

अशोक मंगोत्रा  
सदस्य सचिव

**A. K. Mangotra**  
Member - Secretary



सत्यमेव जयते

**(URGENT BY HAND)**  
राष्ट्रीय पिछड़ा वर्ग आयोग  
सामाजिक न्याय एवं अधिकारिता मंत्रालय  
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Dated 26<sup>th</sup> October, 2015

DO. No. NCBC/MS/1/2015

Dear *Ms. Anita Agnihotri*,

**Subject: - Supplementary Report on Income Criteria for Creamy Layer.**

Kindly refer to my earlier D.O. No. NCBC/MS/1/2015, dated 2<sup>nd</sup> March, 2015 under which NCBC had forwarded its Report on Income Criteria for Creamy Layer. This was submitted with reference to MoSJ&E's letter No. 12015/18/2013-BC-II dated 27.06.2014 requesting the NCBC to comprehensively re-examine the criteria for determination of Creamy Layer of OBCs and to recommend modifications to the DoPT instructions on reservations for OBCs covered by the Rule of Exclusion.

2. After the submission of the earlier report, the NCBC has been receiving many inputs calling for a review of some of our earlier recommendations. You would also recall that the Parliamentary Committee on Welfare of OBC's also held a meeting on 14<sup>th</sup> October, 2015, in which I had made a presentation and the Committee had urged some modifications in the earlier NCBC's recommendations.

3. Taking into consideration all the requests and suggestions received from various sources since the submission of the earlier report, the Commission has now recommended certain modifications to some of our earlier proposals. All these have been detailed in the enclosed Supplementary Report. Based on these modifications we have prepared a Revised Schedule to the Rule of Exclusion and placed it in the Supplementary Report. The Government is requested to consider this Supplementary Report proposing to revise the Schedule appended to OM dated 08.09.1993 amended from time to time by DoPT for issuing appropriate orders on the various recommendations made in this Supplementary Report. This final proposed Schedule completely supersedes the Schedule included in the earlier Report dated 27.02.2015 sent to the Government on 2<sup>nd</sup> March, 2015.

With *Regards*

Yours *Sincerely*,  
*A.K. Mangotra*  
(A.K. Mangotra)

**Encl: Supplementary Report (19 Pages)**

**Ms. ANITA AGNIHOTRI,**  
Secretary,  
Ministry of Social Justice & Empowerment  
Shastri Bhawan, New Delhi

**NATIONAL COMMISSION FOR BACKWARD CLASSES  
NEW DELHI**

**SUPPLEMENTARY REPORT  
ON  
THE REVIEW CRITERION FOR DETERMINING THE CREAMY LAYER  
AND  
PROPOSAL TO FURTHER AMEND THE SCHEDULE (APPENDIX I)  
TO THE GOI DEPT. OF PER. & TRG. O.M.NO.36012/22/93-Estt.  
(SCT)DATED 08-09-1993 AS AMENDED FROM TIME TO TIME  
SUPPLEMENTING THE NCBC REPORT DATED 27-02-2015.**

- 1.** The Commission forwarded a Report dated 27-02-2015 proposing to amend the Schedule for Exclusion of Creamy Layer on 2nd March, 2015 and later placed the said Report on the Website of the Commission also. Representations, Objections and Suggestions from various corners including the State Commissions and also from the OBC M.Ps by way of a Press Note dated 10th August, 2015 expressing their views have been received by the Commission.
- 2.** Three Hon'ble Members of the NCBC made a written requisition to convene an urgent meeting of the Commission to reconsider the Commission's report dated 27-02-2015 and to clarify the creamy layer issues and also to raise the proposed income limit from 10.5 lakhs to 15 lakhs and further they requested to restore the Explanation given under Clause VI of O.M. dated 08-09-1993 i.e. "while deciding Income/Wealth Test salary and agriculture income should not be clubbed". Accordingly, the Commission met on 12-10-2015 and discussed various issues and decided to reconsider the earlier Report dated 27-02-2015.
- 3.** The Additional Director, Parliamentary Committee on Welfare of Other Backward Classes Branch, Lok Sabha Secretariat by Office Memorandum No.5/1/2/OBC/2015-16 dated 1<sup>st</sup> October, 2015 informed the Commission that the Committee will hold a sitting on Wednesday, the 14<sup>th</sup> October, 2015 to have briefing of the National Commission for Backward Classes (NCBC) on issues relating to rationalization of Creamy Layer, implementation of reservation policy in employment and in educational institutions. Accordingly, the Member-Secretary along with Officers of the Commission appeared before the Committee and briefed about the issues relating to

rationalization of Creamy Layer and the income criteria. Various issues raised by the Parliamentary Committee on Welfare of Other Backward Classes have been noted and briefed to all the members of the Commission.

4. It is stated that in addition to the various issues some of the points raised by the Parliamentary Committee on Welfare of Other Backward Classes are that the existing income limit and the proposed income limit of Rs.10.5 lakhs is an unrealistic and unreasonable criteria to exclude the creamy layer for availing the reservations and also observed that the reservations in various Departments of the Central Government have not even reached 16% as against the required quota of 27%. Accordingly they expressed their unanimous opinion to enhance the income criteria to Rs.20 lakhs. They further stated that since the income criteria was first fixed in 1993, it has not been revised periodically as stipulated. Therefore, had the Government revised the income limit every three years in the interregnum least periods regularly, the income limit would have been at least Rs.20 lakhs by now. This has gone against the interest of the OBCs. Keeping in view various factors such as the expenses in education of children, cost of living, etc., they expressed a desire to raise the income limit to Rs.20 lakhs. The Members also suggested that agricultural income should be done away with completely. The Creamy Layer under the Rule of Exclusion is applicable to holdings of irrigated land to more than 85% of the statutory ceiling area. This was fixed in 1993 and after 1993 the land holdings of the families have been divided into several fragments and the agricultural operations are no longer sustainable as on date. They have also unanimously pointed out that the former and present MPs and MLAs should also not be brought under the Creamy Layer and further submitted that merely because an OBC candidate is elected as MP or MLA, it cannot be said that they have become socially and educationally advanced. They have also requested to have a relook on the application of creamy layer criteria as recommended by NCBC to the employees of the Public Sector Undertakings as well as salaried employees of all other sectors including private employment.

5. The reasons put forth before the Commission are that when the income limit was fixed to identify the creamy layer limit of Rs.1.00 lakh, it was arbitrarily fixed in the Office Memorandum dated 08-09-1993 without taking into consideration of the ground realities of

filling up 27% of the posts reserved for OBCs. Moreover, no proper reasons were set out in the Report of the Expert Committee for the basis on which this figure of Rs.1.00 lakh was introduced in the Schedule. It is to be noted that though the income limit of Rs. 1 lakh was fixed in September, 1993, it was enhanced to Rs.2.5 lakhs only after a period of 11 years in March, 2004. Thereafter, after four years this was raised to Rs.4.5 lakhs on 14-10-2008. Though the Commission submitted its next report on 14-09-2011 for enhancing the creamy layer limit from Rs.4.5 to Rs. 12 lakhs in urban areas i.e. metropolitan cities and Rs. 9 lakhs in the rest of the areas, the Government enhanced the income limit to Rs. 6 lakhs after two years only on 27-05-2013. When the Commission has proposed to enhance the creamy layer limit from Rs. 6 lakhs to 10.5 lakhs vide its report dated 27-02-2015, which was forwarded to the Government on 02-03-2015, the crucial issue that the fact of non-clubbing of salary income for all other employees other than the excluded cadre based Categories were not taken into proper consideration by the NCBC.

**6.** DoPT issued Office Memorandum dated 08-09-1993 providing 27% reservation to OBCs and excluded the category of persons mentioned in Column 3 of the Schedule to the said Memorandum. As per the Rule of Exclusion of Creamy Layer, the persons mentioned in Category I, II and III with certain exceptions are excluded from the benefits of reservation. As per Category II A & B (Service Category), the son(s) and daughter(s) of Group A/Class I Officers and both the parents of Group B/Class II Officers only are excluded from availing the the benefit of reservation. All other Officers i.e. if only one of the parents is a Group B/Class II Officer and all the Officers below the Category II Officers are entitled to avail the rule of reservation unless their other income other than the salaries and agricultural land exceeds the income criteria limit prescribed in Category VI. In so far as employees working in Public Sector Undertakings, Banks, Insurance Organizations, Universities, etc., are concerned, the terms for Officers holding equivalent or comparable posts and also posts and positions under the private employment as equivalent to that of the criteria enumerated in the Service Category II A & B of Group A/Class I and Group B/Class II Officers are required to be applied mutatis mutandis to these Officers also. But, pending evaluation of equivalent or comparable posts, their salaries income and agricultural income should not to be clubbed for the purpose of Rule of Exclusion based on income/wealth test. The salaries of the employees below the Category

II A & B of Group A/Class I and Group B/Class II officers were never intended to be taken into account when computing the total income for the Income/Wealth test under Category VI.

**7.** If the existing Rule of Exclusion and the Schedule are examined with regard to the description of the Category and to whom the Rule of Exclusion shall apply, it is crystal clear that even in respect of the children of Group A/Class I Officers who die or suffer permanent incapacitation and if one of the spouse is a Group B/Class II Officer, their salaries are not to be taken into account while applying the income criteria unless the parents have third source of income other than the salary and agricultural land exceeding the income/wealth test. In so far as Group B/Class II Officers are concerned, if one of the parents of the children while working as Group B/Class II Officer gets into Group A/Class I Officer at the age of 40 or earlier, then also the children are not entitled to the benefit of reservation. But in case the Group B/Class II Officer gets into Group A/Class I Officer after the age of 40 years, the children are entitled to get the reservation. We are of the opinion that if one of the parents gets into Group A/Class I Officer after 40 years, they should not be brought under the creamy layer. The Commission also now feels that the clubbing the salary income of Officers working below the rank or equivalent to that of both parents working as Group B/Class II Officers is likely to seriously affect the reservation policy in achieving the reserved quota level of 27%.

**8.** The Commission closely examined the Schedule appended to original OM dated 08-09-1993 which was amended from time to time with regard to the income/wealth test criteria to Category VI and noticed that the Rule of Exclusion of the sons and daughters of persons having gross annual income of Rs.1 lakh and above was fixed without any criteria and principle to categorize them as socially and educationally advanced communities by excluding them under OBC category for availing the benefit of reservation. However, the original Schedule also stipulated the revision of the income criteria of Rs. 1.00 lakh every three years or in the interregnum if the situation demands within a period of less than three years also. The revision of income criteria should have been made atleast seven times but it was revised only three times so far. In the first instance, it was enhanced after a period of 11 years in 2004 from Rs. 1.00 lakh to Rs.2.5 lakhs and after 4 years it was enhanced to Rs.2.5 lakhs to Rs.4.5 lakhs and though the NCBC submitted its report on 14-09-2011 proposing to enhance

Rs.12/9 lakhs in urban areas i.e. Metropolitan Cities and in the rest of the areas respectively, the Government of India enhanced the income limit to Rs. 6.00 lakhs only after two years on 27-05-2013.

**9.** The Commission in its report dated 27-02-2015 forwarded on 02-03-2015 proposed to enhance the creamy layer limit from Rs. 6 lakhs to Rs.10.5 lakhs clubbing the gross annual income of both the parents working below the Service Category II of Group B/Class II Officers while calculating the creamy layer limit. The crucial and fundamental issues which are germane not to club the income of both the parents and if one of whom is working as Group B/Class II Officer and other spouse is working below the position of Group B/Class II Officer was never intended to be clubbed from 1993 onwards. The income of the parents unless they are socially and educationally advanced and occupy the posts and positions of Category II A or both are Category II B Officers, their salary income was never intended to be taken into account. One of the parents is only Group B/Class II Officer and other one is Group C/Class III Officer, the salary of the parents shall not be taken into account while applying the income criteria.

Similarly in respect of "Category II-C" employees working in Public Sector Undertakings, Public Sector Banks, Insurance Organizations, or posts and positions under private employment, the Rule of Exclusion will apply to the Category of Services equivalent to Group A/Class I or both the parents holding the position of equivalent to Group B/Class II Officers. But the salary income of all other employees below the rank of Group B/Class II and one of the parents only Group B/Class II Officer and other spouse below Group B/Class II Officer, the salary income of both the parents was never intended to be clubbed with the income of other sources while applying the income criteria.

**10.** Therefore, the salary income of one of the parents of the children holding the post of Group B/Class II Officer or the employees working under the private employment whose position is not equivalent or comparable to Group B/Class II Post and if only one parent is working with equal and comparable posts and positions of Group B/Class II Officer should not be clubbed along with other source of income while applying the income criteria as this would be discriminatory to this section of salaried employees vis-à-vis their

equivalent Government counterparts. The posts and positions under the Private Employment cannot be compared with the cadre of Group A/Class I and Group B/Class II Officers of Government, but the salary of employees in private employment equivalent to the salary of a Group 'B' Officer alone can be compared/taken into account. These crucial issues have been missed by the Commission while sending the earlier proposed Schedule for applying the creamy layer criteria by clubbing the income of both the parents and making it applicable to even those categories of salaried employees whose counterparts in Government were not subjected to this condition.

**11.** Thus it is clear that in the case of all the salaried employees of the Central Government, State Governments, Public Sector Undertakings, Insurance Organizations, etc., and persons in the private employment below the equivalent or comparable posts and positions of Group A/Class I Officers and Group B/Class II Officers, their salaries cannot be clubbed with other sources of income. However, if they independently have any other source of income other than salaries and agricultural land exceeding the income limit under Category VI, the Rule of Exclusion for availing the reservation will apply. Therefore, it was never the intention of the Government or the Commission to bring the Officers below the rank of Group A/Class I or Group B/Class II into the fold of the creamy layer, if their income from salaries and agricultural land was not exceeding the limit of income criteria. The Commission was asked only to determine the equivalent or comparable posts in the Public Sector Undertakings, Banks, Insurance Organizations, etc. and posts and positions under private employment. From the explanation (i) of Category VI of the Schedule viz. Income/Wealth Test, it is clear that income from salaries or agricultural land shall not be clubbed in respect of the Officers/persons other than mentioned in Category I, II, III and IV, they would be deprived of the benefit of reservation only if their income from sources other than the salaries and agricultural land exceeds the income/wealth criteria under Category VI. Suppose, if one of the parents is a Group B/Class II Officer and the other is continuing below that level, the salary of both the parents cannot be taken into account while applying the Rule of Exclusion under Category VI. Therefore, it is very clear that the salary income and agricultural income was never clubbed from 1993 onwards for exclusion of the children one of whose parents is Group B/Class II Officer and other is working at a lower

level (provided of course, that there was no third source of income exceeding the income criteria).

**12.** In fact the DoPT in its clarifications issued in OM No.36033/5/2004 Estt(Res) dated 14th October, 2004 has clarified with regard to the following question:

4(x) What is the scope of the explanation, 'Income from salaries or agricultural land shall not be clubbed', given below the Income/Wealth Test ?

Answer: It was clarified in para 10 that while applying the "Income/Wealth Test to determine creamy layer status of any candidate as given in Category-VI of the Schedule to the OM, income from the salaries and income from the agricultural land shall not be taken into account. **It means that if income from other sources other than the salary and agriculture exceeds the income limit, then only the candidates shall be treated as Creamy Layer.** Therefore the salary income of various categories of persons other than the cadre based exclusion has not been taken into account from 1993 onwards till date. By reason of inclusion of the total salary income and the income from other sources is proposed to be clubbed, majority of Group B/Class II and Group C/Class III employees are in danger of being eliminated. It is also to be noted that the Nine Judge Bench Judgment of the Supreme Court in the Case of Indra Sawhney (1992) 3 Supp. SCC 217 held that while fixing the income limit it should ensure that it does not result in taking away the benefit of providing 27% reservations. The basis of exclusion should not merely be economic unless of-course his income is so high that he becomes an owner of the factory or industry and engages servants then only his social status can be said as raised. Therefore, the reservations are for the socially and educationally backward classes. The Commission in its report dated 27-02-2015 noticed that in many of the Departments even after 21 years from the date of implementation of the reservations by the Central Government from 1993, the representation of OBCs is 0% to 12% only. The Parliamentary Committee on Welfare of OBCs also observed that not more than 16% of the OBCs quota has been filled as against the reserved quota of 27%. Therefore they have also requested to revise the creamy layer criteria liberally enhancing the income criteria upto Rs.20 lakhs and to have a relook into various other categories.



**13.** The Commission discussed the Schedule appended to the initial O.M. dated 08-09-1993 Category-wise and application of Rule of Exclusion.

(i) In so far as Category I is concerned, the Commission is of the opinion that the persons holding the Constitutional Posts of like nature are alone to be excluded from creamy layer but not the persons who have held the constitutional posts of like nature in the past. After hearing the Parliamentary Committee on this issue and after taking into consideration all the ground realities, including the short tenure of some State Legislatures, the Commission has come to a conclusion that MLAs, MLCs may be excluded from the purview of creamy layer. Merely because an OBC person has been elected as MLA or MLC, it is not always that his social status has necessarily been raised. Many of them are less educated and their children are not well settled and it is not possible for their children to compete with advanced communities and therefore the MLAs, MLCs may not be included in the creamy layer category and they should be excluded from the creamy layer. The Commission has also found that the salaries and perquisites of MLAs and MLCs are much lesser than that of MPs and therefore the MLAs and MLCs should not be brought under the creamy layer and that the Rule of Exclusion should not be made applicable to them. However, as far as sitting MPs is concerned, they are on a completely different footing altogether. They come from the top strata of their OBC society and provide voice and leadership not only to OBCs but also to the lakhs of persons whom they represent. Accordingly, the earlier proposal of Category I(g) is to be modified as "Persons holding constitutional posts/positions and of like nature including Ministers of Central/States, sitting MPs, etc."

(ii) In so far as Category II A. is concerned, no change is required to be made except to add a proviso (b) mentioned in the original OM dated 08-09-1993 i.e. "a spouse belonging to OBC category has got married to a Class I Officer, and may himself/herself likes to apply for a job, then the rule of exclusion shall not apply to him/her".

(iii) In so far as Category II B. is concerned, clause (b) is required to be added i.e. parents of whom only one of the spouse is a Group B/Class II Officer and gets into Group A/Class I at the age of 40

or earlier alone is to be excluded from the Rule of Reservation but if the children of one of the parents is Group B/Class II Officer and gets elevated to Group A/Class I after the age of 40 years is entitled for reservation. Accordingly, clause (d) and (e) in Original OM dated 08-09-1993 is required to be retained in the proposed Schedule as many of the Group B/Class II Officers who are getting promotions after the age of 40 years are being eliminated. In view of non-fulfillment of the reserved quota, the children of one of the parents who get promotion from Group B/Class II to Group A/Class I Officer after 40 years are also entitled to avail the benefits of reservation. Therefore, clause (b) be added after clause (a) to the effect that parents of whom one of the spouses is Group B/Class II Officer and gets into Group A/Class I at the age of 40 years or earlier and proviso (b) requires to be added to the effect that the son(s) and daughter(s) of the parents who are working as Group B/Class II Officers and both of them die or suffer permanent incapacitation.

(iv) In so far as Category II C. employees working in Public Sector Undertakings, Public Sector Banks, Insurance Organizations, etc. of the Centre and State Governments is concerned, the equivalence or comparable posts are determined in so far as PSUs, Public Sector Banks, Insurance Organizations alone are comparable to the post of Executive to that of a Cadre Group A/Class I Officer. But if both the parents of Public Sector Undertakings, Public Sector Banks, Insurance Organizations, etc. are working in the Supervisory cadre or any other cadre below the level of Executive, their salary income shall not be added or clubbed to other sources of income. If the income from other sources other than the salary exceeds the income limit criteria in Category VI, their children would not be entitled to avail the benefits of reservation.

(v) But in so far as the salaried employees working in the Statutory Bodies, Autonomous Bodies, Universities, Private Companies, Firms, Corporate Companies, Co-operatives and any other Organizations, Bodies and Institutes, posts and positions under private employment, etc., not covered in Category II 'A', 'B' or 'C' are concerned, a separate Category II 'D' is proposed. The posts and positions of the employees under Category II 'D' cannot be compared or equated and therefore a comparable salary to that of Group B/Class II Officer is taken into account. The salary of Group B/Class II Officer depending upon the service ranges from Rs. 80,000/- to Rs.1,00,000/-

per month i.e., Rs.9,60,000/- to Rs.12 lakhs per year. Therefore while applying the Rule of Reservation in respect of employees working in the Statutory Bodies, Autonomous Bodies, Universities, Autonomous Bodies, Private Companies, Firms, Corporate Companies, Co-operatives or any other Organizations, Bodies and Institutes, posts and positions under private employment, etc., not covered in Category II 'A', 'B' or 'C', shall be taken into account after excluding the salary of both the parents. Even if the average gross salary of Group B/Class II Officer is taken into account at the rate of Rs.90,000/- per month, the gross annual salary income would be Rs.10,08,000/- and therefore if one of the parents is drawing salary of Rs. 9 lakhs and another spouse is also drawing a lesser salary, say Rs.6 lakhs, the salaries of both the parents on an average comes to Rs. 15 lakhs. That means after deducting from the salary of both the parents an amount of Rs. 15 lakhs and if the remaining amount exceeds Rs.15 lakhs, the prescribed income limit under Category VI, their children will fall in the Creamy Layer. As regards Category II 'D' employees are concerned, the income limit mentioned in Category VI (a) shall be derived after excluding a gross amount from the salaries of both the parents an amount of Rs. 15 lakhs. This deduction would introduce parity and equivalence between the Government Officers and all other salaried employees whether from private or public sectors.

(vi) In so far as Category III is concerned, no change is required to be made.

(vii) In so far as Category IV is concerned, the Explanation (i) and (ii) of original OM dated 08-09-1993 requires to be added.

(viii) In so far as Category V is concerned, Son(s) and daughter(s) of persons consisting of father, mother and minor children holds only irrigated land more than 85% are sought to be excluded irrespective of any income. However, if the total holding of the family is un-irrigated the Rule of Exclusion will not apply. The Commission is of the opinion that the land holdings have been fragmented from 1993 onwards and the present situation and the land holding by family is much lesser than the land holding that they were holding in the year 1993. The existing land holding has been divided into various fragments over a period of 22 years and added to that the agricultural operations are no more profitable and nobody is able to comfortably educate their children only on agricultural incomes. It was highlighted

by many agriculturists that because of the shortage of rainfall the land is becoming unfertile day by day and because of indiscriminate use of chemical pesticides, earth is becoming unfertile and requires more chemical fertilizers as the result of which the investment is increasing and income is less. The statutory land ceiling limit is not uniform but varies from State to State and some States have fixed smaller sizes as the statutory land ceiling limits and therefore the Commission is of the opinion that the category of agricultural holding can be liberalized further. Accordingly, the Commission is of the view that Category V 'A' requires to be modified as follows:-

#### V. PROPERTY OWNERS

- |   |   |
|---|---|
| A. Agricultural holding   | Son(s) and daughter(s) of persons belonging to a family (father, mother and minor children) which holds - |
|   | (a) Only irrigated land which is equal to or more than 90% of the statutory ceiling area;                 |
|   | (b) The rule of exclusion will not apply if the land holding of a family is exclusively un-irrigated.     |
| B. Plantations<br>Coffee, tea, rubber, etc.                           | Criteria of income specified in Category VI below will apply.   |
| C. Vacant land and/or building in urban areas or other agglomerations | Criteria specified in Category VI below will apply.   |

Explanation: Income derived from the Vacant land and/or buildings used for any purpose will be clubbed together.

(ix) In so far as Category VI Income is concerned, the Commission noticed that even after exclusion of Creamy Layer, 27% vacancies reserved for the Backward Classes have not been fulfilled because of the stringent and unrealistic figures of creamy layer limit initially fixed in 1993. Accordingly, the Commission after elaborate discussion and taking into consideration of various aspects viz. the judgment of the Supreme Court in the case of Indra Sawhney and the objections, representations and suggestions received from various Associations, Organizations, State Commission, Members of Parliament and the Members of the Parliamentary Committee on Welfare of Other Backward Classes, the Commission advises to enhance the creamy layer limit from Rs. 6 lakhs to Rs. 15 lakhs. In so far as wealth tax is concerned, as per the Finance Act, 2015, the filing of the Wealth Tax returns have been exempted with effect from 1<sup>st</sup> April, 2016 and therefore the question of applying wealth tax does not arise hereafter.

(x) In so far as the appointment by direct recruitment to civil posts and civil services of All India Posts by competitive examinations are concerned, the 27% reservations are provided for the members of the Other Backward Classes. But in so far as Group C and D posts are concerned, the reservations are not uniformly fixed at 27% and the reservations are fixed at not even 50% of the BC population in many States such as Madhya Pradesh, Chattisgarh, Goa, Himachal Pradesh, Orissa, Uttarakhand and many other States/Union Territories. Only 6% are reserved in favour of OBCs in the State of Chattisgarh, 18% in the State of Goa, 20% in the State of Himachal Pradesh, 12% in the State of Jharkhand, 15% in the State of Madhya Pradesh, 12% in the State of Orissa, 21% in the State of Punjab, 20% in the State of Rajasthan and 13% in the State of Uttarakhand. That means in appointments of Group C and D posts are concerned, the recruitment itself is being made lesser than the 27% reservation provided for OBCs and therefore the reservation policy of the Government of India in fixing much less than 27% reservations in favour of OBCs is contrary to the provisions of the Constitution and Indra Sawhney Judgment. Under the Constitution proportionate reservations are provided in proportion to the population of SCs and STs. OBC population of the Chattisgarh as per NSSO 61<sup>st</sup> Round 2004-2005 of 2011 Census is 41.90%. But reservations have been fixed at the rate of 6% alone on the ground that the reservations are fixed for STs 32% and STs 12%. At least 21% of the posts in Group C and D should have been reserved in favour of OBCs in the State of Chattisgarh. Therefore, the OBCs

have been deprived of their right to be appointed upto the limit of 27%. The ceiling limit of 50% cannot be clubbed with reservations provided in favour of SCs, STs in any circumstances. No judgment can override the constitutional provisions. Therefore, the reservation policy in so far as appointment of Group C and D posts is required to be relooked.

**14.** The policy of the Government, pursuant to the report submitted by the Mandal Commission appointed under Article 340 of the Constitution of India, is to provide 27% reservations in favour of Other Backward Classes in posts and services and educational institutions of the Central Government. Till 27% reservations provided are fulfilled, the exclusion falling under the Creamy Layer should be liberal. Therefore, the Government should ensure to achieve 27% reservations in favour of Other Backward Classes while applying the Creamy Layer for excluding advanced OBC persons. This final proposed Schedule completely supersedes the Schedule included in the earlier report dated 27-02-2015 sent to the Government on 2<sup>nd</sup> March, 2015. Accordingly, the Schedule is revised and proposed as follows:-

### **PROPOSED 'SCHEDULE'**

Category	Description of Category	Who will fall in Creamy Layer
1	2	3

<b>I</b>	<b>CONSTITUTIONAL/ STATUTORY POSTS</b>	<p>Son(s) and daughter(s) of the present and former</p> <p>(a) President of India;</p> <p>(b) Vice President of India;</p> <p>(c) Governors &amp; Lt. Governors;</p> <p>(d) Judges of the Supreme Court and of the High Courts;</p> <p>(e) Chairpersons &amp; Members of the Central and State Administrative Tribunals and all other Tribunals;</p>
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Category	Description of Category	Who will fall in Creamy Layer
1	2	3

- (f) Chairman & Members of UPSC and of the State Public Service Commissions, Chief Election Commissioner, Comptroller & Auditor General of India, Attorney General of India, Solicitor General of India and Advocate General of various States;
- (g) Persons holding Constitutional posts/positions and of like nature including Ministers of Central/States;
- (h) Sitting MPs;
- (i) Serving Chairpersons and Members of all Constitutional and Statutory Commissions of the Centre and States equal to the rank of Secretary to the Government of India/Secretary to the State Government or equivalent and above.

**II****SERVICE  
CATEGORY**

**A.** Group A/Class I Officers of the Central and State Governments (Direct Recruits)

Son(s) and daughter(s) of Parents, any of whom, is/was a Group A/Class I Officer in Central or State Governments.

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

- a) Son(s)/daughter(s) of a parent, who is a Group A/Class I Officer in the Central or State Government but who passes away while in service or suffers permanent incapacitation.

Category	Description of Category	Who will fall in Creamy Layer
1	2	3

**B.** Group B/Class II Officers of the Central & State Governments (Direct Recruitment)

b) A spouse belonging to OBC category married to a Group A/Class I Officer can apply for a job under OBC category and his/her creamy layer status will be decided by his/her parents status only.

Son(s) and daughter(s) of

a) Parents both of whom are/were Group B/ Class II Officers in the Central or State Governments.

b) Parents of whom only one of the spouse (direct recruit or pre-forty promoted) is a Group B/ Class II Officer and gets into Group A/Class I at the age of 40 years or earlier.

c) Parents, one of whom is a Group A/Class I Officer and the other spouse is a Group B/Class II Officer and the Group B/Class II Officer passes away or is permanently incapacitated.

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

(i) Son(s)/daughter(s) of parents, who are/were both Group B/Class II Officers but one or both of them have passes away while in service or suffers permanent incapacitation.

(ii) If the father or mother are directly recruited to Class III / Group C or Class IV / Group D Posts and they get promoted into Class I / Group A before the age of 40 years, their sons and daughters shall not be treated to be falling in the creamy layer.



Category	Description of Category	Who will fall in Creamy Layer
1	2	3

**C.** Employees/  
Officials in Public  
Sector  
Undertakings,  
Public Sector  
Banks, Insurance  
Organizations etc.  
of the Centre and  
State  
Governments.

Son(s) and daughter(s) of

Parents any one of whom is/was working at  
Executive or above levels.

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

(i) Son(s)/daughter(s) of parents of whom  
any one gets promoted as Executive entry  
level after the age of 40 years;

(ii) Son(s)/daughter(s) of parents both or  
anyone of whom while working as Executive  
or above levels passes away or suffers  
permanent incapacitation.

**D.** Salaried  
Employees/  
**Officials** of the  
Statutory Bodies,  
Autonomous  
Bodies,  
Universities,  
Private  
Companies, Firms,  
Corporate  
Companies, Co-  
operatives and  
any other  
Organizations,  
Bodies and  
Institutes,  
posts and  
positions under  
Private

For the Son(s) and Daughter(s) of the  
salaried employees of the Statutory Bodies,  
Autonomous Bodies, Universities, Private  
Companies, Firms, Corporate Companies,  
Co-operatives and any other Organizations,  
Bodies and Institutes, posts and positions  
under Private Employment, etc., not  
covered in Category II 'A', 'B' or 'C', the  
income criteria specified in Category VI  
below will apply.

**Provided** that if the gross salary  
income of both the parents exceeds  
Rs.15,00,000/- (Rupees Fifteen Lakhs  
only), the income criteria under Category VI  
will be applied to the amount remaining  
AFTER deduction of an amount of Rupees  
Fifteen Lakhs from the gross salary of both

Category	Description of Category	Who will fall in Creamy Layer
1	2	3

Employment, etc., not covered under Category II A,B or C above.

parents. (Example: If gross annual income of both parents is Rs. 25 lakhs, in that case, their income for applying the Income Criteria will be: 25 lakhs minus 15 lakhs i.e. Rs.10 lakhs only).

**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/was or are/were in the rank of Colonel and above in the Army and to equivalent posts in the Navy and the Air Force and the Para Military Forces;

**Provided that:-**

- (i) If the spouse of an Armed Forces Officers in the Armed Forces (i.e., the category under consideration the rule of exclusion will apply only when the spouse reaches the rank of Colonel);
- (ii) The service ranks below Colonel of the spouse shall not be clubbed together;
- (iii) If the spouse 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 the spouse falls in the service category No.II in which case the criteria and conditions enumerated therein will apply to the children of the spouse independently.

Category	Description of Category	Who will fall in Creamy Layer
1	2	3

Explanation: Wherever the expression 'permanent incapacitation' occurs in Category II & III above, it shall mean incapacitation which results in putting an Officer out of service.

**IV PROFESSIONAL CLASS AND THOSE ENGAGED IN TRADE AND INDUSTRY**

- (i) Persons, engaged in profession as a medical/veterinary/dental doctor, lawyer, chartered accountant, income tax consultant, financial or management consultant, engineer, architect, computer specialist, film artists and other film professional, author, playwright, sports person, sports professional, print and electronic media professional or any other vocations of like nature, etc. Criteria specified against Category VI below will apply.
- (ii) Persons engaged in trade, business and industry, etc. Criteria specified against Category VI below will apply.

Category	Description of Category	Who will fall in Creamy Layer
1	2	3

## EXPLANATION:-

- (i) Where the husband is in some profession and the wife is in a Group B/Class II or lower grade employment, the income/wealth test will apply on the basis of the husband's income alone.
- (ii) If the wife is in any profession and the husband is in employment in a Group B/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 the persons belonging to a family (father, mother and minor children) which holds -

(a) Only irrigated land which is equal to or more than 90% of the statutory ceiling area;

(b) The rule of exclusion will not apply if the land holding of a family is exclusively un-irrigated.

(i) Mango, Citrus, Apple Plantation etc.

Deemed as agricultural holding and hence criteria at Category V.A(a) above will apply.

Category	Description of Category	Who will fall in Creamy Layer
1	2	3

**B.** Plantations  
Coffee, tea, rubber,  
spices, etc.

Criteria of income specified in Category VI below will apply.

**C.** Vacant land and/or  
Buildings

Criteria specified in Category VI below will apply.

Explanation: Income derived from the Vacant land and/or buildings used for any purpose will be clubbed together.

**VI INCOME TEST**

Sons and daughters of

(a) Parents having gross annual income of Rs. 15,00,000/- or above (Rupees Fifteen Lakhs or above) for a period of three consecutive years.

(b) Persons in Categories II, III and IV who are otherwise entitled to the benefit of reservation but have income from any other sources other than the salary and agricultural land will be tested under the income criteria mentioned in (a) above.

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## EXPLANATIONS:

(Applicable to all the above Categories)

- (i) Income from salaries and agriculture operations will not be clubbed with any other sources of income. Only the other sources of income other than salaries and agriculture income will be taken into consideration for arriving at the income limit of both parents taken together.
- (ii) As regards the Category II 'D' employees are concerned, the income limit mentioned in Category VI(a) shall be arrived after deducting an amount of Rs.15 lakhs (Rupees Fifteen Lakhs) from the combined gross annual salaries of both the parents.
- (iii) The creamy layer status of a candidate is determined on the basis of the status of his/her parents and not on the basis of his/her own status or income or that of his/her spouse. Therefore, while determining the creamy layer status of a person, the status or the income of the candidate himself or of his/her spouse shall not be taken into account.

(Justice V.ESWARAIAH)  
Chairperson

(S.K.KHARVENTHAN)  
Member

(A.K.SAINI)  
Member

(Dr.SHAKEEL-UZ-ZAMAN ANSARI)  
Member

(A.K.MANGOTRA)  
Member-Secretary