

NATIONAL COMMISSION FOR BACKWARD CLASSES

Hon'ble Justice Shri M.N.Rao, Chairperson

Hon'ble Shri S.K.Kharventhan, Member

Hon'ble Shri Deepak Katole, Member

Hon'ble Dr. Shakeel uz-Zaman Ansari, Member

Case: Request for Inclusion 'BUJHRU, DAKAUT' Castes in the Central List of Other Backward Classes for the State of Himachal Pradesh.

I. Request:

1. This case arises from the requests received in the National Commission for Backward Classes from the State Government of Himachal Pradesh/Backward Classes Associations for inclusion of the '**BUJHRU, DAKAUT**' castes in the Central List of Other Backward Classes for the State of Himachal Pradesh

II. PUBLIC HEARING

2. The Commission consisting of Justice Shri M. N. Rao, Hon'ble Chairperson, Shri S. K. Kharventhan, Hon'ble Member, Shri Deepak Katole, Hon'ble Member and Dr. Shakeel uz-Zaman Ansari, Hon'ble Member, held a Public Hearing in respect of the request of the castes/communities/sub-castes/synonyms for inclusion in the Central List of OBCs for the State of Himachal Pradesh on 17th August, 2011. At the Public Hearing, the State Government was represented by Shri S. K. Das, I.A.S., Principal Secretary, Social Justice & Empowerment, Shri P. C. Dhiman, I.A.S., Principal Secretary,

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Health Department; Shri S. K. B. S. Negi, I.A.S., Principal Secretary, Rural Development Department, Shri T. G. Negi, I.A.S., Principal Secretary, Administrative Reforms Department, Ms. Madhu Bala, Special Secretary, Social Justice & Empowerment Department, Shri Manish Garg, Director, Social Justice & Empowerment; and Shri Vinod Goyal, Member Secretary, Himachal Pradesh Commission for Backward Classes.

III Findings

3. The State Government of Himachal Pradesh has requested the NCBC for inclusion of 'BUJHRU, DAKAUT' in the Central List of OBCs for the State of Himachal Pradesh.
4. At the time of public hearing held at Shimla on 17th August, 2011, no one represented the community although wide publicity was given by the State Government about the public hearing by the NCBC.
5. The request of the State Government is based upon the Advice tendered by the Himachal Pradesh State Commission for Backward Classes which has been accepted by the State Government and the community was included at Sl.No.39 in the State List of Backward Classes.
6. We have gone through the Advice of the State Commission. In the Chapter concerning the data collected by the Commission, the following is very relevant:

<u>DISTRICT</u>	<u>BLOCK</u>	<u>NAME OF GRAM PANCHAYAT</u>
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Sr.No.1: Sl.No. of Pariwar register.

Sr.No.2: Name of Head of Family.

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Sr.No.3: Number of family members.

Sr.No.4: Land holding of the family:

Sr.No.5: Caste of Family:

Caste

(a)

Sub-caste

(b)

Sr.No.6:

Occupation:

In Govt. Service	In Public under-	In Private Employment	Trade/ Business taking
(1)	(2)	(3)	(4)
Agricul- ture	Domestic work	Number of children upto 16 years	Unemployed
(5)	(6)	(7)	(8)
Number of family members Educated upto Matric Pass Or above.			Remarks.
(9)			(10)

7. As a result of the survey, the profile of the population was found to be as follows:-

Sr. No.	Class/Community	Population in the State
1.	Brahman	7,53,354
2.	Business Community	1,15,821
3.	Christian	2,746
4.	Musalman	64,205

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5.	O.B.C	9,03,074
6.	Rajput	19,54,566
7.	S.C	14,13,078
8.	S.T	2,40,118
9.	Sikh	7,619
10.	Misc.	1,76,034
	Total	56,31,455

8. There is no column indicating social backwardness of the community – how the community is treated by other communities and how the community itself considers its social position vis-à-vis other communities. In the identification of Social and Educational Backward Classes, what is more important is the social backwardness of the community. Economic backwardness by itself can never be a primary consideration for inclusion of a community in the List of Backward Classes. Article 15(4) specifically employs the expression socially and educationally backward classes and social backwardness has always been considered to be the primary factor in the determination of backward classes under Article 16(4) also. SCs and STs have been treated as a separate entity although they form part of the broad expression backward classes. Article 340(1) which refers to the appointment of Presidential Commission contemplates that the Commission should “investigate the conditions of socially and educationally backward classes”. So any enquiry conducted by a Commission appointed by the State for inclusion of a backward class must necessarily take into consideration as a predominant factor the social backwardness. The majority judgment (per Justice P.B.Sawant) in Indra Sawhney case (reported in (1992) Supp 3 SCC 215 at page 541, para 482 and 492 also ruled that –

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"482. Economic backwardness is the bane of the majority of the people in this country. There are poor sections in all the castes and communities. Poverty runs across all barriers. The nature and degree of economic backwardness and its causes and effects, however, vary from section to section of the populace. Even the poor among the higher castes are socially as superior to the lower castes as the rich among the higher castes. Their economic backwardness is not on account of social backwardness. The educational backwardness of some individuals among them may be on account of their poverty in which case economic props alone may enable them to gain an equal capacity to compete with others. On the other hand, those who are socially backward such as the lower castes or occupational groups, are also educationally backward on account of their social backwardness, their economic backwardness being the consequence of both their social and educational backwardness. Their educational backwardness is not on account of their economic backwardness alone....."

492. While discussing Question No.1, it has been pointed out that so far as "backward classes" are concerned, clause (4) of Article 16 is exhaustive of reservations meant for them. It has further been pointed out under Question No. II that the only "backward class" for which reservations are provided under the said clause is the socially backward class whose educational and economic backwardness is on account of the social backwardness. A class which is not socially and educationally backward though economically or even educationally backward is not a backward class for the purposes of the said clause. What follows from these two conclusions is that reservations in posts cannot be made in favour of any other class under the said clause. Further, the purpose of keeping reservations even in favour of the socially and educationally

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backward classes under clause (4), is not to alleviate poverty but to give it an adequate share in power".

9. The State Commission's Advice does not indicate in what respects the community in question is socially backward. The finding recorded by the Commission is that "...the evidence recorded clearly proved that Bujhrus and Dakauts were socially backward and neither their daughters taken in marriage by other communities nor they could marry girls from other communities, though they are Brahmans but within the Brahman community also Bujhru and Dakaut are considered to be most inferior and most of the Brahmans do not eat in their homes and treat them by and large inferior".... This conclusion, in our opinion, does not indicate the social backwardness of the community. If within the larger community of Brahmans, ^{these} ~~this~~ particular classes – Bujhrus and Dakauts are treated as inferior is not indicative of the fact that the community is in general treated as backward by the other communities in the society. Social backwardness must be clearly established before a community's claim for inclusion in the list of Backward Classes is accepted. How the other communities treat the two communities in question has not been stated by the State Commission. Following the well accepted principles regarding identification of backward classes, we are of the view that the two communities in question BUJHRU, DAKAUT cannot be treated as socially and educationally backward and therefore, the request is rejected.

V. ADVICE OF THE COMMISSION

The Commission in view of the above findings has decided to tender the the following Advice to the Central Government under Section 9(1) of the NCBC Act for necessary action under Section 9(2) of the NCBC Act.

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Request for inclusion of 'BUJHRU, DAKAUT' be rejected as they are not socially and educationally backward communities.



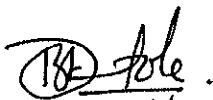
(Justice M. N. Rao)

Chairperson



(S. K. Kharventhan)

Member



(Deepak Katole)

Member



(Dr. Shakeel uz-Zaman Ansari)

Member

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