

---

## **THE PRINCIPLE OF CREAMY LAYER IN RESERVATION POLICIES FOR ADVANCEMENT OF THE BACKWARD CLASSES: AN ATTEMPT TO ESTABLISH EQUITY**

---

Dr. Binita Behera<sup>\*</sup>, Simran Sahoo<sup>\*\*</sup> & Sai Ashish<sup>\*\*\*</sup>

### **ABSTRACT**

There has been a lot of contention over the provision of affirmative action in the Constitution of India. Whereas the framers of the Constitution had laid down certain provisions to make the Indian society more inclusive but there has been enough politics and arguments on both sides seem to be equally justifiable. One of the key issues which has raised controversies and attention is the creamy layer in these communities. The paper aims to understand the jurisprudence behind these provisions and also the manner in which these are actually applied in the Indian society. The paper delves into arguments on both sides and asks questions as to how far the re-exclusion of creamy layer is going to be helpful for the rest of the community- the non-creamy layer of these communities; it also makes an analysis of the difference in the backwardness of SCs/STs and OBCs and ascertains whether or not, the principle of creamy layer should extent to SC/ST community as well; should the ‘creamy layer’ be extended only at entry level in recruitment to services or should it be extended to even the promotions. A mixed methodology of both doctrinal and field based empirical research has been undertaken combining theoretical analysis of principles of social justice and equality and equity by way of research studies and case laws as also empirical data collected from the ‘stakeholders’ in question that is the students, job aspirants and job holders from the Scheduled Caste, Scheduled Tribes (SC/ST) and Other Backward Classes Communities, whereby the method of data collection was primarily through telephonic interview guided by an interview guide. An

---

<sup>\*</sup> Assistant Professor, KIIT Law School (Bhubaneswar)

<sup>\*\*</sup> Undergraduate student, (3rd year, B.B.A- LLB), KIIT Law School (Bhubaneswar)

<sup>\*\*\*</sup> Undergraduate student, (3rd year, B.B.A- LLB, KIIT Law School (Bhubaneswar)

intensive and qualitative research study has been performed, where the authors have tried to bring out the factual and unseen reality of these backward classes in the present scenario along with manifesting the actual struggle and challenges faced by them. The paper winds up with conclusively determining the answers to the issues sought to be dealt with, critically analyzing the responses made by the interviewees and providing various recommendations for improvement and advancement of the backward classes with an aim of promoting equity and fair play.

**Keywords:** - Affirmative Action, Creamy Layer, Equity, SC/ST, OBC, Backward classes, Reservation policies.

**LITERATURE REVIEW**

The initial study made for the purpose of this research paper have been mentioned below, whereby the findings of each study so made are briefly described with an aim to have a basic idea on reservation policies in India as well as to ascertain the areas where these studies are silent about, according to which further study has to be made for bridging up the gap. The details of the studies have been delivered in a tabular form for easy and precise understanding. These are as follows: -

SR. NO	AUTHOR(S)	NAME OF THE JOURNAL	YEAR OF PUBLICATION	REGION/COUNTRY	METHODS/TYPE OF STUDY	AIM AND OBJECTIVE	FINDINGS
1	Ishwar Modi	Sociological Bulletin	2014	INDIA	Intensive qualitative study; consists of critical analysis by the author (analytical study); not based upon raw information and first hand evidence and thus can be considered as a secondary source of data.	Addressing of the main issues with regard to reservation policies in India-	Reservation policies in India have been developed mainly for groups and communities suffering from economic exclusion with regard to caste, gender and religious identities to promote economic empowerment and equal opportunities within the country. The main concern that need to be addressed over here is the proper identification of other backward classes in the country along with setting up of a yardstick for determining the creamy layer and the outcome of sub classification of the Scheduled Castes into “more backward” and “backward” classes where backward castes are given more preference for reservation in appointments. The study further analyses that Reservation quotas in India are being used as a tool for political mobilization, rather than ensuring social justice.

2	Ajay Gudavart hy	Economic and Political Weekly	2012	INDIA	Intensive qualitative study; consists of critical analysis by the author (analytical study); not based upon raw information and first hand evidence and thus can be considered as a secondary source of data.	Arguments in for and against exclusion of creamy layer	<p>The study talks about one of the central issues i.e. the exclusion of creamy layer criteria in implementing the OBC reservations. The main critique faced by this notion is- by disqualifying those most likely to succeed in elite institutions, creamy layer exclusion undermines the very purpose of the proposed law (Deshpande 2008); inclusion of creamy layer in reservation benefits would give confidence to the others to aspire for higher positions in life rather than come in the way of their advancement. However, it has also been recognised that the dependence on such elites has led to new classes within each community, where the elites start identifying themselves more with the affluent castes rather than with their own community, thereby causing inter caste conflicts. Thus, the reservation made should be time-bound and restricted to a certain period of time along with getting periodically revised so as to ensure both redistribution and recognition.</p> <p>Reservation is not cantered only to get jobs, rather is more necessary for getting education and therefore, once the backward class people get the required income through reservation, which is sufficient enough to educate their children, then there is absolutely no need for reservations and the creamy layer criterion should be applied. Exclusion of creamy layer would also lead to selecting the students according to their merit, which in turn helps in restoring their dignity</p>
---	------------------	-------------------------------	------	-------	---	--	---

3	Jayshree Singh	Revolving around India	2015	INDIA	The study done is intensive and qualitative in nature, has mainly focused of history of reservation, critical analysis of provision of Indian constitution relating to reservation and its implication on the society. The study stands as a secondary source of information.	The methods for resolving the predicament of reservation	The study mainly focuses on social justice, equality and equity of the society as large; debates upon the issue that upto what extent the Indian Quota system has proven to be the medium for modification of the concept of equality and reasonable classification; Attempts to find out the reason for why reservations at educational institutions and workplaces have failed to mitigate caste hierarchy and caste system, rather has been a matter of retaliation; tries to work upon the question as to whether reservation has actually helped in eradicating discrimination and bringing equality for all. The study even provides for some positive recommendation for resolving the predicament of reservation such as :- The country needs to provide for developmental measures on the basis of quality output and placement of candidates irrespective of their educational institution, caste, creed, gender and religion; Such educational institutions should be banned which wear a fake mask of progress and fail to grant justice to competence; the employees and officers of the government services, whether joined through general category or through quota, should be provided with in-service training programs, workshops, etc for the upliftment of their knowledge and skill base; the promotions in the services should be given according to the evaluation made in intelligent quotient test that needs to be conducted at regular intervals.
---	----------------	------------------------	------	-------	---	--	---

4	Osborne, E. W	Economic Development and Cultural Change	2001	INDIA	The study made is quantitative in nature and also data based as it contains various surveys made by the authors and also reference has been made to previously made surveys. The study by itself stands as a primary source of information.	Implication of pressure groups and rent seeking in changing the social structure of post-independence India	The study provides some insights into the nature of Indian governance and society along with the nature of pressure groups, mainly pertaining to developing societies; analyses the factional dynamics of other societies with already existing pressure groups which mainly rest upon linguistic or ethnic criteria. The result from the study suggests that irrespective of the changes witnessed in the wealth of the one who receives the rewards of reservation, rent seeking based on preexisting criteria will be arduous to make a move once established.
5	Maheshwari SR	Indian Journal of Public Administration	2005	INDIA	The study done is intensive and qualitative in nature and stands as a secondary source of information.	Dynamics of reservation in public services	The study mainly traces down the history of evolution of reservation policies and presents various constitutional provisions thereof. It gives a detailed study of dynamics of reservation in public services in India, pertaining to SC, ST and OBC, including the politics involved in the name of 'mandalisation'. It also provides discussions on the extension of reservations in the legislature, thereby creating another category of 'sons of the soil'.

6	Naseem A zaidi	Economic and political weekly	2014	INDIA	Analysis of qualified students as against the total Number appearing from Muslim universities and Hindu universities in civil services; quantitative study.	Reasons for poor representation of Minorities in the civil services.	Educational backwardness of Muslims is often considered to be the main factor for their low participation in civil service examination; low female participation; academically excellent students travel to western countries for lucrative jobs in private companies.
7	Anil singh	Economic and political weekly	2012	INDIA	Analysis of the veracity of concerns of the students regarding arbitrary marking scheme devised by UGC.	Is the decision of the UGC arbitrary and biased;	The UGC-NET exam is not like other entrance exams where only limited seats are available and it is necessary to declare what the cut-off will be in accordance with the available seats. The net is only a qualifying exam that makes a candidate eligible to apply to universities and colleges in India for lectureship.; It being a mere qualifying exam emphasis must be laid on the greater opportunities being provided to the students.

8	K.Venkat araman	The Hindu	2019	INDIA	Qualitative analysis of the oppression and trauma faced by them, the paradigm that still exists and measures to curb	Should the creamy layer norm be extended to SCs and STs?	The reason for reservations for SCs is not economic backwardness. It is 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 the stigma that comes on account of an untouchable status. reservation is only a tiny remedial measure for that. This continuous clubbing together of economic backwardness and stigma because of the untouchable status is wrong. Because one can remove the economic backwardness, but for Dalits (SCs) you have to address the stigma.
9	Apoorva mandhan	The Print	2019	INDIA	Analysis of the concept of creamy layer and its application by the help of 3 landmark case laws decided by the apex court of the country; qualitative analysis.	Exclusion of creamy layer from the reservation policy. Valid or not?	The whole object of reservation is to see that backward classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were

10	KD saksena	Economic and political weekly			Qualitative study basing on reports of various commissions like the backward classes commissions, the kalekar commission, Mandal commission	To clarify the conceptual confusion between caste and class that has led to an inadequate application of caste criteria for determining the Other Backward Classes. excluding the creamy layer from further special	The policy of reservation for SCs and STs has been followed for more than half a century and for OBCs more than one and a half decades. There has hardly been any attempt to monitor and assess the impact of reservations in improving the lot of the beneficiaries and the categories and communities to which they belong and in bridging the gap between the reserved and the general categories of citizens. There is an urgent need for such empirical studies, and for putting in place a system for studies on a regular basis to provide necessary
----	------------	-------------------------------	--	--	---	---	---

After analyzing and typically interpreting the above studies, the authors of this paper have determined that these studies are unclear and imprecise about the question as to whether or not the exclusion of creamy layer alone stands sufficient enough for establishing socio-economic equity and

providing fair and equal opportunity to all; What is the difference in the backwardness of SCs/STs and OBCs? And whether or not, the principle of creamy layer should extent to SC/ST community as well: and should creamy layer be made applicable only at the stage of recruitment entry or should also extend to promotional level in government services. Determining and uncovering the answers to these issues stands as the primary objective of this research paper where the authors have further referred to various other research papers, articles, books, journals and various political weekly and annual reports, systematically mentioned under the head 'References', which have exceedingly helped the authors in successfully completing this research paper.

### **OBJECTIVE OF STUDY**

The basic aims and objectives of this research paper is to ascertain the following: -

- (1) Whether or not the exclusion of creamy layer alone stands sufficient enough for establishing socio-economic equity and providing fair and equal opportunity to all.
- (2) What is the difference in the backwardness of SCs/STs and OBCs? And whether or not, the principle of creamy layer should extent to SC/ST community as well.
- (3) Should creamy layer be made applicable only at the stage of recruitment entry or should also extend to promotional level in government public services.

Further, the paper focuses on understanding and analyzing the actual challenges that are faced by the backward classes in their journey, starting from the stage of availing higher education as well as serving in public employment through reservation benefits, up to their life even after availing such benefits.

### **RESEARCH METHEDODOLOGY**

The outcome of the research work so made for accomplishing this paper, is a summation of interpretation and analysis of various primary and secondary sources of data as well as assembling of a number of information by way of developing a Questionnaire which was presented before the targeted group i.e. members of backward classes (SCs/STs), through the platform of online video conferencing and over telephonic conversation, in the form of an interview. The authors of this paper have tried to reach at most twelve members of the targeted group who were within their

knowledge, thus performing targeted-convenience and targeted-snow ball sampling, whereby the willingness and ability of each such members in taking part in the interview was first ascertained before the presentation of the Questionnaire. The result derived from analyzing the primary and secondary sources, as well the outcome of the interview so performed, was further interpreted and discussed with experts having specialized knowledge in this particular field, for reaching to the final conclusion and recommendations which are provided at the end of this research paper. Thus, a mixed methodology of both doctrinal and field based empirical research has been undertaken which has aided the authors of this paper in producing an intensive and qualitative piece of research work.

## **INTRODUCTION**

Caste system defines the core of Indian culture and it permeates almost everything - the life you live, the life chances that you and your children will have, the property you own and will own and the public services that you are able to avail. At the same time there is the class based stratification which is a reality too in modernized India. And add to this the indigenous people in the hinterlands which further confounds the analyses of the social stratification in India. At first the groups identified as the scheduled castes and the scheduled tribes were understood to be suffering from certain disabilities. And then came the other group, the Other Backward Classes (the OBCs) who were recently identified as a group with disabilities and then they too were required to receive some support. These of course generally belonged to groups just higher than the Scheduled Castes. Of all the provisions provided for the social and educational advancement, the policy 'protective discrimination' has been one of the most debated and discussed and also thus tends to be the 'dynamic' portion which is subject to change whether initiated through writ petitions and succeeding opinions by the Supreme Court of India. This issue is popularly referred to as 'reservation' or "quota" in the Indian context. With all the contentions in court and judgements, another issue added to this debate is the concept of the 'creamy layer' within each of these categories. The debates have given rise to and initiated due to the ever changing dynamics of political combinations during elections in India. It is in this socio-politico-legal background that we want to decipher the concept of reservations. Based on the protective discrimination policy, the Constitution and the governments have laid down three kinds of arrangements. Firstly, seats for these communities reserved in the Parliament and the state legislatures. Secondly reservation for members of these communities in government and semi-government services. Lastly seats for them reserved in educational institutions, especially in institutions of higher learning such as colleges and universities. The first arrangement is completely left out from the discussion in this paper. The discussions are limited to the second and the third arrangement. The paper categorically will try to address some significant research questions. They are as follows:

- ❖ Whether exclusion of 'creamy layer' would establish socio-economic equity and provide fair and equal opportunity to everyone in India or will it result in continuance of the 'systemic inequality' in India to persist?

- ❖ What is the difference in the backwardness of SCs/STs and OBCs? And whether or not, the principle of creamy layer should extent to SC/ST community as well.
- ❖ Whether creamy layer should be made applicable only at the stage of recruitment which is ‘entry point’ into the jobs or should it also be extended to promotions too.

The concept of reservation in the Indian context is ‘affirmative action’ in favour of the ‘systemically’ disadvantaged in terms of social, cultural and educational terms. The reservation policy and the related laws may be seen as a culmination of various landmark cases and reports of various commissions who took it up as their sole job to find and uproot the decade’s worth of tyranny and oppression faced by the weaker sections of the society by elevating their position in the present scenario so that they will be held at an equal footing with their counterparts.

The concept of ‘creamy layer’ has its genesis in a 1992 Supreme Court Judgement in the **Indira Sawhney vs Union of India** case. The word creamy layer generally refers to a class of people within either the SC/ST or the OBC communities who are socially, economically, and educationally ‘better off’ that is and progressing from the first generation learners in these communities to the now next generations of learners and job seekers. It is definitely comparable to the situation (economic) to the other members of the community. But it is also held comparable to the economic situation of other castes members in this regard. A bird's eye view of this topic may bring us to the conclusion that these members of particular community confiscate all the reservation benefits that are available to that particular community, thereby causing the benefits to be far-out-of-reach for the ones who are actually backward within their community and therefore exclusion of creamy layer or taking them out of the ‘special privilege’ and to instead put them in the foray to compete with others in the mainstream would be indeed ‘level playing ground’ and would ensure the flow of benefits only to the ones who are genuinely worthy of deserving and are most downtrodden within the community. Looked from the angle of the ‘members of upper castes’ who are referred to as the General Category may also be losing out in this case as the vacancies get reduced and many ‘deserving candidates’ are not considered.

However, at this point, it does make sense to understand the ‘jurisprudence’ of the constitutional provisions especially Article 16 among the others similar ones. What does it actually mean when we use the term ‘socially disadvantaged’? When this article was discussed and debated in the Constituent Assembly, it was well understood. The reason was not that these communities were deprived from state services nor was it due to non-availability of candidates nor was it due to lack of commensurate educational qualification and lastly not due to the situation of poverty that they were in. Rather ‘reservation’ was aimed at the oppressive system and the attitudes of others in the caste hierarchy in its local manner wherein they were systemically and systematically kept outside the mainstream society in India. The ethos somehow seems to have been diluted and diffused in the years following as India modernized, somehow the understanding of this ethos now changed towards a ‘class based distinction’ where purely

economic criterion alone was held and then the tenor of the majority voices implied that echoes today too as to why this 'reservation system or quota system' has been continued in India till date. The dynamics of 'vote bank' politics too has done great damage to the original 'ethos' which now seems to have been lost somewhere as other voices of many other groups have now gone louder who ask for this advantage.

## **DISCUSSION OF OBJECTIVE- I:**

### **“WHETHER OR NOT EXCLUSION OF CREAMY LAYER STANDS SUFFICIENT FOR ENSURING EQUITY”**

If we look at the percentage of members of a community in the reserved category who form the creamy layer is very minimal. Of course fact remains though there is a plethora of academic research but it does not really discuss the percentage or approximately so of the creamy layer within any of these community. Whereas owing to very many writ petitions in the Supreme Court of India, this has been debated and dealt with a lot but in terms of real numbers, the actual or near actual figures have never been put. That is why this debate continues. None really quotes the actual numbers, either those who support or those who oppose the idea.

Amidst all this hue and cry, realistically speaking, the scenario is quite different. The percentage of creamy layer is miniscule as most members of such communities may not even reach the requisite level and credentials of higher education to avail the reservation benefits provided by the government. In case of OBCs, at the time of reservations for admission in educational institutions, the unfilled vacant seats get converted into general seats and in addition to this, the government has even increased the number of seats for giving more opportunities to the general communities. Thus, it is the members of the general community who avail the maximum opportunities out of the reservation policies.

In cases of vacancies reserved for the SCs/ STs/ OBCs which could not be filled up and are carried forward as backlog vacancies and remain unfilled in the following recruitment year also, will be carried forward as backlog vacancies for subsequent recruitment year(s) as long as these are not filled by candidates of the category for which these are reserved. According to Article 14 (4B), the unfilled vacancies under reservation in promotion in favour of SCs/STs of a year have to be treated as a separate class of vacancies and such vacancies while getting added up in the subsequent years shall not be considered together with the vacancies of the year in which it is getting filled up for determining the 50 % ceiling limit. These provisions, no doubt, aims at giving better opportunities to the backward classes, but there exists no scope for these backward classes to even rise up to such a level for availing such opportunities. At present, the principle of creamy layer is applicable only to OBCs and not SCs and STs. The authors of this paper believe that exclusion of creamy layer in case of OBCs, who are backward only on grounds of poor economic conditions, is justified to certain extent as once the members of this category get richer and economically sound by availing the reservation benefits

and benefits from other policies, they won't be facing any social harassment which is usually faced by SCs/STs who are even weaker than the OBCs (as clarified by Indra Sawhney Judgement). The SCs/STs face social discrimination even after they get successful in their lives as people criticise them of having no merits in availing such success. Thus, exclusion of creamy layer won't be justified in case of SCs/STs and inclusion of such would at least motivate other members of the reserved communities to become as advanced and developed as the members of the creamy layer by considering them as their role models.

Thus, at a concluding note, the authors of this paper feel that the concept of creamy layer, as just and fair as it might sound has various downsides to it as well. Firstly, having a clear and concise definition of creamy layer is quite difficult, for if the legislation considers the economic criteria as the domain of the "creamy layer", then they are being oblivious towards the culturally and socially backward classes who even after nearly 70 years of independence are still being considered as untouchables. So in such a scenario no matter how much money can a man earn he would not be elevated to the status of his counterparts throughout his life because he is being viewed through a very culturally orthodox lens and if such socially backward people are exempted from the purview of reservation which acts as their lone recourse to normalcy, let alone elevating their status, that would be considered as a grave miscarriage of justice. If on the other hand the legislation lays emphasis on establishing the principles of equity, bringing about a blanket provision to curb the social indifferences, then they are again ignoring the financial aspect of it. So, to provide a particular definition of creamy layer and precisely explaining its inclusivity with proper weightage given to every aspect of the issue is a herculean task. Secondly, the number of people who can be included within this confined elite sphere of creamy layer is quite negligible because the number of students who are actually nourished with proper education from their childhood to avail the help of reservation in their latter stages are very minimal. So, to create a separate club altogether is not a very rational approach. The people, belonging to such backward classes availing the reservation and being successful would not only do a world of good for themselves but can help the community as a whole, and other people from such community can draw inspiration from such achievement. Even in the landmark judgement of **Ashok Thakur case**, the honourable supreme court held that, if the reserved seats go vacant they will ultimately be filled by the meritorious students from the general category. Also the fact that only a miniscule of population from these classes can be said to be the part of "creamy layer". So with such provisions in hand, the argument of excluding creamy layer from reservation category (especially in case of SCs and STs) completely falls through and has no legs to stand. Thus, exclusion of creamy layer alone is not adequate enough for establishing equity, rather change in various other socio- economic conditions should also be taken into consideration for instituting such an objective.

## **DISCUSSION OF OBJECTIVE- II:**

**“WHAT IS THE DIFFERENCE IN THE BACKWARDNESS OF SCs/STs AND OBCs?”**

**AND**

**“WHETHER THE PRINCIPLE OF CREAMY LAYER SHOULD EXTENT TO SC/ST COMMUNITY AS WELL?”**

Before moving further, it is much required to understand and interpret the provisions regarding reservation in matters of education and public employment under Indian Constitution. The provisions that need to be referred are as follows: -

❖ **“Article 15(4) of the Constitution of India”** empowers the state to take any affirmative action and provide for any positive discrimination or favourable distinction for the advancement of backward classes through formulating special provisions for the advancement of SEBCs (Socially and economically backward classes), SCs (Schedule Castes) and STs (Schedule Tribes). This provision was introduced in the 1<sup>st</sup> Constitutional Amendment Act through the case state of **Madras vs Champakan Dorairajan** where the Supreme court stated that reservations cannot be provided only on communal lines i.e. on the basis of religion and caste. **“Article 15(5) of the Constitution of India”**, empowers the state to make any special provision with regard to admission in educational institution, whether government or private (both aided and unaided) in favour of SEBCs, SCs and STs.

In the case **M.R Balaji vs State of Mysore**, the state of Mysore had passed a government order providing reservations in engineering and medical colleges, thereby reserving 28%, 22%, 15% and 3% of the total seats to backward class, more backward class, SC and ST categories respectively with an aggregate reservation of 68%. This was challenged before the court of law where the Supreme court struck down the order stating that the following conditions that needs to be considered before providing reservation policies-

- There has to exist both social and educational backwardness of the community that is to be provided with reservation benefits.
- Only caste cannot be the sole criteria for providing reservations.
- The categorisation of Backward classes into more Backward classes is not valid.
- The total reservation of seats for the above categories shall not exceed the bar of 50% of the available seats.
- While formulating reservation policies, the interest and development of the public at large shall not be neglected.

Further, in the case **Indra Sawhney vs. UOI**, it was held that caste can also be the sole factor for determining backwardness; the categorisation of BC and MBC is valid; and the total reservation shall not exceed 50% of the total seats.

❖ **“Article 16(4) of the Constitution of India”** aims at providing equality of opportunity in matters of public employment by eradicating disability and creating new opportunities. The state through this provision has power to reserve appointments and posts in favour of backward classes who are inadequately represented in public services. Under this provision, as there is no specific categorisation with regard to backward classes, it may be deemed that the term backward classes include SEBCs, SCs and STs. In **M.R Balaji vs State of Mysore**, the court provided for two conditions that needs to be satisfied for application of the above provision i.e.

- The community has to be socially and educationally backward.
- The community should be inadequately represented in public services under the state.

In the case **Devdasan vs. UOI**, it was held that the carry forward rule would be invalid or inapplicable if the total reservations for the backward classes exceeds the bar of 50% of the total posts available. Further, in **Indra Sawhney case**, various rules were formulated such as 27% reservation was provided to the SEBCs; reservations to be confined only up to appointment and not promotions; and that the reservation shall not exceed 50% ceiling bar. Soon after the Judgment, the Parliament in its 77<sup>th</sup> Amendment Act, added **“Article 16 (4A)”** which allows reservations in promotions (with consequential seniority) to any class of posts in state services in the favour of SCs and STs. Subsequently, **“Article 16 (4B)”** was added that ended the 50 % ceiling on reservation in promotions i.e. the unfilled vacancies of a year have to be treated as a separate class of vacancies and such vacancies while getting added up in the subsequent years shall not be considered together with the vacancies of the year in which it is getting filled up for determining the 50 % ceiling limit.

The common criteria that distinguishes the OBCs, SCs and STs from the general ones is their extreme social, educational and economic backwardness, but what makes the distinction between OBCs and SCs is the SC’s drawing backwardness from untouchability practiced upon them by the upper caste and not on the basis of economic conditions. On the other hand, OBCs are not of oppressed class and may also pertain to the category of upper caste, but suffer backwardness on the basis of their education, development and income level. STs are the indigenous communities whose livelihood is dependent upon forest and agricultural activities. Thus, there is no huge difference between the categories as they are deprived and are backward in their respective grounds.

The Constitution of India recognizes mainly three categories of backward classes i.e. SCs, STs and SEBCs (socially and economically backward class) under Article 341, 342 and 342A respectively and also under Article 15 of the Indian Constitution. Presently, the Central Educational Institutions (Reservation in Admission) Act, 2006 which provides for reservation schemes, lays down 15%, 7.5% and 27% of the total seats for SCs, STs and OBCs respectively. But, there is no pellucid mentioning of the term OBCs under the Indian Constitution. Thus it may be concluded that there exist some similarity and interlinking between the two terms i.e. OBCs and SEBCs as OBC’s include any backward category other than

that of SCs and STs which obviously means and includes SEBCs and also that Article 16 (4) does not segregate the various categories, rather terms all of them as “backward classes” and its applicability extends to any community who is socially and educationally backward and has inadequate representation in the public services.

The grading of “creamy layer” was earlier made applicable only for communities belonging to OBC category where any person of OBC category whose parents have an annual income of Rs 8 lakh and above is categorised as creamy layer and is not made eligible for enjoying reservation quotas i.e. if the income of parents from other sources other than the amount earned as salary and agricultural income exceeds the income limit stated above, only then the person can be treated as creamy layer.

Now the question as to whether the exclusion of creamy layer should be extended to SCs and STs is argued against the motion by stating the difference in the social reality in which both SCs/STs and OBCs dwell. OBCs are economically backward and if a person of such category becomes rich enough to cross a certain edge, they won't be facing any social discrimination as faced by the Dalits. In reality, discrimination increases in the rise in economic condition in case of SCs and STs as even after a Dalit enters into any government employment or attains admission for higher studies, they come across a lot of harassment because of their joining through the help of reservation and not through their merit. In US, it is argued that the richer blacks face a greater discrimination as the whites don't allow these blacks to enter into places which the whites consider to be privileged for them. Even today, SCs/STs face discrimination by way of untouchability and denial of right to property as well as education. Therefore, it can be said that exclusion of creamy layer should only be limited to OBCs as once they become economically well off, they can lead a better life and require no reservation benefits for their upliftment. The authors of this paper also completely agree with the above argument.

But, through the verdict passed by the court in **Nagaraj case**, the principle of creamy layer was extended to SCs and STs too. Even in **Jarnail Singh vs. Lachhmi Narain Gupta case**, it was clarified by the court that the socially, economically and educationally well off and progressive cream of the SCs/STs must be precluded from the reservation benefits provided by the government in public services in order to make such benefits available to the weakest and most unprivileged section of that particular community. At the same time, the court also stated that the test of backwardness (where the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes) should not be made applicable to all SCs and STs and if made applicable, would stand contrary to the 9-Judge Bench in **Indra Sawhney case** where it was held that the SC/ST are the most backward among backward classes and therefore, it has to be presumed that once they get included in the Presidential List under “Articles 341 and 342”, there is no requirement of showing backwardness once again. Indra Sawhney case also laid down that the creamy layer principle should not be made applicable to SCs/STs, still the Supreme Court in Jarnail Singh case included the above principle

for SCs/STs by stating that the ultimate object of providing reservation is to ensure that backward classes of citizens move forward so that they become as advanced as the other citizens of India. This is possible only when the creamy layer within that class leaves the reservation benefits for the weakest section of the class. Thus, it is clear that when a Court applies the creamy layer principle to SC/ST, it does not in any way cause hindrance in the applicability of the Presidential List under “Articles 341 or 342”. Therefore, this part of the judgment does not need to be revisited, and consequently, there is no need to refer Nagaraj to a 7-Judge Bench.

However, as of now, there exist no legislative development with this regard and there exist no specific criteria for determining the creamy layer in case of SCs/STs. Presently, the creamy layer principle is only applicable to the OBCs. The government has demanded the supreme court to reconsider and re-look its stand in the above verdict regarding the applicability of creamy layer principle to the various categories.

### **DISCUSSION OF OBJECTIVE- III:**

**“SHOULD CREAMY LAYER BE MADE APPLICABLE ONLY AT THE STAGE OF RECRUITMENT ENTRY OR SHOULD ALSO EXTEND TO PROMOTIONAL LEVEL IN GOVERNMENT SERVICES.”**

The contents under the above heading extensively deals with the discussion that whether creamy layer in reservation should apply only at the recruitment stage or shall it also extend to the promotional level. For drawing an inference regarding this debate we need to study the pros and cons of both sides of this discussion.

In order to identify the necessity of excluding a creamy layer at the recruitment or promotional stage, we first need to know about the evolution and rationale behind reservation in promotions and then find whether the creamy layer doctrine holds water.

The concept of reservation extending to promotion has been evolved through various case laws in India. Mainly, the Indira Sawhney vs Union of India, the **M Nagaraj case** and the latest, **The Jarnail Singh case**. In the Indira Sawhney case, it was decided by the judiciary that reservation should not be applied at the promotional level and should be confined to the recruitment stages only. The ratio decidendi of this judgement, may ipso facto sound reasonable because one might think that once the recruitment of such backward people have been done they can meritoriously climb up that promotional hierarchal ladder and don't need any extra aid from the legislation for their upliftment , but it's a fallacious argument because the people belonging to backward classes faced the same problems in their jobs which they used to face in the society and due to this, their chances of promotion was very bleak. According to 2011 census, out of 16.6% SCs only 3.96% were in the government jobs, and out of 8.6%

STs, only 4.37% were in government jobs. More over such numbers are even lower for the posts of higher ranked officers which shows that the reservation at the promotional level is a necessity.

As a correctional measure against the **Mandal commission case (Indira Sawhney case)** judgement, the legislature took out the 77th amendment which saw the influx of clause 4(a) in Article 16 of the Indian constitution which extended the reservation in promotional level also. The M Nagaraj case, upheld the 77th amendment but posed 3 conditions for its applicability

- Quantifiable data relating to such backward classes should be obtained.
- There should be an inadequacy of representation in services.
- The overall efficiency of the administration should not be hampered.

Then came the judgement of the Jarnail Singh case wherein it was held that the first condition of the M Nagaraj case was against the constitutional provision of Article 341 and should be done away with. In this case there was also a mention of the concept of creamy layer in case of reservation in promotion as well as recruitment and it was decided to exclude such privileged creamy layer from the domain of reservation in promotion.

The bench, headed by the then CJI Dipak Mishra held that, “The whole object of reservation is to see that backward classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were. Moreover the Jarnail Singh case again took the pre-decided matter into hand because the Nagaraj case asked the states to collect quantifiable data showing backwardness, and such a provision is contrary to the nine-Judge Bench in Indra Sawhney v Union of India where it was held that Scheduled Castes and Scheduled Tribes are the most backward among backward classes and it is, therefore, presumed that once they are contained in the Presidential List under Articles 341 and 342 of the Constitution of India, there is no question of showing proof of backwardness of the SCs and STs all over again. And such position of SCs and STs in the presidential list cannot be altered by anyone except the parliament itself.

So, now the creamy layer would not come under this presidential list under “Article 341 or 342” because, it is clear that when the creamy layer principle is applied to Scheduled Castes and Scheduled Tribes, it does not in any manner tinker with the Presidential List under Articles 341 or 342. It is only those persons within that group or sub-group, who have come out of untouchability, backwardness or any such social stigma by virtue of belonging to the creamy layer, are excluded from the benefit of reservation. By studying the rationale of this judgement the exclusion of creamy layer in both recruitment as well as promotion sounds plausible.

The creamy layer concept in promotion is quite different from that of the creamy layer concept in recruitment stages because during the entry level there are certain criteria, there are various social stigmas, economic hurdles and other barriers which an individual need to overcome so that they can be eligible to appear that exam and it thus becomes necessary on the part of the legislature to elevate them to the level of their competitors, so that there would be a fair test. On the other hand, a person belonging to the same backward class sitting at a privileged position, belonging to an affluent family does not need the aid of reservation and hence during the recruitment stages or at the entry level it becomes necessary to filter out such creamy layer. But in cases of promotion, the concept of creamy layer is quite vague because after getting recruited, there is no economic barrier per se, but the social stigma that is etched to their identity forever still persists and even if a person from such backward class belongs to the creamy layer he would not be able to get promoted because of the socio-inequality against him by his superiors in office , and so excluding such creamy layer from the reservation in promotions might not be a good idea because that would defeat the sole purpose of reservation in the first place and the same is believed by the authors of this paper.

### **RESPONSES OF THE QUESTIONNAIRE AND IT'S ANALYSIS**

The interview is conducted by presenting a set of questionnaire before 12 targeted samples belonging to the Backward community (SC, ST and OBC), pertaining to two groups i.e.-

- **GROUP-A:** People of backward classes who are eligible of availing or presently availing reservation in educational institutions for higher studies.
- **GROUP-B:** People eligible of availing or presently availing reservation in Public Government services.

The questionnaires pertaining to both the groups, have been attached at the end of this paper, under the head ‘ANNEXURE-I’ and ‘ANNEXURE-II’ respectively.

**RESPONSES OF GROUP-A MEMBERS**

RESPONSES OF SAMPLES PERTAINING TO GROUP-A SC/ST COMMUNITY

Sr.No.	PARTICULARS	SAMPLE-1	SAMPLE-2	SAMPLE-3
1.	<b>Educational background of their family (both paternal and maternal)</b>	Father 12 <sup>th</sup> Pass,  Mother is Under matric. Sister/s -  At present doing 10 <sup>th</sup> in St. Joseph's school.	Both parents are illiterate. Father is no more since my childhood.  Sister PASSED +2 and aspires to study B.Sc. nursing but due to lack of money is at home presently.  Brother- POST GRADUATE from KISS	I and my siblings have studied at KISS. Both the parents are under-matriculated.
2.	<b>Occupation of their parents.</b>	Father is a fire officer and mother is a housemaker.	Father was a farmer and mother is a housemaker.	Father with 6.6 acre land.
3.	<b>Other Ancillary income (including agriculture, Trade, Part time job, Business, Rent on house or any other)</b>	NONE	None. We just have our house at the village and Mother RS. 500 (widow pension in village)	NONE

4.	<b>What they aspire to be (Aim of life)</b>	Future PG entrance, desire to join civil services and banking RBI.	looking for small jobs - but interested in LLM.	Desire to join in Rural Management placement. Commerce student I want to start business. Sports person - Kho Kho - coaching academy.
5.	<b>How easy or challenging is it for achieving their aim as compared to the students of other community.</b>	There exists competition within the reserved categories as well. Also that, the members of other categories are in a more advantageous position as they already have well settled and well educated family members which implies that they know the value of education even more as compared to our family members.	foundation of education should be strong - starting from first standard to 10th  standard, how to talk to people and how to write? first generation learner. I am pursuing law for the first time we are on equal ground. but I belong to a remote hilly area and if the person is from Cuttack or Bhubaneswar they are better off. they get more scope	We require a lot of hard work for entering into educational institutions and jobs. We even face language barrier. We don't have well educated family environment as the members of other community have.
6.	<b>Requirements for undertaking the preparation for their job.</b>	Coaching, necessity and the associated cost.	LLM, A.P.P OJS, human rights commission.  I may go for Judiciary coaching but cannot afford now.	Coaching private - commission 1 lac 3-5 thousand.

7.	<b>Scholarship (if any)</b>	NO	GOVT 10 TH,  First year LLB I got Rs. 10000 in one year  2nd year LLB I got Rs. 12000 in one year  3 rd year LLB I got Rs. 12000 in one year  4 th year LLB I got Rs. 12000 in one year  5 th year LLB I got Rs.8000.	Sports scholarship govt. Participation
8.	<b>Their role model for future career.</b>	None as such.	My mother is my inspiration. She was all alone and she took care of all the three children single handedly after death of my father.	Samantha Sir (Founder of KIIT & KISS, APJ Abdul kalam.
9.	<b>Reaction of their friends belonging to general community while they were studying in their institutions.</b>	Nothing as such	Actually I am thankful to my friends from KISS as also my KSOL friends (General category). They have  been very good to me.	Positive reaction

<p>10.</p>	<p><b>Response of their friends from general category on their future careers.</b></p>	<p>They say that I don't have to worry because of the Reservation basis, but they do not understand that the basis is only of 10 to 15 marks in merit cut off from the general candidate.</p> <p>But if you realize the ratio is less.</p>	<p>They Support me. They say you should make your community proud. You should be the first magistrate of your place etc.</p>	<p>They are very supportive.</p>
<p>11.</p>	<p><b>Their opinion as to whether creamy layer should also extend to SC/ST community or not.</b></p>	<p>No, because we already face a lot of social and economic backwardness, we don't have any established educational background which would aid us in establishing our career, only a few get the opportunity of availing the benefit and also the basis is only of 10 to 15 marks in merit cut off from the general candidate.</p>	<p>No, as we don't have any role model or any established educational background and thus we are still in a disadvantaged position.</p>	<p>No, the percentage of creamy layer is very low and also that many of the members of our community don't even reach to the level of getting reservation in higher studies as they don't even have a proper schooling. The ultimate benefits go to the general and OBC category itself.</p>

RESPONSES OF SAMPLES PERTAINING TO GROUP-A **OBC** COMMUNITY

Sr.No.	PARTICULARS	SAMPLE-1	SAMPLE-2	SAMPLE-3
<p>1.</p>	<p><b>Educational background of their family (both paternal and maternal)</b></p>	<p>All members of my family are well educated. I have presently</p>	<p>All the members of my family are well educated. I am</p>	<p>Presently pursuing BBA.LLB (Integrated law) at KIIT School</p>

		completed my B-tech and am preparing competitive exams.	presently in the 3 <sup>rd</sup> year of B-tech, IT branch.	of Law. All the members of my family are well educated.
2.	<b>Occupation of their parents.</b>	Both the parents are retired government officer holding the rank of head clerk.	Father is ground water board mechanical and mother is a teacher inn a private school.	Father is a business man (dealing with packaging) and mother is a housewife.
3.	<b>Other Ancillary income (including agriculture, Trade, Part time job, Business, Rent on house or any other)</b>	An annual rent income amounting to 1 lakh.	Business: - A gas agency, repairing shop and one cycle showroom.	Rent on houses amounting to 6-7 lakhs per month.
4.	<b>What they aspire to be (Aim of life)</b>	To work under the government organized sector, basically civil services.	Private software Engineer.	International layer/ legal adviser under corporate sector.

<p>5.</p>	<p><b>How easy or challenging is it for achieving their aim as compared to the students of other community.</b></p>	<p>It is as challenging as for students of general category because I have never availed any reservation benefits as I have already pursued my higher education before the retirement of my parents. There is a huge competition in the market and also such of the seats are taken away by the reserved categories who are having privilege of entering into educational institution through much less cut-off mark. Even we don't receive any government incentives for skill development as received by the SC/ST students, making it much more challenging for people of my community.</p>	<p>It is obviously challenging as our cut off mark is more because of which, even if we score more than the SC/ST, we don't get admissions in good colleges. Our merit is getting undermined. Thus, there is a lot of competition and struggle.</p>	<p>It is as challenging as for members of other communities as there is a huge competition, even if we are talented enough to avail better educational institution and jobs, still we are not able to get one because of the reservation policies of our country and on top of that, I belong to a creamy layer OBC because of which, I don't get the benefit of reservation.</p>
<p>6.</p>	<p><b>Requirements for undertaking the preparation for their job.</b></p>	<p>I require technical trainings and coaching for clearing out my competitive exams for civil services, whose total expenditure would amount to approx. 2 lakhs.</p>	<p>I would later require coaching for enhancing my language, reasoning and communication skill for getting a good job.</p>	<p>I should have a strong academic record, broad prospective of international laws, strong analytical skills. I also need to pursue my post-graduation degree i.e. LLM from abroad for exploring better opportunities and for which I require legal coaching so as to fulfil my desires.</p>

7.	<b>Scholarship (if any)</b>	NO	NO	NO
8.	<b>Their role model for future career.</b>	Role model would be my cousin brother who is an Assistant Section Officer under secretariat.	The most inspiration comes from my cousin elder brother who is working in a digital marketing sector and is successful in his life without taking any reservation benefit, with his own merit.	Justice D.Y. Chandrachud because of the way he delivers the justice, his code of conduct and his reasoning to a particular decision. He has also perused his post-graduation from abroad.
9.	<b>Reaction of their friends belonging to general community while they were studying in their institutions. Whether they have faced any harassment or not.</b>	Positive reaction. No harassment faced.	Positive reaction. No harassment faced.	Positive reaction. No harassment faced.
10.	<b>Response of their friends from general category on their future careers.</b>	No specific responses. They are always encouraging and motivating.	No specific responses.	They have always been encouraging and given me positive response.
11.	<b>Their opinion as to whether creamy layer should also extend to SC/ST community or not.</b>	The concept of creamy layer should be introduced to SC/ST community so that the benefit of reservation would stream only to the weakest section of people within the community. Now, according to me, they face no such social discrimination or harassment with regard to the	The concept of creamy layer should be introduced for SC/ST as they have already taken much benefit out of the reservation policy, they are no more as economically weaker as they were earlier and also no much harassment or untouchability is anymore performed. This will	Yes, the principle of creamy layer should be extended to SC/ST community as the whole purpose of bringing out reservation is to advance the under-developed and weaker sections of the society and thus not including the above principle to the said community

		<p>caste. Mind-set of people have changed and thus the creamy layer should be introduced on economic point of view only. And even if they face any harassment, they can go to courts for seeking their redressal, but inclusion of creamy layer in taking out the benefits of reservation stands unreasonable as it is killing our scope and opportunities.</p>	<p>ensure the growth and development of the one who actually has the merit or talent and would also ensure flow of benefit only to the one who reasonably requires it.</p>	<p>would destroy this very purpose.</p>
--	--	---	--	---

**RESPONSES OF GROUP- B MEMBERS**

**RESPONSES OF SAMPLES PERTAINING TO GROUP-B SC/ST COMMUNITY**

Sr.No.	PARTICULARS	SAMPLE-1	SAMPLE-2	SAMPLE-3
1.	<b>Educational background of family members (both paternal and maternal)</b>	<p>Father is a constable in excise department, mother is not educated and brother is deputy director civil supply.</p>	<p>Father is under matriculated, retired from Seal keeper, in RBI, Bhubaneswar office. Mother has read up to 4<sup>th</sup> or 5<sup>th</sup> class.</p>	<p>Father was daily wages labor and later as a pastor or religious leader(Christian) in our community church. Mother is illiterate and brother is graduate and presently working as a worker in Bhusan plant, Rengali, Sambalpur District. Sister is also graduate.</p>

2.	<b>Details of how they pursued their education.</b>	Completed graduation in Rajendra college Balangir.	I have passed class 12, Branch-Arts, in a college in BBSR.	+3 2nd yr. I got job as I had registered in employment exchange. During my education itself, I was working as a daily-wage laborer with my father.
3.	<b>How long have they worked in their jobs (in yrs.)?</b>	27 years.	10 years.	I joined the fire department of govt. Of Odisha in 1995.
4.	<b>Number of promotions availed.</b>	02 promotions.	No promotion.	3 promotions availed. First 2 promotions I have availed quota but not the 3rd one because I already came in seniority list and there is a roster system by which we get promotion so my turn came.
5.	<b>Whether or not they have availed any reservation quota for entering into their job as well as the difficulty so faced with this regard.</b>	Yes, availed reservation quotas for job. No doubt, the cut-off is less for us, but still we face competition within our own community. we have to excel among them to get the job. We also have to study and educate ourselves for getting into a job.	Yes, I have availed quota.	Yes, I have availed quota

6.	<b>Factors which helped them in getting their job.</b>	By the help of Quotas.  And also my father was working in the same department which made it easier for me to avail the job. Also, we have got minimum level of education even in our urban area-Balangir, Odisha.	The most important factor was availability of quota reservation as our cut off was 35% only, whereas for general community, it was 50%. Also, my brother-in-law helped me get this job by advising me the correct path. Also, bribe of Rs. 1 lakh had to be paid under the table for getting the job.	By the help of Quotas.
7.	<b>Reaction and response of their family and the society on their getting of government job.</b>	Yes, we do get respect among our own community as well as in our society.	Friends were somewhat jealous.	It has made a lot of difference. Earlier I and my father did labor work on daily wage basis and the other people in the village including the other castes they used to look down upon our family. After I got the job, today the family is getting respected. After getting job, I also supported education of my brother and sister.
8.	<b>The effect and impact on the society on their availing of the government job.</b>	I became a sort of role model for other people of my community.	Positive impact.	Positive impact.
9.	<b>Humiliation at workplace with regard to their caste (backwardness)</b>	A bit of negative reaction and response as to I am much	Yes, I have faced a lot of humiliation. Even I know that	I have faced no humiliation.

		<p>privileged to have got entered into the job as well as promoted and they have to report me and follow my commands. I faced Indirect taunt from my batch mates and seniors from general and other castes.</p>	<p>gossips were made about me of having reservation benefit. Also, I have experienced prejudice at my workplace as a person belonging to SC/ST category.</p>	
10.	<p><b>Their confidence with regard to whether or not their children can establish a good career, without the help of quota.</b></p>	<p>Yes, they can avail it with merit and not through quotas. All my children are well educated.</p>	<p>I will equip them in such a manner that they would not have to depend upon reservations.</p>	<p>I am not confident. Gene problem is there so quota needed for my children. For development of our gene, we need reservation for more generation so that our children would get par for the competition.</p>
11.	<p><b>Their opinion as to whether creamy layer should also extend to SC/ST community or not.</b></p>	<p>He expressed that is such principle is made applicable to him, then his children would face difficulty in getting govt. Jobs.</p>	<p>Yes, it is justified to certain extent. But, our community faces a lot of discrimination within the organization as casteism and caste feeling still everywhere including govt. Offices. So if the quota is removed for creamy layer, it is difficult to at all get jobs. Mostly the general caste persons are in high ranks in every govt. Office so because of the general caste lobby, they will not allow scheduled tribe or</p>	<p>Family background should be taken up and creamy layer should be made applicable to our community. However, he also said that his children still need quota for going ahead .</p>

			<p>caste persons to get the govt. Post. If the ST person is having money and has relations (members of his own community) who are established is in high-ranked post, then it will be easier, but to get to that stage one needs entry into govt. Jobs.</p>	
--	--	--	---	--

RESPONSES OF SAMPLES PERTAINING TO GROUP-B **OBC** COMMUNITY

Sr.No.	PARTICULARS	SAMPLE-1	SAMPLE-2	SAMPLE-3
1.	<b>Educational background of family members (both paternal and maternal)</b>	<p>I have completed by diploma course in mechanical branch and presently doing a government job as an employee in MCL company.</p> <p>My sister is B.Sc. pass out and presently preparing for competitive exams.</p> <p>My parents have acquired very less education and have not completed their matriculation.</p>	<p>I have completed my B.Sc. in Chemistry honors, Engineering in metallurgy, MBA in marketing and Computer PG diploma. In my paternal side, only my father was educated, completed his graduation in English Honors. My maternal side was way more educated, they were either doctors, advocates or lecturers.</p>	<p>I have acquired graduation in economics honors, government press training and computer courses. Father is matriculated but mother is illiterate. Paternal and maternal side is not that much educated with occupation based on agricultural activities.</p>

2.	<b>Details of how they pursued their education.</b>	After passing matriculation, did entrance preparation for studying Diploma, then got admission in a private diploma college and then after entering into job, am presently pursuing B-Tech in mechanical branch.	I have studied in government schools and colleges which were having a very nominal fee. My parents could not afford for any coaching or tuitions during my school time. Only for engineering I had acquired coaching in madras and that to with my elder brother's finance who had just entered into a job at that time. After that, after getting job at NALCO as a foreman, I completed my engineering degree, MBA and Computer PG Diploma during my service itself.	Acquired government press training and computer courses but not availed any coaching for the competitive examinations.
3.	<b>How long have they worked in their jobs (in yrs.)?</b>	5 years	33 years.	10 years
4.	<b>Number of promotions availed.</b>	1 promotion	7 promotions	Availed no promotions, even if had the opportunity of getting promoted. I am preparing for various competitive exams for better job opportunities and therefore require some time for self-study after the working hours.

5.	<b>Whether or not they have availed any reservation quota for entering into their job as well as the difficulty so faced with this regard.</b>	I have not availed nay reservation neither in entering educational institution nor for jobs, even if I belonged to the non-creamy layer at that point of time, with parents having less than 8 lakh of annual income. I have got the job through land oustee where my land was taken over by the MCL company in return of this job.	At my time, there was no scope of reservation benefit for our community and thus I have not availed any reservation.	Availed no quotas, even if eligible of acquiring such benefit. Passed through merit.
6.	<b>Factors which helped them in getting their job.</b>	The ancestors land has helped me get the job through land oustee.	Self-study, hard work with constant effort and optimum utilization of the limited resources is the only key factor.	Systematic and consistent effort and determination on a particular line or field.
7.	<b>Reaction and response of their family and the society on their getting of government job.</b>	Positive reaction	Some were encouraging and some other were jealous and kept on expecting a lot and always had a motive of receiving something or the other (especially with regard to	After availing the government job, it has led to my personality development and better recognition in the society. The perspective of the members of my society has drastically

			financial support.)	changed.
8.	<b>The effect and impact on the society on their availing of the government job.</b>	After getting this government job, people in the society started giving me more recognition and status. The standard of life has been enhanced through the various incentives like healthcare facilities, insurance facilities and various other perks are being provided by the company. It has encouraged many of my cousins in going forward for a government job. But at the same time, the people in the society have also become more demanding and depending.	I have set an example for the others and have been their role model. This made them believe that even with less resource, we can achieve what we desire to.	I hope that it has created an inspiration for other members of my community as well my society to have a good education and to have a well-paid job.
9.	<b>Humiliation at workplace with regard to their caste (backwardness)</b>	Never faced any humiliation.	Discrimination from general caste class people of higher position who intentionally caused hindrance in my development and in getting timely promotions. They extracted more work from me with less input but gave less recognition and less appreciation. They always tried to restrict my growth.	No humiliation faced.

10.	<b>Their confidence with regard to whether or not their children can establish a good career, without the help of quota.</b>	There is no pre thought of getting my child avail the reservation benefits. I would rather like my child to take admissions in good government colleges, only on the basis of his/her merit and not by way of availing benefit through quota. I believe that I am sufficiently financially sound to give my child proper coaching and tuitions for enhancing the quality of education and making her a good rank holder. The first priority would always be proper education and enhancement of skill and knowledge.	I very well understand the value of education and would never want my children to depend upon reservation quotas for entering into good institutions, even if they would have been eligible to get one. I hope I can afford for better education of my children.	I believe in providing a good education to my children for making them capable enough of entering educational institution without any quotas, rather through merit and his/her actual talent.
11.	<b>Their opinion as to whether creamy layer should also extend to SC/ST community or not.</b>	The concept of creamy layer should be introduced to SC/ST community so that only the weakest of the said community can avail the benefit and also the general and the creamy layer OBC can get reasonable opportunity.	The creamy layer should me made applicable to SC/ST as they are getting opportunist in getting various facilities and are also neglecting their duties because of which the country is losing a lot. There should be equal opportunities for all.	The principle should definitely be applied to the SC/ST as well because they keep on developing by taking away the opportunities of OBCs and other general category members. We are the one who are actually struggling hard to get a good institution and a good job. The ST are still backward to certain extent but the members of ST community are taking more

			<p>advantage and have become much dominating. They have developed to such an extent that they should actually be eradicated from holding the tag of being SC. Members of this community have taken the benefit for granted and have become careless as they know even if they don't have any knowledge, they will still avail the best of all institutions and jobs. This has actually caused hindrance in the country's overall development and have aided in increasing the illiteracy rate.</p>
--	--	--	--

**ANALYSIS AND CONCLUSION**

**“Equality is giving everyone a shoe**

**but,**

**Equity is giving everyone a shoe that fits”**

The above quote signifies the difference between equality and equity that is well recognized even by the Constitution of India through its various provisions. On one hand, equality ensures providing equal number of resources and inputs to every single individual, but equity provides for fair distribution of these resources and inputs among the people on the basis of their requirement. The former believes in equal treatment for all, but

the later believes in equal treatment only for people with equal circumstances and unequal treatment for people with different circumstances. The constitution of India attempts to provide a fair distribution of resources by way of uplifting and developing the weaker and deprived section of the society by granting them special and privileged treatment through its various Articles such as Art.14 and Art.16. The policy of reservation quotas in educational institutions and in public employment for SC/ST and OBC community is an example of such an attempt, where the Constitution of India ensures advancement of the backward classes of the country with an aim to promote equity. The concept of creamy layer, with regard to the reservation policies, also tries to establish equity by eliminating the already developed section of the backward community from reservation benefits so that such benefits stream only to the actual weaker section of the community who genuinely require to get uplifted. Presently in India, the concept of creamy layer is made applicable only to the OBC community.

The authors after a critical study of the issue through their readings and case analyses are finally with the view that-

- ❖ Exclusion of creamy layer alone is not adequate enough for establishing equity, rather change in various other socio- economic conditions should also be taken into consideration for instituting such an objective;
- ❖ The concept of creamy layer may be extended to OBC community and not to SC/ST community as the basis of backwardness for OBC is the ‘economic condition’, where once they become economically well off, they can lead a better life and require no reservation benefits for their upliftment.
- ❖ It may also be said that many among the OBC in fact once they belong to the category, they themselves go for the general category. Another issue is that OBC are also represented in the enterprises and agriculture sector.
- ❖ But at the same time, in the case of SCs/STs, discrimination increases in the rise in economic condition in case of SCs and STs as even after a Dalit enters into any government employment or attains admission for higher studies, they come across a lot of harassment because of their joining through the help of reservation and not through their merit.
- ❖ Even presently, they face discrimination and prejudice and denial of land ownership and education. Thus, the social factor should be taken into consideration in applying the principle of creamy layer; The concept of creamy layer in reservation seats for public employment, should be extended to the stage of promotions too because the social stigma that is etched to their identity forever still persists and operates in a subtle and indirect manner.

- ❖ Also considering by sheer numbers, the representation of other castes such as general and OBC is much larger and based on the diversity seen in the Indian society, if it is to be also reflected in the workplace, then too it is of significance to continue the reservations in jobs and not just stop short of admissions into higher education.

Further on, an in-depth analyses of the issue further developed from our respondents who unabashedly shared their issues and the realities with which they actually live whether in govt. Job or aspiring for one. The following are the key points that we came to know from them:

- ❖ Based on the principle of diversity to be reflected in the workplace there is adequate requirement of representation of both the OBC as well as the SC/ST as a disadvantaged category.
- ❖ OBCs may not face the kind of discrimination and prejudice which SC/ST persons are subject to. For the OBC the support has meaning in the economic terms alone. In fact, many respondents among OBC have never even applied for reservation quotas whether working in PSU or in Governmental sector. They readily apply under the general.
- ❖ Not so in case of the SC/ST, even if they are considerably well off due to their government jobs, they would still want it to continue for their children too because they understand having experienced and witnessed the manifold disadvantages.
- ❖ Many respondents said it is ‘genetic problem’ that their children are not that smart to be considered at par with the children of other castes. This is because the caste hierarchy in most cases goes hand in hand with the class hierarchy too. They feel only when they come to a stage when their representation is adequate if not same as the other castes because their disadvantage is carried to the workplace. It does not stop once they get entry to the job, it most definitely is what they live with even in their workplace.
- ❖ As of now, they feel they do not have the wherewithal both in terms of wealth and educational degrees sufficient to be well off to giving a good support thus to their children. Therefore, they feel the quota should continue and the ‘creamy layer’ principle should not be applied to them.
- ❖ There is the unseen aspect of ‘caste lobby’ which also operates in the job sector as also at the workplace itself, since there is a majority representation of these castes in the higher ranks. Thus even if a person from such backward class belongs to the creamy layer, still it may not be easy for him/her to get promoted if competing without the reservations. This will again put the person at a similar if not same kind of situation. Therefore, exclusion of the ‘creamy layer’ from the reservation in promotions may not be a good idea as it defeats the very purpose of this principle of ‘compensatory discrimination’. The SCs/STs are at a reasonable disadvantage.

- ❖ Availing quota may not be that easy for many belonging to the SC/ST category, because they have other hurdles such as landlessness or small piece of land which does not enable them to have the monetary support for accessing coaching, being able to pay the ‘under the table’ bribe money. Another student shared that his elder brother did make it to the selection list of district level ‘National Livelihood Mission’ in Gajapati but he was asked to pay bribe of Rs. 10,000 which he could not afford and hence he did not get the job. It is in this context that we must place the debate of creamy layer. As per the responses, reservation at entry point even comes at a (monetary) cost.
- ❖ Developing oneself and ascending the career ladder is an aspiration basic to all human beings. Sometimes the motivation lies in the intrinsic value of the ‘excelling in one’s calling or it is to gain respect and all other benefits that come with it in comparison to their prior status. Like anyone else they too want it and the Constitution of India definitely provides this opportunity to them. In the words of one of the respondents ‘we need this at least for few generations’ so that our children too can be at par with all the advantages that children belonging to others castes/ classes have.

The Indian legal system is in need of a comprehensive piece of legislation that would efficiently deal with the various ambiguity which are existing with regard to the reservation policy, would provide an express constitutional limitation as to the quantum of such reservation and would also establish a concrete criterion for determining the backwardness of a particular community, especially the SCs/STs and OBCs. Further, the legislation should also provide for policies that would both enable and encourage the weaker sections of the society for forwarding themselves towards education and public employment so that they can avail the various reservation benefits provided by the government. Both the Bar and the Bench should be sensitized on these actual realities of casteism in India today. The procedure for coming out with policies should be based on the ‘Big Picture’ rather than having a very narrow understanding of the same. The social discrimination faced by the members of various backward classes even today, should get eliminated and this should first begin from us only. Mere adoption of western culture won’t stand enough in defining modernization, rather the change in mindset and outlook of people would do. We should start early with our schools emanating the values that the framers of the Constitution struggled for and change the template of the casteism in India. The logic of 50% bar is not based on realistic data. Most of the vacancies even today are not filled up, so how can we say that the vision of compensatory discrimination has been reached? The policy making as well as law making should be based on real time, empirical evidence by social scientists. There should also be changes in the procedural aspects by way of enforceable and verifiable rules. Merely having a legislation or a policy is not enough. Besides, if ‘creamy layer’ who are important being role-models hence their flight upward inter-generationally as well as vertically should be made easier as they motivate the aspirations of many from their community.

## **REFERENCES**

### **BOOKS-**

1. A.K. Singh, "Social Justice & Reservation Policy in Uttar Pradesh", Contemporary Social Work, Lucknow University, Lucknow, Vol. XII, April, 1995.
2. Anirudh Prasad, "Reservation Policy and Practice in India", Deep and Deep Publication, Delhi, 1991.
3. C. Parvathamma and Satyanaranyana, "Housing in Rural Karnataka", University of Mysore Arts Journal, No. XLIV, March and Sept., 1982, pp. 1-7.
4. Hiranmay Karlekar, "In the Mirror of Mandal: Social Justice, Caste, Class and the Individual", Ajanta Publication, Delhi, 1992.
5. Mungekar, B. L., "India's Economic Reforms and the Dalits - An Ambedkarian Perspective", Dr. Ambedkar Institute of Social and Economic Change, Mumbai, 2004.
6. Soran Singh, "Scheduled Castes of India: Dimensions of Social Change", Gian publishing House, Delhi, 1987.
7. Santakumari R., "Scheduled Castes and Welfare-Measures", Classical Publishing Company, New Delhi, 1980

### **RESEARCH POLITICAL WEEKLY AND ANNUAL REPORTS-**

1. Modi, I., "Indian Society and Sociology: Challenges and Responses", Sage Publication, 2014.
2. Gudavarthy, A., "Can we de-stigmatise reservation in India?", Economic and Political Weekly, February 11, 2012.
3. Report of the Working Group on Higher Education for the XII Five Year Plan, Department of Higher Education, Ministry of Human Resource Development, Government of India, 2011.
4. Balagopala K., "Ideology and Adjudication: The Supreme Court and OBC Reservations", Economic and Political Weekly, Delhi, October 24-30, 2009.
5. Kumar, V., "Dynamics of reservation policy", Indian Law Institute, 2008.
6. Deshpande, S. and Y. Yadav, "Redesigning Affirmative Actions: Castes and Benefits of Higher Education", Economic and Political Weekly, Delhi, June 17, 2006.

7. Srinivas, K., “Demystifying the Anti creamy layer”, Economic and Political Weekly, February 2, 2007.
8. Prakash Ved, “Trends in Growth and Financing of Higher Education in India”, Economic and Political Weekly, Delhi, August 4, 2007.
9. Ramaiah A., “Dalits’ Physical and Mental Health: Status, Root Causes and Challenges”, Tata Institute of Social Sciences, Mumbai, India, 2007.
10. Chaudhury, P., “The ‘creamy layer’”, Economic and Political Weekly, May 21, 2004.
11. Annual Report, Ministry of Personnel, Public Grievances and Pensions, Government of India, New Delhi, 2002-2003, Chapter5, Paragraph 5.2
12. Kumar, P., “Reservations within reservation: Real Dalit-Bahujans”, Economic and Political Weekly, September 21, 2001.

#### **CASE REFERENCES-**

1. Ashok Kumar Thakur vs Union of India 2008 6 SCC 1
2. Madras vs Champakan Dorairajan AIR 1951 SC 226
3. M.R Balaji vs State of Mysore AIR 1963 SC 649
4. Devdasan vs. UOI AIR 1964 SC 179
5. M.Nagaraj & Others vs Union of India & Others (2006) 8 SCC 212
6. Indra Sawhney & Others v. Union of India AIR 1993 SC 477
7. Jarnail Singh vs Lachhmi Narain Gupta AIR 2018 SC 1641

#### **RESEARCH PAPERS AND WEBSITES-**

1. Virginius Xaxa, “State, Society and Tribes: Issues in Post-Colonial India”, 2008, Pearson India Educational Services Pvt. Ltd.
2. Kailash Jeenger, ‘When It Comes to Reservations, the Supreme Court Needs to Change its Approach’, The Wire, April 1, 2021
3. Prakash, S. (n.d.). OBC seats, if vacant, will go to general category: SC. Hindustan Times. [https://www.hindustantimes.com/india/obc-seats-if-vacant-will-go-to-general-category-sc/story-CAR8CWXF1z1RUVsNX0EpTO\\_amp.html](https://www.hindustantimes.com/india/obc-seats-if-vacant-will-go-to-general-category-sc/story-CAR8CWXF1z1RUVsNX0EpTO_amp.html)

4. (2019, December 30). Creamy layer for SC's / ST's. Drishti. [https://www.drishtiiias.com/daily-updates/daily-news-editorials/creamy-layer-for-sc-s-st-s?\\_\\_cf\\_chl\\_jschl\\_tk\\_\\_=88eb64783d7ab7c62a7599bb51d66a1b4e7c1120-1616833002-0-AUmo7T\\_TvjlrhDUfZWBL8Y0dScmU-qYS8GWxiOBBUAFUxfGRD450HJvf7gkoJAH8-4Kf6VljQk2m06piNsk7CFDQ3magneXeIZDE-bhoX08JNiGgWOCItYQr4Sij4rort4aRJP-0NftrM3IDnreEkLmF7rfEo8MI9Vbc441Q18hrhMjHf18pNNWf5V1e3MFdBRcdcCvvgHBZKHcnnevP1rmXf499BgHs40ICwOLCzCQTcOM2jfgNDL7rim\\_dJ8-ycBbWPHa2eOnSiRV0WH4XvJ8oF5tqCKxKUdSLqu2nTIFAv0tum2MccUpJAPBh6q-QsD1QO\\_7yP\\_xifWYizcrY8nRWqDefNhWi2XG-QacxKE2-hMU9iiIYFLXO4A1KNzGeW4Y5OaZZjIeRoGTriQbDYbw](https://www.drishtiiias.com/daily-updates/daily-news-editorials/creamy-layer-for-sc-s-st-s?__cf_chl_jschl_tk__=88eb64783d7ab7c62a7599bb51d66a1b4e7c1120-1616833002-0-AUmo7T_TvjlrhDUfZWBL8Y0dScmU-qYS8GWxiOBBUAFUxfGRD450HJvf7gkoJAH8-4Kf6VljQk2m06piNsk7CFDQ3magneXeIZDE-bhoX08JNiGgWOCItYQr4Sij4rort4aRJP-0NftrM3IDnreEkLmF7rfEo8MI9Vbc441Q18hrhMjHf18pNNWf5V1e3MFdBRcdcCvvgHBZKHcnnevP1rmXf499BgHs40ICwOLCzCQTcOM2jfgNDL7rim_dJ8-ycBbWPHa2eOnSiRV0WH4XvJ8oF5tqCKxKUdSLqu2nTIFAv0tum2MccUpJAPBh6q-QsD1QO_7yP_xifWYizcrY8nRWqDefNhWi2XG-QacxKE2-hMU9iiIYFLXO4A1KNzGeW4Y5OaZZjIeRoGTriQbDYbw)
5. (2018, September 3). Article 15 Indian Constitution [Video]. Finology legal. <https://youtu.be/S1i06Jm2Kz4>
6. (2018, September 20). Article 16 fundamental right in Hindi [Video]. Finology legal. <https://youtu.be/wvgEFRJ02dE>
7. George, A. A. (2020, October 26). OBC Reservation Eligibility – Do you come under the Non-Creamy Layer? ClearIAS. <https://www.clearias.com/obc-reservation-eligibility/>
8. Venkataramanan, K. (2019, December 13). Should the creamy layer norm be extended to SC/STs? The Hindu. <https://www.thehindu.com/opinion/op-ed/should-the-creamy-layer-norm-be-extended-to-scsts/article30291026.ece>
9. Sharma, D. (2018, September 27). Applying creamy layer principle to SC/ST not invalid; collection of quantifiable data to show backwardness not allowed; Nagaraj case not to be reconsidered: SC. SCC Online Blog. <https://www.sconline.com/blog/post/2018/09/27/applying-creamy-layer-principle-to-sc-st-not-invalid-collection-of-quantifiable-data-to-show-backwardness-not-allowed-nagaraj-case-not-to-be-reconsidered-sc/>
10. Krishnan, A. (2019, December 11). Creamy layer principle in SC, ST quota for promotion: judgments, appeals. The Indian Express. <https://indianexpress.com/article/explained/explained-creamy-layer-principle-in-sc-st-quota-for-promotion-judgments-appeals-6157100/>

**ANNEXURE-I**

**QUESTIONNAIRE FOR GROUP-A**

*1. Who among your family members, have acquired education and are literate?*

---

---

*2. what is the occupation of your parents and siblings (if working)?*

---

---

***3. Mention any ancillary income of your family, if any (including agriculture, Trade, Part time job, Business, Rent on house or any other)***

---

---

***4. What do you aspire to be in your future?***

---

---

***5. According to you, how easy or how challenging is it for a person belonging to your community, to enter into an educational institution for availing higher education and fulfilling your desires as compared to the people belonging to other community? Give reasons.***

---

---

***6. What are your requirements for undertaking your preparation for job?***

---

---

***7. Do you avail any scholarship presently?***

---

---

***8. Who is your role model for future career?***

---

***9. In case of your friends from general castes/communities, how did they react when you got through the course in your college/university?***

---

---

***10. What were the Responses of your friends from general category, regarding your future careers?***

---

---

***11. According to you, should the principle of creamy layer be also made applicable to the SCs/STs community? Give reasons.***

---

---



**ANNEXURE-II**

**QUESTIONNAIRE FOR GROUP- B**

*1. Give details of the educational background of your family and relatives, both maternal and paternal.*

---

---

*2. Give details of how you pursued your education.*

---

---

***3. How long have you been working (in years).***

---

---

***4. How many promotions have you availed?***

---

---

***5. Have you availed any government quota for getting into your job? If yes, then how easy or difficult would it have been, for you in getting into your job without such quotas? If no, how difficult or easy was it for you in getting into such a job without availing any reservation?***

---

---

***6. As an individual, what do you think was the key factor/s in you getting this govt. Job?***

---

---

***7. As a family, how much difference has it made for you in society because you are having a govt. Job?***

---

---

***8. The effect and impact on the society on their availing of the government job.***

---

---

***9. Have you faced any humiliation etc. in your workplace because of you belonging to your community?***

---

---

***10. For your children, do you have full confidence that they can get through a good career without a quota? Yes, or No, Give reasons.***

---

---

***11. According to you, should the principle of creamy layer be also made applicable to the SCs/STs community? Give reasons.***

---

---