

INCOME AND QUOTAS: THE HINDU EDITORIAL ON CREAMY LAYER AND ECONOMIC CRITERION

Relevant for: Current Affairs | Topic: Important Aspects of Governance, Transparency & Accountability including Right to Information and Citizen Charter

The [Supreme Court's ruling](#) that economic criterion alone cannot be used to classify a member of a Backward Class as belonging to the 'creamy layer' adds an interesting nuance to the jurisprudence of affirmative action. There was a time when backwardness was primarily related to the inadequate social and educational advancement of a group. Ever since the Court, in [Indra Sawhney](#) (1992), introduced the concept of 'creamy layer' — a term describing the well-off among the Backward Classes — and declared that this section should be denied reservation benefits, the original idea of including groups based on social backwardness was matched by a parallel exercise to exclude the more advanced among them. This position has crystallised into law. Many support the formulation that once caste is accepted as a basis for determining backwardness, there is nothing wrong in excluding the affluent among the eligible castes. The Union government has unreservedly accepted the 'creamy layer' rule, and formulated criteria for identifying those who fall under the category. The proponents of economic criteria feel that genuine social justice means reservation benefits should be restricted to the poorer among the backward; while sections championing Backward Class assertion disfavour any dilution of the social basis for reservation.

The Court's latest judgment in a Haryana case corrects a grave error by the State. It has struck down a notification fixing an annual income of 6 lakh as the sole criterion to identify whether a family belongs to the creamy layer. It was contrary to *Indra Sawhney* that had spoken of different criteria, including being the children of high-ranking constitutional functionaries, employees of a certain rank in the Union and State governments, those affluent enough to employ others, or with significant property and agricultural holdings and, of course, an identified annual income. The Court has found that the Haryana criterion based on income alone was contrary to its own law that specifies that the creamy layer would be identified through social, economic and other factors. The Constitution permitted special provisions in favour of 'socially and educationally backward classes' through the first Amendment, as well as reservation in government employment for 'backward classes'. Judicial discourse introduced a 50% ceiling and the creamy layer concept as constitutional limitations on reservation benefits. However, the 103rd Constitution Amendment, by which 10% reservation for the 'economically weaker sections' (EWS) has been introduced, has significantly altered the affirmative action programme. With the current income ceiling being 8 lakh per annum for availing of both OBC and EWS quotas, there is a strange and questionable balance between the OBC and EWS segments in terms of eligibility, even though the size of the respective quotas vary.

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From the abrogation of the special status of Jammu and Kashmir, to the landmark Ayodhya verdict, 2019 proved to be an eventful year.

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