muslim Jats. The Bihar State Backward Class Commission considered the social, educational and economic condition of both Hindu and Muslim Jats and concluded that the Jat community in Bihar is backward. The recommendation of the Bihar State Backward Classes Commission is based on the information sought through the questionnaires filled by members of the community (the number of questionnaire received by the commission is not specified) and representations from the Jat community. Since the report is not based on household survey, "this committee is not in a position to give facts and figures."

The Commission concluded that the Jat community in Bihar is not represented at all in the Group I and Group II jobs in the Government. They are educationally backward compared to other communities in Bihar and are primarily engaged in agriculture and allied activities."

DELHI "The estimated population of Jats in Delhi is around 1.2 million (independent source). There are two reports, one prepared by Delhi OBC Commission and another by an Independent researcher, The Delhi state OBC Commission report does not have any absolute indicators on educational status, employment structure etc. However, the Commission has reported indicator on net social standing, net educational standing and net economic standing. On net educational standing, Jats with composite score of 1.17 are behind Gujars (1.34) and Ahirs (1.22). On net social standing, the composite score of Jats is 17.24, which is significantly lower than the Gujars (27.14) and Ahirs (19.85). On composite economic score, score of Jats is 16.55, lower than Gujars (19.38) but higher than the Ahirs (14.86). Thus, with respect to social and educational standing, Jat lags behind Gujars and Ahirs while in case of economic standing, they lag behind compared to Gujars but ahead of Ahirs. It is to be noted that both Gujars and Ahirs are included in the Central OBC list."

GUJARAT "In case of Gujarat, the estimated Jat population is 0.65 million (independent source) but there is no documentation available about spatial or religion-wise break-up of Jat population. Further, there is lack of information on the parameters (social, educational and economic) specified by the NCBC. However, the Gujarat government website mentions that Jat Muslims are included in the Central OBC list."

HARYANA "One of the states where Jats have sizeable population is Haryana. Our observations are based on the Haryana State OBC Commission report, which recommended reservation for Jats as OBC in the state in 2012. The commission based its recommendations on a sponsored study conducted by Sangwan (2012). The findings of the study indicate that on occupational structure, Jats in Haryana are a landowning community. Nearly 87% of the Jats are engaged in agriculture. The other economic activities pursued by Jats include animal husbandry and trade. In government employment, Jats have about 21% share in the total class I & II services in the state which is about four percentage points lower than their share in population (25%) in 2012. However, they lag behind compared to Bishnoi and Brahmins whose share in government employment in Class I & II is higher than their respective population share. The comparable figures for Ahir/Yadava and Gujar (the other two comparable OBC communities with Jats) are not reported in Haryana Backward Classes Commission Report 2012. On the educational achievements, more than 12% Jat children in the age group of 6-14 years never attended school, which is higher than many other backward castes. At the graduation level, Jats have about 6.5% enrolment, which is less than average level of 8.3%. At the postgraduate level, enrolment of Jats is 1.71% against the average of 2.26% of the respondents. The

available data, therefore, suggests that in Haryana Jats are land-owning community. Their share in class I & II government service is close to their population share but they lag behind in both school and higher education enrolment."

HIMACHAL PRADESH "In case of Himachal Pradesh, the HP State OBC Commission Report is the only available source of information. The Report is based on hearing of about 866 persons conducted by the full bench of the Commission. The Commission estimated the Jat population in Himachal Pradesh is 43, 252. The Commission evolved a 25-point criteria based on NCBC guidelines. However, the Report does not contain any quantitative information about the social, economic and educational status of Jats vis-a-vis other communities. The State Commission has recommended for inclusion of Jats in the State OBC list. Data on literacy rate and higher education enrolment of Jat children is lacking in the State Commission Report. However, the report observed that dropout rate of children beyond primary level being high, they are put to household work or work as agriculture labour. On share in the government service, the State Commission Report observed that the incidence of representation of Jats In the state services in comparison to general average is very low. Similarly, the state commission report observes that the representation of Jats in the public sector is negligible. The report of the commission also mentions that most of the members (male, female and children) of this community are depending on agriculture labour on a much larger scale than Rajputs and Brahmins. It is to be noted that the Commission Report does not include quantitative information on literacy, occupation and representation in government service on the basis of which it has made these recommendations. The Commission came to unanimous conclusion that this community is socially, educationally and economically backward and is fit for inclusion in the State list of OBCs."

MADHYA PRADESH "In case of Madhya Pradesh, in 2002, State Government included Jats in the State OBC list though no details are available on the parameters or criterion used by the State OBC Commission for the inclusion of Jats in the State list. Earlier, in the year 1999, the NCBC had observed that the Jats in Madhya Pradesh are not socially backward and were not included in the central OBC list."

RAJASTHAN "In case of Rajasthan, the available information suggests that Jats are included in both the Central and State OBC list since 1999. But the report of the Rajasthan State OBC Commission has not been made available to us by NCBC. Therefore, we have based this comparative picture on a study sponsored by the State Government and conducted by Institute of Development Studies, Jaipur. The report of the sponsored study was submitted to the Department of Social Justice and Empowerment, Government of Rajasthan 2012. The available information shows that more than 91% Jat households own land, which is higher than that of Ahir, Gujar and the rest of OBCs. Around 29% of the Jat population in the age group of 7-59 years is reported to be illiterate in 2012. This is substantially lower than several caste groups that are included in the OBC list. Among the Jats, 7.5% households have at least one member who is graduate, which is lower than the Ahir and Charan communities but somewhat better than the rest of the OBCs. Among the Jats, it is reported that more than 6.8% household have at least one member in the government service. This is marginally lower than Ahir, Vishnoi and Charan households but higher than the rest of the backward classes. Thus, Jats in Rajasthan are better off with respect to ownership of land but

somewhat lag behind with respect to literacy rate, enrolment in graduation and representation in government service."

UTTAR PRADESH AND UTTARAKHAND "The Jat population is primarily concentrated in western Uttar Pradesh and Uttarakhand. Jat community got included in the State OBC list in 2000. Our observations are based on the Social Justice Committee Report (SJCR) 2001, which has been prepared after the Jat community was already included in the state OBC list by the Uttar Pradesh Government in 2000, The SJCR population estimates are based on the Village Panchayat Family Register, Accordingly the highest population at 19.6% is that of Ahir followed by 7.5 % Kurmi (different variants) and 3.6% Jats. The comparable socioeconomic indicators are available in Singh (2003) that we use in this report. Singh (2003) shows that about 92% Jat households own land. The figures for Ahir and Kurmi are 95% and 100%, respectively. Singh (2003) also reports that 89% of the workers among the Jats in rural areas are engaged in primary sector activities, which is similar to that of Ahir/Yadava but lower than the Gujar community. The proportion of those completed graduation and above in the Jat community is 1.7% compared to 3% for Yadava. Similarly, the proportion of post-graduate is 0.2% for Jat and 0.7% for Yadava. The data compiled by SCJR in 2001 from higher educational institutions on 207,000 students indicate that the share of Jats is much less than their share in the population while that of Ahir and Kurmi was much higher than their population share. The information compiled by SJCR suggests that share of Ahir/Yadava is 3:4% whereas Kurmis have 11.2% in professional education. Share of Jats is only 0.3% that is way below the share of Ahir and Kurmi shares. In the Group A & B Government Employment, the share of Jat is 5.5% and 4.3%, respectively, which is slightly higher than their share in OBC population. Corresponding figures for Yadava and their variant for Group A & B services is 46% and 42% Of the OBC which is much higher than their share in the population of OBC which is 19.4%. Similar differences are observed in case of Kurmi and their variants. As far as Uttarakhand is concerned, no separate report is available. Apparently, Uttarakhand has accepted the list of OBC as that of Uttar Pradesh. Thus, Jats are at par compared to OBCs such as Ahir/Yadav as far as ownership of the land is concerned. However, in case of enrolment in higher and technical education they lag behind Ahir/Yadav. In case of representation in the government service, the share is proportionate to their population but relatively lower than the Ahir/Yadava and Kurmi."

INTER-STATE COMPARISON "The NCBC has asked this committee to provide inter-state variation in the social, economic and occupational status of Jats vis--vis other backward class communities. Going by the summary of the status of different communities reported from paras 9 to 16 above, the committee is of the view that due to lack of comparable quantitative data on the social, educational and economic status of Jats and other backward class communities in the nine states, any meaningful comparison is not possible. However, based on available quantitative and qualitative information, it is the impression of the committee that the situation of Jats with respect to ownership of land and occupation, education level and representation in the government service, the Jats from the states of Bihar, Gujarat and Himachal Pradesh are worse off compared to the Jats from Delhi, Haryana, Rajasthan and Uttar Pradesh and Madhya Pradesh. Nevertheless, these are impression of the committee based on the limited comparable data and information."

29. The report of the Expert Committee constituted by the ICSSR was based on a study of eight specific reports which were sent by the Group of Ministers to the NCBC at the time of seeking a review of the earlier decision of the NCBC. The said eight reports, details of which are mentioned below, in turn, were forwarded by the Commission to the ICSSR -

(1) Social Justice Committee Report, Uttar Pradesh (2001) (2) Socio-Economic Status of Farming Communities in Northern India, Uttar Pradesh (2003) (3) Caste, Land and Political Power in UP, Uttar Pradesh (4) Justice Gurnam Singh Commission Report, Haryana (1990) (5) Justice K.C. Gupta Report, Haryana (2013) (6) Justice Gummanmal Lodha Commission Report, NCT of Delhi (1999) (7) Dr. Lipi Mukhopadhyay Report, Delhi (2005) (8) State Backward Classes Commission's Reports of State Governments of Rajasthan, Madhya Pradesh, Himachal Pradesh and Gujarat.

30. Apart from the aforesaid eight reports, fifty one representations in favour of inclusion of Jats in the Central Lists and fifty eight representations against such inclusion received by the NCBC were also forwarded to the ICSSR. On receipt of the report of ICSSR, the summary of which has been indicated above, the Commission on an extensive study of the same and on a further detailed examination of the eight specific reports which were referred to it by the Group of Ministers carried out a State- wise analysis of the aforesaid materials. Thereafter it came to specific findings in respect of each of the States, summary of which findings, is indicated below :

Relevant Findings in the Report of the NCBC Haryana The NCBC found that the report of the State Backward Commission of the year 2012 (Justice K.C. Gupta Commission Report) was the primary document pertaining to Haryana. The NCBC found certain inherent flaws in the said report which, in its view, made the same unworthy of acceptance. Some of the reasons recorded by the NCBC for taking the above view are :

Justice K.C. Gupta Commission's report is primarily based on the survey conducted in the year 2012 by Maharishi Dayanand University (MDU), Rohtak which was a very selective study.

Apart from Justice Gupta, the Commission consisted of at least two other persons who belonged to the classes/groups which were under consideration i.e. Bishnoi and Ror who came to be included in the State List of Other Backward Classes.

The survey undertaken by the MDU, Rohtak was by one Prof. K.S. Sangwan who belong to the Jat community; the Vice-chancellor of the MDU was also a Jat. In the public hearing conducted by the Commission, the aforesaid two persons were accused of bias.

The survey undertaken by MDU was a comparative study of the Jats with higher castes like Brahmins, Rajputs etc and comparable figures in relation to Ahirs, Yadavs, Kurmis and Gujars were not available. In the course of the public hearing it transpired that in comparison to the aforesaid communities i.e. Ahirs, Yadavs,

Kurmis and Gujars, the Jats were superior.

The villages where the survey was undertaken were as per details provided by the State Commission and not independently undertaken by the MDU.

The representation of the Jats in the Armed Forces was not studied.

31. The Justice Gurnam Singh Commission Report being of the year 1990 and having been earlier considered at the time of submission of the report of the NCBC on 28.11.1997, was not considered appropriate for being considered once again.

32. The NCBC had evolved a set of guidelines, criteria, formats and parameters against which all claims for inclusion as an other backward class are required to be considered. The said parameters were evolved on the basis of the Mandal Commission Report and the judgment in Indra Sawhney. 11 indicators under three broad heads i.e. social, economic and educational, details of which are indicated below, were identified.

A. Social Castes/Classes considered as socially backward by others.

Castes/Classes which mainly depend on menial labour for their livelihood.

Castes/ Classes where at least 25% females and 10% males above the State average get married at an age below 17 years in rural areas and at least 10% females and 5% males do so, in urban areas.

Castes/Classes where participation of females in work is at least 25% above the State average.

B. Educational

(v) Castes/Classes where the number of children in the age group of 5- 15 years who never attended school is at least 25% above the State average.

(vi) Castes/Classes where the rate of student drop-out in the age group of 5-15 years is at least. 25%. above the State average.

(vii) Castes/Classes amongst whom the proportion of matriculates is at least 25% below the State average.

C. Economic

(viii) Castes/Classes where the average value of family assets is at least 25% below the State average.

(ix) Castes/Classes where the number of families living in Kuccha houses is at least 25% above the State average.

(x) Castes/Classes where the source of drinking water is beyond half a kilometer for more than 50% of the households.

(xi) Castes/Classes where the number of households having taken consumption loan is at least 25% above the State average.

33. Relative weight-age to each of the parameters under the aforesaid three broad heads is to be in the proportion of 3:2:1. The Justice K.C. Gupta Commission however followed 12 Social indicators, 7 Educational indicators and 5 Economic indicators. That apart, according to the Commission, backwardness that was required to be determined, is primarily social backwardness which, in turn, depended on how the other castes/classes perceived whether the Jats were socially backward or not. Justice K.C. Gupta Commission did not proceed in the matter from the aforesaid perspective. Further in its report the NCBC found that indicators like Infant Mortality Rate, Maternal Mortality Rate, Deliveries at Home etc. had been considered to determine social backwardness. Such data, according to the NCBC, are actually Public Health Statistics and are wholly irrelevant for determination of social backwardness.

34. The NCBC in its report also recorded its disagreement with the views of the K.C. Gupta Commission that despite there being 26 (out of 90) MLAs belonging to the Jat community and 4 Members of Parliament (out of 15), the Jats have not progressed socially, educationally and economically. In this regard, the NCBC had also recorded that in the course of public hearing it transpired that several Chief Ministers of Haryana who held office for long periods of time belong to Jat Community and in fact there has been a Prime Minister of the country who was a Jat (Ch. Charan Singh).

Uttar Pradesh The NCBC in coming to its conclusion with regard to the claim of Jats of the State of Uttar Pradesh for inclusion in the Central Lists of other backward classes relied on three basic documents, namely, -

Social Justice Committee Report popularly known as Hukum Singh Committee Report (2001).

Social Economic Booklet on Social economic status of farming community in Northern India by Shri Ajit Kumar Singh (2003).

Caste and Class in India by K.L.Sharma (1994).

35. The Hukum Singh Report, being 14 years old, was understood by the NCBC as having serious limitations in furnishing current data. The said committee, in fact, did not undertake any study of the socio-educational status of the Jat community. Rather, its primary object was to investigate the facilities extended to SCs/STs and OBCs in the State of U.P. and to propose modification in the quota of reservation in the new State of Uttarakhand and the truncated State of UP. In performing the said exercise, the Committee recommended the inclusion of Jats in Schedule 'B' consisting of 8 different other backward classes who were to have the benefit of 9% reservation. No study of the Jats of UP as a socially, economically or educationally backward group of people was undertaken by

the Committee.

36. The booklet compiled by Shri Ajit Kumar Singh (in the year 2003) is based on a small sample survey of 2000 rural households selected from 20 villages spread over 5 districts of Western UP. By its very nature it was found to be of limited utility. In the said book it is recorded that "Jats, Gujars, Kurmis and Yadavs were the main beneficiary of the green revolution and have acquired political clout due to their numerical strength. They are the main land owning classes now and have progressed educationally as well and are seeking greater access to government jobs through reservation politics. These intermediate castes enjoy relatively better economic conditions as compared to Lodhs and the motley group of castes called Other Backward Castes or OBC, who together form the relatively poorer section of the middle classes in the rural areas." The said view/findings were specifically taken note of by the NCBC while making its recommendations.

37. The statistics and data available in the book - Caste and Class in India by K.L. Sharma are of considerably old vintage. The book, itself, is 20 years old. In any case, in the said book it has been recorded that "the intermediate caste in U.P. can be broadly divided into three categories i.e. Jats, Tyagis, Bhumihsars, who have a considerable position in land, possess high ritual status and because of their regional concentration are dominant in the politics of a few districts". The aforesaid view was specifically taken note of by the NCBC while tendering its advice to the Government.

Delhi Two pieces of literature formed the foundation of the study undertaken by the NCBC with regard to the status of Jats in the State of Delhi. The first is Justice Gumanmal Lodha Commission Report which is the State OBC Commission Report for Delhi. The survey undertaken was limited to about 2500 households belonging to 18 castes out of which 11 were already in the OBC category. The said report (2002) was considered by the NCBC while tendering its earlier advice in November, 2010 against the inclusion of Jats. The second document is a report prepared by one Prof. Lipi Mukhopadhyay on behalf of the Indian Institute of Public Administration (IIPA). The said report was prepared on the basis of a structured questionnaire with topics of relevance to the subject and collected from a total sample of 2000 households. A total of 46 villages covered under 5 districts were surveyed. The Lipi Mukhopadhyay Report records the social profile of the Jat community in detail, relevant extract of which is set out below :

"Jats occupy prominent position in Haryana, western Uttar Pradesh, Punjab, Delhi and eastern Rajasthan, being the largest group in North Western India. They are divided into twelve clans and about three hundred gotras. Though the origin of Jat is shrouded in mystery, they are believed to be an Indo-Aryan tribe, connected to the Vedic civilization (4500 BC- 2500 BC) that existed along the Saraswati River. Even today the highest density of Jat population is along the dried beds of Saraswati, starting from Haryana, going on to Punjab and ending up in Rajasthan. They play a predominant role in this, region. Agriculture, soldiering and cattle rearing have been the main occupation of Jats. Jats are brave and hardworking and independent minded people. The Jats led a fairly autonomous political life.

Historically, it is argued that the Jats and Rajputs were of one race. But a certain section of the people having risen in the social scale started associating themselves as the original Rajputs and hence Kshatriyas. These Rajputs disassociated themselves from the so-called Jats or descendent of jata of Lord Shiva.

During the survey the overall response in respect to the social status was not very clear. The community as a whole responded that they are not treated well by other castes and considered lowly especially by upper caste Hindus like Brahmins and Kshatriyas. They follow a strict gotra system in their social structure. Similar to the Hindu custom marriages within the same gotra is not allowed.

Jats in the National Capital Territory of Delhi, as a community cannot be discriminated into any social structure except the gotra. However depending on the social treatment meted out to them this community is divided. Hence different sections of the society feel associated with different castes. As comparison to other castes the Jat community as whole is also treated lowly and in the present situation especially by the Brahmins and also by Rajputs. They are not considered as kshatriyas or of the same status to them. There is social stigma like being called gawars or unwise and seen as of low status. Apart from the varna system there is gotra division among the Jats like Chitania, Chadel, Bambolia, Taporwadia Nain, Bahadu, Ladhawal, Rinwan and many more specially in Punjab and Rajasthan."

In sharp contradiction of the above the Committee also found -

"Half of the Jat community opined that they are treated well by other dominant castes like Brahmins and kshatriyas. It is significant to note that these are the people who assumed or considered themselves closer to the kshatriyas, so much so that they enjoy the same status as the former. A significant 29.7% of the population felt the social stigma of inferiority by other castes. In fact they said that their standing in the society is like the shudras. Others which is about 19.2% said that there is no social discrimination against them."

38. Insofar as education is concerned, though the literacy rate is high i.e. 85.7% as against 83.7% for the general population, the level of education is mainly high school and drop-out at school level is very high. The economic standard of the Jat community was, however, found to be relatively better. The employment in the government jobs, however, according to the report, was quite low. Only 2.4% Jats engaged in high-end services while 19.1% Jats are engaged in low-end services like "peons, DTC drivers, teachers in primary school etc."

39. On the basis of the aforesaid report of the IIPA, the NCBC Commission recorded, inter alia, the following findings :-

"However, examination of the report of IIPA leaves no manner of doubt that Jats as a class cannot be treated as a backward class. Ethnically, they are at a higher level; they

are of Indo Aryan Descent; their educational level is high; and social status they command is higher than ordinary shudras. In the absence of social and educational backwardness coupled with inadequacy of representation in the services, Article 15(4) and 16(4) do not apply for the purpose treating the Jat as backward classes.

No case is made out for any review of the advice of the NCBC."

Himachal Pradesh

40. The NCBC took into account that the claim of the Jats for inclusion in the State List of OBCs in Himachal Pradesh had been differently considered at different points of time by the State Commission itself. While the State Commission had rejected the said claim in the year 1999 and its recommendations had been accepted by the State Government in the year 2000, the Report of the State Commission prepared in October 2002 recommended inclusion of the Jats who, accordingly, came to be included in the State List. From the Report of the NCBC it appears that a public hearing was conducted by the Commission in Shimla on 17.08.2011 and on the basis of what had transpired and also upon consideration of the Report of the State Commission prepared in October 2002, the NCBC decided to keep the matter pending. No compulsive material, according to the NCBC, was laid before it in the course of the present exercise so as to enable a recommendation in favour of the Jats of Himachal Pradesh to be made by it.

Rajasthan

41. The NCBC in its report dated 28.11.1997 had recommended the inclusion of Jats (excluding Dholpur and Bharatpur districts) in the Central List of other backward classes. On the basis of the recommendation of the NCBC, the Government of India had issued a Notification dated 27.10.1999 to the above effect. Following the said Notification, the State Government had also issued a Notification including Jats in the State List of other backward classes (excluding the two districts). Thereafter, the State Commission recommended for the removal of the area restriction of the Jats in the two districts which was also accepted by the Government of Rajasthan and a Notification dated 10.01.2000 was issued. It appears that in the course of survey undertaken by ICSSR, the report of the State Commission for OBCs was not made available. In the absence of the said Report, a study sponsored by the State Government and conducted by the Institute of Development Studies, Jaipur, was considered. On the basis of the findings recorded by the ICSSR in its report, (earlier extracted), the Jats were found to be better off in regard to ownership of land though in respect of literacy rate and representation in Government service they were found to be marginally lower than Ahirs, Vishnois and Charans but better than rest of the OBCs. In the aforesaid backdrop the NCBC came to the conclusion that on the basis of the materials available as well as what had been revealed in the course of the the public hearings conducted on 10.02.2014 and 13.02.2014 "the preponderance of evidence adduced by those speaking against the motion was much more than those speaking for." Under these circumstances the NCBC did not find any reason to interfere with its earlier order issued on the subject.

Madhya Pradesh

42. The State Backward Classes Commission of the State of Madhya Pradesh undertook a study of Jat Community in the districts of Dewas and Hoshangabad in the year 1994. The findings of the study had indicated that the Jats considered themselves equal to the Rajputs; "their political situation is very good" and so is their social status. The State Commission therefore did not recommend the inclusion of the Jats in the State List of OBCs. The said recommendation was approved by the State Government on 21.12.1999. Thereafter, on account of the representations received by the State Commission, another study was conducted in January 2002 in a single district of the State i.e. "Harda" district. Based on the aforesaid study, which the NCBC found to be cursory, the Jats came to be included in the State List. The aforesaid materials failed to convince the NCBC that it would be justified to include the Jats in the State of Madhya Pradesh in the Central List of Other Backward Classes.

Bihar

43. The Jat Hindus of 4 districts of Bihar and Jat Muslims in 5 districts are included in the State List of Other Backward Classes. In the report of the ICSSR it has been mentioned that the recommendation of the State Commission is based on information received through questionnaire (number not indicated) and not on the basis of any household survey. Considering the materials made available to it, the NCBC came to the conclusion that the recommendation of the State Commission was based on a "flimsy four page report" without any formal survey or study. Furthermore, according to the NCBC nothing was revealed in the course of the public hearings to justify the inclusion of Jats of Bihar in the Central List of Other Backward Classes.

Uttarakhand

44. No separate report was prepared for Uttarakhand by the State Commission and the Jats in the State came to be included in the State List of OBCs merely because the State of Uttarakhand had accepted the list of OBCs in the State List of Uttar Pradesh. In the absence of an independent survey and information, the claims of the Jats of Uttarakhand for inclusion in the Central List had been negated by the NCBC particularly when it had recommended that the claims of the Jats in the State of U.P. be rejected.

Gujarat

45. The Jat Muslims were included in the Central List of OBCs way back in the year 1993 but the Jat Hindus had not been so included either in the State List or the Central List. The cases of Jat Hindus in Gujarat were considered by the NCBC in the year 2011 but in the absence of relevant information its decision was deferred till the report of the ICSSR is received. The said report of the ICSSR prepared on the basis of the literature survey mentions (as noted and extracted above) that there is lack of information on the parameters (social, educational and economic) specified by the NCBC. In these circumstances, the claim of the Jats in Gujarat was not recommended by the NCBC in its report dated 26.2.2014.

Our Conclusions

46. Undoubtedly, the report dated 26.02.2014 of the NCBC was made on a detailed consideration of the various reports of the State Backward Classes Commissions; other available literature on the subject and also upon consideration of the findings of the Expert Committee constituted by the ICSSR to examine the matter. The decision not to recommend the Jats for inclusion in the Central List of OBCs of the States in question cannot be said to be based on no materials or unsupported by reasons or characterized as decisions arrived at on consideration of matters that are, in any way, extraneous and irrelevant. Having requested the ICSSR to go into the matter and upon receipt of the report of the Expert Committee constituted in this regard, the NCBC was under a duty and obligation to consider the same and arrive at its own independent decision in the matter, a duty cast upon it by the Act in question. Consideration of the report of the Expert Body and disagreement with the views expressed by the said body cannot, therefore, amount to sitting in judgment over the views of the experts as has been sought to be contended on behalf of the Union. In fact, as noticed earlier, the Expert Body of the ICSSR did not take any particular stand in the matter and did not come up with any positive recommendation either in favour or against the inclusion of the Jats in the Central List of OBCs. The report of the said Body merely recited the facts as found upon the survey undertaken, leaving the eventual conclusion to be drawn by the NCBC. It may be possible that the NCBC upon consideration of the various materials documented before it had underplayed and/or overstressed parts of the said material. That is bound to happen in any process of consideration by any Body or Authority of voluminous information that may have been laid before it for the purpose of taking of a decision. Such an approach, by itself, would not make either the decision making process or the decision taken legally infirm or unsustainable. Something more would be required in order to bypass the advice tendered by the NCBC which judicially (Indra Sawhney) and statutorily (NCBC Act) would be binding on the Union Government in the ordinary course. An impossible or perverse view would justify exclusion of the advice tendered but that had, by no means, happened in the present case. The mere possibility of a different opinion or view would not detract from the binding nature of the advice tendered by the NCBC.

47. Of relevance, at this stage, would be one of the arguments advanced on behalf of the Union claiming a power to itself to bypass the NCBC and to include groups of citizens in the Central List of OBCs on the basis of Article 16(4) itself. Undoubtedly, Article 16(4) confers such a power on the Union but what cannot be overlooked is the enactment of the specific statutory provisions constituting a Commission (NCBC) whose recommendations in the matter are required to be adequately considered by the Union Government before taking its final decision. Surely, the Union cannot be permitted to discard its self-professed norms which in the present case are statutory in character.

48. Certain other issues arising may be conveniently considered at this stage.

One such issue arises from the contentions advanced on behalf of the respondents, particularly on behalf of the Union Government, that the OBC lists of the concerned States, by themselves, can furnish a reasonable basis for the exercise of inclusion in the Central Lists. The above contention is sought to be countenanced by the further argument that the Union and the State Governments under the constitutional scheme have to work in tandem and not at cross purposes. While there can be no doubt that in the matter of inclusion in the Central Lists of other backward classes, the

exercise undertaken by the State Governments in respect of the State Lists may be relevant what cannot be ignored in the present case is the very significant fact that in respect of all the States (except Haryana) the inclusion of Jats in the OBC Lists was made over a decade back. A decision as grave and important as involved in the present case which impacts the rights of many under Articles 14 and 16 of the Constitution must be taken on the basis of contemporaneous inputs and not outdated and antiquated data. In fact, under Section 11 of the Act revision of the Central Lists is contemplated every ten years. The said provision further illuminates on the necessity and the relevance of contemporaneous data to the decision making process.

49. The backwardness contemplated by Article 16(4) is social backwardness. This is implicit in the judgment in *Indra Sawhney* (supra), as will be noticed in a later part of the present order. Educational and economic backwardness may contribute to social backwardness. But social backwardness is a distinct concept having its own connotations. The extracts of the Minutes of the Meeting of the Cabinet held on 2nd March, 2014 which had preceded the impugned notification dated 4th March, 2014 tends to overlook the fact that crucial test for determination of the entitlement of the Jats to be included in the Central Lists is social backwardness. This would be evident from Para 3 of the Minutes of the Cabinet Meeting dated 2nd March, 2014 which is extracted below :

3. "The ICSSR has observed that Jats in Haryana are a land owning community and while their share in Class I & II Government services is closer to their population, they lag behind both in school and higher educational enrolment. In the National Capital Territory of Delhi, in terms of social and educational standing, Jats lag behind as compared to Gujars, who have been included as OBC in the Central List. Similarly, in Uttar Pradesh and Uttarakhand, in the enrolment in higher and technical education, Jats lag behind Ahirs/Yadavs. In Himachal Pradesh, the State Commission has come to the conclusion that the Jat Community is socially, educationally and economically backward and is fit for inclusion in the State list of OBCs. In Rajasthan, too, as regards literacy rate, enrolment in graduation level courses and representation in Government services, Jats lag behind."

50. In so far as Haryana is concerned, the test adopted appears to be educational backwardness. Similarly for the NCT of Delhi also, educational backwardness has been taken into account as the determining factor for inclusion of Jats along with the fact that the Jats are behind the Gujars who are already included in the Central Lists of OBCs. Similarly, in Uttar Pradesh and Uttarakhand, the test appears to be educational backwardness; same is the position with regard to Rajasthan. Though the States of M.P., Gujarat and Bihar have also been included in the Central Lists of OBCs by impugned notification, no apparent consideration of the cases of these States is reflected in the Minutes of the Cabinet Meeting dated 2nd March, 2014. Of course, the Cabinet is not expected to record the manner of its consideration of each of the States but when it is done so for some of the States, the absence of any mention of the other States would be a strong basis to conclude that the States that do not find any mention in the Minutes, in fact, did not receive the consideration of the Cabinet, at all.

51. A very fundamental and basic test to determine the authority of the Government's decision in the matter would be to assume the advice of the NCBC against the inclusion of the Jats in the Central List of Other Backward Classes to be wrong and thereafter by examining, in that light, whether the decision of the Union Government to the contrary would pass the required scrutiny. Proceeding on that basis what is clear is that save and except the State Commission Report in the case of Haryana (Justice K.C. Gupta Commission Report) which was submitted in the year 2012, all the other reports as well as the literature on the subject would be at least a decade old. The necessary data on which the exercise has to be made, as already observed by us, has to be contemporaneous. Outdated statistics cannot provide accurate parameters for measuring backwardness for the purpose of inclusion in the list of Other Backward Classes. This is because one may legitimately presume progressive advancement of all citizens on every front i.e. social, economic and education. Any other view would amount to retrograde governance. Yet, surprisingly the facts that stare at us indicate a governmental affirmation of such negative governance inasmuch as decade old decisions not to treat the Jats as backward, arrived at on due consideration of the existing ground realities, have been reopened, inspite of perceptible all round development of the nation. This is the basic fallacy inherent in the impugned governmental decision that has been challenged in the present proceedings. The percentage of the OBC population estimated at "not less than 52%" (Indra Sawhney) certainly must have gone up considerably as over the last two decades there has been only inclusions in the Central as well as State OBC Lists and hardly any exclusion therefrom. This is certainly not what has been envisaged in our Constitutional Scheme.

52. In so far as the contemporaneous report for the State of Haryana is concerned, the discussion that has preceded indicate adequate and good reasons for the view taken by the NCBC in respect of the said Report and not to accept the findings contained therein. The same would hardly require any further reiteration.

53. Past decisions of this Court in M.R. Balaji Vs. State of Mysore[6] and Janaki Prasad Vs. State of Jammu & Kashmir[7] had conflated the two expressions used in Articles 15(4) and 16(4) and read them synonymously. It is in Indra Sawhney's case (supra) that this Court held that the terms "backward class" and "socially and educationally backward classes" are not equivalent and further that in Article 16(4) the backwardness contemplated is mainly social. The above interpretation of backwardness in Indra Sawhney (supra) would be binding on numerically smaller Benches. We may, therefore, understand a social class as an identifiable section of society which may be internally homogenous (based on caste or occupation) or heterogeneous (based on disability or gender e.g. transgender). Backwardness is a manifestation caused by the presence of several independent circumstances which may be social, cultural, economic, educational or even political. Owing to historical conditions, particularly in Hindu society, recognition of backwardness has been associated with caste. Though caste may be a prominent and distinguishing factor for easy determination of backwardness of a social group, this Court has been routinely discouraging the identification of a group as backward solely on the basis of caste. Article 16(4) as also Article 15(4) lays the foundation for affirmative action by the State to reach out the most deserving. Social groups who would be most deserving must necessarily be a matter of continuous evolution. New practices, methods and yardsticks have to be continuously evolved moving away from caste centric definition of backwardness. This alone can enable recognition of newly emerging groups in society which would

require palliative action. The recognition of the third gender as a socially and educationally backward class of citizens entitled to affirmative action of the State under the Constitution in National Legal Services Authority vs. Union of India[8] is too significant a development to be ignored. In fact it is a path finder, if not a path- breaker. It is an important reminder to the State of the high degree of vigilance it must exercise to discover emerging forms of backwardness. The State, therefore, cannot blind itself to the existence of other forms and instances of backwardness. An affirmative action policy that keeps in mind only historical injustice would certainly result in under-protection of the most deserving backward class of citizens, which is constitutionally mandated. It is the identification of these new emerging groups that must engage the attention of the State and the constitutional power and duty must be concentrated to discover such groups rather than to enable groups of citizens to recover "lost ground" in claiming preference and benefits on the basis of historical prejudice.

54. The perception of a self-proclaimed socially backward class of citizens or even the perception of the "advanced classes" as to the social status of the "less fortunates" cannot continue to be a constitutionally permissible yardstick for determination of backwardness, both in the context of Articles 15(4) and 16(4) of the Constitution. Neither can any longer backwardness be a matter of determination on the basis of mathematical formulae evolved by taking into account social, economic and educational indicators. Determination of backwardness must also cease to be relative; possible wrong inclusions cannot be the basis for further inclusions but the gates would be opened only to permit entry of the most distressed. Any other inclusion would be a serious abdication of the constitutional duty of the State. Judged by the aforesaid standards we must hold that inclusion of the politically organized classes (such as Jats) in the list of backward classes mainly, if not solely, on the basis that on same parameters other groups who have fared better have been so included cannot be affirmed.

55. For the various reasons indicated above, we cannot agree with the view taken by the Union Government that Jats in the 9 (nine) States in question is a backward community so as to be entitled to inclusion in the Central Lists of Other Backward Classes for the States concerned. The view taken by the NCBC to the contrary is adequately supported by good and acceptable reasons which furnished a sound and reasonable basis for further consequential action on the part of the Union Government. In the above situation we cannot hold the notification dated 4.3.2014 to be justified. Accordingly the aforesaid notification bearing No. 63 dated 4.3.2014 including the Jats in the Central List of Other Backward Classes for the States of Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, NCT of Delhi, Bharatpur and Dholpur Districts of Rajasthan, Uttar Pradesh and Uttarakhand is set aside and quashed. The writ petitions are accordingly allowed.

.....J. [RANJAN GOGOI]J. [ROHINTON FALI
NARIMAN] NEW DELHI, MARCH 17, 2015.

- [1] 1992 Supp (3) SCC 217
- [2] 1966 Supp SCR 311
- [3] (1969) 1 SCC 325

- [4] (1990) 3 SCC 223
- [5] (2003) 7 SCC 330
- [6] 1963 Suppl. (1) SCR 439
- [7] (1973) 1 SCC 420
- [8] (2014) 5 SCC 438
