**Case Analysis**

Indira Sawhney VS Union of India

    (Mandal Commission Case)

    By : Tanushree Jaiswal

**INTRODUCTION-**

The reservation issue has been a very overwhelming issue for quite a long time in our country India. It has seen  times of differentiation in the Employment and Educational area not founded on open competition and merit but rather on class, rank, money and on social grounds.

It has created two outcomes. On hand, it look to satisfy the target of Social Equality - a rule that everyone must follow and yet again it has made National of this country India shaky with respect of Fundamental thought of magnificence. This case is a point genuine interest that demonstrates, that standing indecencies ought to never be made the premise of accomplishing such a respectable target, as it just not upsets the essential amicable texture of general public but also make a superfluous gap between the "Meriting and Merited".

The outcome of this belief system influenced the soundness of energy relations and accomplishments in the country.

The SUPREME COURT and everyone is just an observer that reservations are Hostile.

However reservations have been viewed as a vast majority of our country's population is still very backward.

**STATEMENT OF FACTS:**

-On 1 January, 1979, the Government headed by the Prime Minister **Mr. Morargi Desai** **designated the Second Backward classes Commission** to reach the SEBCs inside the region of our country India.

It has prescribes venture to be taken for their progressions.

-On December 1980, the **Commission presents its report and recognized 3743 stations as socially backward classes. It also prescribes a 27% booking Government Employments for them**.

-Now Due to its inward disagreements, the Janta Government fallen and the CONGRESS PARTY headed by **PM Smt. INDIRA GANDHI** came to control and power at the center.

Till 1989 the Congress **Government didn't execute the Commission Report**.

-In the year 1989, the Congress party vanquished and again the Janta Government came to control. It issued Office Memoranda to execute the commission report.

It wake of passing remainder tossed the country into unrest.

This Hostile reservation development shook the country bringing about tremendous destruction of Loss of PEOPLE and PROPERTY for about 3 months.

-On **1 October 1990**, a writ request for benefit of Supreme **Court Bar Association was filled** **testing the legitimacy** of the O.M. furthermore, to stay its task.

In this 5 Judges seat of court remained this task till the last transfer of the case.

-Unfortunately the Janta Party again fallen because of rebellions.

The **Congress party** came to control headed by P.V. NARASIMHA RAO issued another O.M. on 25 September, 1991 by presenting the financial standard.

It offer a **reservation** to the poorer areas of SEBCs in the **27%** in the Quantity.

It also saved another **10%** of opportunities for different SEBCs monetarily in the backward sections of the higher class and rank in the country.

**ISSUED RAISED:**

-Whether this classification is based on the caste and economic basis?

-Whether the Article 16(4) is exception of Article 16(1) or not?

-Whether Article 16(4) backward classes are similar as SEBCS in Article 15(4) or not?

-"Any provision" under Article 16(4) for reservation "by the state" necessarily made have to law by state or law by parliament.

Or these such provisions made to excute order or not?

-Whether classification between Backward classe or Backward or more Backward is valid or not?

**JUDGEMENT:**

5 Judge Bench referred the case to 9 Judge Constitution Bench of Supreme Court.

The Decision was given by 6:3 majority.

It held that Union Government to hold 27% reservation on Government occupations   for SEBCS gave them CREAMY LAYER is constitutionally VALID.

The Apex Court struck down second proviso of Office Memoranda.

And it held that holding 10% Government Occupations for monetarily in Backward classes of higher section of the society isn't valid.

Following are the important proclamations:

1. Article 16(4) of Backward class were not socially Backward as Article 15(4).
2. Creamy Layer must be barred.
3. Article 16(4) characterizes into different Backward classes.
4. Backward classes citizen can't be distinguished with their financial condition and criteria.
5. .No Reservation in promotion.
6. Reservation should not exceed 50% of the total.
7. Reservation can be made by the Executive Order.
8. Permanent bodies to look over inclusion and under inclusion.
9. Majority people held there is no need to Express an Opinion on Activities done by the Mondal Commission.
10. Supreme Courts only hear disputes with respect to this new reservation.

Commonly reservation under Article 16(1) and Article 16(4) together not surpass 50% of the appointments in the year.

In any other case if exceed 50% every penny should be advocated.

The reservation in advancement is Unlawful but sometimes it may give exceptions, relaxations, and concessions etc.

India cherished **Article 15** in the Constitution booking for socially Backward into-:

Backward Classes,

Other Backward Classes,

And Schedule Caste

in employments and administrative seats etc.

Reservation can't be Time bound.

Indian Constitution from its origin till now has not given any unmistakable meaning of Backward Class. Reservation is to reduce the stress of most denied areas into general public interest.

There are Scheduled Castes and Schedules Tribes are not financial Backward but still they have reservation.

**CONCLUSION:**

The reality of the case and Judgment,

I have come to numerous derivations.

This case is a point of Judgment on Reservations of the Government Occupations, which portrays **Article 16(4).**

The main issue that whether the grouping depends upto monetary premise.

The Dominant part of the Judges said "neither the Constitution nor any Law recommends the proof of Backward Class, It is only left to specialist to distinguish.

On the second issue of the Court Article 16(4) is not a special case to Article 16(1) yet a free provision.

Reservations can be made based on sensible arrangements and overruled the choice of

BALAJI v. PROVIENCE OF MYSORE.

In third issue the court held that Article 16(4) is not same as SEBCS.

It incorporates all other

SC, ST and other in Backward Class including SEBCS of Nationals.

In fourth issue characterization between Backward Classes is overruled in Balaji case.

**The Supreme Court executed the approach** of understanding the Article of the Constitution that:

**"Creamy Layer must not be barred"**

In illustration given by the Court:-

If individual assigned in Backward Class turns into an Individual from IAS or IPS that in India his status in the public eye is raising he is never again socially hindered.

The Court said that, there are sure posts and administrations to which it may not be fitting to apply to govern the Reservation.

For instance;

Specialized post in examine and office foundations to claim to fame in physical science, building, drug, and math’s. In guard benefits, pilots in Indian aircrafts, professionals in atomic energy and space and Researchers etc.

The **Court on given Judgment** specified that reservation should **not surpass 50% and Reservation can't be made in Advancements**.

Apex Court overruled the choice of - DEVDASON v. Association of India. It held that 50% surpass in additional circumstances in States like:

NAGALAND and TRIPURA. The larger part made it clear that any question in this respect can brought only to Supreme Court not High Court or any other Council.

The Supreme Court of the India made a strong endeavor strike a harmony between interests of the Society in the Backward Classes.

The Supreme Court dealt with various aspects of the complex issue of reservation and gave a very thoughtful Judgment in this Indra Sawhney v. Union of India, AIR 1993 SC 477 case.

When our Indian Constitution was framed the framer of the Constitution made a special provision for Equal Opportunity to all citizens of the Country.

In the Article 16 it was inserted and specially for Backward classes a article was inserted Article 16(4).

The decision of the Indira Sawhney vs. Union of India solved many problems related to Reservation.

The main 3 Constitutional Amendment made are as under-:

1. The Constitution 77th Amendment in 1995 : In this new clauses inserted Article 16 and Article 16(4-A).

These articles empowers the State to make a provision for reservation. It is for the matters of promotion to any class or classes of the important posts in the service of the state in favour of the SC Schedule Caste and ST Schedule Tribes.

1. .The Constitution 77th Amendment 2000: Article 16 inserted in this and made that it was a amendment basically that Reservation can exceed above 50% reservation for SC Schedule Caste, ST Schedule Tribes if any backlog vacancies not filled up in the previous years due to non- availability of the eligible candidates required which is fit for the post.
2. The Constitution 77th Amendment in 2001: In this the word "In the matter of promotion to any classes" was substituted by the word "In the matter of promotion with consequential seniority to any classes".

**Order:**

Judgment of the Chief Justice M.N Venkatachallah , A.M Ahmadi and B.P Jeevan Reddy, J.J Delievered by B.P Jeevan Reddy.

-The objective of securing to its Citizens Justice, Liberty, Equality and Fraternity of the Constitution was founded 43 years ago.

-The Constitution assembly elected on the basis of Limited Franchise which represents all the sections of the Society.

The difficult task of carving an egalitarian society from out of the bewildering mass of religions, communities, caste, races, languages, beliefs and practices.

-Liberity, Equality and Fraternity was the battle of the French Revolution.

Its basically our motto of the Constitution.

The concepts of our Constitution is Justice of Social and Economic and Political. Equality is the greatest at all points of time for Human Beings.

Many philosophers has been inspired by this thought.

-Liberty of thought, expression, belief, faith and worship has faith all humans.

-The doctrine of Equality has many facts which are really important of because it is dynamic and an evolving concept.

Right to Equality (Article 14 to 18).

Other articles in Part IV (Directive Principles of the State Policy) it's the sum total.

-Article 14 says state not to deny any person Equality before Law or equal protection of law.

-The State not to do any kind of Prohibition of religions, race, caste, sex and place of birth.

-No Citizens shall on ground of religion, race, caste, sex and place of birth restricted to:

a. Access shops, public restaurants, hotels and places of public entertainment or

b. Use well, tanks, roads and bathing ghants.

-Equality of Opportunity for public employment of citizens.

**THE FIRST BACKWARD CLASSES COMMISSION- (KELEKAR COMMISSION) :**

Dr. B.R Ambedkar stated : We have a massive opinion that it is good to have a Equality of the opportunity but there should be provision for entry of certain communities outside the administration.

**THE SECOND BACKWARD CLASSES COMMISSION :**

The terms of Commission were:-

1. To determine criteria to define social and economic Backwardness.
2. To also recommend steps for socially and economically Backward classes of citizens of the country.
3. For provision of reservation of appointments and posts in favour of Backward classes.

The Commission Submitted its report and Chapter 1 of this report deals with Constitution of the First Backward Classes (Kaka kelkar Commission) it points out certain internal contradictions.

Chapter 2 deals with the Status of the Backward classes in some of the states. It sets some provisions in favour of OBC Other Backward Classes.

In Chapter 3 is for methodology. Its sets various provisions.

The Reason Central Government for not accepting recommendations of the kaka kelkar Commission is that they have not properly worked on its objectives for classification of Backward classes.

The Commission evolved  11 indicators as follows:

A. SOCIAL:-

1. Caste, Classes considered socially Backward by others.
2. Caste, Classes which mainly depend upon manual labour of their livelihood.
3. 3.Caste, Classes where at least 25% Females,
4. 10% Males are above the state average get age married at an age below 17 years in rural areas and at least 10% females and  5% males do in urban areas of the country.
5. Caste, Classes which Female participation of work is at least 25% above the state average.

B. EDUCATIONAL

1. Caste, Classes where the number of children in the group age is 5 to 15 years who never attended school is at at least 25% above the state average.
2. Caste, Classes where the rate of student drop out in the age group of 5 to 15 years at at least 25%  below state average .
3. Caste, Classes amongst whom the proportion of matriculation is at least 25% below state average.

C. ECONOMIC

1. Caste, Classes where the average value of family assets is at least 25% below the state average.
2. Caste, Classes where the number of families living in kuccha houses is at atleast 25% above the state average.
3. Caste, Classes where the drinking water source  is beyond half a kilometer for more than 50% of the households.
4. Caste, Classes where the number of households have taken loans whose rate of consumption loan is at at least 25% above the state average.

**Weighing Indicators:** As the 3 groups mentioned above are not given equal importance for the purpose which is for that is required. The separate weightage was then given in each indicators in of the groups mentioned above as Social, Educational and Economic.

All the Social Indicators have given 3 points each.

The Education Indicators were given a 2 points each and then the Economic Indicator were given 1 points each.

All these factors highlighted the fact of socially and Educationally Backward classes are Economically Backward also.

The MANDAL COMMISSION Judged classes on a scale from 0 to 22 .

All these important 11 Indicators applies to all the castes which is covered by the survey which is conducted basically for a particular state

**Observations and Findings:** The Commission estimated that total population of the country India (excluding SC Schedule caste and ST Schedule Tribes) is 3743, which belongs to different castes, and communities were Backward.

The number of OBCs Other Backward Classes in the Central Government list increased is now increased to 5013 this is without taking the figures Union Territories in the year 2006 as per the National Commission of Backward Classes.

The figures of caste wise population is also not available So as the Commission used the year 1931 census data to calculate the number of OBCs in the country to find the figures. The population of Hindus OBCs is find out after the subtracting of total Hindus population in the country India. The population of SC and ST and the forward classes Hindus, it worked out to be 52%.

Now just as to assuming the total the proportion of OBCs amongst Hindus is the same.

So The Population of the Non- Hindus OBCs was considered to be as 52% also.

- Lets Assuming that the child from a advanced class family and a child from a very Backward class family had the same kind of intelligence level at the time of their birth in this world, but then owing to the cast differences in their socially, educationally, economically, culturally and environmentally factors, The former child will beat the latter child by the lengths in any competitive fields.

Even if the advanced class child's intelligence quotient level was much lower to the as compared to the Backward class child's intelligence level but still the chances are that the former child will beat the latter Backward class child in any competition where the selection is made on the basis of the MERIT.

-The Facts are that the word Merit in an elitist society is an amalgam of the native endowments and all other environmental privileges.

A child from a advanced class family and child from poor Backward class family are not EQUALS in fair sense. It is very unfair to Judge them by the same yard-stick.

The civilised  society what called is at MERIT and EQUALITY are not turned to be fetish in the sense and the privilege elements is duly recognized and it discounted for when "Unequals" are made in the race of the same RUN.

-The study of the TATA Institute of Social Sciences Bombay it observed that -;

" The British Rulers produced many structural differences in the HINDU CASTE SYSTEM"- The impact of the British rule on the Hindu caste system is near monopolization of Jobs, Education and Profession by the literate castes.

In country India, the western concepts and the western thinking it gave reform movement from above to below reform movement.

It also started the emergence of caste associations, as it's the new role in the Society, which causes state conflicts in the MODERN INDIA.

Some more ingredients of very weak British rule and the British Period is the politicization of masses, and also the very famous the "Universal Adult Franchise" all these became extremely powerful moving forces after the country's Independence after 15 August 1947- a Historic Day for every Indian's.

**Recommendations:**

The Recommendations section in the report presents following argument as under:-

The Commission as has already concluded that 52% of the county's population is comprised of the  OBCs Other Backward Classes, then it is initially argued that the percentage of reservations in the public services for Backward classes should also be match that figure if the 52% as concluded.

However all this would have gone against the Supreme Court of India earlier Judgment given which has laid that reservation of the posts must be below 50%.

The OBC proposed figures had to be fixed no change. Then which when it is added to 22.5% for SCs and STs, which remains below the cap of 50%.

In this legal view for this constraint, the Commission was obliged to recommend a RESERVATION of 27% only for Backward castes and classes of the Society.

Now the overlap between economic Backwardness and the caste became even more tenuous as result being that its extended to include OBC - The Other Backward Classes.

**Implementation:**

The view that Prior to Implementation of the Mandal Commission in the our country India, the state of India faced Caste discrimination in terms of social economically and in the political context, various living standards, Schedule Caste and Schedule Tribes and Other Backward Classes households OBCs viewed to be significantly lower that in the mainstream population, comprising of Hindu forward castes and other religions and various other religions groups of the Society.

In the year 1980 the Mandal Commission submitted its report which described the criteria used to indicate Backward classes and it also stated various recommendations in the light of their recommendations and findings.

Then the JANATA PARTY GOVERNMENT had fallen. The following CONGRESS GOVERNMENT  under the INDIRA GANDHI and RAJIV GANDHI were not willing to act on the report submitted dur to politically reasons.

After being neglected after long 10 years, the Report was finally accepted by the NATIONAL FONT GOVERNMENT led by V.P.  SINGH.

On the 7-8-1990 the National Font Government declared that it would provide 27% reservations to the socially and educationally Backward classes for their jobs in the Central Government Services and also the public sector undertaking s. After having Government released order on August 13, V.P. Singh announced legal Implementation in his  independence day speech 2 days later.

In the same year in the month if September,  a Case was brought to the Supreme Court of India which challenged the Constitutional validity of the Government order for the Mandal Commission reports recommendations  for its Implementation.

Petitioner-: INDIRA SAWHNEY, the case-made 3 principle arguments against the order given-:

1. The Extension of reservation violated the Constitutional guarantee of equality of opportunity.

2. Not a reliable indicator of Backwardness is should not be -"  CASTE ".

3. The public institutions efficiency was at RISK.

The Supreme Court of India the 5 judge bench issued stay on the order on the operation of the Government order of 13 August till the final disposal of the case.

On the 16 November 1992, The Supreme Court of India in its verdict,  upheld the Governments order, being opinion that caste was an acceptable indicator of Backwardness.

In the year 1992, the recommendation of reservations for the OBCs in all the countrys Central Government Services was finally implemented was it's full effect.

Its reported in THE TIMES Of INDIA in 26 December 2015, only 12% of the employees under Central Government Ministries and the statutory bodies are the members of the OBCs Other Backward Classes.

The DATA -:  This data shows that out of the 79,483 posts, employees from the OBCs occupied only 9040 of them.

 **Protest:**

After a decade, when the commission gave its report V.P. Singh, the Prime Minister tried the Implementation of the recommendations in the year 1989.

At that time the criticism were extremely sharp and the colleges across the country held massive protests against it.

In the year 19 September 1990, RAJIV GOSWAMI, a student of Deshbandu college Delhi, committed Self - immolation in the protest of the Government's actions.

His Act made him face the Anti- Mandal agitation then.

All this further sparked the series of the self- immolations by the upper caste college students which are like him, whose own job of getting a Government Job were now at a THREAT. This led a huge STUDENT MOVEMENT against Job Reservation for Backward Classes and Caste in the Society in India.

Nearly 200 students committed self- immolations.

62 students out of succumbled to theirs burns in the body.

On 24 September 1990, Surinder Singh Chauhan was the First student who died due to all this- Self immolation.

The normal business activity was suspended in the northern India across the country. All shops were kept closed and all schools and colleges were also shut down by the student agitators. At that time they attacked Government Organizations, buildings. They organized rallies and have demonstrations .

They also getting clashed with the police force of the country.

Police firing incidents reported in 6 states during agitation, which claiming 50 lives.

 According to Ramchandra Guha, the agitation did not gain much traction in southern India as it did in north India due to several very reasons.

- Firstly people were agreeable to Implementation of the Mandal Commission report.

The upper caste constituted less than 10% of the population. Lastly the Industrial sector and the educated youth in south were not as dependent on Government Employments as those in the north in the country.

**Criticisms:**

32% figures was given by the National Sample Survey Organization.

There is always a substantial debate to find out the extact number of OBCs in India.

There is also debate about the estimation on Mandal Commission for calculations of OBCs population.

Psephologist Yogendra Yadav turned politician also agrees that there is no empirical basis to the Mandal Commission figures.

According to him,

 "It's a mythical construct based on reducing the number of SC Schedule caste and ST Schedule Tribes, Muslims and others then to arriving on the numbers".

Mr. Yadav also argues that government jobs availed to those who by their own means had got Higher Education and that reservation for OBCs  was th only one of the many recommendations of the Mandal Commission. All this largely remain unimplented after last 25 years.

In the year 1999-2000

The National Sample Survey around country's 36% of the population belonging to OBCs Other Backward Classes.

This figure of 32% population is after excluding muslims OBCs.

A non- Muslim OBC population is 29.8% by National Family Health Statistics (NFHS) in the year 1998 - a survey which was conducted.

Critics of the Mandal Commission argue that it is unfair to accord people special privileges on the basis of caste discrimination.

They argue that those who were DESERRED seats through Merit will be at a Disadvantage.

The NSSO data shows 23.5% of college seats are occupied by the OBCs. Only 8.6% share of population was that according to the same survey.

 **References:**

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-Mandal Commission report

-Wikipedia and Google

External links

Reserving and Deserving, Genesis of a debate

-The Skimming creamy Layer

-Counter currents

-Youth for Equality

-Diluting Mandal from S.S Gill, Secretary Mandal Commission

-Supporting reservations

-Late Mr. Ranjiv Gandhi speech on Mandal Commission.

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