

DE JURE NEXUS LAW JOURNAL

Author:

Bhaavya Singh

Symbiosis Law School, Noida

1st Year, BBA LL.B.



INDRA SAWHNEY & ORS v. UNION OF INDIA

Court: The Supreme Court of India

Citations: AIR 1993 SC 477, 1992 Supp 2 SCR 454

Bench: Justice M Kania, Justice M Venkatachaliah, Justice S R Pandian, Justice T Ahmadi, Justice K Singh, Justice P Sawant, Justice R Sahai, Justice B J Reddy.

Theme: Reservations in India

Subject: Constitutional Law

Judgment: India

Background:

One of the major fundamental rights guaranteed by the Indian constitution constitutes the Right to Equality given under Article 14. Article 14 states that every Indian citizen shall be treated equally before the law and give equal protection to every citizen. It also states that the law shall treat equals equally and unequals differently.¹

Article 15 prohibits discrimination on the grounds of race, religion, caste, place of birth, sex, or any one of them while accessing public spaces. Clauses (3) and (4) empower the State to

¹ INDIA CONST., art. 14

make special provisions for women, children and for the advancement of socially and educationally backward classes as well as Schedule Castes and Scheduled Tribes respectively.²

Article 16 states that the constitution guarantees that equal opportunity shall be given to every citizen in matters of public employment. Clause (4) empowers the State to make reservations for backward classes.³

Facts of the Case:

Article 340 of the Indian Constitution empowers the President of India to appoint a commission with members fit, in his discretion, to investigate the conditions of socially and educationally backward classes in India and to recommend actions to the central or state governments to improve their condition.⁴ The first backward class commission was appointed on 29th January 1953 and was called the Kaka Kalelkar Commission. The report submitted by the Commission was rejected by the Central Government in 1961.

In 1979, the then Prime Minister Moraji Desai set up the second backward classes commission headed by Sri B. P. Mandal. The commission was set up to lay down the criteria for identifying “*socially and educationally backward classes (SEBCs)*” and to observe the desirability of providing affirmative action to them in public services and posts.

The report was submitted by the commission in 1980 but no action was taken with respect to the report until 1989. In 1989, the Prime Minister at that time, Sri V. P. Singh implemented the Mandal Commission’s report and provided 27% reservation quotas for Other Backward Classes in public services as well as an additional quota of 10% for other economically backward sections of India who were not provided with any reservation by any pre-existing schemes.

This led to severe public unrest in the country and a writ petition was brought before the Supreme Court of India. While the proceedings were taking place, the newly elected government modified the aforementioned provision and provided 10% reservation to other economically backward sections that were not covered by reservation schemes. The case was brought before a five-judge bench who then referred it to a nine-judge coram.

² INDIA CONST., art. 15

³ INDIA CONST., art. 16

⁴ INDIA CONST., art. 340, cl. 1

Issues of the Case:

Several issues were raised before the court in the above case. Some of them were:

- a. Whether the provision related to reservation is required to be made by the legislature solely?
- b. Whether clause (4) of Article 16 of the Indian constitution is an exemption to clause (1)?
- c. What does “backward classes” mean as given under article 16 clause (4)?
- d. If backward classes could be identified with the sole focus on caste or economic status?
- e. To what extent can the reservation be made?
- f. If the provision for reservation can be extended to promotions as well?
- g. Is the additional provision for reservation of 10% of posts for economically weaker sections constitutionally valid?
- h. Whether the backward classes mentioned under article 16 clause (4) are similar to backward classes under article 15 clause (4)?
- i. Whether the constitution allows further classification of backward classes into backward and more backward classes under article 16(4)?

Judgment and Analysis of the Case:

The judgment in the case was rendered by a majority of 6:3 judges. In this case, after a close analysis of articles 12 and 13 of the Indian constitution, it was concluded that State includes the executive wing of the government as well. It was also concluded that laws also include ordinances, rules, regulations, by-laws, etc. issued by the government. Hence, it was concluded that the executive also has the power to provide affirmative action to backward classes in India. The Honorable Court’s judgment was in line with the law laid down in the Indian constitution and the bench’s understanding of the law, in this case, was valid.

It was held that Article 16(4) is not an exemption to clause (1) of the article, but an illustration of categorization. Article 16(1) also permits the provision of reservation to backward classes. While discussing the question of “what does backward classes mean?” the court examined the deliberations of the Constituent Assembly. It was concluded that the responsibility of defining backward classes was left to the discretion of local governments. Backward classes, therefore, mean backward classes as defined by the local governments.

The question arose whether backward classes could be identified with the sole focus on caste as it was reported that the Mandal commission had based its report primarily on caste. It was observed that the criteria for identifying backward classes can neither be solely caste nor economic or social status. The economic, social and educational status of a person is based on their caste and hence, they cannot be separated from one another. The questions that arose on the legitimacy of the Mandal commission's report remain unanswered by the Court as it did not think it fit to comment on them. Experts are of the opinion that the Mandal commission made a grave mistake of classifying backward classes and backward castes synonymously. Though, caste cannot be separated from social and educational status, as argued above, placing sole reliance on caste does not seem very reasonable.

It was also held by the Honorable Supreme Court that the backward classes as mentioned under article 16(4) were, in no way, similar to backward classes given under article 15(4). It was also held that the Constitution allows the classification of backward classes as backward and more backward classes under article 16(4).

While looking into the recommendations of the Mandal Commission and its implementation by the government, the court held it mandatory that the reservation levels do not exceed 50% of the positions, posts or seats available. It seems reasonable to cap the maximum limit at 50% since there are a lot of members in the backward classes in need of affirmative action, regardless of the contrary public opinion. The Court also held that the reservation provided by the memorandum issued does not include promotions, i.e., there are no reservations where promotions are concerned. The Court was also of the opinion that the additional reservation of 10% granted to the economically weaker sections not covered by any reservation schemes as unconstitutional. It is agreed that the Court's opinion is valid and the need in case of economically weaker sections, is of economic upliftment through employment opportunities and monetary schemes. Concessions and scholarships can also be awarded in educational institutions to those belonging to economically weaker sections.

The creamy layer with respect to backward classes of citizens refers to those who have made significant progress in regards to social, educational and economical status and are better off as compared to the other members of the backward classes. The Court held that the concept of the creamy layer was to be excluded from reservations, i.e., reservations were required to be provided irrespective of the fact that an individual may belong to the creamy layer.

It is argued that the Honorable Court's opinion in this regard is unreasonable. Reservations and affirmative actions are needed by people who are socially and educationally backward in reality. Just because a person is a member of a backward class should not be a reason to grant reservation. If reservation is granted in such cases, it leads to two negative outcomes. Firstly, the benefits arising out of reservation goes to a person who is not in actual need of those benefits. Secondly, a person who may need such benefits more as compared to one who belongs to the creamy layer is deprived of it. This seems very unreasonable and the concept of the creamy layer should be applicable when deciding matters of reservation and affirmative action. Hence, the Court's opinion in this regard is unfair to those who are in actual need of benefits offered by reservations and affirmative actions.

Conclusion:

There have been multiple debates on the validity and relevance of reservations and multiple views on this topic can be observed. However, the focus should be on the requirements of the lowest sections of society and the measures that can be taken to improve their conditions. Reservations and affirmative action in this regard prove to be useful.

However, when deliberating upon the provision of reservation, the target of such reservation should be kept in mind. People who are in dire need of reservation should be made a priority as compared to those belonging to that section of backward classes who have already improved their conditions as they are unworthy of such help. However difficult it may be to classify and differentiate the creamy layer from backward classes, it should not be avoided solely because of such difficulty. The vision of the Constitution makers that equals should be treated equally and unequals differently under article 14 should also be considered. Those belonging to the creamy layer are already closer to being classified as "equals" in society and hence, treating them differently would be unfair and unreasonable to those who are in actual need of help. Thus, it is strongly advised that the concept of the creamy layer should be incorporated in the subject matter of reservations.

References:

1. Shreyansh Chopra, *Case Analysis on Indra Sawhney v. Union of India*, LEGAL SERVICE INDIA (Feb 28, 2022, 1:58 PM),

<https://www.legalserviceindia.com/legal/article-3384-case-analysis-on-indra-sawhney-v-union-of-india-and-ors.html>

2. *Indra Sawhney Case- Important SC Judgments for UPSC*, BYJUS, (Feb 28, 2022, 2:00 PM), <https://byjus.com/free-ias-prep/indra-sawhney-case-1992-sc-judgements/>
3. *Indra Sawhney v. Union of India*, INDIAN KANOON, (Feb 28, 2022, 2:05 PM), <https://indiankanoon.org/doc/1363234/>



De Jure Nexus

LAW JOURNAL