



LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 3 | Issue 2

2025

DOI: <https://doi.org/10.70183/lijdlr.2025.v03.39>

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A CRITICAL STUDY OF INDIA'S RESERVATION POLICY WITH SPECIAL EMPHASIS ON THE CREAMY LAYER PRINCIPLE

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I. ABSTRACT

This research paper examines India's constitutional policy of reservations with a special focus on the creamy layer principle. It analyses the doctrinal evolution of the principle from Indra Sawhney v. Union of India and traces how the judiciary used it to exclude the socially and economically advanced among backward classes. The study identifies that while the doctrine aims to balance equity and merit, its application has remained inconsistent. The absence of statutory codification and lack of centralised data undermine its effectiveness. The exclusion relies heavily on income and occupational thresholds, failing to account for social capital, inherited privilege, and intersectional disadvantages. The research also evaluates key judgments including Jarnail Singh, which extended creamy layer exclusion to SC/STs in promotions, and Janhit Abhiyan, where EWS reservation bypassed the doctrine altogether. The study critiques the lack of uniform policy across states and the inefficiencies in periodic revision of income limits. Comparisons with affirmative action models in the US, South Africa, Brazil, and Malaysia highlight India's unique position in adopting intra-group exclusion as a legal filter. The paper argues that unless legislative reforms are undertaken, the creamy layer principle risks becoming a bureaucratic rule without meaningful constitutional impact. It recommends a data-driven, socially sensitive, and uniformly applicable model. A revised creamy layer framework must include non-economic indicators, gender justice elements, and sunset clauses to ensure equitable circulation of benefits. The study concludes that effective implementation of the creamy layer rule can restore public trust and make affirmative action truly inclusive.

II. KEYWORDS

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Reservation Policy in India, Creamy Layer Doctrine, Indra Sawhney Case, Constitutional Equality, OBC Exclusion, Affirmative Action Law, SC/ST Promotion, Public Employment, Article 15 and 16.

III. INTRODUCTION

India's legal framework on affirmative action grew as a constitutional commitment to ensure social equality. Post-independence, the State's responsibility to uplift socially and educationally backward classes found its legitimacy in Articles 15(4), 15(5), and 16(4) of the Indian Constitution. These provisions reflect a conscious deviation from formal equality to achieve substantive equality. They mark a shift from treating everyone alike to recognizing historical injustice and need-based protection. The idea is to make equality real by acknowledging disparity in social conditions.³

Reservation policy started as a remedial mechanism for Scheduled Castes (SCs) and Scheduled Tribes (STs), but gradually extended to Other Backward Classes (OBCs). The Mandal Commission Report, 1980, played a pivotal role in expanding its ambit. This report identified social, educational, and economic backwardness using quantifiable indicators. On its recommendation, 27% reservation was provided to OBCs in public employment. This led to intense legal scrutiny, culminating in the landmark judgment of *Indra Sawhney v. Union of India*, where the Supreme Court upheld OBC reservation but introduced the "creamy layer" exclusion to ensure internal balance and fairness within backward classes.⁴

The creamy layer doctrine carved a filter within backward classes to exclude the advanced among them. It aims to prevent the benefits of reservation from getting monopolized by a small privileged section. It draws strength from the constitutional principle of equality and the spirit of affirmative action. But its application, especially its exclusion from the SC/ST category, remains controversial and inconsistent. Questions of its relevance, uniformity, and adequacy persist in academic and judicial discourse.⁵

³ INDIA CONST. art. 15, cl. 4, 5; art. 16, cl. 4

⁴ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

⁵ P. B. Gajendragadkar, *Law, Liberty and Social Justice* 85 (N.M. Tripathi Pvt. Ltd. 1964).

Despite multiple guidelines by the Department of Personnel and Training (DoPT) and judicial pronouncements, determining creamy layer remains administratively complex. Economic criteria, income ceiling, and occupation-based exclusions create ambiguity. Several High Courts and Tribunals have seen litigation over improper exclusion or inclusion under the creamy layer clause. Yet, the principle still stands as a balancing tool to fine-tune equity within affirmative action.⁶

The intersection between social justice and merit resurfaces in every debate on reservation. The creamy layer concept tries to balance the two by identifying who among the backward is truly in need. But the distinction often gets blurred with political intervention and populist policies. State after State has tried expanding the reserved category without adjusting the creamy layer rules, leading to reverse discrimination challenges and judicial review.⁷

In *Ashoka Kumar Thakur v. Union of India*, the apex court reiterated that creamy layer exclusion is constitutionally valid and must be applied even in educational institutions. However, its non-extension to SC/ST groups was upheld. This created dual standards in reservation policy. It invited criticism for privileging caste over class. Critics argue that once the goal is socio-economic upliftment, it should apply uniformly across all backward sections.⁸

Further, the 103rd Constitutional Amendment Act, 2019, introduced 10% reservation for Economically Weaker Sections (EWS), marking a shift from caste-based to economic-based affirmative action. This stirred renewed debate on the legitimacy of reservations beyond caste. The creamy layer discussion gained fresh relevance since it questioned whether economic backwardness alone should determine social disadvantage. The case *Janhit Abhiyan v. Union of India*, upheld the amendment but refrained from harmonizing its principles with the creamy layer doctrine.⁹

⁶ Government of India, Department of Personnel and Training, Office Memorandum, OM No. 36012/22/93-Estt.(SCT), dt. 08.09.1993.

⁷ M.P. Singh, *Constitution of India* 456 (Eastern Book Company 2022).

⁸ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1.

⁹ *Janhit Abhiyan v. Union of India*, (2022) 10 SCC 1.

The creamy layer principle challenges the traditional reservation matrix. It calls for a nuanced and data-driven approach. Social justice, while being the goal, must not compromise fairness within the beneficiary class itself. The principle's inconsistent enforcement weakens the credibility of affirmative action and undermines the rule of law. The need for a centralized mechanism, legislative clarity, and uniform criteria is urgent, especially in an evolving society where the definition of backwardness is changing.¹⁰

The paper evaluates the legal evolution, current application, and socio-political impact of the creamy layer principle. It also explores judicial trends, legislative frameworks, comparative perspectives, and future pathways. By doing so, it attempts to re-imagine India's reservation framework within a more inclusive and equitable structure.¹¹

A. Objectives of the Study

1. To critically evaluate the constitutional and legal framework governing reservations in India with special emphasis on the creamy layer doctrine.
2. To trace the historical evolution of the creamy layer concept and analyse how the judiciary shaped its scope.
3. To assess the effectiveness and limitations of the creamy layer rule in promoting intra-group equity.
4. To study the gaps between policy and implementation at both central and state levels.

B. Research Questions

1. Whether the creamy layer doctrine has fulfilled its intended constitutional purpose of equitable distribution within backward classes.
2. Whether there exists legislative or administrative coherence in its application across different States.

¹⁰ Justice V. R. Krishna Iyer, *Social Justice: Sunset or Dawn?* 212 (B.R. Publishing Corporation 1987).

¹¹ Marc Galanter, "Competing Equalities: Law and the Backward Classes in India," 23 *Berkeley J. Int'l L.* 423 (1984).

3. Whether income-based exclusion is sufficient to define the creamy layer or if social capital, gender, and other factors should be included.
4. Whether the extension of creamy layer to SC/ST groups, as held in *Jarnail Singh*, is constitutionally valid and practically enforceable.
5. Whether the judiciary has overstepped its role by evolving policy tools such as creamy layer in absence of legislative guidance.

C. Methodology

The research adopts a doctrinal and analytical methodology. It relies on primary sources including the Constitution of India, statutory texts, government memoranda, and Supreme Court and High Court decisions. Secondary sources include scholarly books, journal articles, reports from commissions, and comparative international material. A case law analysis method has been used to trace the evolution of the creamy layer doctrine. Legislative interpretation techniques are used to study constitutional amendments and provisions related to Articles 15 and 16. Policy documents of the National Commission for Backward Classes and Ministry of Social Justice have been analysed. Comparative constitutional methodology is applied to examine how affirmative action is handled in other democratic jurisdictions. The research also applies principles of social justice theory and substantive equality jurisprudence in assessing the broader impacts of the creamy layer rule¹².

IV. HISTORICAL AND CONSTITUTIONAL FOUNDATIONS OF RESERVATION IN INDIA

Colonial India saw the earliest efforts of group-based protection. The British administration acknowledged caste-based discrimination but used it more as a tool of divide and rule than reform. The Government of India Acts of 1909 and 1935 introduced communal representation and separate electorates. It provided quotas in legislatures for Muslims, Sikhs, and depressed classes. But those efforts lacked a clear philosophical grounding of social justice.¹³

¹² P. Ishwara Bhat, *Law and Social Transformation in India* 274 (Eastern Book Co. 2013).

¹³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 137 (Oxford Univ. Press 1966).

Mahatma Gandhi and Dr. B.R. Ambedkar clashed over separate electorates for Scheduled Castes. The Poona Pact of 1932 led to reserved seats in general electorates instead of separate ones. This compromise defined the basic moral direction of post-colonial affirmative action. It was not about isolation but integration with safeguards.¹⁴

In the making of the Constitution, reservation emerged as a constitutional obligation. The framers included Articles 15(4) and 16(4) to allow the State to make special provisions for socially and educationally backward classes. Article 46 of the Directive Principles strengthened this goal by obligating the State to protect weaker sections. These clauses altered the strict liberal understanding of equality. Equality in India was not about treating everyone identically but about empowering the disadvantaged.¹⁵

Article 340 enabled the President to appoint commissions to investigate backward classes. The First Backward Classes Commission under Kaka Kalelkar, 1953, laid the foundation for defining backwardness. It considered caste as a factor, though it received criticism for lack of scientific criteria. The report was not implemented. But it opened the space for caste as a proxy for social and educational backwardness¹⁶.

Later, the Mandal Commission (Second Backward Classes Commission) in 1979 under B.P. Mandal formalized the social, educational, and economic criteria for reservation. The report recommended 27% reservation for OBCs. It acknowledged caste as the most visible and pervasive form of social discrimination. In 1990, the Central Government implemented the report's recommendation which led to large-scale protests and litigation¹⁷.

In *Indra Sawhney v. Union of India*, the Supreme Court upheld the Mandal recommendations. It declared Article 16(4) not as an exception to Article 16(1) but as a facet of equality. However, the Court introduced a 50% cap on total reservations. It also introduced the "creamy layer" exclusion for the OBC category to ensure that

¹⁴ Dhananjay Keer, *Dr. Ambedkar: Life and Mission* 216 (Popular Prakashan 1990)

¹⁵ INDIA CONST. arts. 15(4), 16(4), 46.

¹⁶ Kaka Kalelkar Commission Report, Ministry of Home Affairs, Govt. of India (1955).

¹⁷ Mandal Commission Report, Second Backward Classes Commission, Govt. of India (1980).

benefits reach the genuinely disadvantaged. The judgment distinguished backward classes from socially advanced sections within them.¹⁸

The Court in *M. Nagaraj v. Union of India*, reaffirmed that the State must collect quantifiable data before granting reservations in promotions under Article 16(4A). It reinforced that backwardness, inadequate representation, and administrative efficiency must all be satisfied. However, it did not overrule *Indra Sawhney* and kept creamy layer exclusion intact.¹⁹

The 77th, 81st, 82nd, and 85th Constitutional Amendments responded to these decisions by allowing reservations in promotions with consequential seniority. This showed Parliament's intent to secure rights for Scheduled Castes and Tribes in government services. Yet, these provisions did not extend creamy layer exclusions to SC/STs. The judiciary accepted that caste-based disadvantages for SC/STs still persisted, even when economic status improved.²⁰

While Articles 15 and 16 allow special measures, they are also bounded by judicial interpretation of equality. In *Ashoka Kumar Thakur v. Union of India*, the Court upheld the 93rd Amendment allowing reservation in private unaided educational institutions. But it emphasized non-exclusion of creamy layer in OBCs. The judgment clarified that reservation is not a blanket right, but a tool to achieve equality in specific circumstances.²¹

The Constitution balances formal and substantive equality. It legitimizes reservation as a corrective mechanism but restricts it from becoming a permanent entitlement. The creamy layer concept became a constitutional instrument to ensure this balance. It also illustrates the Indian model of nuanced affirmative action—not purely caste-based, nor purely economic-based, but context-specific.²²

¹⁸ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

¹⁹ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

²⁰ The Constitution (77th, 81st, 82nd & 85th Amendment) Acts.

²¹ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1

²² Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* 19 (Univ. of California Press 1984).

V. EVOLUTION OF THE CREAMY LAYER DOCTRINE

The creamy layer doctrine took shape as a judicial innovation. It first emerged in *Indra Sawhney v. Union of India*. The Supreme Court held that reservation under Article 16(4) should not be extended to socially advanced members of backward classes. It created a principle of exclusion within inclusion. The Court stated that backward classes must not be treated as homogeneous.²³

The logic behind this doctrine was constitutional equality. Article 14 guarantees equal protection. If a segment within backward classes had achieved economic and social progress, then extending reservation to them would violate the principle of equality. It would amount to unfair advantage. The creamy layer concept was meant to prevent perpetuation of privilege within disadvantaged groups.²⁴

The Court laid down that economic advancement, position in services, and parental income would be key criteria. It directed the government to evolve parameters to identify the creamy layer. Subsequently, the Department of Personnel and Training (DoPT) issued Office Memorandums providing income ceilings and occupational criteria. The latest revision in 2017 fixed the income ceiling at ₹8 lakh per annum.²⁵

The doctrine, however, was not applied to Scheduled Castes and Scheduled Tribes. The Court reasoned that SC/STs faced social stigma and untouchability, which were not merely economic barriers. Their backwardness was historical and deeply rooted. But this differential treatment became a point of legal controversy later.²⁶

In *Ashoka Kumar Thakur v. Union of India*, the Supreme Court reaffirmed the validity of the creamy layer doctrine in the context of Article 15(5). It upheld reservation for OBCs in educational institutions but struck down inclusion of creamy layer within them. It emphasized that exclusion of creamy layer is essential to ensure that truly deprived benefit from affirmative action. The Court also recommended its periodic review.²⁷

²³ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

²⁴ P. Ishwara Bhat, *Law and Social Transformation* 292 (Eastern Book Co. 2013).

²⁵ Govt. of India, DoPT O.M. No. 36033/1/2013-Estt.(Res.), dt. 13.09.2017.

²⁶ *Indra Sawhney*, supra note 1.

²⁷ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1

Later, in *Jarnail Singh v. Lachhmi Narain Gupta*, the Court took a transformative turn. It ruled that the creamy layer concept must apply even to SC/STs in matters of promotions. It partially overruled *M. Nagaraj v. Union of India*, which had required quantifiable data but not creamy layer exclusion for SC/STs. The Court emphasized that benefits should not go to the “affluent and socially forward” among the Dalits. It stressed equality within equality.²⁸

The Parliament, however, has not amended any statute to enforce creamy layer exclusion in SC/ST categories. States like Tamil Nadu and Bihar have resisted such application. There is no uniform policy across India. Multiple High Courts have given conflicting rulings on its application to vertical and horizontal reservations. This creates ambiguity in implementation and interpretation.²⁹

The doctrine is criticised on both legal and policy grounds. Critics argue that using economic criteria for social backwardness is flawed. Social capital, educational environment, and systemic bias remain even after income growth. Others argue that it strikes the right balance. It prevents elite capture of benefits. It restores fairness within disadvantaged groups and avoids dilution of merit³⁰.

The National Commission for Backward Classes (NCBC) has called for data collection and socio-economic surveys. In absence of updated data, creamy layer exclusion often becomes arbitrary. The income limit is not linked to inflation or cost of living. Occupational categories are outdated. Judicial guidance lacks standardisation across States.³¹

Comparative jurisprudence in countries like South Africa and the United States focuses more on historical disadvantage and systemic exclusion rather than income alone. India's creamy layer doctrine reflects a hybrid model—one that mixes caste,

²⁸ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396; *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

²⁹ *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310.

³⁰ Galanter, Marc, *Competing Equalities: Law and the Backward Classes in India* 347 (Univ. of California Press 1984)

³¹ NCBC Report on Creamy Layer, Ministry of Social Justice and Empowerment (2020).

class, and occupation. But it lacks a constitutional amendment or statutory codification. That leaves it open to misuse and discretionary application.³²

VI. LEGISLATIVE AND POLICY FRAMEWORK

The legislative foundation of reservation policy rests primarily on constitutional provisions. Articles 15(4), 15(5) and 16(4) enable the State to make special provisions for backward classes. These are enabling clauses. They do not create an automatic right. But they authorize the State to frame laws and policies. The goal is not charity but substantive equality.³³

The first official recognition of Other Backward Classes came through the Presidential Orders under Article 341 and 342 for SCs and STs. But OBCs lacked statutory recognition until the Mandal Commission Report in 1980. The Central Government implemented its recommendations in 1990 through executive orders granting 27% reservation in public employment for OBCs. This was followed by a series of Office Memoranda issued by the Department of Personnel and Training (DoPT) outlining eligibility, criteria, and exclusions.³⁴

The 77th Constitutional Amendment introduced Article 16(4A). It enabled reservation in promotion for SCs and STs. It was followed by the 81st Amendment inserting Article 16(4B), allowing carry forward of unfilled vacancies. These amendments were policy responses to judicial decisions restricting promotional reservations. They marked Parliament's firm commitment to affirmative action in public services.³⁵

The 93rd Constitutional Amendment inserted Article 15(5). It allowed reservation in private unaided educational institutions, except minority ones. This provision was upheld in *Ashoka Kumar Thakur v. Union of India*. But the Court held that the creamy layer must be excluded from OBC reservations under this clause. The judgment reinforced the doctrine's statutory relevance even in education sector policies.³⁶

³² Sandra Fredman, *Discrimination Law* 123 (Oxford Univ. Press 2011).

³³ INDIA CONST. arts. 15(4), 15(5), 16(4).

³⁴ Department of Personnel and Training, O.M. No. 36012/22/93-Estt. (SCT), 08.09.1993

³⁵ The Constitution (77th, 81st, 85th Amendment) Acts

³⁶ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1

The 103rd Amendment introduced a new reservation scheme under Article 15(6) and 16(6). It provided 10% reservation for Economically Weaker Sections (EWS) from unreserved categories. The law excluded SCs, STs, and OBCs. It represented a shift from caste-based to economic-based affirmative action. In *Janhit Abhiyan v. Union of India*, the Court upheld the amendment but avoided reconciling it with the creamy layer doctrine. No creamy layer exclusion was prescribed for EWS category though it is based on income.³⁷

The National Commission for Backward Classes (NCBC) was accorded constitutional status through the 102nd Amendment. Article 338B lays down the duties of the NCBC. These include recommending inclusion and exclusion of communities, and monitoring the implementation of welfare schemes. But the NCBC has no statutory power to enforce creamy layer rules. Its recommendations lack binding force unless adopted by Parliament or State Legislatures.³⁸

The Central Government issues periodic guidelines to revise the income ceiling. The DoPT revised the ceiling from ₹6 lakh to ₹8 lakh in 2017. It is supposed to be updated regularly based on inflation and living standards. However, no mechanism ensures automatic revision. The list of categories deemed as 'creamy layer' includes children of certain professionals, constitutional functionaries, Class I officers and others. But ambiguities remain. For example, income from salary and agriculture are treated differently, which creates unequal exclusion.³⁹

State governments follow their own rules. Tamil Nadu, for instance, has over 69% reservation despite the 50% cap imposed in *Indra Sawhney*. States like Karnataka and Maharashtra have implemented sub-categorization within OBCs to ensure equitable distribution of reservation benefits. But there is no uniform national policy. The lack of centralized legal criteria causes fragmentation in application of creamy layer rules across India.⁴⁰

³⁷ *Janhit Abhiyan v. Union of India*, (2022) 10 SCC 1

³⁸ The Constitution (102nd Amendment) Act, 2018; INDIA CONST. art. 338B

³⁹ Department of Personnel and Training, O.M. No. 36033/1/2013-Estt. (Res.), 13.09.2017.

⁴⁰ M. P. Singh, *Constitution of India* 849 (Eastern Book Co. 2022).

No parliamentary statute codifies the creamy layer principle in express terms. It derives its legitimacy from judicial pronouncements and executive orders. This creates challenges of enforceability, monitoring, and consistency. The absence of a legislative framework also raises constitutional concerns under Article 14. Arbitrary or politically driven classification without proper data has led to litigation in multiple High Courts and Tribunals.⁴¹

There is also no legal obligation to conduct regular socio-economic surveys. Without data, identification of creamy layer becomes guesswork. The judiciary has repeatedly urged the government to collect fresh data, but no statutory duty exists. The latest NSSO and SECC reports are outdated and not uniformly used. As a result, creamy layer exclusion continues to suffer from lack of empirical basis and transparency.⁴²

VII. JUDICIAL PRONOUNCEMENTS AND TRENDS

The Supreme Court in *State of Madras v. Champakam Dorairajan*, struck down caste-based reservations as violative of Article 29(2). The judgment triggered the First Constitutional Amendment introducing Article 15(4). It marked the judiciary's early role in shaping affirmative action through constitutional alignment.⁴³

In *Indra Sawhney v. Union of India*, the creamy layer doctrine was born. The Court held that Article 16(4) is not an exception to Article 16(1) but a facet of equality. It upheld 27% reservation for OBCs in public employment. But it excluded the "creamy layer" among backward classes. The judgment limited reservations to 50% except in exceptional cases. It banned reservations in promotions under Article 16(4) and overruled *Devadasan v. Union of India*, AIR 1964 SC 179.⁴⁴

The Court defined "backward class" as socially and educationally backward. It directed the government to identify creamy layer using economic and professional criteria. It laid down that backwardness must be reviewed every 10 years. This

⁴¹ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

⁴² Ministry of Rural Development, *Socio Economic and Caste Census (SECC)*, 2011

⁴³ *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.

⁴⁴ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

judgment remains the cornerstone of the creamy layer jurisprudence. It crystallised the idea that equality within backward classes matters.⁴⁵

In *T. Devadasan*, the Supreme Court invalidated carry forward rules exceeding 50% reservation. It introduced the idea that excessive reservations violate equality. Later, in *M.R. Balaji v. State of Mysore*, the Court held that caste cannot be the sole criterion for backwardness. It capped reservation at 50% and stressed on the need for objective evaluation. These rulings laid the foundation for later creamy layer discussions.⁴⁶

In *M. Nagaraj v. Union of India*, the Court upheld the constitutional validity of the 77th, 81st, 82nd and 85th Amendments allowing reservations in promotions. But it made it subject to conditions. It ruled that State must collect quantifiable data on backwardness and inadequate representation. It did not apply creamy layer exclusion to SC/STs. This created dual standards in the application of the doctrine.⁴⁷

In *Jarnail Singh v. Lachhmi Narain Gupta*, the Court overruled the “data requirement” in *Nagaraj*. It applied the creamy layer concept to SC/STs in promotion. The Court reasoned that the affluent among SC/STs do not suffer from same social disadvantages. It declared that equality must be intra-group, not just inter-group. This extended the doctrine beyond OBCs. But it triggered opposition from political and social quarters.⁴⁸

In *Ashoka Kumar Thakur v. Union of India*, the Court upheld the 93rd Amendment and reservation in private unaided institutions. It excluded creamy layer from OBCs. It warned against excessive reservation and reasserted the 50% cap. The judgment clarified that creamy layer exclusion is not only constitutional but essential to uphold the spirit of affirmative action.⁴⁹

High Courts too have shaped this jurisprudence. The Kerala High Court in *Vineeth v. Union of India*, held that inclusion in OBC list does not mean automatic entitlement to benefits. The Delhi High Court in *Pushpa Singh v. Union of India*, ruled that income

⁴⁵ Justice B.P. Jeevan Reddy’s opinion in *Indra Sawhney*, supra note 2.

⁴⁶ *M.R. Balaji v. State of Mysore*, AIR 1963 SC 649; *T. Devadasan v. Union of India*, AIR 1964 SC 179

⁴⁷ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212

⁴⁸ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396.

⁴⁹ *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1

from agriculture cannot be excluded while calculating the creamy layer. These decisions highlighted implementation flaws and inconsistent criteria.⁵⁰

In *Janhit Abhiyan v. Union of India*, the Court upheld 103rd Amendment granting EWS reservation. But it failed to explain why creamy layer principles were not applied here. Critics argue that income-based reservation without creamy layer exclusion weakens the doctrine. The judgment left a gap in the evolving narrative of economic and social backwardness.⁵¹

Judicial review of reservation policy shows a pattern of support with restraint. The courts uphold affirmative action but insist on rational classification and exclusion of privileged within backward classes. Creamy layer doctrine has evolved from a constitutional idea to a judicially monitored device. Yet, the absence of legislative clarity continues to complicate its scope.⁵²

VIII. SOCIO-LEGAL AND POLITICAL DIMENSIONS

The creamy layer principle reflects more than legal filtration. It has social consequences. It distinguishes between the relatively privileged and the genuinely backward within a reserved group. That creates intra-group conflict. Many among OBCs argue that the concept divides a collective struggle for dignity. It creates a second hierarchy inside an already marginalized population.⁵³

Social mobility among backward classes remains patchy. A family earning ₹8 lakh per year may still face caste bias in villages or in matrimonial markets. Economic growth does not erase social exclusion. Upper-caste surnames carry advantage in perception, access, and opportunity. This makes the creamy layer a blunt tool to measure backwardness. Yet, courts continue to treat income as a proxy for privilege.⁵⁴

⁵⁰ *Vineeth v. Union of India*, 2007 SCC OnLine Ker 299; *Pushpa Singh v. Union of India*, 2010 SCC OnLine Del 3243.

⁵¹ *Janhit Abhiyan v. Union of India*, (2022) 10 SCC 1.

⁵² Mahendra Pal Singh, V.N. Shukla's *Constitution of India* 632 (Eastern Book Co. 14th ed. 2022).

⁵³ Sudha Pai, *Dalit Assertion and the Unfinished Democratic Revolution* 144 (SAGE Publications 2002).

⁵⁴ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* 281 (Oxford Univ. Press 1984).

The political class has mostly resisted extending the creamy layer doctrine to SC/STs. The fear is erosion of political support from Dalit communities. Parties often promise expanding reservation, not refining it. In many states, OBC sub-categorization proposals are used for electoral consolidation. Tamil Nadu retains 69% reservation defying the 50% limit. Bihar released a caste survey to build a case for proportional quotas. In such spaces, creamy layer appears more as a bureaucratic rule than a social reform.⁵⁵

The judiciary, though assertive, lacks data to back its policy directions. It directed exclusion of creamy layer in *Indra Sawhney* but never insisted on a periodic survey. Parliament never enacted a law codifying the exclusion criteria. So the rules vary between states. Andhra Pradesh includes income from agriculture. Gujarat does not. In absence of legislative standardization, the creamy layer principle becomes inconsistent in impact.⁵⁶

Students from non-creamy OBC backgrounds still lag behind in access to elite institutions. According to All India Survey on Higher Education (AISHE), OBCs represent about 36% of total enrolments. But the top-tier IITs and IIMs show much lower representation. This proves that despite exclusion of creamy layer, educational inequities persist. It questions whether the filter works to uplift or only to reduce competition among the backward.⁵⁷

Women face dual marginalisation. An OBC woman from a low-income rural family may still be excluded from reservation if her father's income is above the limit. Gender-specific barriers like early marriage, domestic workload, and social invisibility are ignored. The creamy layer rule, in its current form, applies to the parent's status and ignores intersectionality.⁵⁸

Social perception plays a silent but strong role. A Dalit with an elite job is still discriminated in housing societies, in matrimonial ads, and in urban workplaces. The

⁵⁵ Christophe Jaffrelot, *India's Silent Revolution: The Rise of the Lower Castes in North India* 205 (Columbia Univ. Press 2003).

⁵⁶ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

⁵⁷ Ministry of Education, *All India Survey on Higher Education (AISHE)*, 2020-21

⁵⁸ Niraja Gopal Jayal, *Citizenship and Its Discontents* 112 (Permanent Black 2013).

stigma does not vanish with salary. The Supreme Court in *Jarnail Singh v. Lachhmi Narain Gupta*, recognised this but failed to offer a clear distinction between caste-based oppression and economic progress. The Court's reliance on administrative convenience diluted the moral dimension of reservation.⁵⁹

Political parties have rarely campaigned for revising the creamy layer thresholds. The ₹8 lakh ceiling remains arbitrary. Inflation has changed, costs of urban living have spiked, and aspirational standards shifted. Yet the creamy layer policy stagnates. In absence of a socio-economic caste census or regular audits, the exclusion lacks empirical legitimacy.⁶⁰

The demand for proportional reservation often contradicts the logic of creamy layer. If every caste group claims reservation based on population share, exclusion of advanced members within them becomes politically untenable. That tension makes the doctrine vulnerable. Its survival depends more on judicial directions than public consensus.⁶¹

Affirmative action, globally, has grappled with such dilemmas. In Brazil, racial quotas are based on self-identification and social vulnerability. In the US, affirmative action is under retreat following *Students for Fair Admissions v. Harvard*. India's model is unique but it faces similar critiques – how to balance merit, representation, and social equity without reinforcing new inequalities.⁶²

IX. COMPARATIVE ANALYSIS WITH OTHER COUNTRIES

In the United States, affirmative action began as a remedy against racial discrimination. Executive Order 11246 directed federal contractors to take “affirmative steps” to ensure equality. Over time, it extended into education and employment. The landmark case *Regents of the University of California v. Bakke* allowed race as one of many factors in college admissions. But quotas were ruled unconstitutional. Later, in *Grutter v. Bollinger*, 539 U.S. 306 (2003), the Supreme Court

⁵⁹ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396.

⁶⁰ National Commission for Backward Classes, *Annual Report 2019-20*.

⁶¹ Yogendra Yadav, “Reworking Affirmative Action,” *EPW*, Vol. 37, No. 36 (Sep. 2002).

⁶² *Students for Fair Admissions v. Harvard*, 600 U.S. ____ (2023).

upheld race-conscious admissions. Yet, in *Students for Fair Admissions v. Harvard*, the Court invalidated the race-based affirmative action model, asserting it violated the Equal Protection Clause. The US now moves towards class and economic disadvantage frameworks, though no parallel to creamy layer exclusion exists formally.⁶³

South Africa adopted a strong model of racial redress post-apartheid. Its Employment Equity Act, 1998, mandates fair representation in the workforce. Affirmative action focuses on historically disadvantaged groups including Blacks, Coloureds, and Indians. The Constitutional Court upheld such measures in *Minister of Finance v. Van Heerden*, emphasizing restitution-based equality. But unlike India, South Africa does not filter out the privileged among the previously disadvantaged. The assumption is that social exclusion persists regardless of economic rise. There's no creamy layer model in place, though internal debates have surfaced around elite capture of benefits.⁶⁴

In Brazil, the 2012 federal law mandated racial quotas in public universities. It requires 50% of seats to be reserved for public school students with sub-quotas based on race and income. Unlike India, Brazil uses self-identification and verification committees to assess racial identity. The Supreme Federal Tribunal upheld these quotas in *ADI 1946* (2012), affirming the constitutionality of race-conscious affirmative action. Creamy layer-type filters are applied indirectly—students must come from low-income public schools. It creates a hybrid model, mixing class and race.⁶⁵

Malaysia implements one of the most extensive affirmative action programs through the Bumiputera policy. It favors ethnic Malays and other indigenous groups over Chinese and Indian minorities. The New Economic Policy (NEP) aimed to restructure society and reduce inter-ethnic economic disparity. There is no exclusion criterion within the Bumiputera category. The wealthy elite among them continue to benefit. This has caused economic inefficiencies and resentment. Malaysia's lack of internal

⁶³ *Students for Fair Admissions v. President and Fellows of Harvard College*, 600 U.S. ____ (2023); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978).

⁶⁴ *Minister of Finance v. Van Heerden*, 2004 (6) SA 121 (CC).

⁶⁵ Supremo Tribunal Federal, *ADI 1946*, Judgement of Apr. 2012 (Braz.).

filters invites comparisons with India's creamy layer doctrine which attempts intra-group equity.⁶⁶

In Canada, Employment Equity legislation targets four groups – women, indigenous peoples, persons with disabilities, and visible minorities. Policies promote equal opportunity, but not through reservations. Equity is ensured by tracking representation, offering training, and removing structural barriers. There is no concept of exclusion like creamy layer, as the model is more opportunity-based than compensatory.⁶⁷

The UK follows a diversity approach rather than strict affirmative action. The Equality Act, 2010, permits “positive action” in limited cases, like tie-breaking in hiring between equally qualified candidates. Quotas are not allowed. The focus is on eliminating bias, not group-based preference. Creamy layer has no space in such systems as the policy itself does not differentiate beneficiaries within a group.⁶⁸

Comparatively, India's model remains unique in explicitly codifying caste-based reservations and judicially crafting creamy layer exclusion. Most democracies avoid rigid quotas. They lean towards outreach, opportunity, and monitoring-based models. India's model is more interventionist, reflecting the depth of its social hierarchy. The creamy layer principle stands out as an effort to balance social justice with efficiency. Yet, no country has legally institutionalised a filter within backward groups as systematically as India has post-*Indra Sawhney*.⁶⁹

The Indian judiciary's push for intra-group fairness has few parallels. But the global trend suggests growing preference for disadvantage-based models over identity-based models. In this context, India's creamy layer rule is both progressive and contested. It ensures benefits go to the most needy. But it also risks diluting the

⁶⁶ Gomez and Jomo K.S., *Affirmative Action Malaysia* 72 (National University of Singapore Press 2013).

⁶⁷ Canadian Human Rights Commission, *Employment Equity Act Annual Report* (2021).

⁶⁸ UK Equality Act 2010, c. 15; Sandra Fredman, *Discrimination Law* 99 (Oxford Univ. Press 2011).

⁶⁹ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

structural basis of historical oppression if misapplied without sensitivity to social stigma.⁷⁰

X. RECOMMENDATIONS AND WAY FORWARD

The creamy layer principle needs statutory codification. It cannot rest on executive orders and judicial directions alone. A clear central legislation should define income thresholds, criteria of exclusion, and review periods. Parliament must take responsibility to standardise the application across States. Without uniformity, equality becomes fragmented.⁷¹

The ₹8 lakh income limit is outdated. It fails to reflect inflation or regional economic disparities. Government must link the creamy layer ceiling to a dynamic index like Consumer Price Index or GDP per capita. This would ensure periodic and objective revisions without political delays. A flat income test does not capture the socio-economic realities of different regions.⁷²

Occupational exclusions need updating. Categories like 'Class I officer' or 'constitutional post holder' are too narrow. The exclusion criteria must account for inherited wealth, corporate ownership, access to elite networks. A person's social capital should not be ignored. The creamy layer framework must expand beyond mere annual income.⁷³

Agricultural income should not be exempt automatically. Wealthy landowners from backward classes continue to access reservation benefits. Exclusion of this income distorts equity. A proper valuation of land assets and agricultural produce should be introduced. Otherwise, land-rich caste elites exploit loopholes while landless poor get pushed out.⁷⁴

State-level creamy layer policies must be aligned with central guidelines. Many states still follow outdated norms or resist applying creamy layer to promotions. Some

⁷⁰ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* 312 (Oxford Univ. Press 1984).

⁷¹ P.B. Gajendragadkar, *Law, Liberty and Social Justice* 121 (N.M. Tripathi 1964).

⁷² Justice V.R. Krishna Iyer, *Social Justice: Sunset or Dawn?* 203 (B.R. Publishing Corp. 1987).

⁷³ National Commission for Backward Classes, *Annual Report* (2020-21).

⁷⁴ Ramesh K. Sharma, "Agrarian Inequity and Reservation," *EPW*, Vol. 55, No. 41 (2020).

include all family members in one income bracket, others do not. A centralised creamy layer monitoring authority should be created under NCBC. It must audit and coordinate implementation across jurisdictions.⁷⁵

The doctrine should apply to Scheduled Castes and Scheduled Tribes in promotions and post-graduate education. The judgment in *Jarnail Singh v. Lachhmi Narain Gupta*, must be given legislative backing. Otherwise, States will bypass the ruling using administrative exceptions. Parliament must amend the service rules and constitutional articles to incorporate creamy layer application to SC/ST promotions with proper safeguards.⁷⁶

An independent socio-economic caste census is required. No data-driven policymaking is possible without updated evidence. The last SECC conducted in 2011 is inadequate and not fully published. Without data, creamy layer exclusions are arbitrary. Identification of beneficiaries becomes political. A decadal caste census with economic layering must be institutionalised.⁷⁷

The NCBC should be given quasi-judicial powers. It must be allowed to enforce creamy layer rules, hear grievances, and issue binding directions. Currently, it only gives recommendations. Empowering it through legislative amendment will help remove inconsistencies in enforcement. It can also maintain a national registry of OBC sub-categories and creamy layer exclusions.⁷⁸

Intersectionality should be integrated into creamy layer determination. Gender, rural-urban status, disability, and first-generation education must be factored. A woman in an affluent OBC household may still suffer social disadvantages. Exclusions must be based on advantage, not just family income. A context-sensitive model is more constitutionally sound.⁷⁹

⁷⁵ Ministry of Social Justice and Empowerment, *Creamy Layer Clarification Circular*, No. 36033/1/2013-Estt. (Res.), dt. 13.09.2017.

⁷⁶ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396

⁷⁷ Government of India, *Socio Economic and Caste Census*, 2011

⁷⁸ The Constitution (102nd Amendment) Act, 2018; INDIA CONST. art. 338B

⁷⁹ Niraja Gopal Jayal, *Citizenship and Its Discontents* 117 (Permanent Black 2013).

Reservation policy needs a sunset clause. Benefits should not continue for generations without review. A family that has availed reservation for two successive generations should be auto-evaluated for creamy layer status. The idea is not to punish upliftment but to ensure circulation of benefits. Stagnation breeds resentment and undercuts social justice.⁸⁰

Public awareness of the creamy layer rule is low. Many deserving candidates do not apply due to confusion or lack of guidance. The government must create digital portals with real-time eligibility checks. Awareness campaigns in regional languages can democratise access to information. Transparency strengthens trust in reservation policy.⁸¹

XI. CONCLUSION

India's reservation framework evolved to undo structural oppression, not to create permanent entitlements. It began with a moral objective—real equality. But over decades, it turned into a layered legal and political mechanism. Affirmative action became a constitutional right and also a contested social claim. The creamy layer doctrine emerged to refine that claim. It ensured benefits don't stay concentrated in a forward-looking segment within backward groups.⁸²

The Supreme Court in *Indra Sawhney v. Union of India*, introduced the creamy layer rule to strike a balance. Equality of opportunity under Article 16 was reinterpreted to mean both inter-group and intra-group fairness. The doctrine reshaped reservation from being a blanket inclusion to a filtered mechanism. It was a bold attempt to prevent privilege within the disadvantaged. Yet, thirty years later, its implementation remains uneven and politically diluted.⁸³

The policy relies heavily on income thresholds, occupational categories, and family status. But backwardness is not economic alone. It is layered with caste discrimination, educational access, gender, regional disparities, and symbolic marginalisation.

⁸⁰ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* 298 (Oxford Univ. Press 1984).

⁸¹ Ministry of Electronics and IT, *Digital India Mission Reports*, 2021.

⁸² Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 134 (Oxford Univ. Press 1966).

⁸³ *Indra Sawhney v. Union of India*, AIR 1993 SC 477.

Income doesn't erase social exclusion. The creamy layer framework needs to evolve beyond monetary indicators to capture the full experience of privilege.⁸⁴

The lack of statutory backing weakens the doctrine's force. Its legal basis rests on judicial interpretation and executive memoranda. Parliament never codified the creamy layer test in a central statute. This results in fragmentation. States apply it inconsistently. Some revise thresholds regularly, others lag. Some include agricultural income, others do not. Without legislative clarity, the constitutional promise of equal protection under Article 14 is compromised.⁸⁵

Judgments like *Jarnail Singh v. Lachhmi Narain Gupta*, expanded the creamy layer idea to Scheduled Castes and Scheduled Tribes in promotions. It was a transformative step. Yet, there is no legislative or administrative effort to translate that judgment into rule-based application. In practice, creamy layer exclusion still applies mostly to OBCs. The legal asymmetry raises serious questions of equal treatment.⁸⁶

The 103rd Constitutional Amendment added another layer to the debate. EWS reservation for upper castes based purely on economic criteria didn't adopt creamy layer filtering. Ironically, economic-based reservation avoided the very doctrine born from economic advancement. Courts upheld the amendment. But the judgment left a vacuum in aligning different affirmative action models under one jurisprudential logic.⁸⁷

Social justice must move from group entitlement to targeted empowerment. Creamy layer acts as a gatekeeper. But without a data-backed and socially sensitive filter, it can exclude the deserving and include the elite. The need for a caste census and granular socio-economic data is urgent. Legal policy cannot function in vacuum. It must align with evidence.⁸⁸

⁸⁴ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* 313 (Oxford Univ. Press 1984).

⁸⁵ Ministry of Social Justice and Empowerment, *Clarification on Creamy Layer Criteria*, O.M. No. 36033/1/2013-Estt. (Res.), 13.09.2017

⁸⁶ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396.

⁸⁷ *Janhit Abhiyan v. Union of India*, (2022) 10 SCC 1.

⁸⁸ Government of India, *Socio Economic and Caste Census*, 2011

The creamy layer principle reflects India's constitutional morality. It ensures that the pursuit of equality does not reinforce new inequalities. But its success depends on honest political will, precise legal design, and continuous social audit. Reservation is not just a right. It's a responsibility shared by the State and the citizen. Creamy layer exclusion, if done right, can uphold that responsibility without dismantling the justice project.⁸⁹

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