

## SC seeks States' views on 50% cap on quota

The SC has decided to examine whether its judgment in the Indra Sawhney case of 1992 which fixed reservation for the marginalised in government jobs and educational institutions at 50% needs a relook.

Indra Sawhney v Union of India & Ors case, 1992:

- The Supreme Court had set the upper limit for reservation in jobs and education at 50%, except in "extraordinary circumstances".
- The court in the Indra Sawhney case tried to come up with a solution that is reasonable and strikes a fine balance between the society and rights of the backward classes.
- However, over the years, several States, such as Maharashtra and Tamil Nadu, have crossed the upper limit of 50% and passed laws that allow reservation to be as high as 60%.

Maratha quota law:

- The Maharashtra State Reservation for Socially and Educationally Backward Classes (SEBC) Act of 2018 originally provided 16% reservation to Marathas (based on the recommendation by

the Gaikwad Commission) and came after years of protests by the community.

- In June 2019, the Bombay high court trimmed the quantum of the quota to 12% in education and 13% in jobs. In its order, the high court said the 50% cap could be breached in exceptional circumstances.

- The Maratha reservation had been challenged in the SC and a five-judge Bench was set up to hear the same.

The bench will look into whether the Maharashtra State Reservation for (SEBC) Act of 2018, which provides quota benefits for the Maratha community, thus taking the reservation percentage in the State across the 50% mark, was enacted under "extraordinary circumstances".

- The Indra Sawhney judgment notes that the 50% rule could be crossed in certain exceptional and extraordinary situations for bringing far-flung and remote areas' population into the mainstream.

The five-judge bench looking into the Maratha reservation issue has expanded the ambit of the case

and has framed the following questions to be looked into by the court.

### 1. Relook at the upper limit for reservation:

- The court will be looking into whether the Indira Sawhney verdict of 1992, fixing 50% limit on quota, needs to be relooked by a larger Bench of more than nine judges.
- The Bench has made other States party to the case and has asked them to make their stand clear on the question of whether reservation should continue to remain within the 50% boundary or not.

### 2. Impact of the 102nd Amendment Act:

- The bench will also judge whether the Constitution (One Hundred Second Amendment) Act of 2018, which introduced the NCBC, interferes with the authority of the State legislatures to provide benefit to the socially and educationally backward communities in their own jurisdiction.
- The 102nd Constitutional Amendment Act introduced Articles 338B and 342A in the Constitution.

- Article 338B deals with the NCBC.
- Article 342A empowers the President to specify the socially and educationally backward communities in a State.
- Thus it strips the State legislatures of their discretionary power to include their backward communities in the State List.
- The Constitutional amendment empowers the Parliament to include a community in the Central List for socially and backward classes for grant of reservation benefits.

#### Conclusion:

- The potential reconsideration of the Indra Sawhney case ruling, also popularly referred to as the Mandal case, could alter the structure of reservations that has been in place for decades.