

Reservation and the concept of Creamy Layer

Mains: *GS II - Social Justice*

Why in News?

Recently the central government reiterated in the Supreme Court that the creamy layer concept does not apply to SC/ST.

What is reservation in Indian Socio-Political setup?

- **Reservation in India** - It sets aside a fixed percentage of seats in higher education, government jobs, and political bodies for historically disadvantaged and marginalized groups.
- It is a system of affirmative action and its main goal is to promote social justice and ensure fair representation.
- **Evolution**



TIMELINE OF RESERVATION POLICY

1950: SC/ST reservations enshrined in Constitution.

1951: First Amendment upheld caste-based quotas in education.

1979: Mandal Commission created.

1990: OBC quota (27%) introduced in govt jobs.

1992: Indra Sawhney case: upheld OBC quota, capped total quotas at 50%, introduced creamy layer.

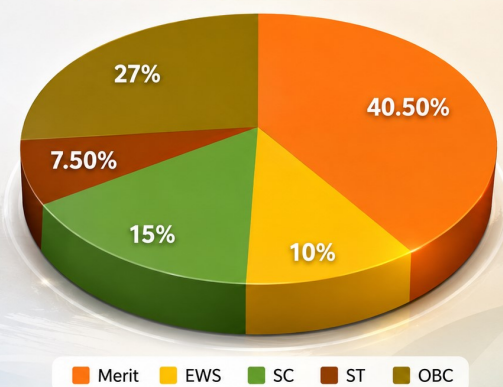
2006: Quotas extended to OBCs in central universities (IITs, IIMs).

2019: EWS quota (10%) introduced for poor among "upper castes."

• Structure



INDIAN RESERVATION SYSTEM



What is the significance of reservation in India?

- **Correcting Historical Injustice** – Addresses centuries of caste-based discrimination, untouchability, social exclusion, and denial of equal opportunities faced by historically disadvantaged communities.
- **Level Playing Field** – Provides access to education, employment, and economic opportunities to communities that have historically lacked social capital, resources,

and generational wealth.

- **Ensuring Fair Representation** - Promotes adequate representation of SCs, STs and other disadvantaged groups in public employment, educational institutions, and legislatures, thereby strengthening inclusive governance.
- **Combating Discrimination** - Acts as an institutional safeguard against entrenched social prejudices and caste-based discrimination, helping translate the constitutional principle of equality into substantive equality.
- **Promoting Social Justice** - Advances the constitutional vision of social, economic and political justice by enabling disadvantaged groups to participate more fully in nation-building.
- **Enhancing Social Mobility** - Reservation can create opportunities for upward mobility by improving access to education, government employment, and decision-making institutions.

What is the creamy layer concept?

- **Indra Sawhney judgment 1992** - The Supreme Court while upholding the implementation of OBC reservations introduced by the V.P. Singh government, gave rise to the concept of the **creamy layer**.
- The Court reasoned that reservation benefits should reach those who genuinely require them.
- Therefore, certain **socially and economically advanced** sections within the OBC category should be excluded from reservation.
- Following the judgment, the Government of India formulated detailed criteria for identifying the creamy layer.
- **Excluded persons** - The OBC creamy layer includes individuals whose parents earn an **annual income above Rs.8 lakh or hold high-ranking positions in government, public sector undertakings (PSUs), armed forces, professions, or own substantial property**.
- These persons are considered socially and economically advanced and do not qualify for OBC reservation benefits.

To know more about creamy layer click [here](#)

What is graded inequality and the need for sub-categorisation?

- **Graded inequality** - The idea refers to the unequal levels of backwardness and representation among communities included within the same reservation category.
- A single constitutional category may contain communities that have benefited relatively more from reservation while other, more disadvantaged communities remain inadequately represented.
- This problem predates the creation of the national OBC classification.
- For decades, State governments had recognised various groups as “Backward Classes” under **Article 16(4)** and had divided their reservation quotas among different communities.
- States such as **Andhra Pradesh, Tamil Nadu and Maharashtra**, among others, had reservation matrices that divided the overall quota for Backward Classes into smaller shares for particular communities.

- The objective was to ensure equitable representation among unequal groups and this became the basis of what is now called **sub-categorisation**.
- Sub-categorisation means dividing the existing reservation quota of a particular category among different communities within that category.
- It **does not increase the overall quantum of reservation**; rather, it seeks to distribute the available quota more equitably and prevent relatively advanced communities within a category from crowding out more backward ones.
- **Davinder Singh Judgment** - The present controversy gained momentum after the Supreme Court's **August 2024 Davinder Singh judgment**.
- The judgment recognised that SCs and STs are not homogeneous groups and that there are different degrees of backwardness among communities included in these constitutional lists.
- It therefore permitted **State governments sub-categorise SC and ST communities within the existing lists**, with the objective of ensuring that the benefits of reservation reach communities that have been routinely crowded out by relatively less backward communities.
- Importantly, the Court distinguished **sub-categorisation from inclusion or exclusion from the SC/ST lists**.
- While the latter is constitutionally entrusted to Parliament, sub-categorisation within the existing lists was held to be within the competence of State governments.

Why the central government opposed the Creamy Layer for SC/STs?

- **Historical injustice** - The Union government has opposed extending the creamy layer principle to SCs and STs.
- Its central argument is that their historical disadvantage cannot be equated with economic backwardness.
- **Different Levels of Inequality** - According to the Central government:
 - **SCs** face historical disadvantage arising from **untouchability**,
 - **STs** are identified by factors including their **distinct cultures, geographical isolation and backwardness**.
 - **OBCs**, by contrast, are identified primarily through a combination of **social, educational and economic disadvantages**.
- The government therefore maintains that SC/ST reservation seeks to achieve social equality and justice, overcome historical discrimination and ensure inclusive participation in public life.
- Discrimination against SCs and STs, it argues, does not disappear merely because an individual or family becomes economically better off.
- **Constitutional and Legal Arguments** - The Centre has relied upon several Supreme Court judgments:
 - **Indra Sawhney (1992)** - Introduced the creamy layer principle for OBCs and expressly stated that it had **no relevance to SCs and STs**.
 - **Ashoka Kumar Thakur judgment 2008** - It clarified that the creamy layer principle does not apply to SCs and STs.
 - **2005 E.V. Chinnaiah judgment** - It observed that even if a situation requiring exclusion of a creamy layer from SCs were to arise, Parliament alone would have to undertake the necessary legislative measures.

- **Articles 341 and 342 of the Constitution** - The President notifies the SC and ST lists, while any inclusion or exclusion from those lists can be effected only through an Act of Parliament.
- Therefore, State governments, courts, tribunals or other authorities cannot modify or alter the constitutional lists.
- The government argued that reservation policy requires a **holistic review, empirical evidence and socio-economic data** concerning beneficiaries.
- It contended that courts cannot issue a writ of mandamus compelling the executive to adopt a particular policy merely because an alternative policy may appear fairer or wiser.
- The Centre has also challenged the maintainability of the petition under **Article 32**, arguing that it does not establish infringement of a fundamental right.

What lies ahead?

- The future of the creamy layer concept involves a fierce legal and political debate over extending income-based exclusions to Scheduled Castes (SC) and Scheduled Tribes (ST) quotas, alongside recent judicial refinements to how salary and status are calculated for Other Backward Classes (OBC).
- While OBC quotas retain the exclusion, the Union government strongly opposes applying it to SC/ST reservations, leaving any major structural changes in the hands of Parliament.

Reference

[The Hindu| Centre's stand on Creamy layer](#)

