

Indra Sawhney Case - Important SC Judgements for UPSC

Many Supreme Court judgements have influenced Indian polity and law profoundly. These landmark SC judgements are very important segments of the [UPSC syllabus](#). In this series, we bring to you important SC judgments explained and dissected, for the benefit of IAS aspirants. In this article, you can read all about the Indra Sawhney case. Get a list of [landmark SC judgements for the UPSC exam](#) in the linked article.

Indra Sawhney Case

Case Summary - Indra Sawhney v Union of India & Ors

Affirmative action, which is commonly referred to in India as reservation, was an earnest attempt by the framers of the Constitution to bring in socio-economic equality in Indian society, particularly, the reservation in matters of Public Employment as provided in Article 16 of the Constitution.

The framers of the Constitution were aware and conscious of the lack of homogeneity of the Indian Society, and apart from the differences in religion, culture, language, etc. there existed people who were in comparison weaker than others - economically, socially and culturally. To ameliorate the conditions of weaker and backward classes, and to make them at par with the other sections of society, the Constitution gave us a mechanism to safeguard the Backward Classes and Scheduled Castes.

As such, provision for reservation was adopted in the Constitution. Reservation to the socially and economically deprived people as such is not a new concept enshrined in the Indian Constitution, but, has been in existence in the pre-constitutional era as well. It is important to mention here the reservation granted by the former princely state of Mysore on the recommendations of the committee set up in the year 1918. The demand for some kind of affirmative action had also been taken up before by people like [Jyotibha Phule](#) and others, and the British did give reservation to some of these classes but their motives were always suspect. Over the years reservation has become more of a political tool than an earnest attempt to establish an egalitarian society.

A landmark in the issue of reservation was the judgement pronounced in *Indra Sawhney v Union Of India & Ors* by the [Supreme Court](#). What follows is an attempt to summarise this important judgment.

In the year 1979, the then Prime Minister Shri Morarji Desai appointed the second Backward Classes Commission under Article 340 of the Constitution.

- The Commission was headed by B.P. Mandal and its mandate was to investigate the status of socially and educationally backward classes in India.
- When the Commission finally submitted its report in 1980, it recommended a reservation of 27 percent in government jobs for these castes.
- The collapse of the Janata Party government complicated matters and the recommendations of the report could not be implemented.
- There wasn't much progress in this respect for several years until Janata Dal regained power in 1989 and decided to implement the recommendations of the report and reserved 27 percent of the seats for socially backward classes.
- This was followed by reservation and anti-reservation protests in large parts of the country some of which led to riots.
- When the government action was challenged before the Supreme Court by way of a writ petition, the then Prime Minister P V Narasimha Rao brought in another order which increased the reservation

limit to 37 percent while including economically, socially and educationally backward classes as well. The five-judge bench referred the matter to a nine-judge bench.

Also read: [Mandal Commission](#)

Issues Before the Court

The court further framed issues, the adjudication of which was essential to deal with the situation at hand, some of these issues were:

- Whether caste on its own constitutes a different class and whether economic criteria could by itself be the determinant of a class.
- Whether Article 16(4) was an exception to Article 16(1) and is exhaustive in itself of the rights of reservation.
- Does Article 16(4) allow classification of 'Backward Classes' into Backward Classes and Most Backward Classes or permit classification among them based on economic or other considerations.

Contentions of the petitioners:

The advocates for the petitioners led by Nani Palkhiwala argued that reservation further provoked the evil of the caste system and this evil will hamper India's march towards being a welfare state. They further argued that if the reservation was continued it will replace standard with sub-standard and meritocracy with mediocrity. Petitioners also alleged that the Mandal report was in essence trying to rewrite the Constitution.

Contentions of the respondents:

The respondent State said that the report merely gives the backward classes a means to fulfil their just claims. They argued that the report was a continuation of the first minorities commission which also recommended affirmative action to right the wrongs that backward classes have faced for centuries together.

The court in its judgement laid down the following rules

- Backward classes under Article 16(4) cannot be identified on the basis of economic criteria but the caste system also needs to be considered.
- Article 16(4) is not an exception to clause 1 but an instance of classification as envisaged by clause 1.
- Backward classes in article 16(4) were different from the socially and educationally backward mentioned in Article 15(4).
- The concept of a creamy layer was laid down and it was directed that such a creamy layer be excluded while identifying backward classes.
- Article 16(4) does allow the classification of backward classes into backward and more backward.
- Reservation shall not exceed 50 percent, moreover, reservation in promotions shall not be allowed.
- Any new disputes regarding criteria were to be raised in the Supreme Court only.

After Indra Sawhney case

A number of developments in the reservation have taken place after the Indra Sawhney case. The Parliament responded by enacting the 77th Amendment to the Constitution by adding clause [4A] to Article 16 in 1995, by virtue of which powers are conferred to the State to reserve seats in favour of SC & ST in promotions in Public Services if communities are not adequately represented in public employment. The Supreme Court upheld the validity of Article 16(4A) in *M. Nagaraj Vs Union of India* 2006, and it has laid three requirements:

- SC & ST should be socially and educationally backward.
- No adequate representation for SC and ST in public employment.
- It shall not affect the over efficiency in the administration.

A number of state governments enacted the law in consequence of the 77th Amendment of the Constitution e.g., Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the posts in Civil Services of the State), 2018 was enacted by the State of Karnataka, and Supreme Court upheld its validity in 2019.

Earlier in BK Pavitra Case, Karnataka Determination of Seniority of the Government Servants Promoted on the Basis of the Reservation Act, 2002 was held to be unconstitutional on the ground that the State had not undertaken to determine 'inadequacy of representation', 'backwardness' and the impact on overall efficiency before passing the law.

It is also pertinent to mention here that the apex court has also said that, there is no fundamental right which inheres in an individual to claim reservation in promotions, in the recent judgment of Mukesh Kumar V State of Uttarakhand which was pronounced in February 2020.

Conclusion

The court in the Indra Sawhney case tried to come up with a solution that is reasonable and strikes a fine balance between the society and rights of the backward classes. Removing economic criteria as the sole determinant of classification was also a step in the right direction as was the exclusion of the creamy layer who had already benefitted enough from affirmative action. The Court ruling may have been considerate but subsequent amendments by successive governments to fiddle with the reservation criteria further established the fact that reservation above all had now well and truly become about vote-bank politics more than anything else. In the almost three decades after this landmark ruling, the anti-reservation voices have started gathering momentum but the lawmakers should remind themselves of the duties the framers have given them through the means of the Constitution. The reservation phenomenon has certainly helped in uplifting the backward classes but there is a long way to go before all historical wrongs are set right.

