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Beyond Formal Equality: Recalibrating the Creamy Layer Doctrine in India's Constitutional Framework of Reservation

PIYUSHA PRADHAN* AND SIMRAN SAHOO**

ABSTRACT

Reservation in India is a constitutionally recognised affirmative action programme that seeks to address socially, educationally and structurally embedded disadvantage and inequality, and to further the constitutional commitment to substantive equality. Within this scheme, the 'creamy layer' doctrine is one of the exclusionary criteria employed to ensure that the benefits of affirmative action reach those members who remain substantially disadvantaged rather than the more advanced sections of the beneficiary groups. This paper critically analyses the constitutional basis, historical background, legal evolution and policy ramifications of the doctrine in Indian reservation law. It traces the development of reservation policy and the emergence of the creamy layer concept, and examines the doctrine in the context of the use of income, occupation, socio-economic indicators and other factors in identifying the advanced sections. It further raises the question whether the notion of backwardness can be uniformly applied to Scheduled Castes, Scheduled Tribes and Other Backward Classes, given the material differences in the history of these groups and the nature of their structural disadvantage. The emphasis of the paper lies on the controversial application of the creamy layer concept to Scheduled Castes and Scheduled Tribes and its implications for the goals of substantive equality, intra-group inequality, caste-based disadvantage and the constitutional philosophy of affirmative action. The paper also examines the application of the doctrine to promotional reservations in public employment and the associated challenges. The methodology adopted is mainly doctrinal and analytical.

Keywords: Reservation, Creamy Layer Doctrine, Affirmative Action

I. INTRODUCTION

In India, social stratification has historically been marked by hierarchies that have significantly shaped access to education, work, property, political representation and public life. Caste has

* Author is a Ph.D. Research Scholar at KIIT School of Law, KIIT Deemed to be University, Bhubaneswar, Odisha, India.

** Author is a Ph.D. Research Scholar at KIIT School of Law, KIIT Deemed to be University, Bhubaneswar, Odisha, India.

played a crucial role in determining social standing and the distribution of opportunity.¹ Economic poverty and the specific exclusion suffered by the tribal population add to these pre-existing inequalities, and together they supply the normative justification for affirmative action in the country. The system of reservation has accordingly been the principal means of addressing discrimination in India since independence. It was originally aimed at improving the position of the Scheduled Castes (SCs) and Scheduled Tribes (STs), who had suffered exclusion, untouchability and deprivation, and was later expanded to include the Other Backward Classes (OBCs). Its fundamental goal is not to grant privileges but to remove the obstacles that have historically prevented the equal participation of these groups in the institutions of the State.²

Under Article 16 of the Constitution, reservation can be seen as a way of reconciling formal equality with substantive disadvantage.³ As the Constituent Assembly debates show, the logic of reservation is linked primarily to structural and historical exclusion, and not merely to economic poverty. At the same time, the creamy layer doctrine introduces a distributional dimension: individuals who have achieved considerable social and economic success within their beneficiary category may be disqualified so that affirmative action reaches those who remain disadvantaged. The central idea of the doctrine is thus to prevent the accumulation of reservation benefits by the relatively advanced elements of the backward categories. The applicability of the creamy layer to SCs and STs is, however, deeply controversial, because the discrimination suffered by these groups is founded on caste membership itself.

Discussion of reservation has become even more complex in contemporary society because of politicisation, competing claims to inclusion and increasing conflict over scarce resources. The shift in the character of reservation from a tool of historical reparation to an object of political bargaining calls into question both its constitutional aim and its distributional efficiency.⁴ The reservation system must therefore remain responsive to changing social and economic circumstances without losing sight of its purpose, which is to address structural inequality. The creamy layer principle seeks to balance affirmative action with equality of distribution, but its implementation demands constitutional delicacy. In other words, a sound policy framework must be able to distinguish genuine advancement from continuing disadvantage.⁵

¹ See generally B.R. AMBEDKAR, *ANNIHILATION OF CASTE* (Verso 2014).

² MARC GALANTER, *COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA* (Univ. of Cal. Press 1984).

³ INDIA CONST. art. 16.

⁴ Christophe Jaffrelot, *The Impact of Affirmative Action in India: More Political than Socioeconomic*, 5 INDIA REV. 173 (2006), <https://doi.org/10.1080/14736480600824516>.

⁵ See generally ASHWINI DESHPANDE, *AFFIRMATIVE ACTION IN INDIA* (Oxford Univ. Press 2013).

II. LITERATURE REVIEW

Sr. No.	Details of the research paper	Summary of findings
1	Orhan Aygün & Bertan Turhan, <i>Affirmative Action in India: Restricted Strategy Space, Complex Constraints, and Direct Mechanism Design</i> (Oct. 4, 2023).	The paper examines inefficiencies in affirmative action in India using game theory as its tool of analysis. It develops a new approach, the ‘generalised lexicographic choice rule’, to make the allocation of seats more efficient. The model allows candidates to rank institution-quota pairs in order to improve access for marginalised groups.
2	Orhan Aygün & Bertan Turhan, <i>Inconsistency of Score-Elevated Reserve Policy for Indian Affirmative Action</i> (Dec. 22, 2023).	The paper challenges the soft-reserve strategy adopted in India, under which OBC cut-off marks are lowered. Through simulation experiments the authors establish that such a system offends the principles of equality and merit, thereby distorting the concept of the reservation quota.
3	Tayfun Sönmez & M. Bumin Yenmez, <i>Constitutional Implementation of Affirmative Action Policies in India</i> (Mar. 3, 2022).	The work draws a legal-algorithmic connection between the decisions of the Supreme Court and institutional practice. Using the 2SMH-DA mechanism, the authors ensure that the horizontal and vertical quota system is implemented consistently and efficiently.
4	Prachi Panwar & Ramakant Tripathi, <i>Reservation Policy in India: A Critical Study with Reference to the Creamy Layer Principle</i> , INDIAN J.L. & LEGAL RES. (2023).	The study is a critique of the creamy layer exclusion approach as too simplistic, particularly when applied to SC and ST communities. It recommends discarding the old income criteria and adopting multidimensional criteria so that only the deprived benefit from the scheme.
5	Anup Surendranath, <i>Reservations and Sub-Classification of SC/STs: A Mixed Bag for Substantive Equality</i> , S.C. OBSERVER (2024).	Surendranath argues that uniform quotas tend to ignore the problem of internal marginalisation within each group. He advocates sub-classification and a distribution that takes account of the multiply marginalised.
6	Malavika Parthasarathy, <i>Creamy Layer: Court in Review</i> , S.C. OBSERVER (Mar. 26, 2022).	Parthasarathy provides a doctrinal discussion of the development of the creamy layer. She points to the judiciary’s intention to improve the reservation system while stressing the failures of implementation. The article focuses on the need for flexible criteria and exclusionary guidelines.

Sr. No.	Details of the research paper	Summary of findings
7	<i>Redefining Affirmative Action: The Supreme Court's Landmark Judgment on Sub-Classification of SCs and STs</i> , LEGALSERVICEINDIA (2024).	The paper analyses the Supreme Court's 2024 decision on the sub-categorisation of SCs and STs. It explores the implications that have emerged from applying the creamy layer concept to the SC and ST communities.
8	<i>Reservation Policy in India: A Socio-Legal Analysis</i> , JURIS CENTRE (July 2, 2025).	The paper traces the history of reservation in India in its historical, legal and social dimensions. It analyses the EWS quota, changes to the 'creamy layer' and the response of SCs and STs. The authors make a case for data-driven policymaking.
9	Sanya Singh, <i>Sub-Classification Within Reserved Categories: Judgment Explainer</i> , S.C. OBSERVER (2025).	Singh's explainer sets out the Court's reasoning on the purpose of 'internal classification' within the SC and ST categories. The approach seeks a balance between law and empirical considerations. The essay cautions against judicial arbitrariness and identity politics while carefully advocating more precisely targeted reservation.
10	<i>Decoding the Creamy Layer Doctrine: From Indra Sawhney to Devendra Singh</i> , JUS CORPUS L.J. (2024).	The study examines the development of the 'creamy layer' concept from its constitutional foundation to contemporary jurisprudence. It stresses the inadequacy of the income criterion alone and the need for multi-criteria approaches to determine who truly belongs to the backward classes, particularly among SCs and STs.

Table 1: Consolidated summary of the literature reviewed

III. RESEARCH OBJECTIVES

Sr. No.	Research objective	Core focus area
1	To explore the legal and constitutional basis for excluding the relatively privileged sections of the reserved classes from reservation benefits, especially within the framework of social justice jurisprudence.	Normative and constitutional basis

Sr. No.	Research objective	Core focus area
2	To evaluate how social deprivation and social discrimination take different forms among SCs, STs and OBCs, and to determine whether the application of the creamy layer concept accords with the socio-historical realities of India.	Differentiated marginalisation and equality
3	To examine the limits of the 'creamy layer doctrine' in government employment, particularly whether it should be confined to the appointment process or extend to promotion as well.	Scope in public employment
4	To analyse the evolution of reservation policy in India by examining landmark decisions of the Supreme Court, so as to appreciate the effect of judicial thinking on affirmative action.	Judicial development and jurisprudence
5	To assess the current reservation policy of India in terms of its morality, social impact and balance between 'competition based on merit' and 'distributive justice'.	Ethical and societal evaluation

Table 2: Key objectives and corresponding focus areas

IV. RESEARCH QUESTIONS

This study is driven by the following central research questions:

1. How do the axes of deprivation differ between SCs, STs and OBCs?
2. Can a uniform application of the 'creamy layer' principle across all categories of backward classes be justified in the light of historical and contemporary inequalities?
3. Should the application of the 'creamy layer' filter to limit access to reservation apply only at the stage of initial recruitment in public employment, or must it extend to promotions as well, so as to ensure merit-based advancement while preserving the foundational aims of affirmative action?

V. RESEARCH METHODOLOGY

The research adopts a primarily doctrinal, qualitative and analytical approach to explore the creamy layer doctrine within the constitutional regime of reservation in India. Primary legal materials, namely the Constitution, the constitutional amendments, statutes, government policy, the reports of commissions and committees, and the judgments of the Supreme Court and the High Courts, are critically analysed with particular attention to reservation, backwardness,

equality, creamy layer exclusion and promotional reservation. Secondary sources, consisting of scholarly books, journal articles, research papers, law reviews and reliable institutional publications, are examined in order to engage critically with the conflicting views on substantive equality, social justice, caste-based discrimination and inequality within a community. A comparative and critical analysis is carried out to understand the different dimensions of the backwardness of OBCs, SCs and STs and to consider whether it is constitutionally proper to adopt a common creamy layer test. The relevance of the doctrine to promotional reservation and the related administrative issues are explored in this context. While authoritative socio-economic data are used for the purpose of analysis, the research does not undertake any primary empirical study.

VI. THE CREAMY LAYER DOCTRINE WITHIN INDIA'S CONSTITUTIONAL FRAMEWORK OF RESERVATION

India's policy of reservation is a tool of substantive equality under the Constitution, aimed at tackling the structural inequalities caused by historically entrenched caste-based, social and educational marginalisation. Built on the constitutional conception of social justice articulated by Dr. B.R. Ambedkar, reservation policy was designed to go beyond special treatment and to dismantle the structural discrimination that obstructed equal access to education, government employment and representation. Its expansion from an institution providing special protection to SCs and STs to one that includes OBCs after the Mandal Commission has, nevertheless, been accompanied by continuing doubts about intra-caste inequality and distributive justice.

One of the most important judicial interventions came in *Indra Sawhney v. Union of India*, where the Supreme Court of India ruled in favour of OBC reservation but recognised the need to exclude the socially and educationally more advanced sections from the benefits of the reservation policy.⁶ The doctrine was intended to serve distributive justice by targeting those who actually faced discrimination. Its later application in the context of promotional reservations created several constitutional problems.

Recent developments, such as the quota for the Economically Weaker Sections (EWS), the claims of newly mobilised social groups, horizontal reservation claims grounded in intersectionality and controversies over affirmative action in the private sector, show that reservation is a dynamic process. It calls for an objective framework that can distinguish structural inequality from relative prosperity. In this context, the present research analyses the creamy layer doctrine together with its constitutional underpinnings, its development in the

⁶ *Indra Sawhney v. Union of India*, (1992) Supp. 3 S.C.C. 217.

courts and its application to SCs, STs and OBCs. The study examines whether the current framework strikes an equilibrium between substantive equality, social justice and distributive fairness.⁷

A. Historical and constitutional evolution of reservation policies in India

Reservation in India can be described as a constitutional tool for achieving social justice, equality and inclusion. Historically, the concept has its origins in the colonial era, including the Government of India Acts of 1919 and 1935. The Poona Pact of 1932 was a key milestone in the political representation of the marginalised communities. After independence, Articles 15 and 16 became the basis of the constitutional provision for reservation in favour of SCs, STs and OBCs.

Articles 15 and 16 permit special provisions for socially and educationally backward classes and for SCs and STs in education and public employment respectively. Political representation is provided under Articles 330 and 332. Article 335 requires that the claims of SCs and STs be taken into consideration consistently with the maintenance of efficiency of administration.⁸

Judicial pronouncements have played an important role in the development of the law relating to reservation. *Indra Sawhney v. Union of India* upheld the validity of OBC reservation under Article 16(4), formulated the ‘creamy layer’ principle and established the general rule of a 50 per cent ceiling. It also held that Article 16(4) did not extend to promotions, which necessitated the insertion of Article 16(4A) to provide for reservation in promotion for SCs and STs.⁹ *M. Nagaraj v. Union of India*¹⁰ and *Jarnail Singh v. Lachhmi Narain Gupta*¹¹ laid down the constitutional parameters for promotional reservations.

B. The emergence and evolution of the ‘creamy layer’ doctrine

The concept of the ‘creamy layer’ is an important landmark in the legal evolution of reservation in India, because it introduces exclusion within a class of beneficiaries of affirmative action. The doctrine arose principally from *Indra Sawhney v. Union of India*, in which the constitutional validity of reservation for OBCs was challenged before the Supreme Court. It was held that the backward classes do not constitute a uniform body of people, and that certain members of the group may achieve enough social and economic success to set them apart from those who remain disadvantaged.

⁷ See generally KALPANA KANNABIRAN, *TOOLS OF JUSTICE: NON-DISCRIMINATION AND THE INDIAN CONSTITUTION* (Routledge 2012).

⁸ INDIA CONST. arts. 15, 16, 330, 332, 335.

⁹ INDIA CONST. art. 16, cl. (4A), inserted by the Constitution (Seventy-seventh Amendment) Act, 1995.

¹⁰ *M. Nagaraj v. Union of India*, (2006) 8 S.C.C. 212.

¹¹ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 S.C.C. 396.

The doctrine is important because it moves beyond viewing backwardness as an undifferentiated class phenomenon. Even though the reservation system addresses structural disadvantage, there is no guarantee that every member of a backward class experiences that disadvantage in the same way. The doctrine seeks to identify those who have already made considerable progress and therefore no longer need the preference. The creamy layer doctrine is thus an effort to balance two constitutional objectives: to provide an adequate remedy to the structurally disadvantaged, and to ensure that affirmative action does not become a permanent advantage for the advanced sections.¹²

i. Genesis of the creamy layer doctrine

The creamy layer doctrine has its roots in the Mandal Commission's recommendations for the upliftment of the socially and educationally backward classes and for 27 per cent reservation for OBCs in government employment.¹³ Its legal foundation was laid in *Indra Sawhney v. Union of India*, in which the Supreme Court endorsed reservation for OBCs under Article 16(4) while mandating that the socially advanced sections be excluded from it. It thus became an intra-class exclusionary doctrine, ensuring that no undue advantage is taken by the relatively prosperous members of the OBCs. The Union Government went on to frame administrative guidelines with reference to occupation, status and economic parameters.¹⁴

ii. Core elements of the creamy layer doctrine

The operational basis of the creamy layer doctrine makes use of parameters such as income, occupation and status to identify the advanced sections of the OBCs. Although it is popularly known as an income criterion for exclusion, the doctrine cannot be equated with a mere financial limit, because the occupations specified, constitutional posts, professional status and the prescribed economic criteria together form the indicators of advancement.

Income is an important parameter and has been revised from time to time in line with economic conditions.¹⁵ The criterion must, however, be viewed against the larger backdrop of the exclusion process, since certain categories are excluded on the basis of occupation and status

¹² O. Chinnappa Reddy, *Ladders to Climb and Bridges to Cross: Reservations, Scheduled Castes, Scheduled Tribes, and Backward Classes*, in *THE COURT AND THE CONSTITUTION OF INDIA: SUMMITS AND SHALLOWS* 96, 96–114 (Oxford Univ. Press 2010).

¹³ SECOND BACKWARD CLASSES COMMISSION, REPORT OF THE BACKWARD CLASSES COMMISSION (1980) (Mandal Commission Report).

¹⁴ CHRISTOPHE JAFFRELOT, *INDIA'S SILENT REVOLUTION: THE RISE OF THE LOWER CASTES IN NORTH INDIA* (Columbia Univ. Press 2003).

¹⁵ DEPARTMENT OF PERSONNEL AND TRAINING, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS, O.M. No. 36033/1/2013-Estt.(Res.) (Sept. 13, 2017) (raising the income ceiling for the creamy layer from Rs. 6 lakh to Rs. 8 lakh per annum with effect from Sept. 1, 2017), <https://www.ncbc.nic.in/Writereaddata/OM8Lakha.pdf>.

regardless of income. This illustrates that economic advancement and social backwardness are not synonymous. Economic prosperity may bring better living conditions, but caste-based discrimination and social backwardness do not end because of it.

Income and occupational standards must therefore be seen as indicative benchmarks for measuring relative progress and not as final yardsticks of backwardness. Regular review is imperative to avoid inclusion or exclusion on the basis of outdated standards that have become irrelevant with changing times. This becomes all the more important when the possible application of the doctrine to SCs and STs is considered.¹⁶

iii. Rationale for excluding the creamy layer from reservation policies

The justification for excluding the creamy layer flows from the distributive and transformative goals of affirmative action. Reservation aims to ensure that marginalised communities have equitable access to education, employment and other constitutional institutions. Allowing those who are already advantaged to be favoured repeatedly may impair the ability of the genuinely disadvantaged to receive their share. The creamy layer doctrine therefore addresses inequality within a class and acknowledges the heterogeneity of the backward classes.

In terms of substantive equality, equal treatment does not always translate into equality of outcome. The doctrine ensures that preferential treatment reaches only those who genuinely need the protection provided by the Constitution. Its aim is neither to punish advancement nor to prevent social mobility, but to keep reservation tied to its remedial purpose. This is evident in *Indra Sawhney v. Union of India*, where the Court moved from the identification of the backward classes to the question of who among them needs affirmative action.

However, economic development does not automatically mean the end of discrimination, stigma or exclusion based on caste, especially in the case of SCs and STs. The standards for exclusion should take into account the fact that their disadvantage is different in kind. Ultimately, the creamy layer doctrine attempts to find a compromise between affirmative action and distributive justice.¹⁷

¹⁶ See generally Ashok Johnson Rodrigues, *Anomalies in Implementation of the 'Creamy Layer' Segment in the Realisation of Benefits under Reservation Policies in India*, 10 CHRIST U. L.J. 55 (2021), <https://journals.christuniversity.in/index.php/culj/article/view/2951>.

¹⁷ See generally Pavan Srinivas, *Affirmative Action and the Marginalized Population: A Study on the Creamy Layer and Its Relevance Today*, 5 CHRIST U. L.J. 45 (2016), <https://doi.org/10.12728/culj.9.5>.

iv. Judicial development of the creamy layer exclusion principle

A body of judicial interpretation on the exclusion of the ‘creamy layer’ from the ambit of reservation has developed, and it has been an important factor in the evolution of the affirmative action system in India:

1. *Indra Sawhney v. Union of India*: This watershed judgment laid the groundwork for the creamy layer doctrine. The Supreme Court held that, in identifying ‘backward classes’, caste could serve as a relevant indicator, but the assessment could not rest solely on economic status.¹⁸ Importantly, the Court clarified that Article 16(4) is not an exception to the general guarantee of equality of opportunity under Article 16(1), but a distinct provision enabling affirmative action within the broader constitutional framework of equality.¹⁹ The Court recognised the need to distinguish within the backward classes themselves, allowing the State to create internal classifications, such as between the ‘more backward’ and the ‘advanced’ among the OBCs, in order to direct benefits more accurately.²⁰ Consequently, the Court introduced the ‘creamy layer’ concept to exclude economically and socially forward individuals from reservation entitlements.²¹ It also capped total reservation at 50 per cent, save in exceptional circumstances, and held that Article 16(4) did not extend to reservation in promotions.²² The Court further directed that disputes concerning the criteria of backwardness and the inclusion or exclusion of classes be raised only before the Supreme Court, so as to ensure judicial consistency.²³
2. *Ashoka Kumar Thakur v. Union of India* (2008): In this case the Supreme Court examined the constitutional validity of the Constitution (Ninety-third Amendment) Act, 2005, which enabled reservation in admission to educational institutions. It held that the OBC reservation would be unconstitutional if implemented without excluding the ‘creamy layer’.²⁴ While acknowledging the necessity of this exclusion, the Court left the formulation of specific criteria to the executive, noting the absence of rigid guidelines.²⁵ The Court reinforced the applicability of the creamy layer doctrine to OBCs, stressing that a failure to exclude advanced individuals would compromise the

¹⁸ *Indra Sawhney*, *supra* note 6, at 314–15.

¹⁹ *Id.* at 329–30.

²⁰ *Id.* at 356–58.

²¹ *Id.* at 417–18.

²² *Id.* at 435–36.

²³ *Id.* at 451–52.

²⁴ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 S.C.C. 1, ¶ 229.

²⁵ *Id.* ¶ 233.

fairness of reservation policy.²⁶ The majority left open the question of the amendment's validity as applied to private unaided institutions, although Justice Bhandari, in a separate opinion, held that imposing reservation on unaided institutions would infringe the right to carry on an occupation; the amendment was upheld in its application to State-maintained and aided institutions.²⁷ Minority educational institutions were held to be constitutionally distinct and protected, and thus exempt from the reservation mandate.²⁸

3. *Jarnail Singh v. Lachhmi Narain Gupta* (2018): This decision confirmed the extension of the creamy layer concept, first applied in *M. Nagaraj*, to SCs and STs, but only in the context of promotions in public employment.²⁹ The Court held that while SCs and STs face systemic discrimination, the more advanced members within these communities, those constituting the 'creamy layer', should not continue to benefit from promotional reservation. The rationale lay in ensuring that the intended beneficiaries of affirmative action, those who remain genuinely disadvantaged, are not overshadowed by better-placed individuals within the same category.³⁰ The judgment emphasised that intra-group inequality must be addressed in order to prevent the monopolisation of benefits and to ensure equitable distribution.³¹ This approach, in the Court's view, avoids reverse discrimination and preserves a balance between social justice and merit.³²

C. Parameters for classifying the creamy layer among backward classes

The parameters for classifying the backward classes into the creamy and non-creamy layers, as laid down in the Government of India's office memorandum of 1993 and subsequently revised, are set out in the following table.³³

²⁶ *Id.* ¶¶ 238–39.

²⁷ *Id.* ¶ 293.

²⁸ *Id.* ¶¶ 282–84; see also INDIA CONST. arts. 29, 30.

²⁹ *Jarnail Singh*, *supra* note 11, ¶ 16.

³⁰ *Id.* ¶¶ 19–20.

³¹ *Id.* ¶ 23.

³² *Id.* ¶ 25.

³³ DEPARTMENT OF PERSONNEL AND TRAINING, MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS, O.M. No. 36012/22/93-Estt.(SCT) (Sept. 8, 1993) (Schedule specifying the categories of persons excluded from OBC reservation), <https://ncbc.nic.in/Writereaddata/36012-22-93-6637801728274863843.pdf>; income ceiling as revised by O.M. No. 36033/1/2013-Estt.(Res.), *supra* note 15.

Category	Nature of employment or status	Persons treated as belonging to the creamy layer
I. Constitutional authorities	Holders of the highest constitutional posts	Sons and daughters of persons holding posts such as President, Vice-President, Judge of the Supreme Court or of a High Court, Chairman or Member of the UPSC or of a State Public Service Commission, Chief Election Commissioner, Comptroller and Auditor-General, and persons holding similar constitutional positions.
II. Government service	Central and State Government employees	(A) Group A (Class I): sons and daughters of parents, both or either of whom is a Group A officer, subject to specified exceptions, including cases of death or permanent incapacitation. (B) Group B (Class II): sons and daughters of Group B officers, according to the parents' service particulars and promotions, again with certain exceptions. (C) Employees of public sector undertakings, banks, insurance organisations and universities: the same criteria apply to comparable posts in these institutions and, on an equivalence basis, in private employment.
III. Defence and paramilitary forces	Armed forces personnel (excluding civilian employees)	Sons and daughters of parents, either or both of whom hold the rank of Colonel and above in the Army or an equivalent rank in the Navy, the Air Force or the paramilitary forces, with special provisions where both parents are in service.
IV. Professionals and business owners	High-earning professionals and persons engaged in trade and industry	Persons engaged in professions such as medicine, law, accountancy, engineering, architecture, sport, the fine arts and the media, or in trade, business and industry, whose family income or property exceeds the specified levels.

Category	Nature of employment or status	Persons treated as belonging to the creamy layer
V. Asset holders	Owners of substantial property or land	(A) Agricultural land: families owning irrigated land equal to or above 85 per cent of the statutory ceiling area, or unirrigated land converted on the prescribed basis. (B) Plantations: land under plantation crops such as coffee, tea and rubber, assessed on the basis of the income criteria. (C) Urban property: ownership of vacant land or buildings in urban areas is assessed under the wealth criteria.
VI. Income and wealth test	General financial benchmark	Sons and daughters of persons whose gross annual income exceeds Rs. 8 lakh (as revised in 2017), excluding income from salary and agricultural land, or who hold wealth above the exemption limit under the Wealth Tax Act, are treated as belonging to the creamy layer. Note: the income limit is revised from time to time in view of inflation and other factors.

Table 3: Employment, status and income criteria for creamy layer exclusion

D. Operational challenges in the implementation of the creamy layer doctrine

The implementation of the creamy layer doctrine is subject to various conceptual, administrative and evidentiary weaknesses. Inconsistency may arise from a lack of clarity in the definition of income, profession and other exclusionary factors. A single monetary cut-off may not be appropriate in view of regional variations in the cost of living and in socio-economic conditions, which compromises the validity of any assessment of relative success.³⁴

The process of issuing and validating non-creamy layer certificates presents further challenges. Delayed processing, weak institutional capacity, lack of awareness and instances of fraudulent certification threaten the integrity of the entire process and its legitimacy.

A further issue is the reliance on economic parameters. Material advancement does not, by itself, eliminate discrimination, stigma and prejudice against members of particular castes or communities. Economic parameters alone may therefore be inadequate to capture the multidimensional character of discrimination, especially when caste, occupation, education and social standing are taken into account. The failure to review and update the exclusion criteria

³⁴ Gautam Kumar & Minaketan Behera, *Affirmative Action in New India: Evaluation of Caste-Based Reservation Policy and Debate Around Economic Criteria*, 55 SOC. CHANGE 7 (2025), <https://doi.org/10.1177/00490857241303332>.

periodically also carries the danger that the approach becomes insensitive to inflation, occupational change and socio-economic realities.³⁵

VII. DIFFERENCES IN THE BACKWARDNESS OF SCs, STs AND OBCs

Historically backward classes suffer disadvantage in different forms. Although SCs and STs are alike beneficiaries of reservation, their historical and socio-structural disadvantages are distinct. SCs have suffered caste-based discrimination and untouchability, leading to social, educational and public exclusion. STs, on the other hand, have suffered mainly from geographic isolation, displacement, underdevelopment and the disruption of their socio-economic structures.

This issue assumes importance against the backdrop of the creamy layer doctrine. In *Indra Sawhney v. Union of India* the Supreme Court ruled that the advanced sections of the OBCs should be excluded from reservation in order to ensure the equitable distribution of benefits. In cases concerning reservation in promotion, the question has arisen whether a similar intra-class distinction can be applied to SCs and STs as well. Economic and professional advancement, however, does not mean that caste-based discrimination will not persist.

This differentiation is evident in the Constitution itself. Articles 341 and 342 lay down distinct procedures for the specification of SCs and STs, while Article 46 directs the State to promote the educational and economic interests of these classes. Backwardness is therefore neither uniform nor static. Any application of the creamy layer principle to SCs and STs must accordingly take these different histories of discrimination into account.³⁶

The difference in their backwardness can be understood through the following tabular representations:

Dimension	Scheduled Castes (SCs)	Scheduled Tribes (STs)	Other Backward Classes (OBCs)
Historical origin	Untouchability, caste exclusion, ritual impurity	Geographic and cultural isolation	Occupational and social hierarchy
Legal recognition	Specified under Article 341	Specified under Article 342	Identified through the Mandal Commission and the NCBC
Nature of marginalisation	Ritual and social ostracism, dehumanisation	Territorial remoteness, lack of integration	Lack of access to education and status

³⁵ GOVERNMENT OF INDIA, REPORT OF THE EXPERT COMMITTEE FOR SPECIFYING THE CRITERIA FOR IDENTIFICATION OF SOCIALLY ADVANCED PERSONS AMONG THE SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES (1993) (Ram Nandan Prasad Committee), <https://archive.org/details/dli.csl.1088>.

³⁶ See generally SUKHADEO THORAT & KATHERINE S. NEWMAN, BLOCKED BY CASTE: ECONOMIC DISCRIMINATION IN MODERN INDIA (Oxford Univ. Press 2010).

Dimension	Scheduled Castes (SCs)	Scheduled Tribes (STs)	Other Backward Classes (OBCs)
Constitutional protection	Articles 17, 15(4), 16(4), 46, 330 and 332	Fifth and Sixth Schedules; Articles 15(4), 16(4) and 46	Articles 15(4), 16(4) and 340
Forms of exclusion	Physical segregation, violence, temple and social bans	Developmental neglect, displacement	Lower social status, economic exclusion
Current challenges	Enduring caste stigma despite mobility	Policy invisibility, low representation	Intra-group inequality, elite capture
Reservation criteria	Social stigma and untouchability	Isolation and underdevelopment	Social, educational and economic backwardness

Table 4: Comparative matrix: nature of backwardness

Group	Requires focus on	Policy implication
SCs	Dignity, anti-discrimination, caste annihilation	More than economic upliftment; needs anti-stigma mechanisms
STs	Access, integration, cultural protection	Land rights, education, autonomy structures
OBCs	Economic mobility, educational support	Creamy layer exclusion, sub-categorisation

Table 5: Key differentiators in State intervention needs

Type of disparity	Description	Legal response
Inter-group	Unequal access to rights as between SCs, STs and OBCs	<i>Indra Sawhney</i> (creamy layer for OBCs); <i>Jarnail Singh</i> (potential for intra-SC/ST exclusion); <i>Davinder Singh</i> (State power to sub-classify)
Intra-group	Elite capture within OBCs; dominant sub-castes among SCs and STs monopolising benefits	<i>Indra Sawhney</i> (creamy layer for OBCs); <i>Jarnail Singh</i> (potential for intra-SC/ST exclusion); <i>Davinder Singh</i> (State power to sub-classify)

Table 6: Intra-group and inter-group inequality

Earlier understanding	Evolving approach
Group identity equated with backwardness	Requires quantifiable, contextual and multidimensional data
Income-based metrics for all	Caste, geography and social stigma for SCs and STs
Uniform reservation	Tailored, evidence-backed frameworks

Table 7: Evolving standards of backwardness

In sum, the disparity in the backwardness of SCs, STs and OBCs is not merely a theoretical construct; it is entrenched in the Constitution through history, law and experience. While SCs continue to suffer the consequences of the caste system, STs face the challenge of geographic isolation, and OBCs suffer social and educational disadvantage. It is the task of the State to develop a framework that acknowledges these disparities.

VIII. BEYOND OBCs: RECONSIDERING THE CREAMY LAYER PRINCIPLE FOR SCs AND STs

Contemporary discourse on reservation now takes account of the importance of intra-group differentiation. In *State of Punjab v. Davinder Singh*, the Supreme Court held that sub-classification within the Scheduled Castes is permitted by the Constitution where empirical data establishes a rational nexus between the classification and the equitable distribution of benefits.³⁷ While this method addresses intra-group disparity, the application of the creamy layer doctrine to SCs and STs cannot be a simple replication of the process used for OBCs. The disadvantage of these groups lies in caste-based exclusion, untouchability and discrimination, which may continue even after economic upliftment.

A. Arguments for and against the application of the creamy layer principle to SCs and STs

The competing positions can be understood through the following tabular representation:

Aspect	Details and arguments
Key case law	<i>State of Punjab v. Davinder Singh</i> (2024): upheld the State's power to sub-classify within the SCs on the basis of data; permitted the targeted distribution of reservation benefits
Judicial rationale	Chief Justice D.Y. Chandrachud advocated a qualitative approach to representation, beyond mere numbers, and called for models that promote intra-group equity
Mechanisms suggested	(1) Preference model: additional preference to under-represented sub-groups; (2) Reservation model: reserved posts for a sub-group, with a carry-forward option
Need for equity within marginalised groups	Dominant sub-castes have monopolised benefits; need for data-backed sub-classification and distributive justice
Evolution of the creamy layer doctrine	Rooted in <i>Indra Sawhney</i> (1992), which aimed to exclude the advanced individuals among the OBCs; now seen as a tool of substantive equality rather than mere economic screening
Constitutional grounding	Article 14 permits reasonable classification; Articles 15(4) and 16(4) support targeted intervention for 'adequate representation'
Conditions for validity	Empirical evidence required; must not undermine the constitutional protection under Articles 341 and 342

Table 8: Rationale supporting creamy layer application for SCs and STs

³⁷ *State of Punjab v. Davinder Singh*, 2024 INSC 562 (Aug. 1, 2024), <https://indiankanoon.org/doc/155595286/>.

Aspect	Details and arguments
Distinctive basis of SC and ST reservations	Unlike OBCs, whose backwardness is defined in social and educational terms and is more responsive to economic mobility, SCs and STs suffer systemic caste-based exclusion regardless of economic status
Persistent discrimination	Social mobility does not amount to social acceptance; Dalits and Adivasis in elite spaces (the IITs, the bureaucracy) still face ostracism, bias and harassment
Judicial safeguards	<i>Indra Sawhney</i> (1992) confined its creamy layer discussion to OBCs and held it inapplicable to SCs and STs; <i>M. Nagaraj</i> and <i>Jarnail Singh</i> made creamy layer exclusion a condition of reservation in promotion for SCs and STs, while leaving the State free not to provide such reservation at all
Constitutional structure	Articles 341 and 342 provide closed lists; only the President by notification and thereafter Parliament by law can alter inclusion; the Constitution presumes the backwardness of SCs and STs
Implementation challenges	No uniform law or mechanism exists to identify 'advanced' SC and ST individuals; potential for arbitrary or politicised exclusion
Misfit of income criteria	Income is not a measure of deprivation; economic success does not erase cultural and social oppression for SCs and STs
Purpose of reservation	Beyond income, reservation aims to ensure dignity, representation and reparative justice; it must not be diluted by the premature application of exclusion
Moral and legal imperative	Until society is caste-neutral, the creamy layer risks reversing affirmative gains; the constitutional vision supports group solidarity for historically excluded classes

Table 9: Reasons opposing creamy layer application for SCs and STs

B. Rethinking the application of the creamy layer doctrine to SCs and STs: the authors' view

The proposal to extend the creamy layer doctrine to the Scheduled Castes and Scheduled Tribes raises a basic question about the nature of the constitutional disadvantage that backwardness denotes. The doctrine was introduced in the OBC context to prevent the more advanced groups from continuing to benefit from reservation. Its extension to SCs and STs cannot rest on the same assumption. The handicap suffered by these categories arises from their history of caste exclusion, untouchability, stigma, dispossession and marginalisation. These disadvantages persist even after education, occupational mobility and economic prosperity. Economic prosperity alone is not enough to show that the disadvantage has been overcome.³⁸

³⁸ Sukhadeo Thorat & Paul Attewell, *The Legacy of Social Exclusion: A Correspondence Study of Job Discrimination in India*, 42 ECON. & POL. WKLY. 4141 (2007), <https://www.epw.in/journal/2007/41/caste-and-economic-discrimination-special-issues/legacy-social-exclusion.html>.

This matters because the constitutional disadvantage of SCs and STs is not limited to economic backwardness. They were historically excluded from participation, from representation and from the exercise of equal citizenship. A member of these categories may therefore have attained considerable economic and professional standing and yet remain subject to discrimination. Treating economic standing or professional status as conclusive proof of social progress would amount to treating a multidimensional disadvantage as an essentially economic one.

The jurisprudence on promotional reservation adds further complexity. *M. Nagaraj v. Union of India* and *Jarnail Singh v. Lachhmi Narain Gupta* laid the jurisprudential foundation of the constitutional provisions on reservation in promotion and accepted the validity of excluding the advanced sections where necessary.³⁹ Yet this development does not supply sufficient justification for simply transferring the OBC formula to SCs and STs. The unique nature of caste-based discrimination and the associated constitutional entitlements of these groups must be taken into consideration.

There is also an institutional and administrative question. In the absence of sufficiently objective and scientifically verified criteria of advancement for SCs and STs, an exclusionary approach would produce subjective classification. A criterion based on income alone would not suffice, since it might exclude persons who remain subject to social discrimination regardless of their financial position. Conversely, too narrow a framework might overlook the intra-group concentration of advantage.

What is constitutionally more sustainable is therefore to distinguish between sub-classification for the purpose of equitable distribution and the wholesale adoption of the creamy layer test. *State of Punjab v. Davinder Singh* provides a precedent for the constitutional recognition of within-group inequality where there is a sound empirical foundation.⁴⁰ The goal must be to ensure that affirmative action reaches the least advantaged while keeping in view the structural reality of caste.

In this light, the application of the creamy layer doctrine to SCs and STs can be regarded neither as necessary nor as unconstitutional *per se*. What is required is a contextual constitutional analysis, reliable empirical information and criteria capable of determining whether real progress has been made or whether social disadvantage persists.⁴¹

³⁹ *M. Nagaraj*, *supra* note 10; *Jarnail Singh*, *supra* note 11.

⁴⁰ *Davinder Singh*, *supra* note 37.

⁴¹ See generally Virginius Xaxa, *Tribes as Indigenous People of India*, 34 *ECON. & POL. WKLY.* 3589 (1999), <https://www.epw.in/journal/1999/51/special-articles/tribes-indigenous-people-india.html>.

IX. APPLICABILITY OF THE CREAMY LAYER IN PROMOTIONAL RESERVATIONS

The key question here is whether the exclusion of the advanced sections from the benefit of reservation should be confined to initial appointment or should extend to promotional reservation in public employment as well. The question is especially relevant for SCs and STs, since promotional reservation is meant to address not only recruitment into the public service but also the adequate representation of these categories in the higher administrative posts. According to the Supreme Court's ruling in *Indra Sawhney v. Union of India*, Article 16(4) did not envisage reservation in promotion. Article 16(4A) was subsequently inserted in the Constitution by the Seventy-seventh Amendment to permit reservation in promotion for SCs and STs.⁴²

This was followed by another important Supreme Court decision on the subject, *M. Nagaraj v. Union of India*, which upheld Article 16(4A) subject to the constitutional requirements of demonstrating backwardness and inadequacy of representation and of maintaining administrative efficiency. The law then shifted with the decision in *Jarnail Singh v. Lachhmi Narain Gupta*, which reconsidered aspects of *Nagaraj*, setting aside the requirement of quantifiable data on the backwardness of SCs and STs, and affirmed the applicability of the creamy layer doctrine to promotional reservation.⁴³

The application of the doctrine to promotion nevertheless creates a distinct constitutional problem. Disadvantage at the point of entry and disadvantage at the point of promotion are two different things. Reservation in recruitment seeks to remove the obstacles that prevent access to public employment, whereas reservation in promotion seeks to remedy the representational and institutional deficits that persist within the public service. An individual may have secured public employment and attained economic stability through it, yet may not have escaped the discriminatory attitudes that flow from the caste system.

The question is more pertinent for SCs and STs because their disadvantage under the Constitution is traditionally associated with untouchability, caste, social exclusion and discrimination, and not with poverty alone. A public servant may thus have been promoted and still face discriminatory attitudes, social rejection and institutional obstacles in the course of further professional advancement.

⁴² Ira Chadha-Sridhar & Sachi Shah, *Caste and Justice in the Rawlsian Theoretical Framework: Dilemmas on the Creamy Layer and Reservations in Promotions*, 10 NUJS L. REV. 171 (2017).

⁴³ Aparna Singh, *Jarnail Singh v. Lachhmi Narain Gupta: The Case that Muddles the Law on Reservation in Promotions*, 8 NLIU L. REV. 328 (2019), <https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-VIII-Issue-II-149-169.pdf>.

At the same time, the reality of intra-group inequality must be acknowledged. If reservation benefits continually flow to the more developed groups within a community, the disadvantaged individuals and sub-groups may remain under-represented. What is needed is not to ignore intra-group inequality, but to adopt an exclusionary criterion that is grounded in evidence and proportionate to the constitutional objective.

Extending creamy layer exclusion to promotional reservation must therefore go beyond the logic on which OBC quotas operate. A constitutionally coherent system is needed, one that recognises the difference between economic success, professional success and the continuing caste-based disadvantage faced by particular individuals or groups. Any exclusion should be founded on actual representation and institutional exclusion, and not merely on criteria fixed in advance. The central aim is to maintain a balance between equality, intra-group fairness and efficiency.⁴⁴

X. RECOMMENDATIONS AND CONCLUSION

The foregoing analysis indicates that the creamy layer doctrine plays a major but contested role in India's constitutional framework of affirmative action. Applied to OBCs, it serves the purpose of ensuring that reservation benefits are not captured by the relatively advanced groups; applied to SCs and STs, it demands much greater constitutional care. Unlike the OBCs, the SCs and STs carry a distinctive history of oppression, untouchability, stigma and discrimination that is not adequately captured in economic and occupational terms.

On the basis of these findings, this study suggests the development of a multidimensional and evidence-based approach to measuring relative advancement. Economic criteria are not enough; occupational position, education, mobility, representation in institutions and, where appropriate, experience of discrimination must also be considered. The criteria used should be evaluated continually against empirical data, so that obsolete benchmarks do not lead to the arbitrary inclusion or exclusion of individuals. Certification, administrative guidelines, verification measures and institutional accountability are equally important.

With regard to SCs and STs, sub-classification and targeted affirmative measures may offer a more constitutionally sound method than a mechanical importation of the OBC creamy layer concept. Any exclusionary approach must take into account the fact that economic progress does not mean the end of caste-based disadvantage. In the case of promotional reservation in particular, a context-based analysis of institutional and representational inequality is necessary.

⁴⁴ See generally Rodrigues, *supra* note 16.

In the final analysis, reservation should be a flexible instrument of equality and not a rigid entitlement. It will remain legitimate only if it ensures that constitutional benefits reach those who remain disadvantaged and are not concentrated among the relatively advanced. The solution lies neither in the perpetuation of existing practice nor in its outright rejection, but in a carefully balanced and data-driven method. Such an approach will allow Indian reservation jurisprudence to adapt to the changing dynamics of social discrimination.
