

## **Reviewing 50% Cap of Reservation**

Recently, a five-judge bench at the Supreme Court has decided to examine whether the 1992 verdict by a nine-judge bench capping quota at 50% (Indra Sawhney case) needed to be revisited in view of subsequent constitutional amendments and changed social dynamics.

**Reservation for Marathas:**The court's observation came in a case where a reservation for Marathas in Maharashtra caused a breach in the 50% ceiling.The Maharashtra government decided to grant 16% reservation of total seats to the Marathas.However, it was reduced by the Bombay High Court to 12% in govt jobs and 13% in educational institutions.When the decision was challenged before the Supreme Court, it stayed the former's order.

**The Review of 1992 Judgement:**If the Supreme Court's five-judge bench accepts that the judgment in the Indra Sawhney case should be modified, the case will have to be referred to an 11 or 13-judge bench.Only a bench of larger composition can modify a previous judgment of the Supreme Court.Besides, the extension of the creamy layer concept not just to OBC but also Schedule Caste (SC) and Schedule Tribe (ST) is to be reviewed too.

**Questions Raised by Supreme Court:**In the purview of increasing reservations by the states, the bench has framed six questions and has issued notices about the same to all the states and UTs. It includes:Whether the 1992 verdict needs to be referred to a larger bench in the light of subsequent constitutional amendments, judgements and changed social dynamics of the society;Other five questions relate to the constitutional validity of the 102<sup>nd</sup> amendment of the constitution;Whether Article 342A of the Constitution abrogates states' power to legislate or classify in respect of "any backward class of citizens" and thereby affects the federal policy/structure of the Constitution of India.

**Constitution and Reservation:**77<sup>th</sup> Constitutional Amendment Act, 1995: The Indra Sawhney verdict had held there would be reservation only in initial appointments and not promotions.However, addition of the article 16(4A) to the Constitution, empowered the state to make provisions for reservation in matters of promotion to SC/ST employees, if the state feels they are not adequately represented.81<sup>st</sup> Constitutional Amendment Act, 2000: It introduced Article 16(4B), which says unfilled SC/ST quota of a particular year, when carried forward to the next year, will be treated separately and not clubbed with the regular vacancies of that year.85<sup>th</sup> Constitutional Amendment Act, 2001: It provided for the reservation in promotion can be applied with 'consequential seniority' for the government servants belonging to the SCs and STs with retrospective effect from June 1995.102<sup>nd</sup>, 103<sup>rd</sup> and 104<sup>th</sup> Amendments: In the last couple of decades, there have been several amendments to the constitution like the 102<sup>nd</sup> amendment, 104<sup>th</sup> amendment.10% reservation for EWS. was made by the 103<sup>rd</sup> amendment to the Constitution.Article 335: It says that the claims of SCs and STs shall be taken into consideration constitutently with the maintenance of efficacy of the administration.

**The 1992 Judgement and States' Adherence :** Indra Sawhney & Others vs Union of India, 1992: The judgement on Indra Sawhney case was passed on 16 November, 1992.It was a nine-judge verdict which decisively laid down several landmark propositions such as 50% threshold in reservations.It said, "Reservation being an extreme form of protective measure should be confined to a minority of seats even though the constitution does not lay down any specific bar, the principle of balancing equality; reservation of any manner shall not exceed 50%".The

concept of 'creamy layer' also gained importance through this judgment and provision that reservation for backward classes should be confined to initial appointments only and not extend to promotions. Earlier, the reservation was meant to be only for SCs and STs. It was the Mandal Commission case that brought Other Backward Classes (OBCs) under reserved category. Adherence of the Limit by the States: Notwithstanding the judgement passed by the Supreme Court, since 1992, many states have passed laws breaching this limit of 50% such as Maharashtra, Telangana, Rajasthan and Madhya Pradesh. Besides, Tamil Nadu, Haryana and Chhattisgarh, have also passed similar laws, causing them to exceed the 50% reservation mark. The apex court has decided to look into Tamil Nadu's 69% quota law after deciding the Maratha quota case.

In January 2000, the Governor of the erstwhile state of Andhra Pradesh declared 100 % reservation to Scheduled Tribes (ST) candidates in posts of school teachers in Scheduled Areas. However, it was ruled as unconstitutional by the apex court. 50% Reservation Not a Law: Although the limit of 50% is not set by any statute but it is laid down by the apex court and hence was binding to all the authorities. However, the judgement itself said that in exceptional circumstances, the percentage can be increased. The issue that arises with the 'exceptional circumstance' is that if it actually exists in a given case or not and if yes then by how much can the limit exceed.

Reviewing the 1992 Judgement: The Supreme Court shall go a step further and look into the Indra Sawhney case to clear the issues that have arisen due to various judgements given by the high courts. The reservation facility should be aimed at improving the socio-economic conditions of the marginalised in keeping with their standing in the caste-based census. Maintaining the Federal Structure: While deciding the reservation issue, it is also important to take into account whether the states providing reservations to different communities are maintaining the federal structure of the government or destroying it. Under Article 341 and Article 342, declaring a particular community as Scheduled Caste (SC) or Scheduled Tribe (ST) it is the power that vests in parliament. Balancing the Reservation and Merit: While giving reservation to the communities, the efficiency of the administration has to be looked upon too. Reservation beyond the limit will lead to the ignorance of the merit, which will disturb the entire administration. The sole purpose of reservation is to address the issue of historical wrong done to the less-advantaged communities but the merit beyond a certain point must not be neglected too.