Indira Sawhney v. Union of India

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***Abstract*: - This landmark judgement established certain fundamental principles dealing with the constitutionality of provisions for reservation being implemented across the nation.**
Reservation policy is one of the most dynamic state stratagems which has been of continuous contemporary relevance since the constitutional pundits first incorporated the provision in the fundamental law of the land. The discussions have ranged from whether reservation should be there at all to the more intricate details and grounds for providing the same.
The Indira Sawhney judgement established the ground for further detailed deliberations on the subject and working out various complexities till the present date.
This case comment will briefly analyze the background of the judgement, the reasoning behind it and also whether the judgement so delivered are fitting to the present scenario, and if some part of it is not then what should have been the stance taken by the Apex Court so as to make it appropriate.

BACKGROUND

The roots of the social divide in India, which might as well be called a land of hierarchy, go way back to the *varna* system in ancient India.
The *varna* system divided the society into four sections based on division of labour (The Brahmans, the Kshatriyas, the Vaishyas and the Shudras). There were also those who were deemed as casteless or the *avarna.*
This division was not just associated with the occupation but also with the egotistic approach of the so called 'upper' Castes towards the 'lower' ones.
This culture, over the years, led to such a social divide that the individuals belonging to the 'lower' Castes were almost completely separated from mainstream society and this was coupled with massive denial of opportunities and rights.
All this along with other socio-economic factors led to certain deprived sections of the society to become so depressed and backward that they could no longer compete with other citizens of the nation at the same level.
It was due to this that numerous great minds from across the nation, while forming the Constitution of India that they provided the suppressed classes with extra constitutional provisions so as to help them compete with the others at an equal level.

It was only fair in the name of equity that this be provided to them, however, this did not stop others not benefitting from the same, to raise their voice against these provisions.

Different arguments on how it compromises merit and deprives the worthy of an opportunity thereby violating the right to equality were raised leading to an increasing number of lawsuits which were slowly shaping the policies.

Prior to the Indira Sawhney judgement, there were many others which dealt with individual aspects of reservation such as,

The Champakam Dorairajan judgement[1], where the Apex Court struck down provisions for reservation in educational institutions granted by the State of Madras.

It was after this judgement that the legislature brought about the first constitutional amendment which amended Article 15 to include provisions for reservation in educational institutions.

Next, in the M.R. Balaji judgement[2], the Apex Court struck down a provision by which the Karnataka State government had provided for 68% reservation in State based educational institutions and stated that it was unconstitutional.

The Court imposed a cap of maximum 50% reservation, however, the Court did opine that this was not an inflexible rule and that reservation could exceed 50% under special circumstances.

Other than the judgements, there were also a few attempts at exactly defining who were supposed to get the benefit of reservation and what percentage of the whole of society did they constitute of.

The first attempt by the Kaka Kalelkar committee was not successful, however, after that Prime Minister Morarji Desai delivered his party's promise of constituting another commission which resulted in the Mandal Commission.

The Mandal commission calculated approximately 52% of the total Indian population to be backwards and requiring reservation.

Now, with the existing 22.5% reservation for SCs and STs, 52% for OBCs was not possible, so the commission decided it to be appropriate to grant 27% reservation.

It was after this that a journalist, Indira Sawhney, filed a P.I.L. challenging the constitutional validity of the reservation provisions.

THE JUDGEMENT

[1] The State Of Madras vs Srimathi Champakam Dorairajan SC 226 A.I.R. (1951).

[2] M. R. Balaji And Others vs State Of Mysore SC 649 AIR (1962).

The judgement laid down certain principles with a 6-3 majority, most of which are still being followed. They may be briefly summarized as,

i) No reservation may be granted solely on economic basis.

ii) There shall be no reservation in matters of promotion.

iii) Reservation may be made by virtue of Article 16(1) and Article 16(4) is not an exception but a classification to 16(1).

iv) Reservation may be granted by an order by the executive or 'Executive Order'.

v) There must a permanent statutory body to deal with disputes regarding inclusion and exclusion.

vi) The creamy layer of backward classes must not be granted benefits of reservation.(Only for OBCs).

vii) Reservation shall not exceed 50% (however this is not an inflexible rule).

viii) The Mandal commission report was criticized to have used data from pre-independence era which was bound to be faulty, however, the Court decided that the report may not be re-examined for correctness.

ix) Distinction may be made between backward and more backward classes.

ANALYSIS

Now, certain issues which the Court took up are of greater importance than the others and hence need explanation to certain depth with respect to contemporary developments.

Firstly, the Court took up the contention that reservation may be granted on solely economic basis, now this was something which was much deliberated upon over the years as a result of a tussle between people with diverse stances, some who believed that reservation must be restricted to the cap as imposed by the Supreme Court which would be exceeded if economic based reservation would be provided additionally to the existing reservation, then the people who believed that reservation must be provided solely on economic basis and then those who believed that it must be provided additionally to the existing provisions.

The Court stated that the can be no economic based reservation as there was no provision in the Constitution to justify the same and the Constitutional Pundits never intended for reservation to be, as stated by Senior Adv. Ram Jethmalani, "a measure of economic reform nor a poverty alleviation programme."[3]

[3] Indira Sawhney & Ors v. Union of India SC 477 AIR (1993) Para 63.

This part of the judgement was in accordance with the law present at that time and it was never challenged or reviewed and even though now there is a provision for reservation for the Economically Weaker Sections (EWS) the government could only do this by bringing the 103rd Amendment to the Constitution and adding a provision for the EWS by amending Articles 15 and 16.

Secondly, the Court then took up the contention that reservation may be provided in promotions.
The people supporting this view believed that even if individuals belonging to the weaker sections were availed opportunities in educational sector and also in securing employment, still the residue to caste divide present in the individuals holding important positions in State institutions would deny the development and advancement of those belonging to the weaker classes, employed under the State, and for this reason, such a provision must be given so as to enable them to develop to their fullest, which is something the Constitution of India aspires to ensure for all citizens.
The ones against this view believed that either reservation must not be provided at all or that reservation must only be provided to a certain extent, beyond which the individual must not be given further support and his/her advancement be based only on his/her capability and merit, they believed that such a provision would deteriorate the quality of labor present in industries and thereby affect the overall development of the nation in the long run.
To this the Court held that no provision of reservation may be provided for the socially backward classes in cases of promotion.
Now, this part of the judgement faced legislative overruling by the 77th Constitutional Amendment in the year 1995, by virtue of which the Congress government at that time, extended the provision of reservation to SCs and STs provided for in Article 16 of the Constitution to promotions in employment under the State.
The 77th Amendment was challenged in 2006 in the famous Nagaraj case[4], in which the Supreme Court upheld the amendment as constitutionally valid, however, the Court further said that if the State wishes to exercise 'this discretion' it needed to prove the inadequacy in the representation of the SCs and STs.[5] This stance has recently been overruled by the five judge bench of the Supreme Court wherein it stated that the Court directing the State to provide quantifiable data to exercise the provision is wrong.[6]
Hence, presently there are special provisions for the promotions of individuals belonging to the Schedule Tribes and Castes.

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[4] M.Nagaraj & Others vs Union Of India & Others Writ Petition (civil) 61 (SC. 2002).
[5] *Ibid* Pg. 39
"The State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335."
[6] Jarnail Singh vs Lachhmi Narain Gupta S.L.P. (Civil) No. 30621 of 2011 (SC. 2018).

This is still, however, not an established provision as there are numerous pending lawsuits in Courts across the nation with the recent one being the issue being discussed regarding the Karnataka law which makes a provision for SCs and STs that when a member from a backward class is promoted to a certain position and another from the general/open category gets promoted to the same post then the member from the reserved category would still be a superior to the one from general category.
This law was the main subject matter in the recent decision in B.K. Pavitra judgement.

Next, the Court in the Indira Sawhney case, decided upon the contention which questioned the provision for reservation to the well-off sections of the backward classes.
The view was that the ground for providing reservation is because certain sections, owing to their social and economic backwardness, could not avail the opportunities available an ordinary citizen, however, if an individual whose family or the individual himself is in a significantly secure financial position, then by potency of that they may very well avail any and all opportunities that may be required for them to fully develop as an individual.
So, as social equality was being guaranteed by various Constitutional as well as statutory provisions and the individual is not economically backward, there remained no ground for giving that individual any special provision.
The Court with regards to this directed the State to implement the creamy Layer principle in giving reservations. The creamy layer principle was, for the first time, used in the case *State of Kerala vs NM Thomas*[7] wherein Justice Krishna Iyer observed that "the danger of 'reservation', it seems to me, is three-fold. Its benefits, by and large, are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake."[8]
The Apex Court only applied this to the OBC reservation in 1992, however recently, in the Jarnail Singh vs Lachhmi Narain Gupta[9] judgement, the Court extended it to SCs and STs and justified it as establishing equality among those receiving benefits of reservation.
The Creamy Layer cap has not been constant, it has been changing keeping in mind the changes regarding income levels, inflation etc.
In 1993, the limit was kept at Rs 1 lakh. It was raised thrice -- to Rs 2.5 lakh in 2004, Rs 4.5 lakh in 2008 and Rs 6 lakh in 2013 and finally in the year 2017 it was raised to 8 lakh per annum[10] due to the prevailing inflation.
The creamy layer principle though fairly established, is not free of issues.

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[7] State of Kerala v. N.M. Thomas SC 490 AIR (1976).
[8] *Ibid* Pg. 48.
[9] Jarnail Singh vs Lachhmi Narain Gupta S.L.P. (Civil) No. 30621 of 2011 (SC. 2018).
[10] Press Trust of India, The Economic Times, (May 12, 2019 23:28) https://economictimes.indiatimes.com/news/politics-and-nation/creamy-layer-income-cap-for-obcs-raised-to-rs-8-lakh-per-annum/articleshow/60497593.cms

CONCLUSION / COMMENTS

The judgement in my opinion was appropriate according to the prevailing law and also fitting so as to make the provisions of reservation acceptable to enough number of people so as to be retained, however, there are certain sections of the judgement that I think should have been given more importance and given certain security so as to prevent exploitation and misuse of the provisions.

Firstly, the Court even though had upheld the 50% cap, again stated that it is not inflexible and reservation may exceed 50% cap in special circumstances.

This however is being exploited by different individual states to fulfill their Sons of Soil aspirations.

States have granted reservations to women, Domiciled Residents, grandchildren of freedom fighters, children of orphans, children of the martyred in straight contravention to the 50% rule.

Taking the example of Tamil Nadu, it has a total of 69% reservation and its law has been by assent of the Center entered into the 9th schedule, significantly outside the purview of the judiciary.

Other than this, Maharashtra has granted 16% reservation to Maratha caste, additionally to the 50% already granted. This is clearly violating the fundamental principle of equality which forms a part of the grund norm of the nation.

Even in State educational institutions there are reserved seats for domiciled candidates which is granted out of nothing but political gain.

National Law Universities like NLIU have up to 25 seats for State candidates and 30 horizontally for women.

Currently a similar debate is taking place for reservation of seats in NALSAR, where the proposed reservation is for a whopping 85% for State candidates, this will seriously hamper the quality of intake of the very reputed college.

Hence, in my opinion the judgement should have made the 50% restriction more rigid and ensure minimum possibility of loopholes.

Secondly, the Court decided that the creamy layer principle which is justified, however, the Court should have, in my opinion, provided for an examination of the background of the candidates applying for such reservation. There are a large number of candidates applying for reservation and obtaining fraudulent non-creamy layer certificate thereby denying the rightful candidates their fundamental rights.

There should be a system of an independent body with minimum scope for corrupt practices to not only check the validity of their documents but also a repeated background check to make sure that they are deserving of reservation benefits.

Lastly, the Court had applied the creamy layer principle only to the OBCs, however, this was rectified by a recent judgement as already mentioned before.

In conclusion, the judgement was comprehensive and established the ground for more extensive debate on reservation and it was very well thought of with immaculate reasoning by the honorable judges only if it were only made more detailed with focus of securing the provisions from fraudulent practices, then no more revision of the principles laid down would be needed.