

# QUOTAS AND A VERDICT

Relevant for: Developmental Issues | Topic: Rights & Welfare of STs, SCs, and OBCs - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

**The story so far:** The introduction of a 10% quota for the economically backward through the Constitution (103rd Amendment) Act has been challenged in the Supreme Court. The principal grounds cited in support of the challenge are mainly found in a 1992 judgment of a nine-judge Bench in *Indra Sawhney vs Union of India*. A look at the context in which *Indra Sawhney*, or the Mandal Commission case, was decided, its major findings and how they are being cited in the challenge to the 103rd Constitution Amendment.

## What is the background of the case?

In December 1980, the Second Backward Classes Committee, headed by B.P. Mandal, better known as the Mandal Commission, gave its report. It recommended 27% reservation for Other Backward Classes (OBCs) and 22.5% for the Scheduled Castes/Scheduled Tribes. A decade later, in August 1990, the government issued an office memorandum (OM), providing 27% vacancies for Socially and Educationally Backward Classes to be filled by direct recruitment. Violent protests greeted this memorandum, and a challenge was mounted in the Supreme Court. In 1991, a new government under the Congress issued a second OM notifying an additional reservation of 10% for other economically backward sections. A nine-judge Bench of the Supreme Court pronounced a 6:3 majority verdict in the Mandal Commission case, upholding the 27% quota in the first OM, but struck down the 10% quota based on economic criteria.

## What were its main findings?

The majority judgment held that “a backward class cannot be determined only and exclusively with reference to economic criterion”. “It may be a consideration or basis along with, and in addition to, social backwardness, but it can never be the sole criterion,” Justice B.P. Jeevan Reddy wrote for the majority. It said backward classes could be identified on the basis of caste. The Bench also laid down that reservation not cross the 50% limit, unless a special case was made out for extraordinary situations and peculiar conditions to relax the rule. It wanted the ‘creamy layer,’ the advanced sections of the backward classes, excluded from reservation and asked the government to evolve suitable criteria to exclude the ‘creamy layer’.

## Why cite the *Indra Sawhney* case?

After 27 years, the Constitution (103rd Amendment) Act, 2019, provides for 10% reservation in government jobs and educational institutions for the “economically backward” in the unreserved category. The Act amends Articles 15 and 16 of the Constitution by adding clauses empowering the government to provide reservation on the basis of economic backwardness. The 10% economic reservation is over and above the 50% cap. The Constitution does not define the term ‘backward classes,’ though it endorses the role of the state in ensuring and promoting social equality. Over the years, caste has been a constant factor in identifying social and educational backwardness. As the Mandal Commission case discusses the basis for identifying OBCs, its findings are being cited by those who have challenged the amendment. They say the amendment violates the bar on quotas solely based on economic criteria and breaches the 50% quota limit which, they argue, is part of the Basic Structure of the Constitution.

The petitions, including those by Youth for Equality and activist Tehseen Poonawala, argue that

the amendment excludes the OBCs and the SCs/STs from the scope of economic reservation. They contend that the high creamy layer limit of Rs. 8 lakh a year ensures that the elite capture the reservation benefits. They argue that the amendment does not clearly define the term “economically weaker sections.”

### **What is the government’s response?**

In its response by affidavit, the government says the amendment was “necessitated to benefit the economically weaker sections of the society who were not covered within the existing schemes of reservation, which, as per statistics, constituted a considerably large segment of the Indian population.” It quoted the 2010 report of the Commission for Economically Backward Classes, chaired by Major General S.R. Sinho (retired), which said 18.2% of the general category came under the below poverty line. It has said the economically weaker sections required as much attention as the backward classes. The government said the 50% ceiling applies to the SCs/STs and the OBCs. The new provisions separately deal with the economically weaker sections. It argued that a “mere amendment” to an Article would not violate the basic feature of the Constitution. The matter is likely to be referred to a Constitution Bench.

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