

INDRA SAWHNEY AND OTHERS V. UNION OF INDIA CASE: UNRAVELLING THE CONTROVERSIES SURROUNDING RESERVATION POLICIES

Nayna Garg*

INTRODUCTION

Reservation, in the context of India, refers to a policy or system that aims to provide representation and opportunities for historically marginalized and disadvantaged communities. The reservation system was introduced as a means to address social inequality and promote social justice. The primary objective of the reservation is to ensure that individuals from socially and educationally backward communities have access to educational institutions, government jobs, and legislative bodies. It is based on the principle of affirmative action, which seeks to rectify historical discrimination and empower marginalized groups.

Reservations in India are primarily implemented through quotas, which reserve a certain percentage of seats or positions for specific categories of individuals. These categories often include Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs), and in some cases, economically weaker sections of society. The reservation policy has had a significant impact on various sectors, including education, employment, and politics. It has enabled individuals from disadvantaged backgrounds to gain access to quality education and secure government jobs. This has played a crucial role in promoting social inclusion, empowering marginalized communities, and bridging the gap between different sections of society.

However, the reservation policy has also been a subject of debate and controversy. Critics argue that it can perpetuate caste-based divisions, undermine merit-based selection, and hinder overall development. Supporters, on the other hand, assert that it is a necessary step towards addressing historical injustices and ensuring equal opportunities for all citizens. The reservation system in India has evolved through various constitutional amendments, court judgments, and government policies. It continues to be a subject of ongoing discussion, with efforts being made to strike a balance between social justice and meritocracy while addressing the changing social dynamics and needs of society.

*BA LLB, SECOND YEAR, HIDAYATULLAH NATIONAL LAW UNIVERSITY, RAIPUR.

*“Indra Sawhney vs Union of India”*¹ is the Supreme Court’s one of the most important cases delivered on 16 November 1992 in which the Supreme Court dealt with issues relating to the reservation of Backward Classes in government jobs. This case is also known as *Mandal Verdict*.

Article 16 of the Indian Constitution² guarantees that all citizens have an equal chance to access and compete for public employment opportunities.

BACKGROUND

In 1979, Shri Morarji Desai, the then Prime Minister under Article 340³ appointed the Second Backward Class Commission, which is also known as Mandal Commission as it was headed by B. P. Mandal. The main purpose of this commission was to collect data about the “*Socially and Educationally Backward Classes (SEBCs)*” and to suggest ways for their upliftment.

The commission was set up to suggest the criteria under which SEBCs can be defined and recommend steps for their advancement.

The report was drafted and submitted by the commission in December 1980. The report recommended that out of the total government jobs, 27 percent should be reserved for this category.

Till 1989, no steps were taken by the successive governments on this report. In 1989, the newly elected government under V. P. Singh issued an Office Memorandum (OM) to implement the suggestions mentioned in the report.

Soon there were violent clashes and anti-reservation movements, which lasted for three months. In 1990, Supreme Court Bar Association filed a writ petition to challenge the validity of the OM and to ask for a stay order.

Supreme Court’s five-judge bench issued a stay notice till the final judgment was declared.

Sooner the government collapsed and a new government was formed which was headed by P. V. Narasimha Rao. The government issued a new OM in September 1991.

¹ Indra Sawhney and Others v. Union of India, (1992), AIR 1993 SC 477.

²INDIA CONST. art.16.

³INDIA CONST. art.340, §1.

It introduced economic criteria to grant reservations to the poorer section of the SEBCs in the 27% quota. It also introduced another 10% reservation for those people who are economically weak but are not included in this category.

The case was later referred to a nine-judge bench. The bench asked the government the criteria upon which the government proposed the reservation.⁴

LEGAL ISSUES INVOLVED

1. Whether Article 16(4)⁵ is an exception to Article 16(1)⁶? Will it allow the State to reserve seats for various posts?
2. Whether any provision regarding reservation under Article 16(4)⁷ has to be only by a law made by the legislatures, or the executives can also make such a provision?
3. Can the extent of reservation of seats under the States exceed 50 percent of the total posts?
4. Whether under Article 16(4)⁸ reservation is allowed only for the primary appointments or is it allowed for the promotions also?
5. Under Article 16(4)⁹ can the State classify the “Backward Classes” into BCs and MBCs or classify them based on economic or any other factors?¹⁰

ARGUMENTS

Petitioners: It was contended that the reservation policy, which was based on caste, contravened the principle of equality guaranteed by Article 14¹¹ of the Indian Constitution. They claimed that providing reservations solely based on caste was discriminatory and treated unequal individuals as equals. The Petitioners expressed concerns about the insufficiency of data and objective criteria used to identify socially and educationally backward classes (SEBCs). They argued that the commission's recommendations lacked a scientific basis and were arbitrary, thereby undermining the legitimacy of the reservation policy.

⁴ALEX ANDREWS GEORGE, IMPORTANT JUDGEMENTS THAT TRANSFORMED INDIA, 73-79 (Mc Graw Hill, 2020).

⁵INDIA CONST. art.16, §4.

⁶INDIA CONST. art.16, §1.

⁷INDIA CONST. art.16, §4.

⁸INDIA CONST. art.16, §4.

⁹INDIA CONST. art.16, §4.

¹⁰INDIAN KANOON, <https://indiankanoon.org/doc/1363234/> (lasted visited Sep 2, 2022).

¹¹INDIA CONST. art.14.

They emphasized that reservation was originally intended as a temporary measure to uplift disadvantaged sections of society. They contended that the continuation and expansion of reservation policies without periodic review and reassessment were contrary to the original purpose of affirmative action. According to the petitioners, the OM which was issued by the Mandal Report is only focusing on the concept of caste which is against Article 16(2)¹². They argued that the OM promotes the evils of the caste system and is against the doctrine of secularism.

They demanded that a new commission should be set up under Article 340¹³ which will conduct another survey throughout the country as the Mandal Commission released its report based on the 1931 census¹⁴ which is not a correct basis for identifying the backward people. According to them, caste should not be the basis for identification, surveys should be conducted from individual to individual.

Respondents: The respondents refuted every argument of the petitioners.

The argument presented emphasized the necessity of reservation based on the Mandal Commission Report to uplift socially and educationally backward classes, providing them protection against various forms of social injustice and exploitation. It was also highlighted that the Mandal Commission Report built upon the recommendations of the first minority commission (Kaka Kalelkar Commission), which also advocated for positive measures to uplift the backward classes. The petitioners' claim that the Mandal Commission Report relied on outdated census data from 1931¹⁵ was countered by explaining that only the community-wise population figures were derived from the 1931 census report¹⁶. The identification of other backward classes was based on the more recent 1961 census report¹⁷.

It was argued that the Mandal Commission employed careful consideration and rigorous testing methods to identify the socially and educationally backward classes in need of affirmative support for their upliftment. They stated that the constitution guarantees equality to all its citizens without discriminating based on their religion, place of birth, residence, or

¹²INDIA CONST. art.16, §2.

¹³INDIA CONST. art.340, §1.

¹⁴ (1931) Census of India| Office of the Registrar General & Census Commissioner, India.

¹⁵ (1931) Census of India| Office of the Registrar General & Census Commissioner, India.

¹⁶ (1931) Census of India| Office of the Registrar General & Census Commissioner, India.

¹⁷ (1961) Census of India| Office of the Registrar General & Census Commissioner, India.

caste. Thus, to uplift the people belonging to the Backward Classes up to the level of the others, it is necessary to provide them with reservation.¹⁸

JUDGEMENT

1. ***“Clause (4) of Article 16¹⁹ is not an exception to Clause (1) of Article 16²⁰.”***Even without clause (4), State is permitted to reserve posts in its favor. Clause (4) is there to simply put things in simple terms so that there is no doubt.
2. Any provision for reservation under Article 16(4) can also be made by the executive order of the union or state government.
3. ***“Any reservation under Article 16(4)²¹ should not exceed 50 percent of the total seats available”.***
4. ***“Reservation in promotion is constitutionally impermissible”*** as once the underprivileged are brought at par with the others, then promotion should be made only based on merit.
5. ***“Article 16(4)²² permits the classification of backward classes”*** as such a classification will help the MBCs as the BCs which are more privileged than the MBCs might get an undue advantage.
6. The wards of those BCs who have attained some or the other position in the society and their mother or father hold any government position, then such people will be excluded from the reservation. ***“The concept of the creamy layer was introduced”.***

CONTROVERSIES

The legislature had enacted various Acts to nullify the effect of the Indra Sawhney case. It includes-

The **Constitution’s 77th Amendment**: It was introduced in 1995 and inserted Article 16(4)(A)²³ under which the State is permitted to reserve seats in promotion in any jobs for the SCs and STs. It nullified two Supreme Court judgments, namely, the Indra Sawhney case (1992)²⁴ and the Ajit Singh Januja case (1992)²⁵, which had placed restrictions on providing

¹⁸D. D. BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA, 108-110 (Lexis Nexis, 2014).

¹⁹INDIA CONST. art.16, §4.

²⁰INDIA CONST. art.16, §1.

²¹INDIA CONST. art.16, §4.

²²INDIA CONST. art.16, §4.

²³ INDIA CONST. art. 16, § 4, cl. A, added by The Constitution (Seventy-seventh Amendment) Act, 1995.

²⁴ Indra Sawhney and Others v. Union of India, (1992), AIR 1993 SC 477.

reservations in promotions. The 77th Amendment overturned these judgments to restore the power of the state to implement reservation policies in promotions.

The **Constitution 81st Amendment**: It was introduced in 2000 and inserted Article 16(4)(B)²⁶ which stated that the reservation of seats can exceed 50 percent for SCs, STs, and BCs if backlog seats are not filled.

WAY FORWARD

The Indian political class needs to break free from its habit of constantly expanding reservation quotas for electoral benefits and recognize that it is not a solution to all problems. Rather than relying solely on various criteria for reservation, the government should prioritize enhancing the quality of education and implementing more effective measures for social upliftment. The emphasis should be on fostering an entrepreneurial spirit and promoting job creation, rather than perpetuating a dependency on job-seeking. The focus should be on inclusive development and empowering marginalized communities beyond just reservations. Efforts should be made to improve access to quality education, healthcare, skill development, and economic opportunities for all sections of society.

Periodic review and evaluation of reservation policies are essential to assess their effectiveness and address any shortcomings. This can involve analyzing the impact of reservations on beneficiaries, identifying new emerging social groups in need of support, and making necessary adjustments to ensure fairness and equal opportunities. Rather than solely relying on caste-based reservations, there could be a shift towards a more nuanced and comprehensive approach.

²⁵ Ajit Singh Janjua and Others v. State of Punjab, 1996 (2) SCC 215.

²⁶ INDIA CONST. art. 16, § 4, cl. B, added by The Constitution (Eighty-first Amendment) Act, 2000.