

# CREAMY LAYER FOR SCs and STs : POLITY

## SC issues notice to Centre on plea for 'creamy layer' like system in SC, ST reservation

The Supreme Court is examining the application of the "creamy layer" principle to Scheduled Castes and Tribes, which would exclude affluent members from reservation benefits. This follows a recent landmark SC judgment that overruled a previous decision and allowed for the sub-classification of SCs to ensure benefits reach the most marginalized.

## Examining "Creamy Layer" for SCs and STs

The Supreme Court of India has initiated an examination of a petition advocating for the introduction of a "creamy layer" concept for the Scheduled Castes (SCs) and Scheduled Tribes (STs). This system, already applicable to the Other Backward Classes (OBCs), would exclude the more affluent members of these communities from reservation benefits to ensure they reach the most disadvantaged.

## Overview of Reservation Policy in India

### Direct Recruitment (Open Competition)

In direct recruitment to central government posts on an all-India basis through open competition, the reservation quotas are:

1. Scheduled Castes (SCs): 15%
2. Scheduled Tribes (STs): 7.5%
3. Other Backward Classes (OBCs): 27%

### Direct Recruitment (Other than Open Competition)

For recruitment conducted on an all-India basis otherwise than by open competition, the quotas are slightly different:

1. SCs: 16.66%
2. STs: 7.5%
3. OBCs: 25.84%

### Economically Weaker Sections (EWS)

The Constitution (103rd Amendment) Act, 2019, empowers both the Central and State Governments to provide up to 10% reservation for the Economically Weaker Sections of society who are not covered under any other reservation scheme.

## The 50% Reservation Ceiling Rule

The Supreme Court has historically maintained a cap, ruling that total reservations in public employment and education should not exceed 50%.

### Indra Sawhney Case (1992)

In this landmark judgment, also known as the Mandal Commission Case, the Supreme Court formally established the 50% ceiling.

### Exception Clause

The court allowed for this limit to be breached in "extraordinary situations." This exception is not based on geography but on a social test to include communities from far-flung areas that have been historically excluded from the societal mainstream.

### Impact of the EWS Judgment

The Supreme Court recently upheld the validity of the 103rd Constitutional Amendment (EWS reservation). This effectively means the 50% limit currently applies only to the combined SC, ST, and OBC quotas. States can now reserve a total of 60% of seats/posts (50% for SC/ST/OBC + 10% for EWS).

### The Creamy Layer Principle

It is a principle designed to exclude the more affluent and advanced members within a reserved category from accessing reservation benefits, thereby ensuring that these benefits are targeted toward

the most socially and economically disadvantaged individuals within that group. The concept was first introduced by the Supreme Court in the Indra Sawhney case (1992). The Court mandated that the "creamy layer" within the OBC category should be excluded from reservations. The determination of the "creamy layer" is based on various indicators of advancement, including parental income, government post, and educational levels. This principle aims to make affirmative action policies more equitable and prevent the benefits from being monopolized by the privileged sections of a backward class.

## Supreme Court's Stance on Sub-Categorisation of Scheduled Castes

### E.V. Chinnaiha Judgment (2004)

A five-judge bench of the Supreme Court held that the Scheduled Castes list is a 'homogeneous group' and cannot be further sub-classified by states for the purpose of apportioning reservation benefits.

### Landmark 2024 Judgment

In a significant 6:1 majority decision, the Supreme Court upheld the validity of sub-classification within Scheduled Caste categories, thereby overruling the 2004 E.V. Chinnaiha decision. The court also held that if a creamy layer concept were to be applied to SCs/STs, its criteria must be distinct from those used for OBCs.

## Arguments of the Supreme Court in the 2024 Judgment

### Equality under Article 14

The court reasoned that equality means treating equals equally, but it also allows the state to classify groups that are situated differently to ensure fairness.

### Homogeneity is a Legal Fiction

The Presidential list of SCs is a tool for identifying disadvantaged groups, not a declaration that all castes on the list are uniform in their level of backwardness.

## Conditions for Sub-classification

The Court laid down strict conditions for any sub-classification:

1. It must be backed by quantifiable data.
2. It must demonstrate that the sub-group is at a greater disadvantage.
3. It must provide evidence of inadequate and ineffective representation of the sub-group in public services.
4. The goal is effective representation, not just meeting numerical targets.

## Arguments in Favour

### Addresses Unequal Backwardness

Recognizes that some castes within the SC list are far more marginalized than others and have not received the benefits of reservation.

### Promotes True Equality

Treating unequal groups equally only perpetuates inequality. Sub-classification allows for a more targeted approach.

### Constitutional Empowerment

Articles 15(4) and 16(4) provide the state with the power to make special provisions for the most backward classes.

### Ensures Effective Representation

Helps the most deprived communities achieve meaningful inclusion in public life.

## Arguments Against

### Violation of Article 341

Critics argue that only the President (and Parliament) can modify the SC list, and state-led sub-classification amounts to an unconstitutional alteration.

### **Causes Community Fragmentation**

It could lead to internal divisions and rivalries among SC communities, weakening their collective social and political solidarity.

### **Difficulty in Defining Criteria**

Establishing objective and empirical measures to prove varying degrees of backwardness within SCs is extremely challenging and prone to legal disputes.

### **Dilutes the Basis of Reservation**

Introducing a creamy layer for SCs shifts the focus from historical discrimination and stigma (which affects all members, regardless of income) to purely economic backwardness.

## **Way Ahead**

### **Adhere to Constitutional Boundaries**

Any sub-classification policy must operate within the framework of Articles 14, 15(4), 16(4), and must not alter the Presidential List under Article 341.

### **Careful Application of Creamy Layer**

If the creamy layer concept is extended to SCs/STs, the criteria must be carefully formulated to be distinct from the OBC criteria, acknowledging the unique nature of caste-based discrimination.

### **Strengthen Measures Beyond Quotas**

Reservation should be complemented with robust policies for education, skill development, entrepreneurship support, and strict enforcement of anti-discrimination laws.

### **Promote Social Cohesion**

Policy changes should be accompanied by awareness campaigns to prevent divisions within communities and uphold the goal of collective upliftment.

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