



Criterion for Deciding Creamy Layer

Why in News

The [Supreme Court of India](#) recently held that the **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.**

- The SC was hearing a petition challenging two notifications issued by the Haryana government sub-classifying backward classes solely on economic basis while fixing the criteria for creamy layer.

The debate

- 'Creamy layer' denotes relatively forward, better-educated and socially advanced members of OBCs
- The term was introduced by Sattanathan Commission in 1971, which recommended that 'creamy layer' should be excluded from quota benefits
- In Indira Sawhney judgment (1992), SC directed that 'creamy layer' among OBCs be excluded from quota benefits
- After a constitution bench judgment in 2018, the concept is applicable also to SC/ST communities
- The Centre has defined 'creamy layer' among OBCs as those earning more than ₹8 lakh per annum



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Key Points

- **SC Verdict:**
 - Recalled the **ruling in the Indra Sawhney-II case**, reported in 2000. **Haryana's notifications have violated the law declared in the Indra Sawhney judgment** by identifying creamy layer only on the basis of income.
 - The basis of exclusion of 'creamy layer' cannot be merely economic - the **government cannot deny reservation to a person belonging to a backward community solely on the ground that he or she is rich.**
- **Social advancement, higher employment in government services**, etc, play

an equal role in deciding whether such a person belonged to the creamy layer and could be denied quota benefits.

- The SC has illustrated that **'creamy layer' would include "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, and therefore, were not entitled to be treated as backward".
 - People with sufficient income who were in a **position to provide employment to others should also be taken to have reached a higher social status** and therefore, should be treated as outside the backward class.
 - Persons from backward classes who had **higher agricultural holdings or were receiving income from properties, beyond a prescribed limit**, do not deserve the benefit of reservation.

▪ **Creamy Layer:**

- The creamy layer **sets a threshold within which OBC reservation benefits are applicable.**
- The creamy layer principle was **based on the fundamental right to equality.** Unless it is applied, the genuinely deserving person would not access the reservation.
- The **basis of exclusion should not merely be economic**, unless the economic advancement is so high that it necessarily means social advancement.
 - While the income of a person can be taken as a measure of his social advancement, the limit to be prescribed should not be such as to result in taking away with one hand what is given with the other.
 - The income limit must be such as to mean and signify social advancement.

▪ **Creamy Layer as defined by the Central Government:**

- The **Department of Personnel and Training (DoPT)** have listed out various categories of people of certain rank/status/income whose children cannot avail benefit of OBC reservation.
 - **Income:** For those not in government, the current threshold is an **income of Rs 8 lakh per year.**
 - The income threshold is supposed to be raised every three years.
 - It was last revised in 2017 (more than three years now).
 - **Rank of Parents:** For children of government employees, the threshold is based on their parents' rank and not income.
 - For instance, an individual is considered to fall within the creamy layer if either of his or her parents is in a constitutional post; if either parent has been directly recruited in Group-A; or if both parents are in Group-B services. There are other criteria as well.

▪ **Constitutional Provisions Related to OBCs:**

- According to the Constitution, **Articles 15(4), 15(5) and 16(4)** confer power on a state to identify and declare the list of SEBCs (Socially and Educationally Backward Classes). As a matter of practice, separate OBC lists are drawn up by the Centre and each state concerned.
- The **Rohini Commission** was constituted in October 2017 under **Article 340** of the Constitution.
 - It had been constituted **to complete the task of sub-categorising 5000-odd castes in the central OBC.**
- The **127th Constitution Amendment Bill 2021**, restores the power of states to identify SEBCs, usually called OBCs.
 - The amendment was necessitated after the Supreme Court, in its Maratha

- reservation ruling in May, [upheld the 102nd Constitutional Amendment Act](#).
- The 102nd Constitution Amendment Act of 2018 **gave constitutional status to the NCBC (National Commission for Backward Classes)**, and empowered the President to notify the list SEBCs for any state or union territory.
 - The Amendment Bill **amends Articles 342 A** (clauses 1 and 2) and will introduce a new clause - 342 A (3) specifically authorising states to maintain their state list.

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