



# COMMUNAL RESERVATION AND EXCLUSION OF CREAMY LAYER – AN OVER VIEW

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## Abstract

*In India, Communal reservation has been applied for about nearly seven decades after independence. Communal reservation is a Constitutional provision made to compensate the cumulative loss suffered for ages by the weaker sections of our society due to the various socio-cultural disabilities. , it is a special arrangement for removing the socio-economic discriminations through positive government steps, by granting preferential treatment to the weaker sections of the society, thereby rendering social justice to the people. It needs encouragement for sharing of opportunities in the Executive, Legislative bodies, in educational institutions and in public services. But, the benefits of reservation have gone mostly to the few top castes. So, automatically the layer of upper crust has been increasing in each caste. In order to prevent exploitation among the beneficiaries, the concept called Creamy Layer was introduced. The income criterion is considered as one of the parameters to identify the socially, educationally and economically advanced among the SEBCs. It helps to give the privilege to the really backward. It is applied only in central educational institutions and in central public employment opportunities of OBCs.*

**Keywords:** Caste, Communal Reservation, Creamy Layer, Preferential Treatment, Social Justice, Other Backward Classes.

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## 1. Introduction

Communal reservation is a Constitutional provision made to compensate the cumulative loss suffered for ages by the weaker sections of our society due to the various socio-cultural disabilities. The policy of communal reservation is based on the concept of social justice. In other words, it is a special arrangement for removing the socio-economic discriminations through positive government steps, by granting preferential treatment to the weaker sections of the society, thereby rendering social justice to the people. It needs encouragement for sharing of opportunities in the Executive, Legislative bodies, in educational institutions and in public services. The demand by the unprivileged as well as the underprivileged sections of the society to enjoy the same privileges of the more privileged classes



resulted in confrontation and social conflict at the beginning. Subsequently, the less privileged sections will become socially, politically and economically equal privileged.

This phenomenon evolved during the British rule in India and emerged as a Constitutional provision in independent India. Thus, today, it has 200 years history. The scheme expresses the fact of reserving some right, power, privilege, etc. for use at a particular time for some special achievement. Since independence, the policy has to be reviewed for the benefit of the future generations. In this research paper, an attempt has been made to study the concept 'creamy layer' which has been introduced for the benefits of the lower section of the Other Backward Communities (OBCs).

## **2. Meaning of the Term Creamy Layer**

The 'creamy layer' is a term used to refer to the relatively wealthier, better educated and employed members of the OBCs who are not eligible for government sponsored educational professional benefit programs. The term 'creamy layer' was first used by the Sattanathan Commission, the first Backward Classes Commission in Tamilnadu, in 1971, which directed that the 'creamy layer' should be excluded from the reservation of civil posts and services granted to the OBCs.[1] The terms Other Backward Classes in all India level meant Socially and Educationally Backward Classes (SEBCs). The term 'creamy layer' is interpreted by the Supreme Court as "Socially-advanced persons and sections from OBCs".[2]

## **3. Constitutional Provisions for Communal Reservation in India**

After independence, Constitutional steps were undertaken to eradicate all kinds of social evils. The new Indian Constitution serves as mechanism of governing the country and a potential instrument for social transformation. The concept of social justice was the main intention of the Constitution. In that context, the Indian Constitution aims at the reduction of disparities between the high and low status people and the establishment of an egalitarian form of social structure.[3]

**3.1** The Preamble of Indian Constitution has guaranteed social, economic and political justice. Ex-criminal Tribes, Scheduled Castes/Scheduled Tribes (SCs/STs) together constituted one-fourth of the total population. It became the bounden duty of the state to raise their standard on par with rest of the society. The policy of preferential treatment otherwise known as protective discrimination in favour of the weaker sections enables them to get relief from the age-old inequalities. It refers to the reservations and special privileges to be provided to socially disabled castes in the fields of education, government employment opportunities and political representation under Constitutional sanctions by the Government of India.[4] It is mainly evolved to improve the socio-economic and cultural conditions of the weaker sections. Besides reservation, provisions are made to remove social disabilities and to promote their welfare and interests. Welfare measures include caste based reservation, age relaxation, relaxation

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of standards of suitability, relaxation in attendance, relaxation in qualification of experience, separate interview, travelling allowance for interview, scholarships, fellowships, pre-examination training centres, book banks, etc. Among all the upliftment measures, reservation of seats plays a dominant role and overriding technique.[5] Clause (4) of Arts 15 and 16 empower the State Governments to make reservation in the educational institutions and employment opportunities in favour of the backward communities. Art. 46 again facilitates the promotion of education and economic interests of SCs, STs and other weaker sections. Further, Art. 330 provides facility for reservation to SCs/STs in the House of the People and Art.332 provides facility for reservation in the Legislative Assembly of the States. Reservation has been marked in Art.331, which ensures the representation of the Anglo-Indian Community in the House of the People and Art. 333 provides reservation in the Legislative Assembly of the States. The Arts.340, 341 and 342 empower the President for considering the elevation of weaker sections of the population.[6]

**3.2** Along with the reservation of seats in the educational institutions, public employment opportunities and Legislative bodies, provisions are enshrined in the Indian Constitution to achieve social justice. Equality before law (Art.14), prohibition of discrimination on grounds of religion, race, caste, sex, place of birth (Arts 15 & 16), abolition of untouchability (Art.17), protection of life and personal liberty (Art.21), Prohibition of traffic in human being and forced labour (Art.23), protection of interests of minorities (Art.29), state to secure social order for the promotion of welfare of the people (Art.38), certain principles to secure equal economic opportunities by the State (Art.39), equal justice and free legal aid (Art.39A), right to work, to education and to public assistance in certain cases (Art.41), reservation of seats and special representation to cease after thirty years (Art. 334), claims of SCs/STs to services and posts (Art. 335), special provision with respect to educational grants for the benefit of Anglo-Indian community (Art.337), Special Officer for SCs/STs, etc. (Art.338), control of the union over the administration of Scheduled Areas and the welfare of STs (Art.339) and the people of SCs/STs (Art.336) are enshrined in the Constitution to achieve social justice. Among all privileges, reservation has been considered as the major factor for advancement.[7]

## **4. Efforts to Identify the OBCs**

From 1870 onwards, the description of 'Backward Classes' was commonly applied to various sections of the population which included SCs, STs, Ex-criminal Tribes and other SEBCs. Before independence, the question of SCs was roughly settled down within the Executive and without the participation of the courts. But the question of BCs would be the post-independence problem. The terms SCs/STs were clearly defined in the Constitution.[8] According to the Indian Constitution, the backward categories of the population were divided into three segments Viz., SCs/STs and OBCs. There was no concrete principle regarding the question of identification of OBCs.[9]



**4.1** Since backwardness was due to lack of adequate opportunity, self development, in economic life and in matters of health, housing and education, it was measured in terms of low levels of income, the extent of illiteracy and the low standard of life revealed by living conditions.[10] Art.340 of the Constitution empowers the President of India to appoint a Commission to determine the criteria for identifying the OBCs, to investigate their conditions and to recommend measures for uplifting them.[11] To identify the OBCs in all India level, the Government of India appointed the first Backward Classes Commission on 29th January, 1953, under the Chairmanship of Kaka Saheb Kalelkar and nine other members. But the Commission failed in its mission. So, the task was left to the state governments.[12]

## **5. Mandal Commission and its Recommendations**

After 22 years, all India Second Backward Classes Commission was appointed under the Chairmanship of B.P.Mandal on 20<sup>th</sup> December, 1978, during the time of Morarji Desai to identify the Socially and Educationally Backward Classes. The Commission circulated the questionnaires among the general public, two-third of the respondents favoured caste as criteria and stressed the increase in the quota and demanded more educational concessions to the children of OBCs along with welfare measures for them. From the Survey, the Commission framed eleven indicators under three heads Viz., social, educational and economic to identify the OBCs or SEBCs. The report was submitted on 31<sup>st</sup> December, 1980 in 7 volumes and two parts. 10 years it was in cold storage.[13]

**5.1** On 7<sup>th</sup> August, 1990, V.P.Singh, the then Prime Minister implemented the Mandal recommendations. By which 27% of seats were reserved for OBCs in civil posts and services under the Central Government and Public Sector undertakings and financial Institutions for SEBCs and 22.5% of reservation for SCs/STs continued. SEBCs would comprise in the first phase, the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Government lists. Agitations and struggles were there in North India. But, the then PM was not ready to give up. Many cases were filed. Supreme Court transferred all the related cases to deal by itself. On 11<sup>th</sup> September, 1990, Supreme Court ordered the Government not to take any further step regarding the implementation of the Mandal Recommendations.[14]

**5.2** The Supreme Court was forced to involve in the reservation issue in the famous Indira Sawhney Vs Union of India or popularly known as the Mandal Case. The historic judgment was delivered on 16th November, 1992. Mandal recommendations were accepted but, subject to the exclusion of the 'creamy layer, of the eligible castes from reservation benefits. There comes the concept creamy layer into the practice. 'Creamy layer' was interpreted by the court as 'socially advanced persons and sections from Other Backward Classes'.[15]



## 6. Application of the Concept Creamy Layer

Other Backward Classes 'creamy layer' does not get any benefit. They do not come under reserved category anymore. They are treated as equal to general category candidate. 'Creamy layer' is identified on the basis of annual income of the family. If it is more than Rs.8 lakhs per annum; the candidate comes under 'creamy layer' OBC category. They would automatically shift to the list of General Turn. This is applicable only to the OBCs and not to the Scheduled Castes and Scheduled Tribes.

**6.1** A popular political party of Tamilnadu called Pattali Makkal Katchi argued that the exclusion of the 'creamy layer' would not apply to educational institutions. The then Chief Justice of the Supreme Court stated that "they are excluded because unless this segment of caste is excluded from that caste group, there cannot be proper identification of the backward class. If the 'creamy layer' principle is not applied, it could easily be said that all castes that have been included among the SEBCs have been exclusively on the basis of caste." [16]

## 7. Aim behind the Introduction of the Concept of Creamy Layer

Some members of the OBCs are socially, economically and educationally advanced. They do not allow the benefits of reservation to reach the truly backward members of that class. By no means such advanced could not be treated as backward. The concept of 'creamy layer' is to treat them advanced among the OBCs. It is applied to the individual not to the community as a whole. Income is fixed as the criteria. The cardinal aim of 'creamy layer' is, benefits of communal reservation should reach the really needy or backward. [17]

## 8. Criteria to Identify the OBC Creamy Layer

To identify the 'creamy layer' an expert committee was appointed by the Central Government under the Chairmanship of Ram Nandan Prasad, a former judge of the Patna High Court, which has as its members M.L. Sahare, Former Chairman of the UPSC, P.S. Krishnan, Former Union Welfare Secretary, and R.L. Majitha, Former Chairman of the Rajasthan Revenue Board. The Committee was formed on 23<sup>rd</sup> February. It submitted its report on 16th March, 1993, in the Parliament and on the same day, it was accepted. The Committee specified certain positions to qualify the rule of exclusion on the basis of income.

**8.1** The children of the OBC persons who hold the following positions are excluded from the benefits of reservation in all India level employment opportunities.

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1. The Constitutional posts Viz., President, Vice-President, Judges of the Supreme Court and High Court, Chairman and Members of the UPSC State Public Service Commission, Chief Election Commissioner, Controller and Auditor General of India, Governors, Ministers and Members of Legislatures,
2. Under Service Category, it covers Class I/II officers of Central and State services under direct recruitments, employment in Public Sector Undertakings includes banks, insurance organizations, Universities, etc. and equivalent positions in private employment,
3. All non-government professionals and people in trade and business would be excluded from the purview of benefits on the basis of income tax, wealth tax assessment.
4. Armed Forces – Either parent of whom is at the level of colonel or above in army or at equivalent posts in Navy or Air-Force or the Paramilitary forces,
5. Professional classes include Doctors, Lawyers, Chartered Accountants, Income Tax, Financial or Management Consultants, Dental Surgeons, Engineers, Architects, Computer Specialists, Film Artists, Media Professionals, Film trade, business or industry – here it will apply according to the criterion of wealth/income.
6. Property owners – owners of the irrigated lands to the extent of which is equal to or more than 85% of the Statutory ceiling are – Owners of plantation like coffee, tea, rubber, etc. – Owners of vacant land or building in urban areas.[18]

**8.2** Their children will be excluded according to the criterion of wealth/income. At the beginning, i.e., in March 1993, the income ceiling was fixed at Rs. One lakh[19] and in September, 1993, it was increased to Rs. 2.5 lakhs.[20] Later among OBCs was enhanced to Rs.4.5 lakhs[21] and later it was increased to Rs. 6 lakhs.[22] At present, the income ceiling is fixed at Rs. 8 lakhs[23] according to the Office Memorandum No. 36033/1/2013-Estt, dated 13.09.2017. If they hold the position for three consecutive years or the income limit is Rs. 8 lakhs, then they would be considered as 'creamy layer' and excluded from enjoying the benefits of communal reservation. This scale is called 'creamy layer bar' to find out the SEBCs or OBCs.

**8.3** The report has given certain concessions to the categories which have been excluded. In Class I officer category, if only one parent belongs to this group and if he or she dies, members of the family are entitled to reservation. In the Class II officer category, if only one parent is in the group, members of the family would get reservation.[24] According to the report of the Ram Nandan Prasad Committee, the Mandal recommendations were implemented excluding the Creamy Layer among OBCs.



## 9. Implementation of the Mandal Recommendations

There is a strong element of economic criterion in the guidelines formulated by the committee. There arose the question as to whether economic advancement ensures social advancement. In one of the Supreme Court verdicts, it is pointed out that “the basis of exclusion should not be merely economic, unless of course the economic advancement is so high that it necessarily means social advancement”. Because of the absence of the guidelines for evaluating social backwardness, the committee evolved the guidelines on the basis of economic and occupational backwardness. The main aim of ‘creamy layer’ is communal reservation should reach the poorest among the backward castes. Subject to the ‘creamy layer’ criteria, Mandal Commission recommendations were implemented. Accordingly 27% of all India level employment opportunities are reserved for OBCs.[25]

## 10. Conclusion

Communal reservation has been applied for about nearly seven decades after independence. But the benefits of reservation have gone mostly to the few top castes. So, automatically the layer of upper crust has been increasing in each caste. In order to prevent exploitation among the beneficiaries, the concept called ‘creamy layer’ was introduced. The income criterion is considered as one of the parameters to identify the socially, educationally and economically advanced among the SEBCs. It helps to give the privilege to the really backward. It is applied only in central educational institutions and in central public employment opportunities of OBCs. Permanent income holders’ children are affected in utilizing the employment opportunities by this concept called ‘creamy layer’, whereas the children of merchants, landlords, and business people escaped from this rule. They easily show their changed income according to the ceiling fixed by the Government. It has also to be checked. ‘Creamy layer’ is meant for the welfare of all sections of the society.

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