

**Judgement Writ Petition (Civil) No.930 of 1990 –
Indira Sawhney Versus Union of India And others (16.11.1992)**

THE FOLLOWING DIRECTIONS ARE GIVEN TO THE GOVERNMENT OF INDIA,
THE STATE GOVTS. AND THE ADMINISTRATION OF UNION TERRITORIES

123. (A) The Government of India, each of the State Governments and the Administrations of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government.

(B) Within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections ('creamy layer') from 'Other Backward Classes'. The implementation of the impugned O.M. dated 13th August 1990, shall be subject to exclusion of such socially advanced persons ('creamy layer').

This direction shall not however apply to States where the reservations in favour of backward classes are already in operation. They can continue to operate them. Such States shall however evolve the said criteria within six months from today and apply the same to exclude the socially advanced persons/sections from the designated 'Other Backward Classes'.

(C) It is clarified and directed that any and all objections to the criteria that may be evolved by the Government of India and the State Governments in pursuance of the direction contained in clause (B) of Para 123 as well as to the classification among backward classes and equitable distribution of the benefits of reservations among them that may be made in terms of and as contemplated by clause (1) of the Office Memorandum dated 25th September 1991, as explained herein, shall be preferred only before this court and not before or in any other High Court or other court or Tribunal. Similarly, any petition or proceeding questioning the validity, operation or implementation of the two impugned Office Memorandums, on any grounds whatsoever shall be filed or instituted only before this Court and not before any High Court or other Court or Tribunal.

124. The Office Memorandum dated August 13, 1990 impugned in these writ petitions is accordingly held valid and enforceable subject to the exclusion of the socially advanced members/sections from the notified 'Other Backward Classes', as explained in para 123(B).

Clause (i) of the Office Memorandum dated September 25, 1991 requires – to uphold its validity – to be read, interpreted and understood as intending a distinction between backward and more backward classes on the basis of degrees of social backwardness and a rational and equitable distribution of the benefits of the reservations amongst them. To be valid, the said clause will have to be read, understood and implemented accordingly.

Clause (ii) of the Office Memorandum dated September 25, 1991 is held invalid and inoperative.

The Writ Petitions and Transferred Cases are disposed of in the light of the principles, directions, clarifications and order contained in this Judgement.

No costs.

Sd/- CJ
(M.H. KANIA)
Sd/- J
(M.N. VENKATACHALIAH)
Sd/- J
(A.M. AHMADI)
Sd/- J
(B.P. JEEVAN REDDY)

NEW DELHI,
November 16, 1992