

50% Cap on the Reservation

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The Supreme Court recently said the issue of whether it is time to scrap the 50% ceiling on reservations in educational institutions and jobs needs to be answered in the context of the “changed social dynamics of the society” and recent constitutional amendments, and sought the views of the states – a radical departure from the legal precedent that has, for three decades now, held the ceiling as inviolable.

In news: SC seeks response from states on 50% cap for reservation

Placing it in syllabus: Indian Society

Dimensions

- Questions to be Taken Up by the Bench
- 50% Rule: Origin and Evolution
- Arguments for 50% rule
- Should it be done away?

Content:

Questions to be Taken Up by the Bench

- The Supreme Court sought response from all the states and Union Territories on whether the 50% cap on reservation in government jobs and educational institutions could be re-examined by a larger Bench.
- The question of review has arisen in the view of subsequent constitutional amendments and the socio-economic changes in the society.
- Also, many states, including Tamil Nadu and Maharashtra, have since made their own laws, raising the limit to 60% or thereabouts.

The Supreme Court has set out the following questions of law for its consideration:

- Whether the 1992 judgment by the nine-judge bench of the Supreme Court in Indra Sawhney needs to be reconsidered by a larger bench?
- Whether Maratha reservation comes under the ambit of Indra Sawhney judgment?
- Whether the 102nd Constitutional amendment prevents state legislatures from legislating on SEBCs in their respective states?
- Whether the 102nd amendment affects the federal structure of the Constitution?

Maratha Reservation Issue

- Based on a report by the Maharashtra State Backward Commission and using the window of “extraordinary situations” in the Indra Sawhney case, the state law provided 16% reservation to the Maratha community in addition to the existing 50% quota.
- But the Bombay High Court, by its judgment in June 2019, brought down the reservation to 12% in admissions to educational institutions and 13% in jobs.

50% Rule: Origin and Evolution

- In 1979, the Janata Party government constituted the Second Backward Classes Commission – popularly known as the Mandal Commission after its chairman, the Bihar MP Bindheshwar Mandal – with the mandate to identify India’s socially or educationally backward classes.
- At the time, India already had reservations for Dalits and Adivasis.
- The Mandal Commission’s report, submitted in 1980, called for giving reservation to the Other Backward Classes, a vast conglomeration of castes that broadly fit the “shudra” category of the caste system.
- Soon after the report was submitted, however, the Congress returned to power and it was put in cold

storage.

- It took a decade and another non-Congress government, this time led by VP Singh, to implement the Mandal Commission's recommendations, sparking a storm of protests and a petition to the Supreme Court which came to be known as the Indra Sawhney case.
- Ruling on the petition, the court partially accepted the government's new policy, allowing for 27% reservation for the Other Backward Classes, but put in a crucial rider: socially and economically advanced individuals among the Other Backward Classes will not be covered.
- The court also held that the share of jobs, or educational or legislative seats reserved for different communities cannot together exceed 50%.
- In Indra Sawhney vs Union Of India, 1992, the court capped caste-based reservation, ruling that "no provision of reservation or preference can be so vigorously pursued as to destroy the very concept of equality".
- Supreme Court held that the reservation under Articles 15(4) and 16(4) should not exceed 50%
- However, the bench did indicate that in exceptional circumstances, reservation could be extended.
- The judgement also established the concept of qualitative exclusion, such as "creamy layer"
- The creamy layer applies only to OBCs. The creamy layer criteria were introduced at Rs 1 lakh in 1993 and revised to Rs 2.5 lakh in 2004, ₹4.5 lakh in 2008 and ₹6 lakh in 2013, but now the ceiling has been raised to ₹8 lakh (in September 2017).

Rising Aspirations of Backwardness:

- Similar to the Maratha issue are the cases of Patels in Gujarat, Jats in Haryana, and Kapus in Andhra Pradesh
- The 102nd Constitutional amendment, which was inserted in Article 342A, empowers the Central government to

notify any class or community as socially and educationally backward class with respect to any state or union territory.

- Based on the 102nd Amendment to the Constitution the court will have to look into whether states have similar powers.
- Also, since this power flows from the Constitution, whether the President is still required to comply with the criteria set by the Supreme Court in the Mandal case.
- The relevance of the Indra Sawhney criteria is also under question in another case in which the validity of the 103rd Amendment has been challenged.
- The 103rd Amendment, passed in 2019, provides for 10% reservation in government jobs and educational institutions for the economically weaker section in the unreserved category.

Arguments for 50% rule:

- Far from correcting historical injustices, reservations have become a competitive subdivision of shrinking opportunities.
- While merit doesn't factor in socio-economic inequalities that prevent many people from attaining their potential, no society can progress if merit gets the short shrift.
- Slowing economic growth and success of various groups in enlisting under OBC/ SC/ ST categories and easing creamy layer ceilings have created social divides that can't be solved – but may be worsened – by more reservations.
- In that respect, Indra Sawhney attempted to balance the right to equality and state's prerogative for socio-economic justice with the 50% cap.

Should it be done away?

- In an underdeveloped country like India, pretty much every community can be shown to be backward in some absolute sense.
- However, quota gains for it can only be at the expense of some other community, perhaps even more backward.
- This fundamental reality is papered over when Centre and states pander to quota demands. From inclusionary ideals, reserving the majority of opportunities for special groups has morphed into a means of exclusion. .
- The Indra Sawhney judgment cap of 50% on reservations is already very high.
- It behoves SC to crack the whip in this regard, and bring errant governments in line.

Mould your thought: How has the 50% reservation rule evolved in India? Should it continue? Give reasons for your answer.

Approach to the answer:

- Introduction
- Discuss Mandal Commission and Indra Sawhney Case judgement
- Discuss 102nd Amendment and 103rd Amendment
- Give reasons for why 50% rule is required or not
- Conclusion