

**THE MYTH CALLED CREAMY LAYER:
THE INTENSION OF JUDICIARY
Vs
INTERVENTION OF POLITICS**

**YOUTH FOR EQUALITY
NEW DELHI
INDIA**

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A note on creamy layer in OBCs

1. The concept of creamy layer is born out of necessity when a caste is considered as a class. Inherently, a caste is a heterogeneous class and to make it a homogeneous class, the developed/advanced persons should be excluded by application of creamy layer principle. The members of a caste or community are supposed to receive benefits of State protection because they are socially /educationally/economically/ politically backward. They are not entitled for State protection because they belong to a particular caste/community. To receive the benefits of affirmative action, a person must qualify for being a member of the class in terms of levels of deprivation. If a person is advanced socially/educationally/economically/politically, he does not share the properties of that class any longer, and hence should not be considered for State protection.
2. In the present system of reservations, the quotas are tightly compartmentalized. Thus, if creamy layer is excluded, it is the weaker section of the OBCs who will be benefited. The so-called forward class has no advantage or disadvantage of exclusion of creamy layer. Even if some reserved seats remain vacant, these seats are non-transferable and the 'General Category' candidates will not get any benefit.
3. If "creamy layer" is not excluded, the "poor and deprived" are compelled to compete with "rich and powerful". In the present system, both the groups are treated equally by the State which is against the principle of "Equality" enshrined in Article 14, which is a basic feature of the Constitution.
4. Clause (2) of Article 38, says "the State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations." In the present system, the already advanced section among OBCs take away all the benefits of reservation, leaving the weakest among them high and dry. This increases the inequalities. Clearly, this is against the spirit of Article 38(2) of the Constitution.
5. It should be amply clear that "creamy layer" principle is for the safeguard of welfare of real deprived and backward people among so-called OBCs. By exclusion of 'creamy layer' among OBCs, the so-called 'forward classes' are not going to receive any benefit. As explained above in point 2, the 'forward classes' will not get even the vacant reserved seats. Contrary to this, when the creamy layer among OBCs is excluded from reservation, they will compete with forward classes for "general category" or "open category" seats and thus reduce the chances of selection of a forward class candidate.
6. In a balancing act, the Supreme Court in Indira Sawhney case ordered to exclude the creamy layer while upholding the caste as a 'backward class'. However, there were two loose threads:
 - (i). The Court failed to provide clear guidelines to define the creamy layer.
 - (ii) The methodology to implement was also left to the government.

This resulted in:

- (i) Non-implementation of the principle of creamy layer (eg Tamil Nadu).
- (ii) Arbitrary and unrealistic definition of creamy layer. In 1993-94, State of Bihar and Uttar Pradesh came out with an income ceiling of Rs 1,000,000 per year (**Rs Ten Lakhs annually**). Though these criteria were struck by the Supreme Court, various states have tried to raise the limits irrationally. Recently, Andhra Pradesh has proposed to raise the limit to Rs 4,00,000 per year.

- (iii) Evading the Supreme Court order. The Kerala State told that there is no creamy layer in the State.
- (iv) Non-implementation of creamy layer: Presently, it is just a declaration in the caste certificate about the creamy layer status. Though the definition of creamy layer takes in account the income of recent three years, the caste certificate once obtained is valid life long and the candidate has to self-declare about the creamy layer status. The appointing authorities or the academic institutions have been entrusted the responsibility to investigate if required. Neither detailed, authentic information is asked from the candidate, nor do these institutions have necessary infrastructure to verify the claim. It is impossible for a college or academic institution to verify the creamy layer status of hundreds or thousands its students every year. Till now, there is not a single known instance where the state governments or central government has verified and excluded the creamy layer candidate.

7. Concerns: In recent arguments against the quota in central educational institutions, the Supreme Court has shown its inclination to exclude the creamy layer. If the Court repeats Indira Sawhney verdict (Upholding caste and excluding creamy layer), the overall impact will be zero and this will be a futile exercise.

The current definition of creamy layer: A document of falsehood

The Creamy layer guidelines were developed by the “Expert Committee for specifying the criteria for identification of socially advanced persons among the socially and educationally backward classes”. This Committee was headed by Justice (retired) R N Prasad, and submitted its report on 10.3. 93. (**Annexure I & II**) On the basis of this report, the Government of India issued the guidelines to define the ‘Creamy layer’ (**Annexure III**) The guidelines were subsequently modified in year 2004.(**Annexure IV & V**) From the inception, efforts were to include more and more of advanced sections of OBCs in the ambit of reservations. Just reading few paragraphs from the ‘conclusion’ of the report will reflect the intensions of the Committee:

35. Hon'ble Mr. Justice Pandian does not subscribe to the "creamy layer" theory. Dealing with the oft-repeated criticism that the reserved posts are lapped up by the socially advanced ("creamy layer") among the socially and educationally backward classes, Pandian J. has quoted with approval the observation of Chinnappa Reddy J. in the case of Vas ant Kumar. The relevant passage is given below:-

" ... That a few of the seats and posts reserved for backward classes are snatched away by the more fortunate among them is not to say that reservation is not necessary. This is bound to happen in a competitive society such as ours. Are not the unreserved seats and posts snatched away, in the same way, by the top creamy layers amongst them on the same principle of merit on which the non-reserved seats are taken away by the top layers of society. How can it be bad if reserved seats and posts are snatched away by the creamy layer of backward classes, if such snatching away unreserved posts by the top creamy layer of society itself is not bad?"

Pandian J. says "The above observation, in my view, is an apt reply to such a criticism with which I am in full agreement".

38. What the Supreme Court has directed is identification of the "creamy layer". This obviously means that we have not to take note of sprinklings of cream or the mere appearance of cream at the surface. Only when the "creamy layer" is substantial and stable, formed after crossing the Rubicon of social backwardness, then and then alone can it be made the basis for disentanglement. In such a situation, can it be said that adopting a rule of caution and erring on the right side is not justified? Apprehension has been expressed, and rightly, that applying the rule of exclusion on the ground of social advancement may be counter-productive, inasmuch as by excluding those who have become capable of facing the fierce competition for appointment in the services what will remain are those of the socially backward who are simply not equipped and ready to face the competition and this will have the effect of many of the reserved seats being left vacant.....

Comment: Out of all the judgments in Indra Sawhney case, the Committee has chosen the Judgment of Justice Pandian who had not supported the concept of creamy layer. Secondly, the Committee believed that the "creamy layer" must be substantially thick before it could be considered for removal.

Further, in 2004, the Committee observes:

*"-----it is our considered view that when prescribing an income limit for excluding the creamy layer, it is to be ensured that the economic strength of the excluded section is sufficiently sound as to mean their social and educational standing **on par or comparable with the creamy layer sections among forward castes/communities**, so that they can compete on equal footings."*

Comments: Clearly, the Committee is concerned with the welfare of rich, powerful, and advanced section of OBCs. The Committee is least concerned about the welfare of really deprived, poor, and resourceless OBCs whose share is gobbled up by the creamy layer.

In fact, with the present definition and methodology of implementation, only a miniscule of advanced and powerful OBCs could be weeded out. At the time of obtaining OBC certificate, it is the self declaration of the candidate which is sufficient. No detailed information is obtained. Secondly, the criteria are also ineffective. Let us have a look at the criteria prescribed and the reality:

1. Presently, creamy layer definition is limited to one generation only, i.e., to parents only. Even if the grandfather is an IAS or an industrialist, it is not considered for definition of creamy layer.
2. Creamy layer definition is used in relation to sons/daughters only. Even if a person is an IAS, he or she is considered backward life-long. There is no time cap by which such persons could be considered advanced.
3. Husband's status is not considered to define advancement of a lady. Even if an OBC girl is married to an IAS officer, she will be backward life-long.

4. Apart from few constitutional posts, none of the politicians has been included in the creamy layer. All the MPs and MLAs are considered backward. **Even the ministers are considered backward. (Annexure VI)**
5. Almost all the Class II officers are excluded from creamy layer. Creamy layer principle is applicable only when both the father and mother of the candidate are Class II officer or either of them is promoted to Class I post before the age of 40 years, or either of them had a foreign assignment for more than 5 years. Even if, the total emoluments of the father/mother are more than 2.5 lakhs, creamy layer principle does not apply.
6. In defense services, only Officers equal to above the rank of Colonel are considered in the creamy layer. The officers in lower ranks very well cross the upper income limit of 2.5 lakhs. Apart from income, the other facilities provided to such officers are also not taken into consideration.
7. Income of husband and wife is not clubbed together to define creamy layer. If both the husband and wife earn Rs 2.40 lakhs each, creamy layer principle does not apply to their children.
8. Income from salary and agricultural income is not clubbed together.
9. **Land holding:** Initially persons having irrigated land equal to or more than 65% of statutory ceiling limit were included in creamy layer. Under pressure of powerful OBC land-owners, the limit was raised to 85%. In various States, the ceiling limit for irrigated land varies from 12 to 18 acres of irrigated land (**Annexure VII**). This is approximately 5 to 7 hectares (1 Acre = 0.404686 Hectares). As per current survey, only 3.6 % land holdings in the country are above the size of 4.0 hectares (**Annexure VIII**). Thus, practically a negligible proportion of population is covered with creamy layer definition which comprises only those people who may be equal only to the forward most of the advanced sections.
10. Only Un-irrigated land, whatever may be the size, has not been considered to define creamy layer.
11. Several States do not have upper ceiling limit.
12. Mango, citrus, apple, and other similar plantations have been considered similar to agricultural land and same ceiling limit principle has been applied.
13. The annual upper income limit was Rs 1,00,000 (one lakh) in the year 1993-94, which has been raised to Rs 2,50,000 in the year 2004. Now look at the income distribution of Indian Population (**Annexure IX**):

| Income Group | Approximate Annual Income of family (Rs) | Percentage of population |
|--------------|--|--------------------------|
| < BL | < 20,000 | 21.8 |
| PL to 2 PL | 20000-40,000 | 55.0 |
| 2 PL to 4 PL | 40,000-80,000 | 19.3 |
| >4 PL | > 80,000 | 4.0 |

(Official poverty line defined in terms of per capita expenditure of less than Rs 11.6 per person per day. The average family size is considered to 4 persons per family.)

This shows that :

- a. About 21.8 % population is below poverty line.
- b. Another 55% population is at poverty threshold.
- c. Another 19.3 % population is just above poverty threshold.
- d. Only 4.0% families have an income more than Rs 80,000 per year.
- e. Out of these 4 % families, hardly 1% can be expected to be having an income of more than 2,50,000 per year. Considering the backwardness of OBCs, this number should be well below 1%.

Clearly, with present income limit , only less than 1% population can be excluded.

14. Previously, whenever State Governments applied the ‘mean test’ to exclude the advanced section of OBCs, Income Tax limit was the Gold Standard. .Let us see what the NCBC has done:

| Year | Annual income for Income Tax exemption (Annexure X) | Creamy layer definition in terms of annual income |
|------|---|---|
| 1993 | 28,000 | 1,00,000 |
| 2004 | 50,000 | 2,50,000 |

The initial limit which itself was set to be very high (three and half times of income tax exemption limit) has been further raised (Five times of income tax exemption limit).

All these facts clearly show that:

1. **The Government of India and its policy makers never believed in the principle of ‘creamy layer’.**
2. **Compelled by the Supreme Court, the Government came out with ‘sham’ definitions of creamy layer.**
3. **The purpose of the Government is to provide benefits of reservation to the rich, advanced and powerful people among OBC castes.**
4. **The Government is least concerned about the welfare of really deprived and backward people.**

Details of Annexure

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Annual Report

2003-2004

(1st April, 2003 to 31st March, 2004)

National Commission for Backward Classes
Trikoort-I, Bhikaiji Cama Place,
New Delhi-110066

3rd February, 2005

No.12011/16/93-BCC(C)
GOVERNMENT OF INDIA
MINISTRY OF WELFARE
New Delhi, the 22nd February, 1993
RESOLUTION

The Supreme Court, in its Majority Judgement in Writ Petition (Civil) No.930 of 1990, Indra-Sawhney and Others etc. Vs. Union of India and Others etc., delivered on 16th November, 1992 has, inter-alia, directed that “within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections (‘creamy layer’) from ‘Other Backward Classes’ and further that the implementation of the impugned O.M. dated 13th August, 1990 shall be subject to exclusion of such socially advanced persons (‘creamy layer’)”.

2. Having regard to the fact that a lot of specialised inputs would be needed to determine the bases viz., socio-economic criteria for identification of the ‘creamy layer’, it has been decided to set up an Expert Committee consisting of:

- | | |
|---|------------------|
| 1. Justice Ram Nandan Prasad (Retd.) High Court Patna | Chairman |
| 2. Shri M.L. Sahare (Social Scientist) Former Chairman, U.P.S.C. | Member |
| 3. Shri P.S. Krishnan Former Secretary (Welfare), Govt. of India | Member |
| 4. Shri R.J. Majithia Former Chairman, Revenue Board Government of Rajasthan | Member-Secretary |

to make recommendations to the Govt. of India, in regard to the said socio-economic criteria. The Committee will also give recommendations on such other matters relating to the implementation of the judgement of the Supreme Court, as the Government of India may consider necessary.

3. The Headquarters of the Committee will be located at Delhi.

4. The Committee will devise its own procedures in the discharge of its functions. All the Ministries and Departments of the Government of India will furnish such information and documents and provide such assistance as may be required by the Committee. It is hoped that the State Governments and Union Territory Administrations and others concerned will extend their fullest cooperation and assistance to the Committee.

5. The Committee shall submit its Report on the socio-economic criteria for exclusion of the ‘creamy layer’ from Other Backward Classes latest by 10th March, 1993.

Sd/-
(M.S. PANDIT)
Jt. Secy. (M&BC)

ORDER

ORDERED that a copy of the resolution be communicated to all Ministries/Departments of the Government of India/State Governments and U.T. Administrations.

ORDERED also that the resolution be published in the Gazette of India for general information.

Sd/-
(M.S. PANDIT)
Jt. Secy. (M&BC)

Annual Report

2003-2004
(1st April, 2003 to 31st March, 2004)

National Commission for Backward Classes
Trikoort-I, Bhikaiji Cama Place,
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3rd February, 2005

Report of the Expert Committee for specifying the criteria for identification of socially advanced persons among the socially and educationally backward classes.

The 9-Member Constitution Bench of the Supreme Court of India delivered its historic judgement in the Reservation case relating to Socially and Educationally Backward Classes (Indra Sawhney and Others Vs. the Union of India and Others) on the 16th of November, 1992. The case arose out of several Writ Petitions filed to challenge the Office Memorandum dated 13th August, 1990 and the Office Memorandum dated 25th September, 1991 issued by the Government of India for implementing, according to the respective modes prescribed in the two office Memoranda, the recommendations for reservation for Socially and Educationally Backward Classes (SEBCs) in public employment, made by the Second Backward Classes Commission appointed under Article 340 of the Constitution, popularly known as the Mandal Commission.

2. The Supreme Court while upholding by majority the basic principle of reservation for the SEBCs have at the same time, directed that the socially advanced persons of the SEBCs category ought not to be given the benefit of reservation. In order to carry out this directive and specifying and determining as to who from amongst the SEBCs would be liable to be excluded from the benefit of reservation, the Government has appointed the Expert Committee as per Resolution No.12011/16/93-BCC(C) dated the 22nd February, 1993 of the Ministry of Welfare, Government of India. The Court has also directed that the reservation shall not become operative till the criteria to exclude the socially advanced persons are ascertained and specified.

3. Four Hon'ble Judges who were members of the Special Bench, namely, the then Hon'ble Chief Justice M.H. Kania, Hon'ble Justice M.N. Venkatachaliah (now Chief Justice), Hon'ble Justice A.M. Ahmadi and Hon'ble Justice B.P. Jeevan Reddy, delivered a common Judgement written out by Hon'ble Justice B.P. Jeevan Reddy and this is known as the majority judgement and we shall refer to it as such in our report. Hon'ble Justice S.R. Pandian and Hon'ble Justice P.B. Sawant have, now doubt, written out separate judgements of their own, but they have in substance supported most of the conclusions of the majority judgement and we will refer to the judgements of these two Hon'ble Judges by their respective names. The dissenting judgements separately written out by Hon'ble Justice T.K. Thommen, Hon'ble Justice Kuldip Singh and Hon'ble Justice R.M. Sahai have a common operative order and this is known as the dissenting judgement and we shall refer, if need be, to the same in the above terminology. When we refer to the ratio decidendi of the entire judgement we will be referring to it as the judgement of the Court.

4. It is necessary to bear in mind that the Court has accepted the principle of reservation on the reasoning that the SEBCs on account of their social and educational backwardness are truly in need of reservation. In other words, the dominant consideration for upholding the reservation is the social and educational backwardness and not the income test, although in actual life it mostly happens that economic backwardness is a natural consequence of the social and educational backwardness. It logically follows, therefore, that for determining who from amongst the SEBCs shall be denied the benefit of reservation, the basics again would be the social and educational factors and only when the advancement in this regard is such as to put that person at par with the forward classes that he may be placed in the excluded category. In the majority judgement, it has been observed that only when a person's social and educational advancement is such that it totally snaps the connecting link of backwardness between him and other members of his community, he can then be said to be a misfit in his own class and so ought to be taken out from there and placed in the "Creamy Layer" category.

The following passage in the judgement of Hon'ble Justice Sawant (paragraph 522 Judgements Today Vol. VI No.9 30th November, 1992) elaborates the point more succinctly:- "The correct criterion for judging the forwardness of the forwards among the Backward Classes is to measure their capacity not in terms of the capacity of others in their class, but in terms of the capacity of the members of the Forward Classes, as stated earlier. If they cross the Rubicon of backwardness, they should be taken out from the Backward Classes and should be made disentitled to the provisions meant for the said classes". Hence while determining the criteria of exclusion we have kept in mind the guiding principle laid down by the Hon'ble Court as mentioned above. However, if economic betterment flows from social and educational advancement, then this also has to be taken note of.

5. Before specification of the actual determinants is taken up, it will be useful, nay necessary, to indicate and explain what exactly the term "Creamy Layer" or the Rule of Exclusion in actual application would imply. When a person has been able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade / profession of high status, as categorised by us below, he at that stage is normally no longer in need of reservation for himself. For example, if a person gets appointed as a Class I Officer either on open competition basis or reservation basis, the question of excluding him on the ground that he forms part of the 'Creamy Layer' does not at all arise. But since he himself has come into the socially advanced category he will be in a position to provide the means, the equipment and the opportunities which are necessary for the uplift of his offspring from the level of social and educational backwardness. As such, the question of applying the Rule of Exclusion will arise only in the case of his offspring. In the present social set-up, when the joint family system, particularly among the upper strata of society, has been breaking up, we are regarding the family to constitute husband, wife and children and on that basis applying the exclusion principle. In other words, even if a person, say Mr. "X", has become a Class I Officer, this will not deprive his brother and sister of the benefit of reservation on the basis that Mr. "X" has become a Class I Officer. The question as to whether the brother or sister of Mr. "X" will or will not get the benefit of reservation shall depend upon the status of their parents.

6. Now we proceed to indicate and define the criteria for application of the Rule of Exclusion. The rise in social and educational status may result from different kinds of positions and placements in life and we shall deal with them one by one as noted below. To the categories listed below, the Rule of Exclusion will apply unless exceptions are specifically indicated.

I. CONSTITUTIONAL POSTS

7. President, Vice-President, Judges of the Supreme Court and High Courts, Chairman/Members of the Union Public Service Commission and State Public Service Commissions, Chief Election Commissioner, Comptroller and Auditor General of India and persons holding Constitutional positions of like nature. The Constitutional posts of Governor, Minister and Membership of Legislatures, are, in the very nature of things, temporary and often transitory. Further, in most cases such persons would be covered in one or the other categories which have been enumerated in this report. Hence such persons have not been separately categorised.

II. SERVICE CATEGORY

A. Group A/Class I Officers of the All-India, Central and State Services (Direct Recruits)

8. If either of the spouses is a Class I Officer rule of exclusion will apply. Where both spouses are Class I Officers and one of them dies the situation remains unchanged and the rule of exclusion will apply. However, if both of them die then obviously, the offspring are not only left to suffer mental agony and hardships in different ways but they are also denied the benefits and status resulting from the posts of their parents, and due to this disadvantage thrust upon them, the children shall not be denied the benefits of reservation, i.e. the rule of exclusion will not apply to them. It may be noted that a permanent incapacitation occurs which results in putting an officer out of service, then it shall be treated as equivalent to death so far as the application of rule of exclusion to the offspring is concerned. Hereafter, wherever death has been mentioned it shall include permanent incapacitation as stated above. To the unfortunate situation of death or permanent incapacitation of the only spouse who is in this category of service, or of both spouses who are in this category of service, an exception has to be recorded. If before the unfortunate event of death of either of or both such spouses occurs, either of the spouses has had the benefit of employment in any international organisation like the UN, IMF, World Bank etc. for a period of not less than five years then exclusion from the benefit of reservation will continue to apply to the offspring.

9. It sometimes may happen that a lady has got married to a Class I Officer may herself like to apply for a job. If she belongs to SEBC category, she will not be disentitled by the rule of exclusion. The reason for saying so is that originally having been a member of SEBC, she carries with her the attributes of backwardness even after she is married to a Class I Officer and though she may economically be in a better position, the initial attributes of social backwardness continue to linger on and will not get shaken off during the short period (in view of the age limit) which will be available to her for getting into any service employment. Therefore, we consider that such a person, more so because she is a lady (which in our society may be generally regarded as a weaker class) should not be denied the benefit of reservation. Therefore, to such a lady rule of exclusion will not apply.

B. Group B/Class II – Central Services and State Services (Direct Recruitment)

10. If both spouses are Class II Officers then rule of exclusion will apply to their offspring. If only one of the spouses is a Class II Officer it will not apply, but if a male officer from Class II category gets into Class I category at the age of forty or earlier, then the rule of exclusion will apply to his offspring. Where both spouses are Class II Officers and one of them dies, it is better to let the children have the benefit of reservation which means rule of exclusion will not apply; however, if either of the spouses has had the benefit employment in any international organisation, as indicated above, for a period of not less than five years, then even in the event of death the application of the rule of exclusion will not be taken away. But if by great misfortune both the spouses die, then the rule of exclusion will not apply to the offspring even if one of the spouses has had the benefit of employment in an international organisation.

11. Where the husband is a Class I Officer (Direct Recruit or pre-forty promoted) and the wife is a Class II Officer and the husband dies, the rule of exclusion will not apply. Also when the wife is a Class I Officer (i.e. Direct Recruit or pre-forty promoted) and the husband is a Class II Officer and the wife dies the rule of exclusion will not apply but if the husband dies the rule of exclusion will apply on the principle that one of the parents, namely, the mother continues to be a Class I Officer.

C. Employment in Public Sector Undertakings etc.

12. The service category is not confined to employment under the Government only, whether at the Union or at the State level. The criteria enumerated above will apply mutatis mutandis to officers holding equivalent or

comparable posts in public sector undertakings, banks, insurance organisations, universities, etc. and also to equivalent or comparable posts and positions under private employment.

13. The evaluation of the posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of persons under this category, it is made clear that so long as the evaluation process is not completed and made operative, the income / wealth test under Item VI will govern the persons under this category. In other words, even during the interim period, the employees under this category will get the benefit of reservation, and if any exclusion is to be made it shall be on the basis of the criterion under Item VI.

III. ARMED FORCES INCLUDING PARA MILITARY FORCES (this will not include persons holding civil posts)

14. The exclusion rule will apply at the level of Colonel and above in the Army and to equivalent posts in the Navy and the Air Force and the Para Military Forces. If the wife of an Armed Forces Officer is herself in the Armed Forces (i.e. the category under consideration) the rule of exclusion will apply only when she herself has reached the rank of Colonel: the service ranks below Colonel of husband and wife shall not be clubbed together. Even if the wife of an officer in the Armed Forces is in civil employment, this will not be taken into account for applying the rule of exclusion, unless she falls in the service category under Item No.11 in which case the criteria and conditions enumerated therein will apply to her independently. In making these recommendations, we have borne in mind the peculiar nature of the service and hardships faced by the members of the Armed Forces and the Para Military Forces. It has also to be remembered that there is no reservation in recruitment to the Armed Forces, which means that a person at the stage of recruitment in these services is denied the benefit of reservation even though he may otherwise be entitled to it.

IV. PROFESSIONAL CLASS AND THOSE ENGAGED IN TRADE, BUSINESS AND INDUSTRY

15. This will include persons not in service employment either Government or private, but those who are engaged in professions as a doctor, lawyer, chartered accountant, income-tax consultant, financial or management consultant, dental surgeon, engineer, architect, computer specialist, film artiste and other film professional, author, playwright, sports person, sports professional, media professional or any other vocations of like status. All these persons for the purpose of determining whether they will fall in the disentitled category or not will be governed by the income/wealth criterion as noted in Item No. VI. Likewise, persons engaged in trade, business and industry will be governed by the income/wealth criterion.

16. In a situation where the husband is in some profession and the wife is in a Class II or lower grade employment, the income / wealth test will apply only on the basis of the husband's income; in other words, the wife's employment will not be taken into account. If the wife is in any profession and the husband is in employment in a Class II or a lower rank post, then the income/wealth criterion will apply only on the basis of the wife's income and the husband's income will not be clubbed with it. The rationale is to avoid discouragement of women entering service or professions in a gender-discriminating society such as ours.

V. PROPERTY OWNERS

A. Agricultural Land Holdings

17. It may not only be difficult but hazardous to prescribe any criteria on the basis of income from agricultural land holdings and this is borne out by the following observations in paragraph 809 of the majority judgement (Judgements Today):-

“Further, income from agriculture may be difficult to assess and, therefore, in the case of agriculturists, the line may have to be drawn with reference to the extent of holding. While the income of a person can be taken as a measure of his social advancement, the limit to be prescribed should not be such as to result in taking away with one hand what is given with the other.”

So we proceed to indicate the criteria on the basis of the extent of land holding.

18. If a person belongs to a family (father, mother and minor children) which owns only irrigated land, and the extent of irrigated land is equal to or more than 65% of the statutory ceiling area, then the disentitlement will occur. It generally happens that a person holds different types of irrigated land. In such a situation, the different types of lands should, on the basis of the conversion formula existing, be brought into a single type of irrigated land as a common denominator and on the basis of such denominator, the above cut-off point of 65% will have to be determined.

19. The rule of exclusion will not disentitle persons belonging to families owning only irrigated land irrespective of the area of such land. This is on account of the constraints imposed on and implicit in unirrigated cultivation.

20. In the case of members of a family owning both irrigated and unirrigated land, the exclusion rule will apply where the pre-condition exists that the irrigated area (having been brought to a single type under a common denominator) is 40% or more of the statutory ceiling limit for irrigated land (this being calculated by excluding the unirrigated portion). If this precondition of not less than 40% exists, then only the area of unirrigated land will be taken into account. This will be done by converting the unirrigated land on the basis of the conversion formula existing, into the irrigated type. The irrigated area so computed from unirrigated land shall be added to the actual area of irrigated land, and if after such clubbing together the total area in terms of irrigated land is 65% or more of the statutory ceiling limit for irrigated land, then the rule of exclusion will apply and disentitlement will occur.

21. On the basis of data supplied to us, we find that there is no Ceiling Law in the States of Nagaland, Mizoram, Meghalaya, Arunachal Pradesh and Goa and in the Union Territories of Andaman & Nicobar Islands, Lakshadweep, Daman & Diu. Apparently this is on account of the peculiar situation prevailing in these areas including topography, climatic conditions, etc. Under the circumstances the exclusion rule on the basis of land holding will not be applicable here. However, if at a future date Ceiling Law is enacted for any of such States or Union Territories, it would then have to be considered and determined if the rule of exclusion on the basis of land holding criterion will be made applicable or not and if so, in what manner.

B. Plantations

22. The plantations like coffee, tea, rubber, etc. which are not regarded as agricultural holdings will come under this category. Since they are not regarded as agricultural holdings, they are not covered by ceiling laws. Therefore, the criterion at “A” above cannot apply to them and there is no alternative but to apply the criterion of income / wealth under Item No.VI.

23. From the data supplied to us, it appears that mango, citrus, apple plantations, etc., are regarded as agricultural holdings and they will be covered by the criterion at 'A' above.

C. Vacant land and/or buildings in urban areas or urban agglomeration

24. To identify those whom come under this category the criterion of income / wealth under Item No. VI will apply. When we refer to a building it is made clear that the building may be used for residential, industrial or commercial purposes and the like, or two or more such purposes.

VI. INCOME/WEALTH TEST

25. This criterion is on the basis of income or wealth. We are conscious of the fact that in the majority judgement and the judgements of Pandian and Sawant, JJ it has been clearly emphasised that when placing a person in the excluded category, it should be unmistakably evident that social backwardness has come to an end. Their Lordships have emphasized that unless there is social advancement to such a degree as to bring a member of the SEBC more or less at par with the members of the forward classes, he should not be denied the benefit of reservation.

26. Since the people of this country are engaged in innumerable types of vocations and callings, it is simply not possible to assess the degree of social backwardness or advancement by specifying each one of such vocations for callings and under these circumstances, we have to take recourse to the only discernible criterion available, namely the criterion of income or wealth. As such, this category may be said to be the residuary category. However, while prescribing the limit for this category, it has been kept in view that improvement in economic condition is so marked as to necessarily imply social advancement. Thus, here the rise in social status is presumption based indicating that it has followed necessarily from the economic betterment. This aspect of treating social advancement on the basis of presumption has been kept in mind in prescribing the limit of gross income. In this connection, the following passage occurring in paragraph 809 of the majority judgement may be usefully quoted:

“The basis of exclusion should not merely be economic, unless of course the economic advancement is so high that it necessarily means social advancement.” (vide Judgement Today Vol. VI, No.9 Nov. 30. 1992)

Hence, persons having gross annual income of Rs.1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act will be excluded from the benefit of reservation. Only when such level of income or wealth has a consistency for a reasonable period will it be justifiable to regard a person as socially advanced on the basis of income. We consider a period of three consecutive year to be a reasonable period for the purpose of the application of the criteria under consideration.

27. In addition to the above, we have to say that the income/wealth test governs categories IV, VB and VC as stated earlier. For the remaining categories, namely, I, II, III and VA, specific criteria have been laid down: however, if in these categories, any person, who is not disentitled to the benefit of reservation, has income from other sources or wealth, which will bring him within the criterion under Item No. VI, then he shall be disentitled to reservation, in case his income – without clubbing his income from salaries or agricultural land – or his wealth is in excess of cut-off point prescribed under the income/wealth criteria.

28. Since the rupee value is bound to undergo change the income criterion in terms of the rupee as stated above will accordingly stand modified with change in the value. The modification exercise may, normally speaking, be undertaken every three years but if the situation so demands the interregnum may be less.

29. Persons working as artisans or engaged in the hereditary occupations, callings, etc., like potters, washermen, barbers, etc., are exempted from application of the rule of exclusion.

30. The Supreme Court Judgement indicates that classifying the socially and educationally backward classes into two or more categories (backward, more backward, most backward and if necessary, further sub-categorisation) is not only desirable but perhaps actually necessary. As and when such categorisation is done we feel that for those fall in the two lowest strata at the bottom, i.e., the strata having the maximum backwardness, the application of the rule of exclusion may be kept in abeyance on the reasoning that the process of “creamy layer” formation will take more time in their case. While doing so the Government may examine its legal permissibility in terms of the Supreme Court Judgement.

31. We are aware of the strain imposed on candidates who seek certificates of caste, etc. The strain for them and the existing administrative machinery will be all the more where certification is required not only of caste but that the candidate is or is not affected by any of the criteria of exclusion. In order that SEBC candidates are not put to any harassment in this regard, we recommend that Government may make smooth and satisfactory arrangements for the issue of such certificates without delay and without any difficulty. Government have created a single window system for entrepreneurs applying for certificates and facilities for setting up new industries. Similarly, an appropriate single window system needs to be created at State/District level and necessary guidelines to be issued to see that correct certificates are issued promptly, and without harassment to the applicants.

32. We are also aware of the fact that in some cases false certificates of caste are issued to candidates who do not belong to the reserved categories. In order to prevent this and to ensure that certificates of caste as well as exclusion/non-exclusion criteria are factually correct, innovative arrangements such as transparency through steps like publication in the village/mohalla/panchayat raj offices, etc., may be considered.

CONCLUSION

33. In specifying the determinants and prescribing the different formulations therein, we have adopted a pragmatic approach and we have considered it prudent as well as desirable to err on the right side. In other words, where it appeared while defining the criteria that a more strict formulation would have the possible effect of excluding more than it ought to, we have chosen not to adopt such a course. And for this approach of ours we find support from observations in different judgements of the Special Bench as well as from other sources.

34. Reservation has been adopted as a remedy for curing the historical discrimination and its continuing ill-effects in public employment. That being the object in view, the denial of reservation to any member of a socially and educationally backward class is, and has to be, treated as an exception. In identifying such an exception, i.e. applying the rule of exclusion, it has to be ensured that the ill-effects have been fully and finally eliminated and no grey zone is discernible. The nature of such an exercise itself makes the rule of caution inherent.

35. Hon'ble Mr. Justice Pandian does not subscribe to the "creamy layer" theory. Dealing with the oft-repeated criticism that the reserved posts are lapped up by the socially advanced ("creamy layer") among the socially and educationally backward classes, Pandian J. has quoted with approval the observation of Chinnappa Reddy J. in the case of Vasant Kumar. The relevant passage is given below:-

"...That a few of the seats and posts reserved for backward classes are snatched away by the more fortunate among them is not to say that reservation is not necessary. This is bound to happen in a competitive society such as ours. Are not the unreserved seats and posts snatched away, in the same way, by the top creamy layers amongst them on the same principle of merit on which the non-reserved seats are taken away by the top layers of society. How can it be bad if reserved seats and posts are snatched away by the creamy layer of backward classes, if such snatching away unreserved posts by the top creamy layer of society itself is not bad?"

Pandian J. says "The above observation, in my view, is an apt reply to such a criticism with which I am in full agreement." (Paragraph 229 and 230 Judgements Today)

36. Another passage from the judgement of Hon'ble Mr. Justice Pandian justifies the rule of caution and of erring on the right side adopted by us. The passage is as below: "It is after 42 years since the advent of our Constitution, the Government is taking the first step to implement this scheme of reservation for OBCs under Article 16(4). In fact, some of the States have not even introduced policy of reservation in the matters of public employment in favour of OBCs." (Paragraph 225 Judgements Today)

37. In the above context would it not be proper, nay desirable to let there be acceleration and let some distance be covered before we apply the brakes?

38. What the Supreme Court has directed is identification of the "creamy layer". This obviously means that we have not to take note of sprinklings of cream or the mere appearance of cream at the surface. Only when the "creamy layer" is substantial and stable, formed after crossing the Rubicon of social backwardness, then and then alone can it be made the basis for disentitlement. In such a situation, can it be said that adopting a rule of caution and erring on the right side is not justified? Apprehension has been expressed, and rightly, that applying the rule of exclusion on the ground of social advancement may be counter-productive, inasmuch as by excluding those who have become capable of facing the fierce competition for appointment in the services what will remain are those of the socially backward who are simply not equipped and ready to face the competition and this will have the effect of many of the reserved seats being left vacant. The well-known writer and columnist, Mr. S. Sahay is one among many who have expressed such an apprehension. In an article entitled "A Moment of Truth" published in the Hindustan Times, Patna Edition dated 26-11-1992, this is what he has to say:

"...Approval in principle of the concept of backward and more backward is rational and so is the exclusion of the creamy layer. However, the consequences in the immediate future of the exclusion of the creamy layer, even though desirable and necessary, are not going to be happy...The poor remain both poor and uneducated. Count the cost of education today and realise for yourself whether the boy or girl from the chaupal has ever the chance of getting a higher appointment under the Central Government. Even now the reserved jobs for the Scheduled Castes and Tribes are not fully filled. Would the lot of the OBCs be any better, especially after excluding the creamy layer?"

39. We can cite many more such questions and also give more reasons in support of the approach which we have adopted, but in our opinion what we have said above is sufficient to highlight the point under consideration.

40. We are happy to say that all the Members of this Expert Committee have worked day and night in a spirit of cooperation and understanding with each other. There has been free and frank exchange of views on almost every point dealt with in this Report and thereafter the Committee has arrived at a consensus on the basis of which the criteria have been laid down.

41. For its deliberations, the Committee had to gather and examine a large volume of literature and documents including the judgement under consideration (Indra Sawhney & Others), various other related judgements on the subjects, report of the Mandal Commission, report of Chinnappa Reddy Commission, reports of the various State Commissions on OBCs/SEBCs. We have had also to look into a large amount of data furnished by the Ministry of Welfare itself or by other Ministries / Departments through the Ministry of Welfare which had relevance to or threw light on the points under consideration.

42. It is not out of place to mention that formulation of the criteria for ascertainment of the socially advanced among the SEBC (termed Creamy Layer by the Supreme Court) in the manner it required to be done for practical application, is unique in the sense that to our knowledge, such an exercise has been taken up in this country for the first time. Though we find that in the Report of the Third Backward Classes Commission for Karnataka, 1990, there is mention at page 174 Vol. I, of categories among socially and educationally backward classes who should not be entitled to reservation, but we have undertaken an elaborate exercise to make the formulations as far-reaching and comprehensive as possible. Of course, it may be desirable, perhaps even necessary at a future date, to give a second look to the criteria evolved by us and make suitable changes on the basis of experience of implementation and other relevant factors.

43. We are happy to place on record our gratitude for the unstinted cooperation extended to the Committee in the discharge of its work by the Hon'ble Minister of Welfare, Government of India, Shri Sitaram Kesari and by the Secretary and all other officers and staff of the Ministry of Welfare, and it is because of this, we have been able to complete this difficult task within the allotted short time.

Sd/-
(RAM NANDAN PRASAD)
Chairman / 10-3-1993

Sd/-
(M.L. SHAHARE)
Member / 10-3-1993

Sd/-
(P.S. KRISHNAN)
Member / 10-3-1993

Sd/-
(R.J. MAJITHIA)
Member / 10-3-1993

Annual Report

2003-2004
(1st April, 2003 to 31st March, 2004)

National Commission for Backward Classes
Trikoort-I, Bhikaiji Cama Place,
New Delhi-110066
3rd February, 2005

G.I., Dept. of Per. & Trg., O.M. No.36012/22/93-Est. (SCT) dated 8.9.1993

SUBJECT: *Reservation for Other Backward Classes in Civil Posts and Services under the Government of India - Regarding.*

The undersigned is directed to refer to this Department's O.M. No.36012/31/90-Estt. (SCT), dated the 13th August, 1990 and 25th September, 1991, regarding reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India and to say that following the Supreme Court judgement in the Indira Sawhney and other v. Union of India and others case [Writ Petition (Civil) No.930 of 1990], the Government of India appointed an Expert Committee to recommend the criteria for exclusion of the socially advanced persons/sections from the benefits of reservations for Other Backward Classes in civil posts and services under the Government of India.

2. Consequent to the consideration of the Expert Committee's recommendations, this Department's Office Memorandum No.36012/31/90-Estt. (SCT), dated 13.8.1990, referred to in para (1) above is hereby modified to provide as follows :-

(a) 27% (twenty-seven per cent) of the vacancies in civil posts and services under the Government of India, to be filled through direct recruitment, shall be reserved for the Other Backward Classes. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.

(b) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.

(c) (i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this Office Memorandum. **(See Appendix 1)**

(ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupations, callings. A list of such occupations, callings will be issued separately by the Ministry of Welfare.

(d) The OBCs for the purpose of the aforesaid reservation would comprise, in the first phase, the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Governments' Lists. A list of such castes and communities is being issued separately by the Ministry of Welfare.

(e) The aforesaid reservation shall take immediate effect. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of this order.

3. Similar instructions in respect of public sector undertakings and financial institutions including public sector banks will be issued by the Department of Public Enterprises and by the Ministry of Finance respectively effective from the date of this office memorandum.

To

All Ministries/Departments of Government of India.

Copy:

1. Department of Public Enterprises, New Delhi }
2. Ministry of Finance (Banking and Insurance }
Divisions), New Delhi }

It is requested that the said instructions may be issued in respect of PSUs, Public Sector Banks and Insurance Corporations.

PERSONS/SECTIONS EXCLUDED FROM RESERVATION

[Schedule TO G.I., Dept. of Per. & Trg., O.M. No.36012/22/93-Estt.(SCT) dated 8-9-1993]

| <u>Description of category</u> | <u>To whom rule of exclusion will apply</u> |
|---|--|
| I. Constitutional Posts | Sons and daughter(s) of – (a) President of India; (b) Vice-President of India; (c) Judges of the Supreme Court and the High Courts; (d) Chairman and Members of UPSC and of the State Public Service Commission; Chief Election Commissioner; Comptroller and Auditor-General of India; (e) Persons holding constitutional positions of like nature. |
| II. Service Category A. Group 'A'/Class I officers of the All India Central and (State Services (Direct Recruits). | Son(s) and daughter(s) of --- a) parents, both of whom are Class I officers; (b) parents, either of whom is a Class I officer; (c) parents, both of whom are Class I officers, but one of them dies or suffers permanent incapacitation; (d) parents, either of whom is a Class I officer and such parent dies or suffers permanent incapacitation and before such death or such incapacitation has had the benefit of employment in any International organisation like UN, IMF, World Bank, etc., for a period of not less than 5 years; (e) parents, both of whom are Class I officers die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment in any International organisation like UN, IMF, World Bank, etc., for a period of not |

less than 5 years;

Provided that the rule of exclusion shall not apply in the following cases :-

- (a) Sons and daughters of parents either Of whom or both of whom are Class I officers and such parent(s) dies/die or suffer permanent incapacitation;
- (b) A lady belonging to OBC category has got married to a Class I officer, and may herself like to apply for a job.

B. Group 'B'/Class II officers of
The Central and State Services
(Direct Recruitment)

Son(s) and daughter(s) of ---

- (a) parents both of whom are Class II officers;
- (b) parents of whom only the husband is a Class II officer and he gets into Class I at the age of 40 or earlier;
- (c) parents, both of whom are Class II officers and one of them dies or suffers permanent incapacitation and either one of them has had the benefit of employment in any International organisation UN, IMF, World Bank, etc., for a period of not less than 5 years before such death or permanent incapacitation;
- (d) parents of whom the husband is a Class I officer (direct recruitment of pre-forty promoted) and the wife dies; or suffers permanent incapacitation; and
- (e) parents, of whom the wife is a Class I officer (Direct Recruit or pre-forty promoted) and the husband is a Class II officer and the husband dies or suffers permanent incapacitation;

Provided that the rule of exclusion shall not apply in the following cases :-

Sons and daughters of ---

- (a) Parents both of whom are Class II officers and one of them dies or suffers permanent incapacitation;

Sons and daughters of ---

- (a) Parents, both of whom are Class II officers and both of them die or

suffer permanent incapacitation, even though either of them has had the benefit of employment in any international organization like UN, IMF, World Bank, etc., for a period of not less than 5 years before their death or permanent incapacitation.

C. Employees in Public Sector

The criteria enumerated in A and B above in this category will apply mutatis mutandis to officers holding equivalent or comparable posts in PSUs, Banks, Insurance organisations, Universities, etc., and also to equivalent or comparable posts and positions under private employment, pending the evaluation of the posts on equivalent or comparable basis in these institutions, the criteria specified in Category VI below will apply to the officers in these institutions.

III. Armed forces including Paramilitary Forces (Persons holding civil posts are not included).

Son(s) and daughter(s) of parents either or both of whom is or are in the rank of Colonel and above in the Army and to equivalent posts in the Navy and the Air Force and the Paramilitary Forces;

Provided that ---

- (i) If the wife of an armed forces officer is herself in the armed forces (i.e., the category under consideration) the rule of exclusion will apply only when she herself has reached the rank of Colonel;
- (ii) the service ranks below Colonel of husband and wife shall not be clubbed together;
- (iii) if the wife of an officer in the armed forces is in civil employment, this will not be taken into account for applying the rule of exclusion unless she falls in the service category under item no.II in which case the criteria and conditions enumerated therein will apply to her independently.

IV. Professional class and those engaged In Trade and Industry

- (i) Persons engaged in profession as a doctor, lawyer, chartered accountant, income tax consultant, financial or

Criteria specified against Category VI will apply.

management consultant, dental surgeon, engineer, architect, computer specialist, film artists and other film professional, author, playwright, sports person, sports professional, media professional or any other vocations of like status.

(ii) Persons engaged in trade, business and industry.

Criteria specified against Category VI will apply.

EXPLANATION ---

(i) Where the husband is in some profession and the wife is in a Class II or lower grade employment, the income/wealth test will apply on the basis of the husband's income.

(ii) If the wife is in any profession and the husband is in employment in a Class II or lower rank post, then the income/wealth criterion will apply only on the basis of the wife's income and the husband's income will not be clubbed with it.

V. Property owners

A. Agricultural holding

Son(s) and daughter(s) of persons belonging to a family (father, mother and minor children) which owns ---

(a) only irrigated land which is equal to or more than 85% of the statutory ceiling area, or

(b) both irrigated and unirrigated land, as follows :-

(i) The rule of exclusion will apply where the pre-condition exists that the irrigated area (having been brought to a single type under a common denominator) 40% or more of the statutory ceiling limit for irrigated land (this being calculated by excluding the unirrigated portion). If this pre-condition of not less than 40% exists, then only the area of unirrigated land will be taken into account. This will be done by converting, the unirrigated land on the basis of the conversion formula existing, into the irrigated type. The irrigated area so computed from unirrigated land shall be added to the actual area of irrigated land and if after such

clubbing together the total area in terms of irrigated land is 85% or more of the statutory ceiling limit for irrigated land, then the rule of exclusion will apply and disentitlement will occur).

(ii) The rule of exclusion will not apply if the land holding of a family is exclusively unirrigated.

B. Plantations

(i) Coffee, tea, rubber, etc.

(ii) Mango, citrus, apple plantations, etc.

Criteria of income/wealth specified in Category VI below will apply.

Deemed as agricultural holding and hence criteria at A above under this category will apply. Criteria specified in Category VI below will apply.

C. Vacant land and/or buildings in urban areas or urban agglomerations

Explanation : - Building may be used for residential, industrial or commercial purpose and the like two or more such purposes.

VI. Income/Wealth Test

Son(s) and daughter(s) ---

(a) Persons having gross annual income of Rs.1 lakh or above

or possessing wealth above the exemption limit as prescribed in the Wealth Act for a period of three consecutive years.

(b) Persons in Categories I, II, III and V-A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.

EXPLANATION :-

(i) Income from salaries or agricultural land shall not be clubbed;

(ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less.

EXPLANATION :- Wherever the expression "permanent incapacitation" occur in this schedule, it shall mean incapacitation which results in putting an officer out of service.

Annual Report

2003-2004
(1st April, 2003 to 31st March, 2004)

National Commission for Backward Classes
Trikoort-I, Bhikaiji Cama Place,
New Delhi-110066
3rd February, 2005

REPORT
ON THE REVIEW OF INCOME CRITERIA FOR
EXCLUSION OF “SOCIALLY ADVANCED PERSONS/SECTIONS”
(“CREAMY LAYER”) AMONG OTHER BACKWARD CLASSES
FROM THE BENEFIT OF 27% RESERVATION IN THE POSTS
AND SERVICES UNDER GOVERNMENT OF INDIA

This report arises from the Government of India (Ministry of Social Justice & Empowerment)'s Office Order No. 12011/6/97-BCC dated 6th October, 2003 whereby the National Commission for Backward Classes (NCBC) has been entrusted the task of reviewing the income limit, specified as Rs. 1 lakh in the Schedule to the Government's O. M. No. 36012/22/93-Estt. (SCT) dated 8-9-1993, for the purpose of excluding persons/sections among Other Backward Classes whose income is above the said limit (who are referred to as “Creamy Layer” or socially advanced persons/sections among OBCs) from the benefits of reservation provided to Other Backward Classes listed in the Central OBC list in the posts and services under the Government of India to be filled in through direct recruitment.

2. The Supreme Court in its judgement in Indira Sawhney & Others vs Union of India & Others dated 16-11-1992 directed the Government of India to exclude the socially advanced persons/sections (“Creamy Layer”) from Other Backward Classes. Pursuant to this, the Government of India, vide Ministry of Welfare Resolution No. 12011/16/93-BCC(C) dated 22nd February, 1993, constituted an Expert Committee for specifying socio-economic criteria for identification of socially advanced persons (“creamy layer”) among socially and educationally backward classes or Other Backward Classes.

3. The Expert Committee in its report dated 10th March, 1993 defined and indicated different categories of people as belonging to “creamy layer” among OBCs for whom the rule of exclusion will apply, based on their respective positions and placements in life. The creamy layer persons/sections defined by the Expert Committee, which were accepted and notified by the Government vide O. M. No. 36012/22/93-Estt. (SCT) dated 8-9-1993, are classified into the following categories:

I. Sons and daughters of parents who hold Constitutional Posts

II. Sons and daughters whose parents are in Service Category (Group ‘A’/Class I officers and Group ‘B’/Class II officers and Employees holding equivalent posts in PSUs, Banks, Insurance Organisations, Universities etc. and also in private employment)

III. Sons and daughters of parents who are in Armed Forces including Para Military Forces (Persons holding civil posts are not included) in the rank of Colonel and above in the Army or in equivalent posts in the Navy and the Air Force.

IV. Professional Class and those engaged in Trade, Business and Industry

V. Property Owners

A. Sons and daughters of parents who hold irrigated agricultural land equal to or more than 85% of the statutory ceiling area or both irrigated and unirrigated land in such a way that irrigated land is 40% or more of the ceiling limit and the unirrigated land, after conversion into the irrigated type as per

existing conversion formula, is to such an extent that if it is added to the actual irrigated land area the total area in terms of irrigated land is 85% or more of the statutory ceiling limit for irrigated land.

B. Plantation owners

- (i) Coffee, tea, rubber, etc.
- (ii) Mango, citrus, apple plantations, etc.

C. Holders of vacant land and/or buildings in urban areas or urban agglomeration.

VI. Sons and daughters of

(a) Persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Act for a period of three consecutive years.
Income/Wealth Test

(b) Persons in Categories I, II, III and V-A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.

4. The Supreme Court in the Mandal Judgement accepted the principle of reservation for OBCs on the reasoning that they **on account of their social and educational backwardness** are truly in need of reservation. In other words, the dominant consideration for recognizing any caste/community and upholding the reservation is the social and educational backwardness and not the economic backwardness, though economic backwardness is a natural consequence of the social and educational backwardness.

5. The income criteria has been adopted only in respect of professional class and those engaged in trade, business and industry(Category IV), plantation owners(Category V-B) and persons who possess vacant land and/or buildings in urban areas or urban agglomerations (Category V-C) and others who are covered under Category VI.

6. According to the Income/Wealth Test specified for Category VI in the Schedule to the Government's O. M. dated 8-9-1993, the rule of exclusion will apply to sons and daughters of "Persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years."

7. While the above income/wealth test was to govern categories IV, VB and VC, for the remaining categories, namely, I, II, III and V-A, specific criteria based on social and educational factors were laid down. However, it was also specified in the Schedule under VI (b) that the rule of exclusion will apply to sons and daughters of "persons in categories I, II, III and V-A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria". An explanation has been given as "(i) Income from salaries or agricultural land shall not be clubbed".

8. With regard to income/wealth test, one other important explanation given in the Schedule to the Government's O. M. dated 8-9-93 is that "The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less."

9. Almost ten years have elapsed after the coming into effect of the Government's Order providing for reservation of 27% to OBCs with the proviso of exclusion of "creamy layer". But so far there was no revision of the income criteria as stipulated in the schedule to the Government's O. M. No. 36012/22/93-Estt. (SCT) dated 8-9-1993.

10. In the meantime, there have been demands from the public, especially from the members and associations/organization of Backward Classes to raise the income limit of Rs. 1 lakh to a suitable level taking into account reduction in the value of rupee and increase in the overall price index, etc.

11. The need for raising the income limit of Rs 1 lakh was also felt by the National and State Commissions and this was expressed through a resolution passed by the First National Conference on Backward Classes organized by the National Commission for Backward Classes on 24th/25th November, 1997. The same resolution was also reiterated by the Second National Conference on Backward Classes organized by the NCBC on 18th/19th February, 2003. While inaugurating the Conference, Hon'ble Union Minister for Social Justice & Empowerment, Dr. Satyanarayan Jatiya, agreeing with the demand of the Backward Classes and their representatives, apprised that the issue of review of the income criteria is under active consideration of the Government.

12. The Government of India in the Ministry of Social Justice & Empowerment, vide Office Order No. 12011/6/97-BCC dated 6th October, 2003, entrusted the task of review of the income criteria to this Commission. The Commission has also been asked to give suggestions/recommendations on some other issues relating to the creamy layer criteria. The terms of reference given to the Commission are as follows:-

(4) To review the existing ceiling of income/wealth to determine the 'Creamy Layer' amongst OBCs as notified vide Department of Personnel & Training (DOPT) OM No. 36012/22/93-Estt (SCT) dated 8th September 1993

(5) To evolve and suggest formulae through which the periodic revision of income ceiling/criteria in terms of quantum or rupee be fixed so that the income ceiling for determining the 'Creamy Layer' amongst OBCs is revised from time to time as per the formulae.

(6) Also to consider and advise the Government on the following:-

(a) Whether the 'Creamy Layer' criteria will apply only to sons/daughters of the persons mentioned in the respective categories, such as, the service category or also to the persons themselves;

(b) Whether the rule of exclusion will apply where the income from salaries alone or from agricultural land alone, exceeds the prescribed limit or the income ceiling will apply to the consolidated income from both.

(c) The committee may also examine as to how income from sources other than salary or agricultural land is to be dealt with;

(d) Evaluation of posts equivalent or comparable in the public sector undertakings, banks, insurance organizations, universities or comparable posts and positions under private employment for the purpose of application of the criteria enumerated in category II-A and II-B.

(e) Presently, if any person in categories I, II, III and V-A, who is not ineligible to receive the benefit of reservation has income from other sources of wealth (without clubbing his income from salary or agricultural land) which will bring him within the criteria under item VI, then he shall be ineligible for reservation. In this context, it may be examined whether, irrespective of the post, service, employment, profession, trade, industry, etc., if the income of a parent or the combined income of parents exceeds the limits specified under category VI, the rule of exclusion be applied.

13. In view of the very short period given to the Commission for giving its suggestions/recommendations, the Commission took up the task with urgency. To begin with, the Commission issued Public Notices through leading national and regional newspapers throughout the country seeking views and suggestions of the general public in the matter, especially those of the Backward Classes and their associations and organizations. The Commission also sought the views and suggestions from the State Governments and Union Territory administrations by separately writing to the respective Chief Secretaries/Secretaries in charge of Backward Classes Welfare Ministries/Departments. The Commission also addressed the State Backward Classes Commissions and the Commissions or Committees in the Union Territories seeking their valuable views in the matter and forward any report compiled by them for this purpose.

14. In response to the public notice, the Commission received numerous representations from the public, running into hundreds and the representations are still being received. In these, suggestions have been made to raise the existing Rs. 1 lakh limit to 1.5 lakh to Rs. 10 lakh on the grounds of increased prices, inflation, devaluation of rupee, higher cost of living, hike in educational expenditure and pay revision of the Government employees consequent to the recommendations of the Fifth Central Pay Commission.

15. Many of the representations also sought the removal of creamy layer criteria, on the ground that the same is not applied to the Scheduled Castes and Scheduled Tribes and that the Backward Classes have not reached the level of creamy layer, as the Central recognition to the list and reservations came into operation after 47 years of independence.

16. There have also been suggestions for simplification of the existing order and avoid ambiguity, presently causing hardship to the Backward Class candidates, who are made to run from pillar to post for securing certificates.

17. Most of the States/UTs have been following the Central Government criteria for exclusion of creamy layer after the Supreme Court judgement in the Mandal case. Though some Governments like Uttar Pradesh and Bihar had brought out separate criteria of their own, they have been struck down by the Supreme Court as arbitrary and on the direction of the Supreme Court, these States were also till recently following the criteria evolved by the Central Government. The state of Kerala declared that there was no creamy layer in the State. The Supreme Court seeking exception to it requested the Chief Justice, Kerala High Court to appoint a retired judge to be the Chairman of a High Level Committee for gathering necessary information regarding creamy layer. The Chief Justice of the Kerala High Court constituted a Committee headed by Justice K. J. Joseph, which submitted its report on 4-8-1997 identifying the creamy layer among the OBCs in the State of Kerala. The criteria evolved by this Committee was more or less on the lines of the criteria adopted by the Central Government. However, the Committee revised the income limit from Rs. 1 lakh to Rs. 1.5 lakh, taking into consideration 39.06% increase in the cost of living index between 1992 (when Indira Sawhney case was decided) and the position in 1996 and also increase in the consumer price index. Further, the Govt. of Kerala

further reviewed it and raised the income limit from 1.5 lakh recommended by Justice Joseph Committee to Rs. 3 lakhs.

18. Recently, some of the State Governments raised the income limit as follows:-

| | |
|----------------|---------------|
| Assam | Rs. 2 lakhs |
| Madhya Pradesh | Rs. 2 lakhs |
| Sikkim | Rs. 2 lakhs |
| Rajasthan | Rs. 2.5 lakhs |
| Uttar Pradesh | Rs. 3 lakhs |
| Kerala | Rs. 3 lakhs |

19. Among the Central Government Departments/Organisations, the Commission received suggestions/views from the Department of Personnel and Training (DOPT). The DOPT stated that the value of Rs. 1,00,000/- in 1993 is equivalent to Rs. 198016/- in September, 2003. The Consumer Price Index and the value of rupee in different years may be taken into account. In view of the present value of rupee, the income limit for determining the “creamy layer” may be fixed at, say, Rs. 2,00,000/- as on 1st January, 2004.

20. The Commission Members held discussions with the concerned officers in different States/UTs and also with different State Backward Class Commissions. The Commission has also had the benefit of discussions with experts from academic circles.

21. The Commission obtained the All India Consumer Price Index for Urban Manual Employees [CPI(UNME)] for the years 1990 to 2003 from the Central Statistical Organisation in the Ministry of Statistics and Programme Implementation. The latter Ministry has also furnished to the Commission; the Calender Year Average of All India Consumer Price Index Numbers for Industrial Workers [CPI(IW)] on base 1982+100 for the years 1990 to 2002, which has been compiled by the Labour Bureau in the Ministry of Labour and which is as follows:-

| | | | | | | | |
|---------|------|------|------|------|------|------|------|
| Year | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 |
| Average | 186 | 212 | 237 | 252 | 278 | 306 | 334 |
| Year | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | |
| Average | 358 | 405 | 424 | 441 | 458 | 477 | |

It is seen that on base 1982+100, the calender year average CPI(IW) for 1993 was 252. Thus, by using a conversion factor of 2.52, the average CPI(IW) on base 1993+100 for subsequent periods and the relative reduction in the value rupee are tabulated as follows:-

| Year | CPI (IW) based on 1993+100 | Value of Rupee in Piase (reciprocal) | Value of Rs. 1,00,000 based on 1993 |
|-----------|----------------------------|--------------------------------------|-------------------------------------|
| 1993 | 100 | 100.00 | 1,00,000 |
| 1994 | 110 | 90.97 | 90975 |
| 1995 | 121 | 82.35 | 82353 |
| 1996 | 133 | 75.45 | 75449 |
| 1997 | 142 | 70.39 | 70391 |
| 1998 | 161 | 62.22 | 62222 |
| 1999 | 168 | 59.43 | 59434 |
| 2000 | 175 | 57.14 | 57143 |
| 2001 | 182 | 55.02 | 55022 |
| 2002 | 189 | 52.83 | 52830 |
| 2003 Jan | 192 | 52.17 | 52174 |
| Feb | 192 | 52.07 | 52066 |
| Mar | 193 | 51.75 | 51745 |
| April | 196 | 51.12 | 51116 |
| May | 196 | 51.01 | 51012 |
| June | 197 | 50.70 | 50704 |
| July | 199 | 50.30 | 50299 |
| August | 198 | 50.50 | 50501 |
| September | 198 | 50.50 | 50501 |

As seen from above, the value of rupee has undergone little above a 50% reduction during the ten years from 1993 to 2003.

22. The Central Pay Commission for revising the pay structure of the central government employees evolved the revised minimum pay of the lowest functionary in Government, the Fifth Pay Commission at first added the basic pay fixed in 1986 of Rs. 750 to the dearness allowance of Rs. 1110 existing as on 1.1.1996. This figure of Rs. 1860 was then enhanced by a compensation factor of 30.9% (Rs. 574.74) being the increase in the per capita net national product during the period 1986-1995. The figure so arrived (Rs. 2434.74, i.e., Rs. 1860+574.74) was rounded off to Rs. 2440. The Government while implementing the Pay Commission recommendation however improved upon the minimum salary recommended from Rs. 2440 to Rs. 2550.

23. In terms of arithmetical relationship, Rs. 2440/- recommended by the Pay Commission as the minimum pay for the lowest Government employee was a 3.25 times increase over the pay fixed in 1986 of Rs. 750/-.

24. The per capital net national product for the years 1993 to 2002 as compiled by the Central Statistical Organisation is as follows:-

| Year | Per Capita Net National Product (Rs.) | |
|-----------------------------|---------------------------------------|-------------------|
| | At 2001-2002 prices | At 1993-94 prices |
| 1992-93 | 6732.4 | 7433.3 |
| 1993-94 | 7689.6 | 7689.6 |
| 1994-95 | 8856.9 | 8069.9 |
| 1995-96 | 10149.4 | 8489.3 |
| 1996-97 | 11564.1 | 9007.2 |
| 1997-98 | 12706.9 | 9243.6 |
| 1998-99 | 14395.7 | 9649.9 |
| 1999-00 | 15625.8 | 10067.6 |
| 2000-01 (Provisional esti.) | 16707.1 | 10306.0 |
| 2001-02 (Quick estimates) | 17977.7 | 10753.7 |

It is seen that at 2001-2002 prices the per capita net national product has increased from Rs. 6732.4 in 1992-93 to Rs. 17977.7 in 2001-02 which amounts to an increase of 167.03%. At 1993-94 prices the increase works out to be 44.66% rounded off to 45%.

25. As already seen, the value of Rupee 1,00,000 in 1993 is about Rs. 2,00,000 in 2003. If we enhance this value by adding 45%, being the increase in the per capita net national product as on 2002, we arrive at the figure of Rs. 2,90,000. Since we have entered the year 2004 and also taking into account the weightage to be given for possible depreciation in the value of rupee, fluctuating inflation rate and percentage increase in the per capita net national product during the next, say, one and half years (which is the mean average of the three year period within which the exercise of review of income limit is normally to take place), it works out approximately to Rs. 3,00,000/-.

26. The Supreme Court in the Mandal case has stated that “While the income of a person can be taken as a measure of his social advancement, the limit to be prescribed should not be such as to result in taking away with one hand what is given with the other. The income limit **must be such as to mean and signify social advancement.**” The emphasis here is on social advancement and there is no parameter or guideline to show on which level of income/wealth a person of backward class can be said to have crossed the level of social backwardness. It is a fact that it takes at least a generation’s time period for a family (the unit to be taken for excluding creamy layer) to go up from a lower social class to a higher one. There have not been concerted efforts on the part of the state to remove social and educational backwardness of Backward Classes since Independence. Even the very limited and partial remedy of reservation for backward classes in the posts and services of the State have been introduced at the all India level only from 1993. Even in 1993 the identification of castes/communities belonging to backward classes had not been completed and the Central list of Backward Classes notified in 1993 was only in respect of 14 States/UTs. It took several more years for the Government to notify the backward classes of every State and Union Territory. In view of these facts, it is reasonable to think that there have not been adequate time for a family belonging to backward caste/community to achieve the desired goal of coming out of backwardness and come on par with the other section of the society. Taking these circumstances and contexts into consideration, it is our considered view that when prescribing an income limit for excluding the creamy layer, it is to be ensured that the economic strength of the excluded section is sufficiently sound as to mean their social and educational standing on par

or comparable with the creamy layer sections among forward castes/communities, so that they can compete on equal footings.

27. During the ten year period between 1993 to 2003, not only the prices and expenditures have been on the continual rise and the rupee on the steep downward slide, but there have also been structural changes in the economy due to the liberalization and privatization policies and processes which have resulted in the diminished role of the government/public sector in the economy, thereby reducing the opportunities for Backward Classes. The new scenario in the educational front is such that the state subsidy is being withdrawn and the cost of quality education is becoming market-controlled. In this emerging scenario the families of backward classes will definitely have only a limited leverage for upward mobility unless they acquire sound economic capabilities and through it social standing.

28. One of the principle that the Commission has kept in view is that any step taken in reviewing the income limit should not result to the disadvantage of genuine and deserving backward class in the list.

29. There cannot be any exact mathematical formula for future periodic revision of the income limit. It has to be based not only on the change in the value of rupee but also other changes in the economy such as changes in consumer prices index, cost of living index, pay structure as well as such other relevant data for the year under review. These Consumer Price Indices are of great significance and are used for various purposes like wage policy, price policy, taxation, measuring the changing purchasing power of money, real income etc.

30. The Commission after careful consideration of above facts and examining the changing price levels, consumer price index numbers, also known as cost of living index numbers and other relevant data, recommends as under:-

- (i) The income limit for determining the Creamy Layer among Backward Classes be raised from the existing Rs. 1,00,000 to Rs. 2,50,000.

Periodic Review

The Commission further proposes to the Govt. of India that the task of future periodic revision of the income criteria would be taken up every three years or earlier if the situation demands, by the National Commission for Backward Classes and would submit its Report to the Govt., as the Commission has necessary expertise and experience in the matters relating to backward classes.

Sd/...
(Dr. Babu Rao Varma)
Member

Sd/...
(Smt. Neera Shastri)
Member

Sd/...
(Shri M.S. Matharoo)
Member

Sd/...
(Justice Ram Surat Singh)
Chairperson

Annual Report

2003-2004
(1st April, 2003 to 31st March, 2004)

National Commission for Backward Classes
Trikoort-I, Bhikaiji Cama Place,
New Delhi-110066
3rd February, 2005

No.36033/3/2004-Estt(Res)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

North Block, New Delhi.
Dated: 9th March, 2004.

OFFICE MEMORANDUM

Subject: Revision of Income Criteria to exclude socially advanced persons/sections (Creamy Layer) from the purview of reservation for Other Backward Classes (OBCs).

The undersigned is directed to invite attention to this Department's O.M. No. 36012/22/93-Estt.(SCT) dated 8th September, 1993 which inter alia provides that sons and daughters of persons having gross annual income of Rs. 1 lakh or above for a period of three consecutive years fall within the creamy layer and are not entitled to get the benefit of reservation available to the Other Backward Classes. It has been decided to raise the income limit from Rs.1 lakh to Rs. 2.5 lakh for determining the creamy layer amongst the OBCs. Accordingly the following entry is hereby substituted for the existing entry against Category VI in the Schedule to the above referred O.M:

| Category | Description of Category | To whom the rule of exclusion will apply |
|----------|-------------------------|--|
| VI | INCOME/WEALTH TEST | Son(s) and daughter(s) of (a) Persons having gross annual income of Rs.2.5 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years. (b) Persons in Categories I, II, III and V A who are not disentitled to the benefit of reservation but have income from other sources or wealth which will bring them within the income/wealth criteria mentioned in (a) above. |

Explanation:

Income from salaries or agricultural land shall not be clubbed.

2. The provisions of this Office Memorandum take effect from the 4th February, 2004.

3. All the Ministries/Departments are requested to bring the contents of this Office Memorandum to the notice of all concerned.

Sd/-
(K.G. Verma)

Deputy Secretary to the Government of India
Tele: 23092797

To

1. All the Ministries/Departments of the Government of India.
2. Department of Economic Affairs (Banking Division), New Delhi.
3. Department of Economic Affairs (Insurance Division), New Delhi.
4. Department of Public Enterprises, New Delhi.
5. Railway Board.
6. Union Public Service Commission/Supreme Court of India/Election Commission/ Lok Sabha Secretariat/Rajya Sabha Secretariat/Cabinet Secretariat/Central Vigilance Commission/President's Secretariat/Prime Minister's Office/Planning Commission
7. Staff Selection Commission, CGO Complex, Lodi Road, New Delhi.
8. Ministry of Social Justice and Empowerment, Shastri Bhavan, New Delhi.
9. National Commission for SCs and STs, Lok Nayak Bhavan, New Delhi.
10. National Commission for Backward Classes, Trikot-I, Bhikaiji Cama Place, R.K. Puram, New Delhi.
11. Office of the Comptroller and Auditor General of India, 10, Bahadurshah Zafar Marg, New Delhi – 110002.
12. Information and Facilitation Centre, DOPT, North Block, New Delhi (100 copies).
13. Spare Copies – 400

Annexure VI:

Judgment of Delhi High Court quoting the circular of Government of Rajasthan dated 2.2.2001 about creamy layer

HIGH COURT OF DELHI AT NEW DELHI

Subject : Reservation for OBC : Creamy Layer

DECIDED ON : July 6, 2004.

1.W.P.(C).No.1085/2003.

Sh.Chander Vijay ...Petitioner.
Through Mr.Sudhir Chandra,Sr.Advocate
with Mr.S.K.Makkar, advocate.

Versus

Union of India & Ors. ... Respondents.
Through Ms.Rekha Palli,advocate
for respondent Nos.1 & 5.
Mr.V.K.Tandon, advocate
for respondent Nos.2 to 4.

2.W.P.(C).No.6168/2003.

Sh.Chander Vijay ...Petitioner.
Through Mr.Sudhir Chandra,Sr.Advocate
with Mr.S.K.Makkar, advocate.

Versus

Union of India & Ors. ... Respondents.
Through
Ms.Rekha Palli,advocate
for respondent Nos.1 & 5.
Mr.V.K.Tandon, advocate
for respondent Nos.2 to 4.

Manmohan Sarin, J.

1.Petitioner appeared and qualified for the Central Civil Service Examination 2002, conducted by the Union Public Service Commission (UPSC). Petitioner being a `Jat' by caste and a resident of Rajasthan had applied for issuance of the Other Backward Class Certificate (OBC) Category. This certificate had been denied. Petitioner qualified even in the general category with a rank of 127. Petitioner's case is that he is entitled to the OBC Certificate and upon the same being granted, his ranking would go up and he would get a better posting.

2.Petitioner by this writ petition seeks a writ of certiorari, quashing notification dated 8.9.1993, 28.9.1993 and

Circular dated 2.2.2001, based on which the petitioner is sought to be excluded from the benefit of the OBC category as part of the "Creamy layer". Petitioner also seeks a mandamus, directing the respondents to issue forthwith a OBC certificate for the year 2002 for the Civil Services Examination, conducted by UPSC.

3. By writ petition bearing No.6168/2003, apart from seeking quashing of the notifications dated 8.9.1993, 28.9.1993 and Circular dated 2.2.2001, as sought in W.P.(C).No.1085/2003, seeks quashing of the communication dated 25.3.2003, by which the Department of Personnel and Training, Government of India, on a complaint received cancelled the candidature of the petitioner even for the Civil Services Examination 2001, as an OBC candidate, following the cancellation of the OBC Certificate by the District Collector and Magistrate, Alwar. As a result of the cancellation of the OBC Certificate for the year 2001, petitioner does not qualify as a general candidate and is not entitled to get any service on the basis of the said Civil Service Examination. Vide interim order passed on 19.5.2003, it was noted that the posting of the petitioner would be subject to final decision in the writ petition.

4. Before advertng to the factual matrix and the relevant text of the notifications in question, it may be noticed that notification dated 8.9.1993 bearing No.36012/22/93-Estt. (SCT) is issued by the Department of Personnel and Training, Government of India, while notification dated 28.9.1993 has been issued by the Department of Personnel, Government of Rajasthan and Circular dated 2.2.2001 has been issued by the Department of Personnel, Government of Rajasthan, clarifying persons to whom rule of exclusion shall apply or not apply, as given in the notification dated 28.9.1993.

5. The crux of the controversy is the exclusion of the petitioner under the notification, issued by the Central Government and the State Government, insofar as they relate to the service category on the ground that the father of the petitioner had retired as a Class I Officer. Petitioner thus formed part of the "Creamy Layer" and was not entitled to the benefit of the OBC. The text of notifications dated 8.9.1993, 28.9.1993 as well as the clarification, insofar as they are relevant for the present case is reproduced for facility of reference:-

"Notification dated 8.9.1993

Subject:- Reservation for Other Backward Classes in Civil Posts and Services under the Government of India-Regarding.

The undersigned is directed to refer to this Department's O.M.No.36012/31/90.Estt.(SCT), dated the 13th August, 1990 and 25th September, 1991 regarding reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India and to say that following the Supreme Court judgment in the Indira Sawhney and others Vs. Union of India and others case (Writ Petition (Civil) No.930 of 1990) the Government of India appointed an Expert Committee to recommend the criteria for exclusion of the socially advanced persons/sections from the benefits of reservations for Other Backward Classes in Civil posts and services under the Government of India.

2. Consequent to the consideration of the Expert Committee's recommendations this Department's Office memorandum No.36012/31/90.Estt.(SCT) dated 13.8.90 referred to in para (1) above is hereby modified to provide as follows:

(a) 27% (twenty seven per cent) of the vacancies in civil posts and services under the Government of India, to be filled through recruitment, shall be reserved for the other Backward Classes. Detailed instructions relating

to the procedure to be followed for enforcing reservation will be issued separately.

(b) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.

(c) (i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this office memorandum.

"II Service Category"

A. Group A/Class I officers of the All India Central and State Services (Direct Recruits).

Son(s) and daughter(s) of:

(a) Parents, both of whom are Class I officers;

(b) Parents, either of whom is a Class I officer;

(c) Parents, both of whom are Class I Officers, but one of them dies or suffers permanent incapacitation;

(d) parents, either of whom is a Class I officer and such parent dies or suffers permanent incapacitation and before such death or such incapacitation has had the benefit of employment in any International Organisation like UN, IMF, World Bank etc., for a period of not less than 5 years;

(e) parents, both of whom are class I officers die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment in any International Organisation like UN, IMF, World Bank etc., for a period of not less than 5 years.

Provided that the rule of exclusion shall not apply in the following cases:

(a) Sons and daughters of parents either of whom or both of whom are Class-I Officers and such parent(s) dies/die or suffer permanent incapacitation.

(b) A lady belonging to OBC Category has got married to a Class-I officer, and may herself like to apply for a job."

Notification dated 28.9.1993

G.S.R. 35:- The Governor of Rajasthan is hereby pleased to order that 21% (Twenty one per cent) of the vacancies in posts and services under the State Government, to be filled through direct recruitment, shall be reserved for the castes and classes included in the list of Backward Classes as notified vide Social Welfare Department Notification No.F.11 (125) R&P/SWD/46631, dated 27th August, 1993, published in Rajasthan Gazette, Extra-ordinary dated 1st September, 1993.

These reservations will be subject to the following conditions:-

(a) Candidates belonging to Backward Classes recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 21%. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.

(b) (i) The aforesaid reservation shall not apply to persons/sections mentioned in Column 3 of the schedule annexed to this notification.

(ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupations and callings. A list of such occupations and callings will be issued separately.

"II Service Category"

A. Group A/Class I officers of the All India Central and State Services (Direct Recruits).

Son(s) and daughter(s) of:

(a) Parents, both of whom are Class I officers;

(b) Parents, either of whom is a Class I officer;

(c) Parents, both of whom are Class I Officers, but one of them dies or suffers permanent incapacitation;

(d) parents, either of whom is a Class I officer and such parent dies or suffers permanent incapacitation and before such death or such incapacitation has had the benefit of employment in any International Organisation like UN, IMF, World Bank etc., for a period of not less than 5 years;

(e) parents, both of whom are class I officers die or suffer permanent incapacitation and before such death or such incapacitation of the both, either of them has had the benefit of employment in any International Organisation like UN, IMF, World Bank etc., for a period of not less than 5 years.

Provided that the rule of exclusion shall not apply in the following cases:

(a) Sons and daughters of parents either of whom or both of whom are Class-I Officers and such parent(s) dies/die or suffer permanent incapacitation.

(b) A lady belonging to OBC Category has got married to a Class-I officer, and may herself like to apply for a job."

Circular dated 2.2.2001

Subject: Reservation for other Backward Classes in posts and services under the State Government - clarification regarding application of Rule of Exclusion in certain situations.

In the Schedule annexed with this Department's Notification No.F9(8)DOP/A-V/90 dated 28.9.1993 such persons/Categories of persons have been specifically mentioned who will not be entitled (excluded) for the benefit of reservation of Other Backward Classes. With respect to 'CONSTITUTIONAL POSTS' it has been prescribed that the Rule of Exclusion will apply to persons holding Constitutional positions like President of India, Vice-President of India, Judges of the Supreme Court and of the High Courts. Chairman & Members of U.P.S.C. And of the State Public Service Commission, Chief Election Commissioner, Comptroller and Auditor General of India and "persons holding Constitutional positions of like nature". In this regard clarification has been sought as to whether Ministers in the State Government would fall under the category of "Persons holding Constitutional positions of like nature" and the Rule of Exclusion will apply to their sons and daughters. The matter has been examined in consultation with the Law Department and the position is clarified as under:-

Ministers of the State Government are Constitutional functionaries but their tenure being temporary and often transitory they are not supposed to have shed backwardness in such short periods. Therefore, the Rule of Exclusion will not apply to the sons and daughters of Ministers and they will be entitled for other Backward Classes reservation provided their parents do not fall in Category of the Schedule.

Clarification has also been sought whether the Rule of Exclusion will apply in the case of sons and daughters of the Offices enumerated in the "SERVICE CATEGORY" even after they retire on superannuation. In this context, it is hereby clarified that retirement on superannuation has no effect on the Rule of Exclusion. Therefore, retirement on superannuation of the specified category of Officers has no effect on their offsprings, who are once defined as "Creamy Layer."

These clarification may be brought to the notice of all concerned and they may be directed to take action accordingly.

(Ashok Sampatram)
Secretary to Government."

6.The main plank of the submission of the learned senior counsel for the petitioner is that the notifications in question provide for exclusion, If either or both parents of the applicant is or are class one officer. This, the learned counsel submits is sought to be mis-interpreted by reading the same as "was or has been a class one officer". I shall advert to the submissions and the authorities cited by the learned senior counsel for the petitioner in this regard later in the judgment.

7.The second limb of the submission of the learned counsel for the petitioner is that the Circular dated 2.2.2001, which has been issued by the State Government of Rajasthan cannot purport to alter or modify notification dated 8.9.1993, issued by the Central Government, which would govern the Central Service Examination. This, he submits is specially so, when the Central Government has not issued any notification/Circular in respect of its notification.

8.For a proper appreciation of the purpose and intent for issuance of notifications in question, it would be appropriate to recapitulate briefly the facts, culminating in their issuance. The Supreme Court in its majority

judgment in Indra Sawhney etc. etc. Vs. Union of India and others etc.etc., reported at AIR 1993 Supreme Court 477 had directed that within four months from the date of the judgment, the Government of India shall specify the basis applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections (Creamy Layer) from other backward classes (OBC). Further that the implementation of the impugned OM dated 13.8.1990 would be subject to exclusion of such socially advanced persons (Creamy Layer). Pursuant to the aforesaid direction, an expert committee, comprising Justice Rama Nandan Prasad (Retired Judge, Patna High Court) as the Chairman and other members, was set up to make recommendations to the Government of India in regard to the socio-economic criteria. The Expert Committee deliberated and considered the matter and after receiving various inputs made recommendations for the criteria for excluding the persons, who were socially advanced in the SEBC category. The notifications embodied the recommendations made by the Committee. The Committee noted the observations and guidelines as given in Indra Sawhney's case and observed as under:-

"It is not necessary to bear in mind that Court has accepted the principle of reservation on the reasoning that the SEBCs on account of their Social and Educationally Backwardness are truly in need of reservation. In other words, the dominant consideration for upholding the reservation is the social and educational backwardness and not the income test, although actual life it mostly happens that economic backwardness is a natural consequence of the social and education backwardness. It logically follows, therefore, that for determining who from amongst the SEBCs shall be denied the benefit of reservation, the basis again would be the social and education factors and only when the advancement in this regard is such as to put that person at par with the forward classes that he may be placed in the excluded category. In the majority judgment, it has been observed that only when a person's social and education advancement is such that it totally snaps the connecting link of backwardness between him and other members of his community, he can then be said to be a misfit in his own class and so ought to be taken out from there and placed in the "Creamy Layer" category."

9.The Committee also noted observations of Justice Sawant in the judgment which may be usefully reproduced:

"The correct criterion for judging the forwardness of the forwards among the Backward Classes is to measure their capacity not in terms of the capacity of others in their class, but in terms of the capacity of the members of the Forward Classes, as stated earlier. If they cross the Rubicon of backwardness, they should be taken out from the Backward Classes and should be made disentitled to the provisions meant for the said classes." The Committee went on to further observe, " When a person has been able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade profession of high status, as categorised by us below he at that stage is normally no longer in need of reservation for himself. For example, if a person gets appointed as a Class I Officer either on open competition basis or reservation basis, the question of excluding him on the ground that he forms part of the "Creamy Layer" does not at all arise. But since he himself has come into the socially advanced category he will be in a position to provide the means the equipment and the opportunities which are necessary for the uplift of his offspring from the level of social and educational backwardness. As such the question of applying the Rule of Exclusion will arise only in the case of his offspring."

The Committee noticing the break up of the joint family system regarded the family to constitute husband, wife and children for the purpose of applying the exclusion criteria.

10.It is in the aforesaid background of purpose and context that the notifications, provisions regarding the

petitioner's exclusion need to be examined. Leaving aside for the moment, the argument on interpretation of the expression, "is" it would be seen that the petitioner's father retired as a Class I Officer. Accordingly, in terms of the notifications, as reproduced earlier, petitioner being his son, falls in the category, who is to be excluded. It is the case of respondent Nos.2 to 4 in their counter affidavit that petitioner and his father both own considerable property. It is stated that petitioner owns 59 bighas of irrigated land in Chattar Garh, Bikaner, Rajasthan. Petitioner's father owns 31 bighas of irrigated land at Chattar Garh, Bikaner, Rajasthan. The facility of irrigation is available from the siphon system attached to the land through the Indira Gandhi Canal. It is stated that the petitioner and his family own orchards near the National Highway By Pass No.8. There is a big house and a tube well and a swimming pool. The nature, extent of land and the factum of irrigation facility is disputed. Petitioner's brother, Sh.Sukhbir Singh and sister-in-law are stated to be members of IAS, as stated by the petitioner's father in the application for ration card.

11.From the foregoing, it would be seen that petitioner is the offspring of a Class I Officer for considerable period. This factor alone, even if the acquisition and possession of immovable properties was not to be reckoned, shows that petitioner has shed of the disadvantage of social backwardness. Petitioner has not been deprived of the opportunities and means as others in the socially backward classes. The submission of the learned senior counsel for the petitioner that petitioner's father had undergone compulsory retirement and the notification is not intended to cover within their ambit offspring of retired first class officers militates against the very intent and purpose of the criteria laid down in Indra Sawhney's case and as enumerated by the Expert Committee as noted above. The mere fact that a Class I Officer upon retirement would get only a pension and have a fall in income or fall in status, in comparison to while in office, can hardly be a ground to bring back the said person or his offspring from Creamy Layer into the backward category.

12.Let us now consider the legal submission made by learned senior counsel, who urged that it was not permissible to read the words, "is or are" used in the notifications as "was or were". Learned counsel contended that it was not permissible to add or amend and by construction and make up the lacunae which are left out.

13.The submission of the counsel that by use of the word "is or are" intention was to exclude only those, whose parents were presently employed in Government Class I service and not those whose services had either been terminated or those who had superannuated, is devoid of merit and deserves to be rejected.

14.Reliance is placed by petitioner on Smt.Hira Devi and others Vs.District Board, Shahjhanpur reported at AIR 1952 Supreme Court 362 to urge that while it is the duty of the Court to harmonise the various provisions of the Act as enacted by the legislature but it certainly was not the duty of the Court to stretch the words used by the legislature to fill in gaps or omissions in the provisions of the Act. In Smt.Hira Devi and others Vs.District Board, Shahjhanpur (Supra) , when these observations were made, the court was dealing with the facts, which are entirely distinguishable. Under the UP District Board Act, the statute had specific provisions governing and subscribing the power of suspension. These were codified in Sections 71 and 90, the Supreme Court dis-approved the High Court's action in reading the power of suspension into the words, " orders of any authority whose sanction is necessary." It was in these circumstances that the above observations were made. The said authority does not advance petitioner's case.

15.Reliance is also placed on number of judgments to submit that the Court could not add or amend or by construction make up the failings. Further, that when the words used are plain and unambiguous, the Court is bound to construe them in their ordinary sense. Reliance is also placed on Mohan Kumar Singhania and others

Vs. Union of India and others reported at AIR 1992 Supreme Court 1 to submit that while interpreting a statute, the consideration of inconvenience and hardship should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules, as the case may be, so far as possible to make a consistent enactment of the whole statute or series of statutes/Rules/Regulation relating to the subject matter. Added to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intentment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation."

16. There is no quarrel with the principles of interpretation as stated in Mohan Kumar Singhania and others Vs. Union of India and others (Supra) or that if the meaning of the words are clear the Court is not to add, amend or delete the same.

17. The situation in the instant case is, however, different. A perusal of the notification shows that the word "is and are" have been used not in the present sense alone. The use of the said expression in various clauses of the notification is indicative of happening in the past and/or in future. This is evident from sub-clauses c, d and e, where the provision is made for the eventuality of demise or suffering a permanent incapacitation which would be indicative of a future event. Again in sub-clause d, eventuality of demise and permanent incapacitation an event in future is considered with reference to denial of benefit with a past event that is beneficial employment in any international organisation like, U.N. I.M.F., World Bank etc., of not less than 5 years. It would thus be seen that the words "is and are" have been used to cover the past as well as future.

18. Reference may usefully be made to the definition of the expression "is" in Black's Law Dictionary. "This word although normally referring to the present, often has a future meaning, but is not synonymous with "shall have been". It may, however, have a past signification as in the sense of has been."

19. Reference may also be usefully made to the judgment of the Supreme Court in F.S. Gandhi, (dead) by L.Rs. Vs. Commissioner of Wealth Tax, Allahabad reported at (1990) 3 Supreme Court Cases 624. The Supreme Court had the occasion to consider interpretation of the words, "where the interest is available to an assessee for a period not exceeding six years from the date of interest vests in the assessee contained in Section 2(e) 2(iii) of the Wealth Tax Act. The Court quoted with approval the above definition of "is" in the Black's Law Dictionary, observing, "the word available is preceded by the word "is" and is followed by the words, "for a period not exceeding six years." The words, "is" although normally referring to the present often, often has a future meaning, but is not synonymous with "shall have been". It may, however, have a past significance as in the sense of has been." We are of the view that in view of the words, "for a period not exceeding six years" which follow the word "available" the word "is" must be construed as referring to the present and future. In that sense it would mean that the interest is presently available and is to be available for a future for a period not exceeding six years. Besides, the aforesaid interpretation of the word "is" in the notifications as referring to "has been and in future" is in consonance with the purpose and intent of the notifications and in accordance with the well settled principles of interpretation, commending interpretation of provisions in the context in which they were used and the purpose which they achieve. Reference may be made to S.R. Chaudhuri Vs. State of Punjab and others reported at (2001) 7 Supreme Court Cases 126. It is also in consonance with the principle of harmoniously interpreting to make the notification/statute workable and giving a meaning to all the provisions of the notification without making any one of them redundant.

Reference may also be made to the decision of the Division Bench of the High Court of Judicature at Madras in Union of India Vs.D.Anil and others (Writ Petition No.12289/2001), where the Court while interpreting the same central notification held that, "the use of "is" in the entries relating to item No.2 in the Schedule to OM is, therefore, to be regarded as referring to persons, who have held the post mentioned therein and it is not to be understood as referring only to persons, who are actually holding those post at the time the claim for a reserved position is made. I am in full agreement with the reasoning and judgment of the Division Bench, which dealt with a similar case and the same notification. It is held that the petitioner squarely falls within the ambit of exclusion of the benefit of OBC under the notifications.

20.It is held that the words "is" and "are" in the Notification dated 8.9.1993 and 29.9.1993 are not to be interpreted as being confined to only those persons who were presently holding the posts and are also to include persons who have held such posts mentioned therein. As discussed in paras 17, 18 and 19 above, the petitioner is not entitled to the relief sought in the writ petitions. No ground is made out to assail the validity of the impugned Notifications. Considering the interpretation given to the words "is" and "are" in the Notifications, resort to the circular dated 2.2.2001 was not even necessary. In any case the clarification given in the circular is also in consonance with the interpretation given to the words used in the Notification by this Court. Hence challenge to the validity of the circular dated 2.2.2001 also fails.

21.In view of the foregoing discussion on merits, it is not necessary to consider the objections of the respondents, as to lack of jurisdiction and/or laches in approaching the Court and challenging the notifications belatedly.

The writ petitions have no merit and are dismissed.

July 6,2004
aka.

Manmohan Sarin,J.

Annexure VII:

State-wise ceilings on land holdings in India (2004).

Source: Agricultural Statistics at a Glance 2004, Ministry of Agriculture, Government of India.

| State-wise Ceilings on Land Holding in India (2004) | | | |
|--|--------------------------------------|-------------------------------------|------------------|
| (In acres) | | | |
| State | Irrigated Land with two Crops | Irrigated Land with one crop | Dry Land |
| As recommended in 1972 National Guidelines | 10 to 18 | 27 | 54 |
| Proposed in Agenda notes 1985 of RMC | 12 | 18 | 30 |
| Andhra Pradesh | 10 to 18 | 15 to 27 | 35 to 54 |
| Assam | 17 | 17 | 17 |
| Bihar | 15 to 18 | 25 | 30 to 54 |
| Gujarat | 10 to 18 | 15 to 27 | 20 to 54 |
| Haryana | 18 | 27 | 54 |
| Himachal Pradesh | 10 | 15 | 30 to 70 |
| Jammu and Kashmir | 9 to 12.5 | 9 to 12.5 | 15 to 23* |
| Karnataka | 10 to 20 | 25 to 30 | 54 |
| Kerala | 12 to 15 | 12 to 15 | 12 to 15 |
| Madhya Pradesh | 18 | 27 | 54 |
| Maharashtra | 18 | 27 | 54 |
| Manipur | 12 | 12 | 15 |
| Orissa | 10 | 15 | 30 to 45 |
| Punjab | 17 | 27 | 51 |
| Rajasthan | 18 | 27 | 54 to 175 |
| Tamil Nadu | 12 | 30 | 60 |
| Sikkim | 12.5 | 12.5 | 50 |
| Tripura | 10 | 10 | 30 |
| Uttar Pradesh | 18 | 27 | 45 |
| West Bengal | 12 | 12 | 17 |

Note : 1. The actual limits for lands in Karnataka and Uttar Pradesh are higher due to classification of land.

2. The actual ceiling limits in Himachal Pradesh and Rajasthan are higher due to hilly terrain and desert lands.

3. 1 Acre = 0.404686 Hectare.

Source: Agricultural Statistics at a Glance 2004, Ministry of Agriculture, Govt. of India.

Year: Period of fiscal year in India is April to March, e.g. year shown as 1990-91 relates to April 1990 to March 1991.

Units: (a) 1 Lakh = 100000.

(b) 1 Crore = 10000000.

Annexure VIII:

Land distribution in India.

Source: NSS Report No. 515: Employment and Unemployment Situation in India, 2004-2005. (page 29).

**Employment and Unemployment Situation in India
2004-05
(Part – I)**

**NSS 61st ROUND
(July 2004 – June 2005)**



National Sample Survey Organisation
Ministry of Statistics & Programme Implementation
Government of India
September 2006

3.3.1.1 The class limits for the MPCE classes given in the statements and appendix tables of this report are based on the data collected in detailed Schedule 1.0 (Household Consumer Expenditure) in this round. The class limits of MPCE classes were determined, separately for the rural and urban sectors of all-India, in such a manner that each of the first two and last two classes contained 5% of the population and each of the remaining classes contained 10%.

3.3.2 In urban India, about 42 per cent of the households – which accounted for nearly 51 per cent of the population – spent less than Rs. 790/- per month per person. On the other hand, in rural India, about 41 per cent of the households – which accounted for 47 per cent of the population – could spend up to of Rs. 455/-. The proportion of households spending Rs.890/- or more per capita was as low as 13 per cent in rural India, whereas in urban India, about 48 per cent of households was spending Rs. 930/- or more per month per person.

3.4 Households and Particulars of Land

3.4.1 In rural India, a majority of the households depend mainly on agricultural activities and thus land is the main source of employment for their members. Hence, it is important to study certain aspects of land viz. the particulars of its ownership, possession and cultivation by the rural households. These aspects are discussed one by one in the following paragraphs.

Statement 3.6: Per thousand distribution of rural households by size class of land owned for each household type

| all-India size class of land owned (hectares) | household type | | | | | | | rural |
|--|----------------|---------------------|--------------|----------------------------|-----------------|--------|------|-------|
| | self employed | | rural labour | | | others | | all |
| | Agriculture | non-agri Culture | all | agri- culture labour | other labour | all | | |
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| 0.000 | 9 | 67 | 27 | 59 (66) | 119 | 77 | 205 | 66 |
| 0.001 – 0.004 | 9 | 123 | 43 | 173 | 145 | 165 | 113 | 96 |
| 0.005 – 0.40 | 179 | 603 | 308 | 592 | 587 | 591 | 450 | 428 |
| 0.41 – 1.00 | 299 | 129 | 247 | 125 | 106 | 120 | 122 | 186 |
| 0.001 – 1.00 | 487 | 855 | 598 | 890 | 838 | 876 | 685 | 710 |
| 1.01 – 2.00 | 248 | 47 | 186 | 39 | 28 | 36 | 61 | 117 |
| 2.01 – 4.00 | 170 | 22 | 125 | 8 | 11 | 9 | 34 | 72 |
| 4.01 & above | 86 | 9 | 63 | 2 | 5 | 3 | 16 | 35 |
| | | | | | | | | (730) |
| | | | | | | | | (108) |
| | | | | | | | | (60) |
| | | | | | | | | (36) |
| all classes | 1000 | 1000 | 1000 | 1000 | 1000 | 1000 | 1000 | 1000 |

Note: 1. The households with size class of land owned '0.000' hectares comprise households owned land less than 0.001 hectares as well as households which reported no information on land owned.

2. Figures in parentheses give the distribution of households obtained from the Land Holding Survey (Sch. 18.1) of

Annexure IX:

Population of different expenditure classes in India. Source: Reports of Conditions of Work and Promotion of Livelihoods in Unorganized Sector. Page 6

Reports on conditions of work and Promotion of livelihoods in the Unorganized sector



National Commission for Enterprises
In the Unorganized Sector
16th and 19th Floor, Jawahar Vypar Bhawan,
1 Tolstoy Marg, New Delhi – 110001
Website: nceuis.nic.in

Table 1.2: Population in Different Expenditure Class

| S.No. | Expenditure class | In Million | | |
|-------|---------------------------------|------------|---------|---------|
| | | 1993-94 | 1999-00 | 2004-05 |
| 1. | Extremely Poor (up to 075PL) | 103 | 87 | 70 |
| 2. | Poor (0.75PL to PL) | 172 | 174 | 167 |
| 3. | Marginally Poor (PL to 1.25PL) | 168 | 200 | 207 |
| 4. | Vulnerable (1.25PL to 2PL) | 290 | 349 | 392 |
| 5. | Middle Income (2PL to 4 PL) | 139 | 167 | 210 |
| 6. | High Income (>4PL) | 24 | 26 | 44 |
| 7. | Extremely Poor and Poor (1 + 2) | 274 | 262 | 237 |
| 8. | Marginal and Vulnerable (3 + 4) | 458 | 549 | 599 |
| 9. | Poor and Vulnerable (7 + 8) | 732 | 811 | 836 |
| 10. | Middle and High Income (5 + 6) | 162 | 193 | 253 |
| 11. | Total | 894 | 1004 | 1090 |

| Expenditure class | Percentage share and average consumer expenditure per capita per day in Rs. (pcpd) | | | |
|-------------------|--|--------|--------|-------------|
| | | | | |
| 1. | Extremely Poor (up to 075PL) | 11.5 | 8.7 | 6.4 (9) |
| 2. | Poor (0.75PL to PL) | 19.2 | 17.3 | 15.4 (12) |
| 3. | Marginally Poor (PL to 1.25PL) | 18.8 | 19.9 | 19.0 (15) |
| 4. | Vulnerable (1.25PL to 2PL) | 32.4 | 34.8 | 36.0 (20) |
| 5. | Middle Income (2PL to 4 PL) | 15.5 | 16.7 | 19.3 (37) |
| 6. | High Income (>4PL) | 2.7 | 2.6 | 4.0 (93) |
| 7. | Extremely Poor and Poor (1 + 2) | 30.7 | 26.1 | 21.8 (11) |
| 8. | Marginal and Vulnerable (3 + 4) | 51.2 | 54.7 | 55.0 (18) |
| 9. | Poor and Vulnerable (7 + 8) | 81.8 | 80.7 | 76.7 (16) |
| 10. | Middle and High Income (5 + 6) | 18.2 | 19.3 | 23.3 (46) |
| 11. | Total | 100.00 | 100.00 | 100.00 (23) |

Note:

1. Figures in bracket denote average consumer expenditure per capita per day in Rs.

2. PL refers to Poverty Line.

Source: Computed from unit level data of NSS 61st Round 2004 - 2005, NSS 55th Round 1999-2000 and NSS 50th Round 1993-94, Employment-Unemployment Survey.

expenditure. The first four are clubbed together to get the segment of the common people. The first group of "Extremely Poor" are those who have a monthly per capita consumer expenditure of up to three-fourths of the official poverty line (i.e. an average of Rs.8.9 per capita per day (pcpd) in 2004-05); the second group "Poor" are those between the Extremely Poor and up to the official poverty line (average expenditure of Rs. 11.6 pcpd); the third is called "Marginally Poor" with per capita consumer expenditure of only 1.25 times the poverty line (i.e. Rs.14.6 pcpd); and the fourth called "Vulnerable" have per capita consumer expenditure of only two times the poverty line (i.e. Rs.20.3 pcpd). In 2004-05, the Extremely Poor constituted 6.4 per cent, the Poor 15.4 per cent, the Marginally Poor 19.0 per cent. These three constituted 41 per cent of the population. If the vulnerable are added to this group the total accounts for 77 per cent of the population (Table 1.2). We would categorise this 77 per cent, totalling 836 million people, with an income roughly below \$2 in PPP terms, as the poor and vulnerable segment of the Indian population.

1.28 While the percentage of population below the poverty line has come down, albeit at a slower rate during the nineties and until recently compared to in the eighties, the movement is within the group of broadly poor (41 per cent) or the poor and vulnerable (77 per cent) of the population.

Annexure X:

Income Tax exemption limit in various years in India.

| <u>Assessment Year</u> | <u>Year ended</u> | <u>Exemption</u> |
|-----------------------------------|--------------------------|-------------------------|
| 1990-91 | 31.03.1990 | 18,000 |
| 1991-92 | 31.03.1991 | 22,000 |
| 1992-93 | 31.03.1992 | 22,000 |
| 1993-94 | 31.03.1993 | 28,000 |
| 1994-95 | 31.03.1994 | 30,000 |
| 1995-96 | 31.03.1995 | 35,000 |
| 1996-97 | 31.03.1996 | 40,000 |
| 1997-98 | 31.03.1997 | 40,000 |
| 1998-99 | 31.03.1998 | 40,000 |
| 1999-00 | 31.03.1999 | 50,000 |
| 2000-01 | 31.03.2000 | 50,000 |
| 2001-02 | 31.03.2001 | 50,000 |
| 2002-03 | 31.03.2002 | 50,000 |
| 2003-04 | 31.03.2003 | 50,000 |
| 2004-05 | 31.03.2004 | 50,000 |
| 2005-06 | 31.03.2005 | 50,000 |
| 2006-07 | 31.03.2006 | 100,000 |