

Creamy Layer – A Contested Issue

August 30, 2021

The Supreme Court held that economic criterion cannot be the sole basis for deciding the creamy layer from among backward classes for the purpose of excluding it from the purview of providing reservation. This might prompt UPSC to ask questions related to the issue of reservation for OBCs and creamy layer concept.

In news: SC quashes 2016 Haryana notification

Placing it in syllabus: Law & Policy

Dimensions

- What is creamy layer?
- Historical evolution of creamy layer
- Haryana government notification
- Recent supreme court judgement
- Creamy Layer as defined by the Central Government
- Constitutional provisions for OBCs

Content:

What is creamy layer?

- Creamy layer is a term used in Indian politics to refer to the relatively forward, economically stronger and better-educated members of the Other Backward Classes (OBCs), who are not eligible for government-sponsored educational and professional benefit programs.
- The term was introduced by the **Sattanathan Commission in 1971**, which directed that the “creamy layer” should be excluded from the reservations (quotas) of civil posts.
- The term was made as a part of **positive discrimination**, in order to uplift the Backward Classes.

- Other Backward class creamy layer is a category of OBC; people belonging under this are financially better off or wealthier. They are way better than the other people belonging to the OBC category.

Historical evolution of creamy layer:

- Originally, the sole basis of reservation was caste.
- Income criteria was not specified for reservation for Dalits, Adivasis and Other Backward Classes (OBCs).
- In the Constitution, OBCs are described as “socially and educationally backward classes”, and the government enjoined to end the social and educational disparity among the classes.
- The First Backward Commission to investigate the possibility and details of providing reservations to OBCs was set up in 1953.
- Under Art 340, the **Kaka Kalelkar Commission** was appointed to identify the OBCs. It submitted the report in 1955 but the report was not implemented
- Several states set up Backward Class Commissions, and provided reservations in public services and employment

Sattanathan Commission, 1971

- The first Backward Classes Commission in Tamil Nadu was formed on November 13, 1969. It was known as Sattanathan Commission.
- Sattanathan Commission recommended the introduction of “Creamy Layer” among the OBC in the state.

Mandal Commission

- The Second Backward commission (Mandal Commission) was set up in 1978 which recommended 27 percent reservations for OBCs which were implemented in 1990.

Mandal judgment/ Indra Sawhney case 1992

- The Supreme Court’s Indra Sawhney vs Union of

India(1992) has been hailed as a landmark judgment as it upheld reservations for Other Backward Classes (OBCs).

- The Supreme Court restricted the 'creamy layer' of OBCs from accessing reservation.
- The court had said that putting in the framework of the "creamy layer" was in keeping with the basic structure of the Constitution as it mapped to the principle of equality.
- However, this judgment also held that reservations in appointments, under Article 16(4) of the constitution, don't apply to promotions.
- The Supreme Court upheld the Mandal Commission's 27 percent quota for backward classes, as well as the principle that the combined scheduled-caste, scheduled-tribe, and backward-class beneficiaries should not exceed 50 percent of India's population.
- At the same time, the court also struck down the government notification reserving 10% government jobs for economically backward classes among the higher castes in 1992.
- The Union government in 1991, had added a notification for 10 percent central reservation to sections of people who were economically backward and not covered under any existing schemes.
- However, the SC in Indra Sawhney case struck this down while stating that economic criteria can't be the sole factor for backwardness, but it can be considered along with or in addition to social backwardness.
- In **Indra Sawhney-II**, the court examined certain questions relating to recommendations of the high-level committee.
- The court held that persons from backward classes who occupied posts in higher services like IAS, IPS and All India Services had reached a higher level of social advancement and economic status.
- Therefore, such persons were not entitled to be treated as backward and were to be treated as 'creamy layer'

without any further inquiry

SC / ST creamy layer in promotions:

- The **77th Constitutional Amendment Act, 1995** was enacted inserting clause 4A in Article 16 of the Constitution (Clause 4A provides for giving benefit of promotion in service to the SC and ST).
- The validity of this amendment was challenged in **M. Nagaraj vs Union of India 2006**.
- The Supreme Court imposed three conditions – **identification of backwardness, compelling reasons and inadequate representation** – for granting quota in promotions to employees from SC and ST communities.
- The court ruled that if reservation is implemented it must not breach the 50% ceiling or “obliterate the creamy layer”.
- On 26th September 2018, the Supreme Court delivered its verdict in the Reservation in Promotion case (**Jarnail Singh vs Lachmi Narain Gupta** case).
- A five-judge Bench of the Supreme Court unanimously held that the judgment delivered in Nagaraj case in 2006 does not need reconsideration by a larger seven-judge Bench.
- The Bench also struck the demonstration of further backwardness criterion from Nagaraj case.
- It **introduced the principle of creamy layer exclusion and held that creamy layer exclusion extends to SC/STs**.
- Hence the **State cannot grant reservations in promotion to SC/ST individuals** who belong to the creamy layer of their community.
- Previously creamy layer exclusion only applied to OBCs in matters of reservation.

Haryana government notification

- The Haryana Government had issued a notification on August 17, 2016 specifying the criteria for exclusion of ‘creamy layer’ within the backward classes.

- As per the said notification, children of persons having gross annual income up to Rs 3 lakh shall first of all get the benefit of reservation in services and admission in educational institutions.
- The left-out quota shall go to that class of backward classes of citizens who earn more than Rs 3 lakh but up to Rs 6 lakh per annum.
- The sections of backward classes earning above Rs 6 lakh per annum shall be considered as 'creamy layer' under Section 5 of the Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016.

Recent Supreme Court Judgement

- The Supreme Court recently struck down Haryana government's August 17, 2016 notification that gave preference to those having income up to Rs 3 lakh within the non-creamy layer group of Backward Classes in government jobs and admission to educational institutions.
- It also asked the state government not to disturb admissions to educational institutions and appointments in state services already done on the basis of the said notification dated August 17, 2016.
- The criteria mentioned for identifying such of those persons who are socially advanced have not been taken into account by the Government of Haryana while issuing the notification
- It said, "In spite of Section 5(2) of the 2016 Act making it mandatory for identification and exclusion of 'creamy layer' to be on the basis of social, economic and other relevant factors, the State of Haryana has sought to determine 'creamy layer' from backward classes solely on the basis of economic criterion and has committed a grave error in doing so."
- The notification was found to be flagrant violation of

the directions issued by the Supreme Court in Indra Sawhney-I

Creamy Layer as defined by the Central Government

- At present, the GOI has defined the Creamy Layer among OBCs as those earning more than Rs.8 lakhs per annum.
- OBC creamy layer does not get any benefit anymore. They are treated the same way the general category is treated.

Income Limit

1. *Income of Person and Family combined*

A person can apply for an OBC certificate only if the annual income of the family is less than rupees eight lakhs per annum. If it were more than the given figure, they would not be getting the non-creamy category certificate. (Income from agriculture/ farming is not included in this).

2. *Parents Employed under Central Government*

If a person's parents are a part of the central government or are working under Group C and Group D category under the central government, the person is eligible to apply for the non-creamy OBC certificate.

3. *Employee under Central Government*

If a person himself or herself is a part of the central government or is working under central government's group B category, then that very person is eligible to apply for an OBC non creamy layer certificate. It is to be noted that it is valid only if the person's parents do not receive any income like that of pensions.

4. *Husband Employed under Central Government*

If a woman's husband is employed under the Central Government, then that woman would be eligible to apply for the certificate

provided that her parents do not receive any kind of income.

Constitutional provisions for OBCs

- Reservation as a policy has a Constitutional mandate and has been explicitly mentioned in various articles of the Constitution.
- The idea behind Reservation for SC/ST was very clear as there was an identifiable criteria and there was a definite time limit prescribed as well to achieve the desired results.
- The problem was with the other group (the OBCs) for whom there was no objective criteria.

Key Constitutional Provisions relating to OBCs are:

- **Art 15 (4)** : Article 15 shall not prevent the State from making any special provision for the **advancement of any socially and educationally backward classes of citizens** or for the Scheduled Castes and the Scheduled Tribes.
- **Art 16 (4)** : Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts **in favour of any backward class of citizens** which, in the opinion of the State, is not adequately represented in the services under the State
- **Art 340** : Appointment of a commission to investigate the conditions of backward classes.

Mould your thought: Discuss the constitutional provisions of OBC reservation in India and traverse the evolution of creamy layer in reservation.

Approach to the answer:

- Introduction
- Mention the constitutional provisions
- Discuss the situation just after Independence
- Discuss Mandal Commission and its aftermath
- Discuss 2016 Haryana Notification and SC judgement

- Conclusion