

# Creamy layer for SC/ST promotions

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**Manifest pedagogy:** The issue of reservations has always been a politically divisive issue. It has a detailed case history, associated social movements and many amendments were made to Constitution on the same. It offers itself as a good issue for UPSC mains question.

**In news:** The Centre has urged the Supreme Court to refer to a larger Bench its decision in 2018 that had applied the creamy layer principle to promotions for SC and STs in government jobs.

**Placing it in syllabus:** Indian Polity – GS Paper-2

**Static dimensions:**

- What is creamy layer?
- Why it is applied in OBCs?
- SC /ST creamy layer in promotions

**Current dimensions:** Advantages and drawbacks of having creamy layer in SC/ST

**Content:**

**What is creamy layer?**

- It is generally small **section of people** that occupies the **top of a marginalised community's socioeconomic hierarchy.**
- They 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 reservation of civil posts.

- It was also identified later by **Justice Ram Nandan Committee in 1993**.
- The **Supreme Court** in September 1993 said that the **benefit of reservation should not be given to OBC children of** constitutional functionaries such as the President, Judges of the Supreme Court and High Courts, employees of central and state bureaucracies above a certain level, public sector employees, and members of the armed forces and paramilitary personnel above the rank of colonel.
- Hence the creamy layer test specifies that a candidate must be **below a certain income ceiling** in order to avail of reservation in government jobs and educational institutions.

#### **Why it is applied in OBCs?**

- **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**.
- Several states set up Backward Class Commissions, and provided reservations in public services and employment.
- The **Second Backward commission (Mandal Commission) was set up in 1978** which recommended **27 percent reservations**

- for OBCs which were implemented in 1990.
- The Supreme Court restricted the **'creamy layer'** of OBCs from accessing reservation in 1992 (**Indira Sawhney case**).
  - 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**.
  - The P V Narasimha Rao 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.

**Haryana had in 2016** passed a bill which created reservations for the Jats and five other groups by including them in a new category called **'backward classes'**. This move was stayed by the High Court of Punjab and Haryana, which stated that reservations would then exceed the 50 percent limit set by the Supreme Court.

In January 2019, the President gave his nod and brought into law **124th Constitutional Amendment Bill, 2019**.

The Act **amends Articles 15 and Article 16** of the Constitution to **provide economically weaker sections (EWS) of citizens with reservations up to 10 percent in higher educational institutions** including private aided or unaided institutions (other than minority education institutions) as well as in initial appointments in government services.

Now people irrespective of caste can avail reservations under this category if their **gross annual family income is less than Rs 8 lakh** and if they possess **agricultural land below 5 acres** and a **residential house below 1000 square foot**.

## SC /ST creamy layer in promotions:

- **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 Lachhmi 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.

As per the 2011 Census, the **SC population was 20.13 crore and ST population 10.45 crore**.

**Advantages and drawbacks of having creamy layer in SC/ST:**

- According to the SC being a part of the “creamy layer” allows Dalits and Adivasis to **“come out of untouchability or backwardness”**.
- Excluding the creamy layer will **serve the cause of equality** since all the coveted jobs in the public sector will be bagged by them and the rest of the class remains backward as they always were.
- According to PRICE, all-India income and expenditure survey around **13 million SC/ST households are “creamy layer”** using the income definition. These socially advanced people must be excluded from reservations.
- The more advantageous sections of all caste groups are able to enter higher education. So to make sure that the poor are getting represented **a separate set of policies** are needed.

### ***Disadvantages:***

- Reservation in politics, services and institutions is given to SCs particularly because they were denied the right to property, education and industries from time immemorial and they were treated as untouchables. Even today there are about **12,000 cases lying with the SC/ST Commission, complaining about discrimination in service**. Hence they need protection in promotion also.
- Dalits and Adivasis are so disadvantaged in India that it is **difficult to even fill the seats reserved for them**. Hence placing further curbs will let more valuable seats go unfilled.
- Even after Dalits get entry into jobs or higher education, there are **little microaggressions** that they face. E.g. in educational institutions students complain of harassment because they came in through reservation (Rohit Vemula case).
- The reason for reservations for Dalits is not economic backwardness but the **stigma that comes on account of the untouchable status**. And even though legally

untouchability has been abolished, there is a lot of data that show that people still practise untouchability. So reservation is only a tiny remedial measure for that.

### **Way ahead:**

A **comprehensive data-based, evidence-based approach for judging reservations** needs to be adopted. Under the SC and ST (Prevention of Atrocities) Act and the Protection of Civil Rights Act, it is the government's responsibility to undertake a study every five years, to bring out the nature of discrimination and untouchability faced by Dalits.

The government's **SC/ST Commission report is supposed to have a separate chapter on untouchability**. But such report has not been brought out in the last 20 years or so. The **quantitative techniques that will capture qualitative relationships** have to be applied by the government to conduct surveys.