

Annual Report

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

National Commission for Backward Classes
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Chapter I

Introduction

Recognition and Reservation for Backward Classes (OBCs)

Reservations in favour of Backward Classes (BCs) was introduced long before Independence in a large area, comprising the Presidency areas and the Princely States south of the Vindhyas. Chatrapati Sahu ji Maharaj, Maharaja of Kolhapur in Maharashtra introduced reservation in favour of backward classes as early as 1902 to eradicate poverty from amongst them and to give them their due share in the State administration. The notification of 1902 created 50% reservation in services for backward classes/communities in the State of Kolhapur. This notification is the first Govt. Order providing for reservation for the welfare of depressed classes in India.

Since the concept of untouchability was not practiced uniformly throughout the country, the identification of OBCs is not an easy task. What is more, the practice of segregation and untouchability prevailed more in the southern parts of India and was more diffused in Northern India. An additional complexity is that there are certain castes/communities, which are considered as untouchables in one province but not in other provinces. Some castes, based on traditional occupations, find place in both Hindu and non-Hindu communities. Listing of castes has had a long history, starting from the earliest period of our history with Manu. Medieval chronicles contain description of communities located in various parts of the country. During the British colonial period, listings were undertaken after 1806, on an extensive scale. The process gathered momentum in course of the censuses from 1881 to 1931.

The Backward Classes movement also first gathered momentum in South India particularly in Tamil Nadu. The continuous efforts of some of the social reformers of the country viz. Periyar, Jyotiba Phule, Babasaheb Ambedkar, Chhatrapati Sahu ji Maharaj and others, completely demolished the wall created by the upper classes between them and the untouchables.

First Backward Classes Commission

On January 29, 1953, the Central Government appointed a Backward Classes Commission under Article 340 of the Constitution to investigate the conditions of socially and educationally backward classes.

Article 340 of the Constitution provides for appointment of a commission “...to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State...”

The first All India Backward Classes Commission was set up with Kaka Kalelkar as its Chairman. The Kaka Kalelkar Commission prepared a list of 2399 backward castes/communities for the entire country and 837 of those were classified as ‘most backward’.

This Commission submitted its report on March 30, 1955. According to the Commission the relevant factors to be considered while classifying backward classes should be based on their traditional occupation and profession, the percentage of literacy or the general

advancement made by them, estimated population of the community and their distribution throughout the State or their concentration in certain areas. The Central Government did not accept the recommendations.

Second Backward Classes Commission

The Government of India appointed the second All India Backward Classes Commission on 1st January, 1979, popularly known as Mandal Commission under Article 340 of the Constitution to investigate the conditions of socially and educationally backward classes. The terms of this Commission included determining the criteria for defining the socially and educationally backward classes; to recommend steps to be taken for the advancement of the socially and educationally backward classes of citizens so identified; to examine the desirability or otherwise of making provision for the reservation of appointments or posts in favour of such backward classes of citizens which are not adequately represented in public services and posts in connection with the affairs of the Union or of any State. The Commission submitted its report in 31st December, 1980.

The Commission evolved 11 'Indicators' or 'Criteria' for determining social and educational backwardness. These 11 'Indicators' were grouped under three broad heads, i.e. Social, Educational and Economical.

The Government of India vide OM dated 13.08.1990 introduced reservation of 27% for OBCs in the civil posts and services under Central Government, and in public sector undertakings and financial institutions to be filled by direct recruitment w.e.f. 7.8.90. The said OM laid down that the Socially and Educationally Backward Classes would

comprise, in the first phase, the castes and communities which are common to both the lists of the report of Mandal Commission and the lists of State Governments. As a result, only 2052 castes/communities could be included in the Central List of OBCs at that time. Subsequently, Govt. of India also issued, on its own, Central List for 14 States/UTs, namely, Andhra Pradesh, Assam, Bihar, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh which came out with their respective State lists after the Indira-Sawhney judgement.

Landmark Judgement

The Supreme Court of India in its landmark judgement dated 16.11.1992 (Judgement Writ Petition (Civil) No.930 of 1990 – Indira Sawhney and Others Vs Union of India and Others) has directed the Government of India, State Governments and Administration of UTs to constitute a permanent body in the nature of Commission or Tribunal for entertaining, examining and making recommendations upon requests for inclusion and complaints of over-inclusion and under inclusion in the list of OBCs (*Annexure-I*). Government of India was also directed to specify the basis for applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections (creamy layer) from other backward classes so that this become a means of ensuring flow of the benefits of reservation to the really needy people of other backward classes.

Creamy Layer

In the context of Supreme Court's direction regarding exclusion of socially advanced persons/sections from OBCs, the Govt. of India constituted an expert committee (*Annexure-II*) headed by Justice R.N.

Prasad (Retd.) and three other members comprising a social scientist and two officers with wide administrative experience, to determine the criteria for identification of the socially advanced persons/sections(creamy layer) for exclusion of 'Creamy Layer' from OBCs. The Committee submitted its report on March 10,1993 (*Annexure-III*) and the same has been accepted by the Government of India. The Committee defined the 'creamy layer' as when a person has been able to shed off the attributes of social and educational backwardness and has secured employment or has engaged himself in some trade/profession of high status and at which stage he is normally no longer in need of reservation.

The reservation for Backward Classes took effect from the 8th September 1993 when the Department of Personnel & Training vide its Office Memorandum No.36012/22/93-Estt.(SCT), dated 8th September 1993 (*Annexure-IV*), the Resolution No.12011/68/93-BCC (C), the then Ministry of Welfare dated 10th September, 1993 (*Annexure-V*) and the Resolution No.12011/9/94-BCC, the Ministry of Welfare dated 19th October, 1994 (*Annexure-VI*) set the stage for the operationalisation of the O.M. of 13th August 1990. The O.M. dated 8th September 1993 incorporated the rule of exclusion of socially advanced persons/sections from reservation, on the basis of the recommendations of the Expert Committee, thus fulfilling the condition laid down by the Supreme Court for the implementation of the Office Memorandum of 13th August 1990.

National Commission for Backward Classes

In pursuance of the direction of the Supreme Court, the National Commission for Backward Classes Act, 1993 (Act No.27 of 1993) (*Annexure-VII*) was enacted by Parliament and the

National Commission for Backward Classes was set up by the Govt. of India. Section 9(1) of the Act provides that it shall “examine the requests for Inclusion of any class of citizens as a backward class in the lists and hear Complaints of Over-Inclusion or Under-Inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate. Section 9(2) of the Act further provides that the advice of the Commission shall ordinarily be binding upon the Central Government. Section 11 of the Act also provides for periodic revision of lists by the Central Government as under:-

- (1) The Central Government may at any time, and shall, at the expiration of ten years from the coming into force of this Act and every succeeding period of ten years thereafter, undertake revision of the lists with a view to excluding from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes.
- (2) The Central Government shall, while undertaking any revision referred to in subsection (1), consult the Commission.

The NCBC, after studying the criteria/indicators framed by the Mandal Commission and the Commission set up in the past by different State Governments and other relevant materials formulated the guidelines for considering requests for inclusion in the list of Other Backward Classes.

Chapter II

Functions of the Commission

The functions of the Commission are laid down in section 9 and section 11 of the Act. Under sub-section (1) of Section 9 of the Act the Commission “shall examine requests for inclusion of any class of citizens as a Backward Class in the lists and hear complaints of over-inclusion or under inclusion of any Backward Class in such lists and tender such advice to the Central Government as it deems appropriate”. The term “list” in this section refers to “lists prepared by the Government of India from time to time for purposes of making provision for the reservation of appointments or posts in favour of backward classes of citizens which, in the opinion of that Government, are not adequately represented in the services under the Government of India and any local or other authority within the territory of India or under the control of the Government of India”. The term “backward classes” has been defined in clause (a) of the same section (section 2) to mean such Backward Classes of citizens other than the Scheduled Castes and the Scheduled Tribes as may be specified by the Central Government in the lists”.

Under Section 9(2) of the Act, “The advice of the Commission shall ordinarily be binding upon the Central Government”. This mandatory provision is based on and incorporates the directions of the Supreme Court in the Mandal Judgement, which directed the Government of India and the State Governments/Union Territories to constitute a permanent body, in the shape of a National Commission for Backward Classes and the State Commissions for Backward Classes and that the “advice tendered by such bodies shall ordinarily be binding upon the Government” (vide extract of the Judgement at *Annexure-I*).

Section 11 of the Act enjoins upon the Central Government to undertake revision of the lists of backward classes at the expiration of ten years after the Act came into force and thereafter every succeeding period of ten years, and enables it to undertake such revision at any time, with a view to excluding from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes. Under sub-section (2) of this Section, the Central Government is required to consult the Commission while under-taking such revision. While performing its functions under Section 9(1) of the Act, the Commission has been vested with all the powers of a civil court trying a suit and in particular, in respect of the summoning and enforcing the attendance of any person from any part of India and examining him on oath; requiring the discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any court or office; issuing notices for the examination of witnesses and documents; and any other matter which may be prescribed.

Section 8(2) empowers the Commission to regulate its own procedure. Sections 14 and 15 provide that the Commission shall prepare its annual report for each financial year which together with a memorandum of action taken on the advice tendered by the Commission under Section 9 and the reasons for the non-acceptance, if any, of any such advice and the audit report shall be laid by the Central Government before each House of Parliament.

As per the procedure laid down by the Commission under Sub-Section (2) of Section (8) of the National Commission for Backward Classes Act, 1993 the advice of the Commission may be formulated unanimously or by consensus or by majority. Where there is no

unanimity or consensus, the advice of the majority will be tendered as the Commission's advice but the dissenting advice also will be furnished to Government. In regulating its procedure under Section 8(2) of the Act, the Commission has been guided by the principles of objectivity, transparency and speed. In fact soon after the Commission was established, it took the following steps under Section 8(2) of the National Commission for Backward Classes Act, 1993 :-

- (ii) Formulated the procedure for examination of requests for inclusion in the lists and complaints of over-inclusion or under-inclusion in the Central list of Backward Classes.
(Annexure-VIII)
- (iii) Formulated guidelines for consideration of requests for inclusion and complaints of under-inclusion in the Central list.
- (iv) Prepared questionnaire for obtaining data in respect of requests for inclusion of castes/communities.

The Commission has been making additions and improvements to this procedure from time to time, based on experience and according to needs.

Chapter III

Composition of the Commission

In accordance with the directions of the Supreme Court, the Government of India enacted the National Commission for Backward Classes Act, 1993 (Act No.27 of 1993) on 2nd April 1993 (Annexure-VII) for setting up the National Commission for Backward Classes at the Centre. Section 3 of the Act provides that the Commission shall consist of five Members, comprising a Chairperson who is or has been a judge of the Supreme Court or of a High Court; a social scientist; two persons, who have special knowledge in matters relating to backward classes; and a Member-Secretary who is or has been an officer of the Central Government in the rank of a Secretary to the Government of India. Every Member of the Commission shall hold office for a term of 3 years from the date he assumes office. The Govt. of India constituted the Commission by its Notification No.12011/34/BCC/Pt.I dated 14 August 1993. The details regarding the composition of the Commissions are as under:

A From 18.8.1993 to 17.8.1996

- | | | |
|----|------------------|----------------------------|
| 1. | Chairperson | Justice (Retd.) R N Prasad |
| 2. | Member-Secretary | Shri P S Krishnan |
| 3. | Member | Dr. Dhirubhai L Seth |
| 4. | Member | Dr. Dinesh Singh Yadav |
| 5. | Member | Dr. Prasannan |

(All the above members completed their 3-year tenure)

B From 28.2.1997 to 27.2.2000

1. Chairperson Justice (Retd.) Shyam Sunder
2. Member-Secretary Shri P S Krishnan
3. Member Shri Akshay Bhai Sahu
4. Member Prof. Uday Pratap Singh
5. Member Shri Navtej Singh Puadhi
(expired while in harness on
16.8.1998)
6. Member Shri M S Matharoo
(joined on 14.7.1999)

(While Members from sl. nos. 1-4 completed their 3-year tenure on 27.2.2000 Shri M S Matharoo continued till 13.7.2002 when he completed 3-year term)

C From 28.7.2000 onwards

1. Chairperson Justice (Retd.) B L Yadav
(died in harness on 24.3.2002)
2. Member-Secretary Shri C T Benjamin
(6.4.2000 to 31.7.2000 as Secretary)
(1.8.2000 to 31.7.2003 as Member Secretary)
3. Member Shri M S Matharoo
(14.7.1999 to 13.7.2002)
4. Member Dr. B M Das
(28.08.2000 to 27.08.2003)
5. Member Smt. Neera Shastri
(August 2000 to August 2003)

D **Existing**

1. Chairperson Justice (Retd.) Ram Surat Singh
(13.8.2002 onwards)
2. Secretary Smt. Chitra Chopra
(04-8-2003 onwards)
3. Member Shri M S Matharoo
(19.8.2002 onwards)
4. Member Smt. Neera Shastri
(29.9.2003 onwards)
5. Member Dr. B. Babu Rao Verma
(6.10.2003 onwards)

Chapter IV

Work done by the Commission

I. Overview of the work done by the Commission since beginning

Since its inception, the Commission has received 1205 requests for inclusion of castes/communities/sub-castes/synonyms relating to Other Backward Classes in the Central list from various States and Union Territories. Advices in respect of 1133 castes/sub-castes/synonyms/Communities have been submitted from time to time to the Central Government in the Ministry of Social Justice & Empowerment. Of these, 682 cases were for inclusion in the Central lists for different States/Union Territories and 451 cases were for rejection. Against 682 cases for inclusion of castes/sub-castes/synonyms/communities in the Central List 675 have already been notified by the Central Government. Similarly, advice of the Commission for rejection in all 451 cases has been accepted by the Government.

A Statement showing the total number of castes / sub-castes / synonyms / communities in respect of which Advices tendered since inception, year-wise from August 1993-94 to March 2004 is as under:

Year	Number of castes/sub-castes/ synonyms/ communities in respect of which Advices tendered during the period
August, 1993-94 to 1994-95	161 (of which 129 were inclusions by correction of error in spelling, etc.)

1995-96	30 (3 inclusion by correction of error in spellings, etc.)
1996-97 (upto July, 1996)	33 upto period covered by the Annual Report for 1995-1996
1996-97 (early August 1996)	32
1997-98	216 Inclusion one case of addition of explanation in the List of BCs for Rajasthan.
1998-99	351 (including 5 by correction of error in spelling etc.)
1999-2000 (upto Feb.2000)	244 (including 1 by correction in spelling)
2000 - March 2001	13
2001 - 2002	22
2002 - 2003	21
2003 - 2004	10

The State-wise break-up of the above mentioned 1133 cases of castes / communities which were considered / advice tendered to the Government by the Commission for inclusion / rejection since inception is tabulated as under:

S.No.	State/Union Territory	Recommended for		Total
		Inclusion in the lists	Rejection	
1.	Andhra Pradesh	47	24	71

2.	Assam	--	1	1
3.	Bihar	12	22	34
4.	Delhi	13	12	25
5.	Goa	12	6	18
6.	Gujarat	30	16	46
7.	Haryana	27	8	35
8.	Himachal Pradesh	2	1	3
9.	Karnataka	106	27	133
10.	Kerala	35	24	59
11.	Madhya Pradesh	42	19	61
12.	Maharashtra	19	16	35
13.	Orissa	45	45	90
14.	Punjab	9	2	11
15.	Rajasthan	32	30	62
16.	Sikkim	3	3	6
17.	Tamil Nadu	81	35	116
18.	Tripura	15	8	23
19.	Uttar Pradesh	94	53	147
20.	West Bengal	44	16	60
21.	Chandigarh	6	1	7
22.	D&N Haveli	--	1	1
23.	Pondicherry	8	81	89
	Total	682	451	1133

II. Work done during April 2003 to March 2004

During the period under report (April 2003 - March 2004), requests for inclusion of 54 castes/sub-castes/communities in the Central list of Backward Classes were with the Commission. Of these requests received, advice in respect of 10 cases has already been sent to the Ministry of Social Justice & Empowerment and 44 cases are under consideration of the Commission. A state-wise break-up of the number of requests for inclusion, pending as on 31.3.2004, is given in the statement at *Annexure-IX*.

Further, during this period the Commission held 3 public hearings for considering the requests in 3 States as per details indicated below:-

Public Hearings held during April 2003 – March 2004

Sl. No.	State/ UT	Date of Public Hearing	Venue	Bench	No. of castes/ communities/ sub-castes/ synonyms considered during Public Hearings
1	2	3	4	5	6
1.	Gujarat	22 nd May, 03	Ahmedabad	3-Member Bench	6
2.	Bihar	2 nd Jan, 04	Patna	Full Bench	3
3.	Goa	6 th Feb, 04	Panaji	Full Bench	1

The following castes / communities were considered in the above public hearings:-

Gujarat	1. Jagari
	2. Dhangar
	3. Khavas
	4. Sagar
	5. Kansara
	6. Chaki
Bihar	1. Kurmi
	2. Soyar
	3. Bakho (Muslim)
Goa	1. Bhandari Naik

During the period under report, the Commission tendered advice in respect of 10 castes/ sub-castes/ communities/ synonyms to the Central Government. Of these advices 7 were for inclusion in the central list and 3 for rejection as per details given below :-

Sl. No.	States / UT	No. of advices tendered	Advices for inclusion	Advices for rejection
1	2	3	4	5
1.	Uttar Pradesh	1	-	1
2.	Maharashtra	2	1	1
3.	Gujarat	4	4	-
4.	Andhra Pradesh	3	2	1

As on 31.3.2004, 44 requests for inclusion of the castes/sub-castes/communities/ synonyms in the Central List of OBCs are under various stages of consideration of the Commission. In some cases, public hearings have already been held and in the remaining cases the Commission has decided to hold public hearings on priority basis.

During the year 2003-04, the Government of India had notified the inclusion / amendments in the Central List of OBCs for the States/UTs of Andhra Pradesh, Chandigarh, Delhi, Haryana, Karnataka, Orissa, Rajasthan and West Bengal as under:

*Inclusion/Amendment in the Central List of OBCs notified during 2003 (**shown in Bold Print**)*

S.No.	Name of the State	Old Entry	New Entry
1.	Andhra Pradesh	90. Turupu Kapu (of Srikakulam and Visakhapatnam Districts who are subject to social custom of divorce and remarriages among their women.	90. Turupu Kapu (of Srikakulam, Vizianagram and Visakhapatnam Districts who are subject to social custom of divorce and remarriages among their women.
2.	Chandigarh	24. Gawala/Gwala/Gowala/Gowale/Gawla	24. Gawala/Gwala/Gowala/ Gowale /Gawla / Yadav / Ahir

3.	Delhi	<p>26. Julaha</p> <p>16. Chippi, Tonk, Darzi</p> <p>20. Dhunia, Pinjara, kandera-Karan, Dhunnewala</p> <p>43. Nai, Hajjam, Nai (Sabita)</p>	<p>27. Julaha Julaha-Ansari (Excluding those in SCs.)</p> <p>16. Chippi, Tonk, Darzi</p> <p><i>Idrishi</i></p> <p>20. Dhunia, Pinjara, Kandera-Karan, Dhunnewala</p> <p>Naddaf, Mansoori</p> <p>43. Nai, Hajjam, Nai (Sabita), Salmani</p>
4.	Haryana	66. Lodh, Lodha	66. Lodh, Lodha, Lodhi
5.	Karnataka	156. Vokkaliga, Vakkaliga, Sarpa Vokkaliga, Uppina Kolaga Vokkaliga	(Rural areas only)
6.	Orissa	<p>43. Gola, Golla, Gope, Sadgope, Ahir, Gour, Gouda, Goudo, Mekala Golla, Punnu Golla, Yadav, Laxminarayan Gola and Goudia Gola, Gopal/Gopala, Sholakhandia, Maghada Gouda</p> <p>48. Hansi, Tanti, Sukuli, Vina, Tulabhina, Rangani, Dera, Dewanga, Kosta, Salia, Patsalia, Buna, Bunkar/Bunkara, Bangali Tanti /Bangiya Tanti, Matibansa Tanti, Asina Tanti, Aswina Tanti, Ashani Tanti, Aswinna Tanti</p>	<p>43. Gola, Golla, Gope/Gop, Sadgope/Sadgop, Ahir, Gour, Gouda, Goudo, Mekala Golla, Punnu Golla, Yadav, Laxminarayan Gola and Goudia Gola, Gopal/Gopala, Sholakhandia, Maghada Gouda, Dumal Gouda</p> <p>48. Hansi, Tanti, Sukuli, Vina, Tulabhina, Rangani, Dera, Dewanga, Kosta, Salia, Patsalia, Buna, Bunkar/Bunkara, Bangali Tanti /Bangiya Tanti, Matibansa Tanti, Asina Tanti, Aswina Tanti, Ashani Tanti, Aswinna Tanti, Rangani Tanti/ Rangani Tantee/ Ranganee Tantee/ Rangini Tanti / Ranguni</p>

		103. Mali, Phulia, Saghbaria, Bhajemali 188. Kalwar	Tanti 103. Mali, Phulia, Saghbaria, Bhajemali, Pandara Mali, Muni, Raula (Raula in Ganjam District only) 188. Kalwar, Kalal, Kalar
7.	*Rajasthan	Nil	62. Silawat (except Sompura Murtikar)
8.	West Bengal	Nil	55. Nashya-Sekh 56. Shershabadia

* Explanation: In the above list for the State of Rajasthan all castes, which are known by the name of their respective traditional hereditary occupations and whose members follow different religions, include all members of those castes, irrespective of whether they follow the Hindu religion or Islam or any other religion.

Chapter V

Review of Income Criteria

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

- (1) To review the existing ceiling of income/wealth to determine the 'Creamy Layer' amongst OBCs as notified vide Department of Personnel & Training (DOPT) OM No. 36012/22/93-Estt (SCT) dated 8th September 1993
- (2) To evolve and suggest formulae through which the periodic revision of income ceiling/criteria in terms of quantum or rupee be fixed so that the income ceiling for determining the 'Creamy Layer' amongst OBCs is revised from time to time as per the formulae.
- (3) Also to consider and advise the Government on the following:-
 - (a) Whether the 'Creamy Layer' criteria will apply only to sons/daughters of the persons mentioned in the respective categories, such as, the service category or also to the persons themselves;

- (b) Whether the rule of exclusion will apply where the income from salaries alone or from agricultural land alone, exceeds the prescribed limit or the income ceiling will apply to the consolidated income from both.
- (c) The committee may also examine as to how income from sources other than salary or agricultural land is to be dealt with;
- (d) Evaluation of posts equivalent or comparable in the public sector undertakings, banks, insurance organizations, universities or comparable posts and positions under private employment for the purpose of application of the criteria enumerated in category II-A and II-B.
- (e) Presently, if any person in categories I, II, III and V-A, who is not ineligible to receive the benefit of reservation has income from other sources of wealth (without clubbing his income from salary or agricultural land) which will bring him within the criteria under item VI, then he shall be ineligible for reservation. In this context, it may be examined whether, irrespective of the post, service, employment, profession, trade, industry, etc., if the income of a parent or the combined income of parents exceeds the limits specified under category VI, the rule of exclusion be applied.

The Supreme Court in its judgement on 16-11-1992 in *Indira Sawhney and Others vs. Union of India and others* directed the Government of India to exclude the Socially Advanced Persons/Sections (Creamy Layer) from OBCs. Pursuant to this, the Government of India had constituted an Expert Committee to make recommendations on

socio-economic criteria to be adopted for excluding the “Creamy Layer” from amongst OBCs. The Report of the Expert Committee was considered and accepted by the Government. Subsequently, Government of India vide Dept. of Personnel & Training’s (DOPT) O.M. No.36012/2293-Estt.(SCT) dated 8-9-1993 inter alia notified that the reservation of 27% of the vacancies in civil posts and services under the Government of India to be filled through direct recruitment shall not be admissible to different categories of “Persons/Sections Excluded From Reservations” (Creamy Layer). One of the category of persons/sections inter alia mentioned in the Schedule to the DOPT’s O.M. dated 08.09.1993 and excluded from reservation is:

“Son(s) and daughter(s) ---

- (a) Persons having gross annual income of Rs.1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Act for a period of three consecutive years.*
- (b) Persons in categories I, II, III and V-A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.*

According to the explanation given in the said Schedule “(i) *Income from salaries or agricultural land shall not be clubbed;*” and “(ii) *The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less.*”

In view of the short time given to the Commission for giving its suggestions/recommendations, the Commission took up the task with urgency. To begin with, the Commission issued Public Notices through leading national and regional newspapers throughout the country

seeking views and suggestions of the general public in the matter, especially those of the Backward Classes and their associations and organizations. The Commission also sought the views and suggestions from the State Governments and Union Territory administrations by separately writing to the respective Chief Secretaries/Secretaries in charge of Backward Classes Welfare Ministries/Departments. The Commission also addressed the State Backward Classes Commissions and the Commissions or Committees in the Union Territories seeking their valuable views in the matter and forward any report compiled by them for this purpose.

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

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

There have also been suggestions for simplification of the existing order and to avoid ambiguity, which presently cause hardship to the

Backward Class candidates, who are made to run from pillar to post for securing certificates.

Most of the States/UTs have been following the Central Government criteria for exclusion of creamy layer after the Supreme Court judgement in the Mandal case. Though some State Governments had brought out separate criteria of their own, they have been struck down by the Supreme Court as arbitrary and on the direction of the Supreme Court, these States were also till recently following the criteria evolved by the Central Government. Recently, some of the State Governments had also raised the income limits.

Among the Central Government Departments/ Organisations, the Commission received suggestions/views from the Department of Personnel and Training (DOPT), Dept. of Expenditure, Pay Commission Implementation Cell, Central Statistical Organisation, Department of Statistical & Programme Implementation, etc.

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

The Supreme Court in the Mandal case has stated that “While the income of a person can be taken as a measure of his social advancement, the limit to be prescribed should not be such as to result in taking away with one hand what is given with the other. The income limit must be such as to mean and signify social advancement.” The emphasis here is on social advancement and there is no parameter or guideline to show at which level of income/wealth a person of backward class can be said to have crossed the level of social backwardness. It is a fact that it takes at least a generation’s time period for a family (the unit to be taken for excluding creamy layer) to go up from a lower social class to a higher one. There have not been concerted efforts on the part of the state to remove social and

educational backwardness of Backward Classes since Independence. Even the very limited and partial remedy of reservation for backward classes in the posts and services of the State have been introduced at the all India level only from 1993. Even in 1993 the identification of castes/communities belonging to backward classes had not been completed and the Central list of Backward Classes notified in 1993 was only in respect of 14 States/UTs. It took several more years for the Government to notify the backward classes of every State and Union Territory. In view of these facts, it is reasonable to think that there have not been adequate time for a family belonging to backward caste/community to achieve the desired goal of coming out of backwardness and come on par with the other section of the society. Taking these circumstances and contexts into consideration, it was the considered view of the Commission that when prescribing an income limit for excluding the creamy layer, it is to be ensured that the economic strength of the excluded section is sufficiently sound, so that they can compete on an equal footings with the forward castes/communities.

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

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

The Commission on 23rd January 2004 submitted its *“Report on the Review of Income Criteria for Exclusion of “Socially Advanced persons/Sections” (Creamy Layer) among Other Backward Classes from the benefit of 27% Reservation in the posts and services under Government of India”* to the Govt. (Annexure-X).

Government of India accepted the recommendations of the Commission and vide O.M. No.36033/3/2004-Estt.(Res.) dated 09th March, 2004 raised the income limit from Rs.1 lakh to Rs.2.5 lakh for determining the creamy layer amongst the OBCs (Annexure-XI).

Chapter VI

RECOMMENDATIONS AND SUGGESTIONS

Since inception, the Commission has given various suggestions and recommendations in several of its Annual Reports, regarding measures to be taken by the Central and the State Governments, for the overall social, educational and economic development of the backward classes.

The Commission had also suggested various measures for the proper and effective implementation of the reservation policy and for the effective functioning of the Backward Classes Commissions. The Commission does not propose to repeat here the various recommendations and suggestions made. The Commission however feels it necessary to recapitulate and reiterate some of the suggestions and recommendations made by the Commission in its earlier annual reports with regard to the important and urgent requirements that will help the Commission as well as the Government in undertaking the tasks ahead. There is also the important task arising out of Section 11 of the National Commission for Backward Classes Act, viz. the revision of the Central lists, which is a massive exercise. In carrying out such tasks, the Government and the Commission will feel utterly handicapped in the absence of generation of relevant data/information regarding castes/communities. For the Commission this lacuna will be felt all the more constricting, because of the Commission's inability to generate the required data/information on its own due to non availability of information from the State/UT Govt., lack of adequate staff and other infrastructure.

In view of the above position, the Commission would like to reiterate the important recommendations/suggestions which have already been made in the earlier annual reports which need to be acted upon by the Central as well as the State Governments:-

1. *Building Up of Data-Base*

Comprehensive socio-economic surveys including collection of population data, educational data and data pertaining to representation in the State and Central Government services, Public Sector Undertakings, Financial Institutions etc. in respect of each caste/sub-caste/community/sub-community be undertaken by each State Government and Union Territory Administration. This is essential particularly for the purpose of the revision of the Central Lists envisaged under Section 11 of the National Commission for Backward Classes Act. So far none of the States have been able to furnish to this Commission, adequate and useful data in respect of castes/communities contained in the respective Central Lists for these States. It is necessary for this purpose that a Special Cell is created in the Ministry of Personnel and in each of the Ministries dealing with employment in the services of the Central Government, Public Sector Undertakings and financial institutions, with the Cell in the Ministry of Personnel coordinating and collecting the data from all the cells and other sources. Similar arrangements must be created in all States and Union Territories.

- 2 *Collection of caste-wise/community-wise population data should be undertaken at the time of decennial census operations.*

The Commission is of the considered view that the population and other socio-economic data are a basic and essential requirement for ascertaining the relative socio-economic status of backward classes and evolving appropriate welfare and development strategies for them. The absence of such basic data will be a stumbling block in the Governmental efforts in this regard. The advantages of generating such data will surely far outweigh any apprehended disadvantages. At least the population of castes/communities listed in the Central and State Lists can be enumerated which will help in measuring development indicators for comparative analysis and will be particularly useful for revision exercise.

3. *Delegation of Power to National Commission for Backward Classes for Guidance & Monitoring Efforts and entrusting the work relating to grievances of OBCs*

Reservation for Backward Classes in Government employment came into effect from 8th September 1993. The Commission feels, however, that unless there is a body to monitor and attend to the grievances regarding implementation of reservation, the goal cannot be achieved.

Since its constitution, the NCBC has been receiving numerous representations regarding non-implementation of reservation orders in recruitments and other grievances. When the Commission for SC/ST was constituted, there was no BCs Commission in existence at

that time at the Center and this work was entrusted to them. Subsequently, when NCBC was constituted at the Center, it was entrusted with only the work of inclusion & exclusion in the Central List of OBCs, but provisions for entrusting the work of grievances of OBCs and monitoring to NCBC was not made, as is done in some State Commissions and other Commissions at the Center have been empowered with this provision.

In pursuance of the judgement of the Supreme Court in *Indira Sawhney and Others vs. Union of India and Others*, in Writ Petition (Civil) No. 930/1990, the Government of India has passed the National Commission for Backward Classes Act, 1993.

Section 9 (1) of the NCBC Act empowers the Commission to examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate. Section 9(2) of the NCBC Act further adds that the advice of the Commission shall ordinarily be binding upon the Central Government.

The Commission has noted that on account of belated recognition of the rights of backward classes by the Central Government and a large number of State Governments as well, the grievances and complaints arising out of non-implementation of reservation etc. should be attended to so as to achieve the goal. The Commission is, therefore, of the view that entrusting the function of only inclusion or exclusion of socially and educationally backward classes in the OBC list will not be enough to improve the condition and status of backward classes and

some more effective provisions to examine the complaints of violation of implementation of rule of reservation and to attend to the grievances of Backward Classes be made in the NCBC Act, as is done in other Commission's at the Center and State level.

As a matter of fact, the States of Uttar Pradesh, Madhya Pradesh and Karnataka have entrusted their respective State Backward Classes Commissions the task of supervising and monitoring the progress of schemes for development and welfare of backward classes and to apprise the Governments accordingly. Andhra Pradesh Backward Classes Commission Act also empowers the State Commission to examine the complaints of violation of implementation of rule of reservation for Backward Classes in the State services and suitably advise the Government. Similar provisions have also been made by the Central Government in the case of National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Women.

As a matter of fact, the NCBC has made its recommendations to the Government more than once in the previous years in this regard, the latest letter being dated 05-12-03, enclosing the resolution passed by the Commission regarding amendment in the NCBC Act.

4. *Full, Effective and proper implementation of Reservation for the Backward Classes.*

5. *Issue of Certificate – Proper implementation of the latest orders by the Issuing Authorities.*

During the visits of Benches of the Commission in various States/UTs, it came to the notice of the Members that the notifications regarding reservation, amendment/addition in castes/communities in the lists, latest creamy layer criteria enhancing the limit, etc. are not available, with the issuing authorities in the State. The members of the OBC community have been put to difficulty. The issuing authorities insist that until and unless they receive through the State Government the latest orders issued by the Govt. of India, they are not in a position to issue certificates as per the latest orders produced by the members of the OBC community. Even though Govt. of India has been circulating the latest Orders to the State Govt. etc., the same does not seem to reach down below to the certificate issuing authorities. The NCBC have been receiving many delegations, representatives and representations from throughout the country regarding non-receipt of the latest orders of Govt. of India by the Issuing authorities and non-issue of OBC certificates to the eligible members of the OBC community and castes.

**Judgement Writ Petition (Civil) No.930 of 1990 – Indira Sawhney
Versus Union of India
And others (16.11.1992)**

THE FOLLOWING DIRECTIONS ARE GIVEN TO THE
GOVERNMENT OF INDIA, THE STATE GOVTS. AND
THE ADMINISTRATION OF UNION TERRITORIES

123. (A) The Government of India, each of the State Governments and the Administrations of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government.

(B) Within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections ('creamy layer') from 'Other Backward Classes'. The implementation of the impugned O.M. dated 13th August 1990, shall be subject to exclusion of such socially advanced persons ('creamy layer').

This direction shall not however apply to States where the reservations in favour of backward classes are already in operation. They can continue to operate them. Such States shall however evolve the said criteria within six months from today and apply the same to exclude the socially advanced persons/sections from the designated 'Other Backward Classes'.

(C) It is clarified and directed that any and all objections to the criteria that may be evolved by the Government of India and the State Governments in pursuance of the direction contained in clause (B) of Para 123 as well as to the classification among backward classes and equitable distribution of the benefits of reservations among them that may be made in terms of and as contemplated by clause (1) of the Office Memorandum dated 25th September 1991, as explained herein, shall be preferred only before this court and not before or in any other High Court or other court or Tribunal. Similarly, any petition or proceeding questioning the validity, operation or implementation of the two impugned Office Memorandums, on any grounds whatsoever, shall be filed or instituted only before this Court and not before any High Court or other Court or Tribunal.

124. The Office Memorandum dated August 13, 1990 impugned in these writ petitions is accordingly held valid and enforceable subject to the exclusion of the

socially advanced members/sections from the notified 'Other Backward Classes', as explained in para 123(B).

Clause (i) of the Office Memorandum dated September 25, 1991 requires – to uphold its validity – to be read, interpreted and understood as intending a distinction between backward and more backward classes on the basis of degrees of social backwardness and a rational and equitable distribution of the benefits of the reservations amongst them. To be valid, the said clause will have to be read, understood and implemented accordingly.

Clause (ii) of the Office Memorandum dated September 25, 1991 is held invalid and inoperative.

The Writ Petitions and Transferred Cases are disposed of in the light of the principles, directions, clarifications and order contained in this Judgement.

No costs.

Sd/- CJI

(M.H. KANIA)

Sd/- J

(M.N. VENKATACHALIAH)

Sd/- J

(A.M. AHMADI)

Sd/- J

(B.P. JEEVAN REDDY)

NEW DELHI,
November 16, 1992

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

RESOLUTION

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

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

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

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

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

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

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

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

ORDER

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

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

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

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

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

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

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

4. It is necessary to bear in mind that the Court has accepted the principle of reservation on the reasoning that the SEBCs on account of their social and educational backwardness are truly in need of reservation. In other words, the dominant consideration for upholding the reservation is the social and educational backwardness and not the income test, although in actual life it mostly happens that economic backwardness is a natural consequence of the social and educational backwardness. It logically follows, therefore, that for determining who from

amongst the SEBCs shall be denied the benefit of reservation, the basics again would be the social and educational factors and only when the advancement in this regard is such as to put that person at par with the forward classes that he may be placed in the excluded category. In the majority judgement, it has been observed that only when a person's social and educational advancement is such that it totally snaps the connecting link of backwardness between him and other members of his community, he can then be said to be a misfit in his own class and so ought to be taken out from there and placed in the "Creamy Layer" category. The following passage in the judgement of Hon'ble Justice Sawant (paragraph 522 Judgements Today Vol. VI No.9 30th November, 1992) elaborates the point more succinctly:-

"The correct criterion for judging the forwardness of the forwards among the Backward Classes is to measure their capacity not in terms of the capacity of others in their class, but in terms of the capacity of the members of the Forward Classes, as stated earlier. If they cross the Rubicon of backwardness, they should be taken out from the Backward Classes and should be made disentitled to the provisions meant for the said classes".

Hence while determining the criteria of exclusion we have kept in mind the guiding principle laid down by the Hon'ble Court as mentioned above. However, if economic betterment flows from social and educational advancement, then this also has to be taken note of.

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

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

I. CONSTITUTIONAL POSTS

7. President, Vice-President, Judges of the Supreme Court and High Courts, Chairman/Members of the Union Public Service Commission and State Public Service Commissions, Chief Election Commissioner, Comptroller and Auditor General of India and persons holding Constitutional positions of like nature.

The Constitutional posts of Governor, Minister and Membership of Legislatures, are, in the very nature of things, temporary and often transitory. Further, in most cases such persons would be covered in one or the other categories which have been enumerated in this report. Hence such persons have not been separately categorised.

II. SERVICE CATEGORY

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

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

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

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

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

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

C. Employment in Public Sector Undertakings etc.

12. The service category is not confined to employment under the Government only, whether at the Union or at the State level. The criteria enumerated above will apply mutatis mutandis to officers holding equivalent or comparable posts in public sector undertakings, banks, insurance organisations, universities, etc. and also to equivalent or comparable posts and positions under private employment.

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

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

14. The exclusion rule will apply at the level of Colonel and above in the Army and to equivalent posts in the Navy and the Air Force and the Para Military Forces. If the wife of an Armed Forces Officer is herself in the Armed Forces (i.e. the category under consideration) the rule of exclusion will apply only when she herself has reached the rank of Colonel: the service ranks below Colonel of husband and wife shall not be clubbed together. Even if the wife of an officer in the Armed Forces is in civil employment, this will not be taken into account for applying the rule of exclusion, unless she falls in the service category under Item No.11 in which case the criteria and conditions enumerated therein will apply to her independently. In making these recommendations, we have borne in mind the peculiar nature of the service and

hardships faced by the members of the Armed Forces and the Para Military Forces. It has also to be remembered that there is no reservation in recruitment to the Armed Forces, which means that a person at the stage of recruitment in these services is denied the benefit of reservation even though he may otherwise be entitled to it.

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

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

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

V. PROPERTY OWNERS

A. Agricultural Land Holdings

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

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

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

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

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

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

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

B. Plantations

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

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

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

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

VI. INCOME/WEALTH TEST

25. This criterion is on the basis of income or wealth. We are conscious of the fact that in the majority judgement and the judgements of Pandian and Sawant, JJ it has been clearly emphasised that when placing a person in the excluded category, it should be unmistakably

evident that social backwardness has come to an end. Their Lordships have emphasized that unless there is social advancement to such a degree as to bring a member of the SEBC more or less at par with the members of the forward classes, he should not be denied the benefit of reservation.

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

“The basis of exclusion should not merely be economic, unless of course the economic advancement is so high that it necessarily means social advancement.”

(vide Judgement Today Vol. VI, No.9 Nov. 30. 1992)

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

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

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

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

30. The Supreme Court Judgement indicates that classifying the socially and educationally backward classes into two or more categories (backward, more backward, most backward and if necessary, further sub-categorisation) is not only desirable but perhaps actually necessary.

As and when such categorisation is done we feel that for those fall in the two lowest strata at the bottom, i.e., the strata having the maximum backwardness, the application of the rule of exclusion may be kept in abeyance on the reasoning that the process of “creamy layer” formation will take more time in their case. While doing so the Government may examine its legal permissibility in terms of the Supreme Court Judgement.

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

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

CONCLUSION

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

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

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

“...That a few of the seats and posts reserved for backward classes are snatched away by the more fortunate among them is not to say that reservation is not necessary.

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

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

(Paragraph 229 and 230 Judgements Today)

36. Another passage from the judgement of Hon'ble Mr. Justice Pandian justifies the rule of caution and of erring on the right side adopted by us. The passage is as below:

"It is after 42 years since the advent of our Constitution, the Government is taking the first step to implement this scheme of reservation for OBCs under Article 16(4). In fact, some of the States have not even introduced policy of reservation in the matters of public employment in favour of OBCs."

(Paragraph 225 Judgements Today)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The undersigned is directed to refer to this Department's O.M. No.36012/31/90-Estt. (SCT), dated the 13th August, 1990¹ and 25th September, 1991², regarding reservation for Socially and Educationally Backward Classes in Civil Posts and Services under the Government of India and to say that following the Supreme Court judgement in the *Indira Sawhney and other v. Union of India and others* case [Writ Petition (Civil) No.930 of 1990], the Government of India appointed an Expert Committee to recommend the criteria for exclusion of the socially advanced persons/sections from the benefits of reservations for Other Backward Classes in civil posts and services under the Government of India.

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

- (a) 27% (twenty-seven per cent) of the vacancies in civil posts and services under the Government of India, to be filled through direct recruitment, shall be reserved for the Other Backward Classes. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.
- (b) Candidates belonging to OBCs recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.
- (c) (i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this Office Memorandum. (**See Appendix 1**)
(ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupations, callings. A list of such occupations, callings will be issued separately by the Ministry of Welfare.
- (d) The OBCs for the purpose of the aforesaid reservation would comprise, in the first phase, the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Governments' Lists. A list of such castes and communities is being issued separately by the Ministry of Welfare.

¹ Appendix 2 to Annexure-IV

² Appendix 3 to Annexure-IV

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

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

To

All Ministries/Departments of Government of India.

Copy:

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

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

Appendix 1 to Annexure-IV

PERSONS/SECTIONS EXCLUDED FROM RESERVATION

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

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

Provided that the rule of exclusion shall not

apply in the following cases :-

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

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

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

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

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

Sons and daughters of ---

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

Sons and daughters of ---

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

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

C. Employees in Public Sector

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

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

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

Provided that ---

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

IV. Professional class and those engaged In Trade and Industry

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

Criteria specified against Category VI will apply.

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

- (ii) Persons engaged in trade, business and industry. Criteria specified against Category VI will apply.

EXPLANATION ---

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

V. Property owners

A. Agricultural holding

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

- (a) only irrigated land which is equal to or more than 85% of the statutory ceiling area, or
- (b) both irrigated and unirrigated land, as follows :-
- (i) The rule of exclusion will apply where the pre-condition exists that the irrigated area (having been brought to a single type under a common denominator) 40% or more of the statutory ceiling limit for irrigated land (this being calculated by excluding the unirrigated portion). If this pre-condition of not less than 40% exists, then only the area of unirrigated land will be taken into account. This will be done by converting, the unirrigated land on the basis of the converting, the unirrigated land on the basis of the conversion formula existing, into the irrigated type. The irrigated area so computed from unirrigated land shall be added to the actual area of irrigated land and if after such clubbing together the total area in terms of irrigated land is 85% or more of the statutory ceiling limit for irrigated land,

then the rule of exclusion will apply and disentitlement will occur).

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

B. Plantations

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

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

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

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

VI. Income/Wealth Test

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

- (a) Persons having gross annual income of Rs.1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Act for a period of three consecutive years.
- (b) Persons in Categories I, II, III and V-A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/wealth criteria mentioned in (a) above.

EXPLANATION :-

- (i) Income from salaries or agricultural land shall not be clubbed;
- (ii) The income criteria in terms of rupee will be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less.

EXPLANATION :- Wherever the expression "permanent incapacitation" occur in this schedule, it shall mean incapacitation which results in

putting an officer out of service.

G.I., Dept. of Per. & Trg., O.M. No.36012/31/90-Est. (SCT), dated 13.8.1990

SUBJECT: 27% Reservation for Socially and Educationally Backward Classes in Civil Posts/ Services.

In a multiple undulating society like ours, early achievement of the objective of social justice as enshrined in the Constitution is a must. The Second Backward Classes Commission, called the MANDAL COMMISSION, was established by the then Government with this purpose in view, which submitted its report to the Government of India on 31st December, 1980.

2. Government have carefully considered the report and the recommendations of the Commission in the present context regarding the benefits to be extended to the socially and educationally backward classes as opined by the Commission and are of the clear view that at the outset certain weightage has to be provided to such classes in the services of the Union and their Public Undertakings. Accordingly orders are issued as follows :-

- (i) 27% of the vacancies in civil posts and services under the Government of India shall be reserved for SEBC;
- (ii) The aforesaid reservation shall apply to vacancies to be filled by direct recruitment. Detailed instructions relating to the procedure to be followed for enforcing reservation will be issued separately.
- (iii) Candidates belonging to SEBC recruited on the basis of merit in an open competition on the same standards prescribed for the general candidates shall not be adjusted against the reservation quota of 27%.
- (iv) The SEBC would comprise in the first phase the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Governments' lists. A list of such castes/communities is being issued separately;
- (v) The aforesaid reservation shall take effect from 7.8.1990. However, this will not apply to vacancies where the recruitment process has already been initiated prior to the issue of these orders.

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

G.I., Dept. of Per. & Trg., O.M. No.36012/31/90-Est. (SCT), dated 25.9.1991

SUBJECT: Amendment to the 27% reservation in service for Socially and Educationally Backward Classes.

The undersigned is directed to invite the attention to OM of even number, dated the 13th August, 1990, on the above mentioned subject and to say that in order to enable the poorer sections of the SEBCs to receive the benefits of reservation on a preferential basis and to provide reservation for other economically backward sections of the people not covered by any of the existing schemes of reservation, Government have decided to amend the said Memorandum with immediate effect as follows :-

2. (i) Within the 27% of the vacancies in civil posts and services under the Government of India reserved for SEBCs, preference shall be given to candidates belonging to the poorer sections of the SEBCs. In case sufficient number of such candidates are not available, unfilled vacancies shall be filled by the other SEBC candidates.
 - (ii) 10% of the vacancies in civil posts and services under the Government of India shall be reserved for other economically backward sections of the people who are not covered by any of the existing schemes of reservations.
 - (iii) The criteria for determining the poorer sections of the SEBCs or the other economically backward sections of the people who are not covered by any of the existing schemes of reservations are being issued separately.
3. The OM of even number, dated the 13th August, 1990, shall be deemed to have been amended to the extent specified above.

MINISTRY OF WELFARE

RESOLUTION

New Delhi, the 10th September, 1993

No.12011/68/93-BCC(C).—The Government of India have had under consideration the judgement of the Supreme Court dated 16.11.92 in the case of Indira Sawhney and Others Vs. Union of India and Others (No.930 of 1990) relating to reservation of 27% vacancies in civil posts and services under the Government of India in favour of Other Backward Classes (OBCs).

2. The OBCs for the purpose of the aforesaid reservation as per orders of the Government of India issued vide O.M. No.36012-22-93-Estt. (SCT) of 8th September, 1993 by the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), would comprise, in the first phase, the castes and communities which are common to both the lists in the report of the Mandal Commission and the State Governments' Lists.

3. The Expert Committee on 'Creamy Layer' headed by Justice (Rtd.) R.N. Prasad, was commissioned to prepare the Common Lists in respect of the following States which had notified the list (Appendix Allahabad) of OBCs for the purpose of reservation in State Services as on the date of judgement of the Supreme Court:

1. Andhra Pradesh
2. Assam
3. Bihar
4. Goa
5. Gujarat
6. Haryana
7. Himachal Pradesh
8. Karnataka
9. Kerala
10. Madhya Pradesh
11. Maharashtra
12. Punjab
13. Tamil Nadu
14. Uttar Pradesh

4. The Common Lists prepared by the Committee have been accepted by the Government. The Government has decided to notify the annexed lists of the Other Backward Classes in the

context of implementation of the aforesaid O.M. The lists shall be deemed to have taken effect from 8th September, 1993.

5. The National Commission for Backward Classes, set up under the provisions of the National Commission for Backward Classes Act, 1993 in pursuance of the direction of the Supreme Court in the aforesaid case shall entertain, examine and recommend upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of Other Backward Classes of citizens.

ORDER

Ordered that a copy of the resolution be communicated to all State Governments, UT Administrations, Ministries/Departments of Government of India.

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

M.S. PANDIT, Jt. Secy.

MINISTRY OF WELFARE

RESOLUTION

New Delhi, the 19th October, 1994

No.12011/9/94-BCC.—The Government of India, vide the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel and Training) O.M. No.36012/22/93-Esst.(SCT), dated the 8th September, 1993 have reserved 27 per cent of vacancies in civil posts and services under the Central Government in favour of Other Backward Classes (OBCs. This O.M. also specifies that the OBCs for the purpose of aforesaid reservation would comprise, in the first phase, the castes and communities which are common to both the lists in the Report of the Mandal Commission and the State Government lists.

2. The Common Lists of OBCs in respect of 14 States, namely, Andhra Pradesh, Assam, Bihar, Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh, in the context of implementation of aforesaid O.M. were notified in the Ministry of Welfare Resolution No.12011/68/93-BCC (C) dated : 10th September, 1993 and published in the Gazette of India —Extraordinary--Part I, Section I, No.186, New Delhi, Monday, September, 13th, 1993/Bhadra 22, 1915.

4. The Government of India have also now prepared the Common Lists of OBCs in respect of the following 4 States and 3 Union Territories :-

1. Orissa
2. Rajasthan
3. Tripura
4. West Bengal
5. Dadra and Nagar Haveli
6. Daman and Diu
7. Pondicherry

The Government have decided to notify the annexed Common Lists in respect of the above mentioned 4 States and 3 Union Territories in the Central List of OBCs in the context of implementation of the aforesaid O.M. dated 8th September, 1993 of the Department of Personnel and Training. These lists shall take effect from the date of issue of this Resolution.

Sd/-
GANGA DAS, Jt. Secy.

ORDER

Ordered that a copy of this Resolution be communicated to all State Governments, Union Territory Administrations, Ministries/Departments of the Government of India.

Ordered also that this Resolution be published in the Gazette of India for general information.

Sd/-
(BHAGWATI PARSHAD)
Joint Secretary to the Government of India

**MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)**

New Delhi, the 2nd April, 1993/Chaitra 12, 1915 (Saka)

The following Act of Parliament received the assent of the President on the 2nd April, 1993, and is hereby published for general information :—

**THE NATIONAL COMMISSION FOR BACKWARD CLASSES ACT, 1993
No.27 of 1993**

[2nd April, 1993]

An Act to constitute a National Commission for Backward Classes other than the Scheduled Castes and the Scheduled Tribes and to provide for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. *Short title extent and commencement.*— (1) This Act may be called the National Commission for Backward Classes Act, 1993.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 1st day of February, 1993.

2. *Definitions.*—In this Act, unless the context otherwise requires,-

(a) “backward classes” means such backward classes of citizens other than the Scheduled Castes and the Scheduled Tribes as may be specified by the Central Government in the lists;

(b) “Commission” means the National Commission for Backward Classes constituted under section 3;

(c) “lists” means lists prepared by the Government of India from time to time for purposes of making provision for the reservation of appointments or posts in favour of backward classes of citizens which, in the opinion of that Government, are not adequately represented in the services under the Government of India and any local or other authority within the territory of India or under the control of the Government of India;

(d) “Member” means a Member of the Commission and includes the Chairperson;

(e) “prescribed” means prescribed by rules made under this Act.

CHAPTER II

THE NATIONAL COMMISSION FOR BACKWARD CLASSES

3. *Constitution of National Commission for Backward Classes* .—(1) The Central Government shall constitute a body to be known as the National Commission for Backward Classes to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Commission shall consist of the following Members nominated by the Central Government :--

- (a) a Chairperson, who is or has been a Judge of the Supreme Court or of a High Court;
- (b) a social scientist;
- (c) two persons, who have special knowledge in matters relating to backward classes; and
- (d) a Member-Secretary, who is or has been an officer of the Central Government in the rank of a Secretary to the Government of India.

4. *Term of office and conditions of service of Chairperson and Members* —(1) Every Member shall hold office for a term of three years from the date he assumes office.

(2) A Member may, by writing under his hand addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of Member at any time.

(3) The Central Government shall remove a person from the office of Member if that person –

- (a) becomes an undischarged insolvent;
- (b) is convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude;
- (c) becomes of unsound mind and stands so declared by a competent court;
- (d) refuses to act or becomes incapable of acting;
- (e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or
- (f) has, in the opinion of the Central Government, so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the interests of backward classes or the public interest.

Provided that no person shall be removed under this clause until that person has been given an opportunity of being heard in the matter.

(4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination.

(5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

5. *Officers and other employees of the Commission*—(1) The Central Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the Commission.

(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

6. *Salaries and allowances to be paid out of grants*—The salaries and allowances payable to the Chairperson and Members and the administrative expenses, including salaries, allowances and pensions payable to the officers and other employees referred to in section 5, shall be paid out of the grants referred to in sub-section (1) of section 12.

7. *Vacancies, etc., not to invalidate proceedings of the Commission*—No act or proceedings of the Commission shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

8. *Procedure to be regulated by the Commission*—(1) The Commission shall meet as and when necessary at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other officer of the Commission duly authorised by the Member-Secretary in this behalf.

CHAPTER III

FUNCTIONS AND POWERS OF THE COMMISSION

9. *Functions of the Commission*—(1) The Commission shall examine requests for inclusion of any class of citizens as a backward class in the lists and hear complaints of over-inclusion or under-inclusion of any backward class in such lists and tender such advice to the Central Government as it deems appropriate.

(2) The advice of the Commission shall ordinarily be binding upon the Central Government.

10. *Powers of the Commission*—The Commission shall, while performing its functions under sub-section(1) of section 9, have all the powers of a civil court trying a suit and in particular, in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court of office;
- (e) issuing commissions for the examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

11. *Periodic revision of lists by the Central Government*—(1) The Central Government may at any time, and shall, at the expiration of ten years from the coming into force of this Act and every succeeding period of ten years thereafter, undertake revision of the lists with a view to excluding from such lists those classes who have ceased to be backward classes or for including in such lists new backward classes.

(2) The Central Government shall, while undertaking any revision referred to in sub-section (1), consult the Commission.

CHAPTER IV

FINANCE, ACCOUNTS AND AUDIT

12. *Grants by the Central Government*—(1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The Commission may spend such sums as it thinks fit for performing the functions under this act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section(1).

13. *Accounts and audit*—(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

14. *Annual report*—The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

15. *Annual report and audit report to be laid before Parliament*—The Central Government shall cause the annual report, together with a memorandum of action taken on the advice tendered by the Commission under section 9 and the reasons for the non-acceptance, if any, of any such advice, and the audit report to be laid as soon as may be after they are received before each House of Parliament.

CHAPTER V

MISCELLANEOUS

16. *Chairperson, Members and employees of the Commission to be public servants*—The Chairperson, Members and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

17. *Power to make rules*—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:--

- (a) salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members under sub-section (5) of section 4 and the officers and other employees under sub-section (2) of section 5;
- (b) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 13;
- (c) the form in, and the time at, which the annual report shall be prepared under section 14;
- (d) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the succession sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form to be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

18. *Power to remove difficulties*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient, for removing the difficulty;

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

19. *Repeal and saving*—(1) The National Commission for Backward Classes Ordinance 1993 (Ord. 23 of 1993) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

Secy. to the Govt. of India

NATIONAL COMMISSION FOR BACKWARD CLASSES

Under sub-section (2) of Section 8 of the National Commission for Backward Classes Act, 1993 (Act No.27 of 1993), the National Commission prescribes the following procedure:

I. Procedure for examination of requests for inclusion in the lists and hearing of complaints of over-inclusion or under-inclusion in such lists.

1. (i) Examination of requests and hearing of complaints under Section 9(1) of the National Commission for Backward Classes Act (hereinafter referred to as the Act) shall generally be done by a bench of 2 members.
- (ii) The benches shall be as per Annexure-I.
- (iii) All cases of requests and complaints pertaining to a State or U.T. shall stand, referred to the bench indicated against that State.
- (iv) The Chairperson may, if he so desires, associate with any of the other benches in addition to his benches for the specific States and U.T.s lists in Annexure-I.
- (v) Whenever exigencies of work-load require, the Commission may create additional benches for any State or U.T.
2. (i) The bench will place its findings in each case before the Commission.
- (ii) **In case of difference of opinion between the two members of a bench, each Member of the bench may place his findings separately before the Commission.**
- (iii) In case of difference of opinion between the 2 Members of a bench or under any other circumstances deemed necessary by the Commission, the Commission may expand a bench by adding a third Member to it and the Members of this expanded bench may place their findings jointly or separately to the Commission.
3. (i) The Commission will consider the findings of each bench and formulate its advice to the Central Government.
- (v) The advice may be formulated unanimously or by consensus or by majority.
- (vi) Where any Member differs from the majority he may formulate his dissenting advice.
- (vii) Where necessary, the Commission may request any bench to examine any further aspects and review its findings in that light, and thereafter again furnish its findings for the Commission's consideration.

4. (i) The Commission will furnish its advice to the Government along with the dissenting advice, if any.

II. Procedure for detailed background study, monitoring, guidance, etc.

5. (i) For purposes of detailed background studies, monitoring, guidance etc., all the States and U.Ts. shall be entrusted to the special care of a Member as listed in Annexure-II
- (ii) The Chairperson and other Members may, in addition, tour any other State or U.T. for purpose of comparative understanding of situations and systems, etc.

III. Tours

6. (i) The Members may undertake tours of States in the light of the work allocation made by the Commission under I & II above.
- (ii) The Members will mark copies of their tour schedule to the Chairperson, Member-Secretary and other Members.
- (iii) Important findings and observations arising from the tours may be intimated to the Office of the Commission (hereinafter referred to as the Office) for incorporation in the Annual Report under Section 14 of the Act.

IV Meetings

7. (i) The Commission will normally hold its regular meetings twice a month.
- (ii) The regular meetings will be held at the Commission's Office in Delhi.
- (iii) The Commission may hold additional meetings as and when necessary.
- (iv) The agenda items and agenda notes for and the minutes of the meetings will be prepared and circulated by the Member-Secretary.
- (v) Any Member may propose items for inclusion in the agenda leaving ordinarily a period of 15 days.
- (vi) Quorum for all meetings shall be 3.

V Staff Car

- (i) For use of staff car, each Member is allowed upto 600 litres of petrol per quarter including official & non-official purposes.

- (ii) Keeping in view the exigencies of work, until a staff car is made available for office, the Joint Secretary / Deputy Secretary may take car on hire on daily basis.

**Extract of the Meeting of the Commission
held on 11th September, 1997 Amending the Procedure
under Sub-Section (2) of Section 8 of the National Commission for Backward Classes
Act, 1993
(Act No.27 of 1993)**

.....the Commission prescribed the following procedure under Sub-Section (2) of Section 8 of the National Commission for Backward Classes Act, 1993 (Act No.27 of 1993) in continuation of/in amendment of the procedure laid down earlier with immediate effect :-

1. Examination of and Public Hearing in respect of the following types of Requests and Complaints under Section 9(1) of the Act and formulation of the Bench findings may be done by single-Member Benches :-
 - a) where inclusion is only by correction of spelling and other similar corrections like punctuations, etc. taking care that in the name of spelling correction, etc., a caste/community/sub-caste, which is not really in the relevant Central List, is not given an unintended entry into that List.
 - b) Absolute synonyms or synonyms which are co-terminus, i.e., names where the boundary denoted by one name is exactly the same as the boundary denoted by other name(s) and where one or more of these name(s) is/are in the relevant Central List and the Request is for the inclusion of the other name(s);
 - c) Fast Track cases, which are already included in the State List;
 - d) The Single-Member Benches will follow the same process of public notice of their hearings and other matters, as the existing Benches are following.
2. The Chairperson may nominate the Member for each such Single-member Bench.
3. Where necessary, the Chairperson may also add to or otherwise modify the composition of any of the Benches of the Commission.

Annexure-IX**CASES PENDING WITH THE COMMISSION AS ON 31.03.2004**

S.No.	State	Caste / Communities
1.	Andhra Pradesh	1. Pehelwan
		2. Barai, Marar & Tamboli
2.	Bihar	3. Kurmi
		4. Bakho
		5. Soyar
		6. Thakurai (Muslim)
3.	Chattisgarh	7. Pinjara (Hindu)
4.	Daman & Diu	8. Hindu-Gola-Rana
		9. Tandel
5.	Delhi	10. Jat
		11. Lubana
		12. Malik (Muslim)
6.	Goa	13. Bhandari Naik
		14. Nhavi, Nai (including Christian Nhavis's / Mhalo)
		15. Kumbhar (including the Christian Kumar)
		16. Teli (including Christian Teli's / "Ghanekars")
		17. Shimpi (including Christian "Alfiate")
		18. Christian Renders
		19. Chamars (excluding those who are already including in SCs)
7.	Gujarat	20. Kansara
		21. Chaki
		22. Sindhi Bhanushali
8.	Haryana	23. Koieri, Kushwaha, Kachhi, Maurya, Murari, Murav, Shakya synonyms of Saini
9.	Karnataka	24. Aryakshatriya and Sarige as synonym of Somavamsha Aryakshatriya
		25. Hindu Sadaru
		26. Shivachara Nagartha

10. Maharashtra
 11. Orissa
 12. Punjab
 13. Rajasthan
 14. U.P.
 15. Uttranchal
27. Kurmi
 28. Yellam / Yelam
 29. Asini Patara / Aswini & Ashwini Patra
 30. Ragini Hansi as a synonym of Hansi / Tanti
 31. Tamuli
 32. Koppala Velama
 33. Yadav / Ahir
 34. Ramgarhia as a synonym of Khati Tarkhan
 35. Kurmi
 36. Arya Jat & Jat Punjabi
 37. Pujari (Sewak)
 38. Kurmi Saithwar
 39. Sanwat
 40. Katua
 41. Barai, Chaurasia synonym of Tamoli
 42. Unai Sahu
 43. Gorkha
 44. Jatt Sikh

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

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

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

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

- I. Sons and daughters of parents who hold Constitutional Posts
- II. Sons and daughters whose parents are in Service Category (Group 'A'/Class I officers and Group 'B'/Class II officers and Employees holding equivalent posts in PSUs, Banks, Insurance Organisations, Universities etc. and also in private employment)
- III. Sons and daughters of parents who are in Armed Forces including Para Military Forces (Persons holding civil posts are not included) in the rank of Colonel and above in the Army or in equivalent posts in the Navy and the Air Force.
- IV. Professional Class and those engaged in Trade, Business and Industry
- V. Property Owners
 - A. Sons and daughters of parents who hold irrigated agricultural land equal to or more than 85% of the statutory ceiling area or both irrigated and unirrigated land in such a way that irrigated land is 40% or more of the ceiling limit and the unirrigated land, after conversion into the irrigated type as per existing conversion formula, is to such an extent that if it is added to the actual irrigated land area the total area in terms of irrigated land is 85% or more of the statutory ceiling limit for irrigated land.
 - B. Plantation owners
 - (i) Coffee, tea, rubber, etc.
 - (ii) Mango, citrus, apple plantations, etc.
 - C. Holders of vacant land and/or buildings in urban areas or urban agglomeration
- VI. Sons and daughters of
 - (a) Persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Act for a period of three consecutive years. Income/Wealth Test

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

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

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

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

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

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

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

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

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

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

- (4) To review the existing ceiling of income/wealth to determine the 'Creamy Layer' amongst OBCs as notified vide Department of Personnel & Training (DOPT) OM No. 36012/22/93-Estt (SCT) dated 8th September 1993
- (5) To evolve and suggest formulae through which the periodic revision of income ceiling/criteria in terms of quantum or rupee be fixed so that the income ceiling for determining the 'Creamy Layer' amongst OBCs is revised from time to time as per the formulae.
- (6) Also to consider and advise the Government on the following:-
 - (a) Whether the 'Creamy Layer' criteria will apply only to sons/daughters of the persons mentioned in the respective categories, such as, the service category or also to the persons themselves;
 - (b) Whether the rule of exclusion will apply where the income from salaries alone or from agricultural land alone, exceeds the prescribed limit or the income ceiling will apply to the consolidated income from both.
 - (c) The committee may also examine as to how income from sources other than salary or agricultural land is to be dealt with;
 - (d) Evaluation of posts equivalent or comparable in the public sector undertakings, banks, insurance organizations, universities or comparable posts and positions under private employment for the purpose of application of the criteria enumerated in category II-A and II-B.
 - (e) Presently, if any person in categories I, II, III and V-A, who is not ineligible to receive the benefit of reservation has income from other sources of wealth (without clubbing his income from salary or agricultural land) which will bring him within the criteria under item VI, then he shall

be ineligible for reservation. In this context, it may be examined whether, irrespective of the post, service, employment, profession, trade, industry, etc., if the income of a parent or the combined income of parents exceeds the limits specified under category VI, the rule of exclusion be applied.

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

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

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

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

17. Most of the States/UTs have been following the Central Government criteria for exclusion of creamy layer after the Supreme Court judgement in the Mandal case. Though some Governments like Uttar Pradesh and Bihar had brought out separate criteria of their own, they have been struck down by the Supreme Court as arbitrary and on the direction of the Supreme Court, these States were also till recently following the criteria evolved by the Central Government. The state of Kerala declared that there was no creamy layer in the State. The Supreme Court seeking exception to it requested the Chief Justice, Kerala High Court to appoint a retired judge to be the Chairman of a High Level Committee for gathering necessary information regarding creamy layer. The Chief Justice of the Kerala High Court constituted a Committee headed by Justice K. J. Joseph, which submitted its report on 4-8-1997 identifying the creamy layer among the OBCs in the State of Kerala. The criteria evolved by this Committee was more or less on the lines of the criteria adopted by the Central Government. However, the Committee revised the income limit from Rs. 1 lakh to Rs. 1.5 lakh, taking into consideration 39.06% increase in the cost of living index between 1992 (when Indira Sawhney case was decided) and the position in 1996 and also increase in the consumer price index. Further, the Govt. of Kerala further reviewed it and raised the income limit from 1.5 lakh recommended by Justice Joseph Committee to Rs. 3 lakhs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

classes will definitely have only a limited leverage for upward mobility unless they acquire sound economic capabilities and through it social standing.

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

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

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

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

Periodic Review

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

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

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

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

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

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

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

OFFICE MEMORANDUM

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

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

<u>Category</u>	<u>Description of Category</u>	<u>To whom the rule of exclusion will apply</u>
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VI	INCOME/WEALTH TEST	Son(s) and daughter(s) of
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(a) Persons having gross annual income of Rs. 2.5 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

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

Explanation:

Income from salaries or agricultural land shall not be clubbed.

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

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

Sd/-
(K.G. Verma)
Deputy Secretary to the Government of India
Tele: 23092797

To

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