

“Supreme Court on Jural Postulates with reference to Creamy Layer Rule”

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1. Abstract

The Supreme Court of India's "creamy layer" judgment is an important legal notion with far-reaching ramifications for the country's affirmative action policy and social justice projects. This abstract summarizes research on the Supreme Court's interpretation of jural postulates in the context of the creamy layer rule.

The creamy layer principle, based on Mandal Commission recommendations from the 1990s, aims to ensure that the benefits of affirmative action policies, particularly reservations in educational institutions and public employment, reach the most socioeconomically disadvantaged segments of the population. It accomplishes this by removing persons from the reserved category's "creamy layer" - those who are relatively affluent and socially advanced.

This study looks into the Supreme Court's role in defining and improving the legal principles that underpin the creamy layer rule. It investigates the judicial evolution of this idea through a thorough examination of important judgments and decisions.

Introduction

The Supreme Court of India has had a considerable impact on the development of Indian law as it is the highest court in the nation. The investigation and implementation of jural postulates in diverse legal matters is a fundamental component of its jurisprudence. Jural postulates are fundamental presumptions that support legal systems and direct how laws should be interpreted and applied. The Supreme Court has shed light on the complex interactions between these tenets and Indian legal concerns through its rulings.

The Supreme Court's capacity to strike a balance between tradition and new demands is one of its notable contributions to legal postulates. The foundations of India's legal system are its long history and wide range of cultural customs. The Court acknowledges the value of traditional customs while also emphasizing the necessity to change with the times. The Court has frequently traversed difficult terrain in issues concerning personal laws, such as those pertaining to marriage, inheritance, and religious activities, where jural postulates taken from tradition collide with growing concepts of equality and fairness.

For instance, the Supreme Court emphasized the necessity of balancing religious customs with constitutional ideals of female equality and justice when it ruled that the practice of instant triple talaq (talaq-e-bid'ah) was illegal in the historic case of “Shayara Bano v. Union of India”. The Court's dedication to maintaining legal precepts that give fundamental rights precedence over discriminatory actions was made clear by this judgement.

Therefore, the fundamental ideas or underlying presumptions upon which legal systems are constructed are known as jural postulates. They serve as the cornerstone of legal reasoning, directing judges as they interpret and apply the law. These tenets are ingrained in a society's sociocultural fabric and change over time to reflect shifting norms and values. Jural postulates offer a framework for resolving new legal issues while keeping continuity with long-standing legal traditions as societies advance.

1.1 Aims and Objectives of the Study

1. **To evaluate Judicial Interpretation:** With a focus on instances involving the creamy layer rule, the study's main objective is to thoroughly evaluate how the Indian Supreme Court has implemented and interpreted the idea of jural postulates in its rulings.
2. **To Examine the Creamy Layer theory:** This study aims to examine the justifications for the Supreme Court's establishment of the theory, its development through time, and how it affects reservation policies.
3. **To Review Important Supreme Court decisions:** Examine significant Supreme Court decisions where the idea of jural postulates and the creamy layer rule were discussed, such as "Indra Sawhney v. Union of India, M. Nagaraj v. Union of India", and others.
4. **To understand the differences within a category:** Examine the differences between the creamy layer and non-creamy layer within the category of Other Backward Classes?

1.2 Review of Literature

Extracts from case judgements and case laws were used to support the argument of this project.

1.3. Hypothesis

The researcher assumes that The Supreme Court's use of the creamy layer rule, which is based on the concept of jural postulates, serves as a check against potential abuse of reservation benefits by individuals from privileged socio-economic backgrounds who fall within restricted categories.

1.4. Research Questions

1. How does the Supreme Court interpret and apply the idea of a "creamy layer" within the context of reservation policies?
2. How does the Supreme Court's view of jural postulates, as applied by the creamy layer concept, address the conflict between guaranteeing social fairness and offering reservation benefits?
3. Is creamy layer rule applicable to caste like of SC's & ST's?

1.5. Research Methodology

Doctrinal method of research would be undertaken to complete the project work.

1.6. Sources of Data

Both primary and secondary sources will be relied upon to complete the project.

1. Primary Sources: Acts and Amendments
2. Secondary Sources: Books, Newspapers and Websites

1.7. Limitations of the Study

Taking into consideration of nature of project and paucity of time, doctrinal method of research has been opted to complete the project.

1.8 Scope of the Study

The scope of the project is limited to India only.

2: Roscoe Pound Jural Postulate's of Law

Jural Postulate are the basic assumption or principles of which the mostly legal system is relying upon. Roscoe Pound jural postulate's of law used by legal system of the world to interpret the law and gave important decisions by the Judges in the important cases and make the decisions more valuable and important. Legal decisions using jural postulate are important in shaping the country's cultural, societal and constitutional values. Thus, these postulates plays an important role in legal system.

There are many postulate given by Roscoe Pound, here the five postulates are:

Jural postulate 1: In a civilized society, men must presume that anyone would not intentionally harm them and inflict any injuries. Likewise in a case of Battery, Assault and Wrongful Restraint, where there is an interest of protection from any intentional harm.

Jural Postulate 2: In a civilized society, men must be able to trust those who does something responsibly act in a good behavior without pose an undue risk of harm to others. Like in a case of negligence.

Jural Postulate 3: Men have right to use and get benefit from what they have created from their labour and skills, as well as what they obtained through current economic system. Like from Agriculture land or any music or artistic things, etc.

Jural Postulate 4: All individuals with whom who interacts in a daily life will behave with him in a good and honest behaviour, without making such comments which is false and harmful statements about others. Like in a case Defamation.

Jural Postulate 5: In order to avoid harm to others anyone which is done something dangerously in his premise must be responsible that things will not escape. For, example, Ryland's v Fletcher case.

Roscoe Pound said that as the interest of the society this postulates will evolve and suggests change as these postulates is merely a legal principle and theses principle must be evolve as the need of the society.

3: Creamy layer rule in India

As we know our Constitution of India does not define Other Backward Classes, but taken in a view of “Indira Sawhney v. Union of India”¹, “the Government of India enacted a National Commission of Backward Classes i.e.; NCBC Act in April 1993, where Backward Classes means such backward classes of citizens, other than the Schedule Castes and Schedule Tribes, as may be specified by the “Central Government in the lists.”²

First, we understand that what the meaning of creamy layer is. ‘Creamy layer’ refers to advanced and affluent members of Socially and Educationally Backward Classes, i.e., SEBC, which is recognized by some parameters which is set by Central Government.

Now the point this how the concept of creamy layer under the category of OBC evolve. This can be understand by different case, amendment, legislations, etc. The phrase 'Creamy Layer' was originally used by Justice Krishna Iyer in the case of “State of Kerala v. NM Thomas”³, which maintained the policy of reservations in promotions. He was opposed to reservations being grabbed by affluent individuals from backward strata because it harmed the same group, who were then unable to avail of the benefits of reservation. At then, the court addressed the creamy layer issue over 15 years after its decision in this case, although this is only the court's opinions and not binding legislation. Now further we move to understand clearly how this rule evolve from the Mandal Commission view till today, and what the government set the guidelines that who is come under the non-creamy layer or who is not.

4: Creamy Layer: The Mandal Commission View

The Mandal Commission, which was established to identify SEBCs in India and was led by B.P. Mandal, recommended that the Creamy Layer be excluded from any reservation plan for SEBCs and OBCs. The idea here is that caste should not be the main criterion for such classification in society, and it should include economic aspects as well. The Mandal Commission was founded in India in 1979 by the Janata Party government, led by Prime Minister Morarji Desai, with the purpose of "identifying the socially or educationally backward."

The phrase "creamy layer" first appeared in the 1992 Supreme Court decision (Indira Sawhney v. Union of India⁴) on the Mandal Commission proposals for 27% reservations for other backward classes (OBCs) in central government jobs. While the Supreme Court stated that the more privileged members of the backward classes should not dominate the reserved categories, the basic bones of the criteria for determining the creamy layer were left to the state governments.

The Morarji Desai government established the commission in 1978 in accordance with the mandate of Article 340 of the Indian Constitution for the purposes of Articles 15 and 16 of the

¹ AIR 1993 SC 477

² Section 2 of NCBC Act, 1993

³ 1976 SCR (1) 906

⁴ AIR 1993 SC 477

Indian Constitution. On January 1, 1979, the president made the decision official. B.P. Mandal, the commission's chairman, is generally known as the Mandal Commission.

Following a thorough scientific examination, the Commission developed 11 indicators of social backwardness with the assistance of specialists from other disciplines. These indicators are social, educational, and economic, and since the main debate revolves around the purportedly approved caste criteria by the commission, it would be appropriate to restate the real criteria utilized by the Commission.⁵

While some state governments, like Kerala, have developed criteria, many others have not. In its 1992 ruling on the creamy layer, the Supreme Court established some guidelines. These include the offspring of members of the executive branch, such as the president, vice president, and Supreme Court and High Court judges. Children of Union Public Service Commission (UPSC) members and Group A and B or Class I and II officers of all-India and state services are also not eligible. Additionally excluded are the kids of specific public sector professionals. The owners of irrigated and non-irrigated land as well as plantation owners are subject to specific property-related ceilings, and in some situations, children whose parents earn more than Rs 2.5 lakhs annually (the ceiling was raised to Rs 8 lakhs in 2017) are also excluded. The creamy layer also includes the offspring of medical practitioners, dental experts, engineers, chartered accountants, IT consultants, media professionals, authors, and athletes.

Following the recommendation of the Second Backward Commission (Mandal Commission), the VP Singh government on August 13, 1990, has notified 27% reservation for Socially and Educationally Backward Classes (SEBC's) in vacancies in civil posts and services that are to be filled on direct recruitment. In 1991, the Narasimha R. government recommended changes to these quotas, increasing 27% to 49.5% but the creamy layer was excluded from the overview of reservations.

Finally, the Court affirmed the government's action in the Indra Sawhney decision (1992) and ruled that the advanced parts of the OBCs (i.e., the creamy layer) must be removed from the list of those eligible for quota. Additionally, it was decided that STs and SCs have to be exempt from the creamy layer notion..⁶

Thus, these commission made an impact related to creamy layer rule which was taken recommendation by Indian government after a decade to 27% quota to OBC's and this creamy layer rule made an impact play after the judgement of *Indira Sawhney v Union of India*.

5: Indira Sawhney judgement & it Aftermath impact

The Indian judicial system established a nine-judge bench in the 1992 case of *Indira Sawhney v. Union of India*. It is both a blessing and a curse, maybe for all time, to watch India's pro- and anti-reservation views clash in a dynamic power struggle. This landmark case was the product of Indian judicial pragmatism in the midst of widespread unrest and violent protests against the

⁵ <https://www.legalservicesindia.com/article/535/Creamy-Layer:-The-Mandal-Commission-View.html>

⁶ <https://www.drishtiiias.com/daily-news-editorials/creamy-layer-for-sc-s-st-s>

implementation of the infamous Mandal Commission Report's 27% quota for the socially and educationally backward classes (SEBCs) in all central government jobs and public institutions.⁷

According to Article 340 of the Indian Constitution (creation of a panel to investigate the state of the backward classes), the First Backwards Class panel, also known as the Kaka Kelkar Commission, was constituted in 1953. However, its 1955 report was largely disregarded in 1961. The Janata Dal established the Second Backwards Class Commission (Mandal Commission) in January 1979 under the direction of the then-prime minister Moraji Desai. The commission's final report, which included suggestions for helping SEBCs, was released in December 1980. This Mandal Commission Report recommended a government quota of 27% for the SEBCs in addition to the already-existing 22.5 percent reservation for SCs and STs.

Whether or not the Mandal Commission Report was valid was the question at hand in the matter brought before the Supreme Court. Additionally, the supreme court made decisions on a number of difficult topics, hence the following list of general issues can be used to classify this historic case:

- The reach and application of Articles 16(1) and 16(4).
- Clear definitions of what is meant by "backward class of citizens".
- The standards used to classify citizens as being behind the times.
- The type and size of the reservation that is allowed.

Here in this case by citing the term creamy layer and made it an exclusionary principle. The principle says that the advanced sections of OBC's were excluded from the benefits of reservation. They said if some members of the OBC's have advanced socially which means in the context of economically as well as educationally. Both must be there to come under creamy layer, economically cannot be the sole purpose for the creamy layer criteria. In a direction of this case to the government, to evolve to exclusion of creamy layer, center and state government within a period of four to six months implement the same. In accordance with this directive, the government established the Ram Nandan Prasad committee to develop the necessary standards for the creamy layer's elimination. It attempted to omit the following:

- i. Those who have constitutional positions.
- ii. Class I officers from the State and All India Center services.
- iii. Children are not eligible if both parents are Class II officers.
- iv. People working in the non-governmental sector and making a gross yearly salary of at least Rs.1 Lakh.
- v. Property owners according to the size of their land holdings.

The creamy layer rule and Article 16(4) of the Indian Constitution are the main topics of the famous Indira Sawhney ruling. The case decision summed up as;

⁷ <https://blog.ipleaders.in/indira-sawhney-v-union-of-india-and-ors-1992-case-analysis/>

- Backward classes of citizens can be designated under Article 16(4) based on caste rather than merely on economic factors. Additionally, the identification process used to establish backwardness should be objective rather than subjective in order to prevent the misuse of authority.
- Article 16(4) is a stand-alone provision that does not deviate from Article 16(1).
- Article 16(4) is thorough in nature and solely applies to reserves for underprivileged groups.
- According to Article 16(1), reservations and reasonable classifications are allowed for additional classes.
- The classes described in Article 15(4) that are socially and educationally backward are distinct from those described in Article 16(4).
- The sub classification of backward classes into more backward classes is permitted by Article 16(4).
- For the purposes of reservation under Article 16(4), creamier strata (socially more affluent persons) can and must be excluded from backward classes.
- Reservations cannot be made in excess of 50%, and this restriction should be true even when applying the carry-forward rule (which fills open positions in the next year).
- There should be no reservation in promotions.

After the Indira Sawhney judgement, the government made four constitutional amendments which meant to reverse the decision of the court made in Indira Sawhney case, 1992:

77th Constitutional Amendment Act, 1995: The Indra Sawhney decision said that promotions would not be subject to prejudice, only initial appointments. But with this amendment, the government gave the state the power to impose reserves for SC/ST employees in areas of promotion if it judges that they are not adequately represented.

81st Constitutional Amendment Act, 2000: It introduced Article 16(4B), which states that the unfulfilled SC/ST quota from a given year will be regarded separately from the ordinary vacancies from that year when carried over to the following year. Through this amendment, the government provided assurance that, despite the Supreme Court's ruling in the Indra Sawhney Case capping the reservation quota at 50%, the 50% ceiling for these carried forward vacant jobs does not apply.

82nd Constitutional Amendment Act, 2000: It amended Article 335 by adding a clause at the end that permits the state to make any provisions in favor of SC/ST members, including lowering evaluation standards, relaxing qualifying marks for examinations, and reserving certain positions for SC/ST members when it comes to promotion to certain classes of services or positions in connection with the business of the Union or of a State.

Constitutional Provision: In order to equalize SC and ST claims to services and positions, Article 335 acknowledges the necessity for special steps to be taken. It reads as follows: "In

making appointments to services and posts in connection with the affairs of the Union or of a State, the claims of members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistent with the maintenance of administrative efficiency.”

85th Constitutional Amendment Act, 2005: It stated that government employees who identify as SC or ST may use the reservation in promotion with "consequential seniority" beginning in June 1995.⁸

Concerns about the constitutionality of the following four Constitutional amendments surfaced in the Nagaraj case (2006).⁹ “Although the five-judge Bench in the Nagaraj case supported the constitutional legality of all four amendments”, the Supreme Court's subsequent two validations in this case became a source of controversy:

- **First:** According to the Court, the State is not required to make reservations for SC/ST in matters involving promotions. However, the State must gather quantitative data demonstrating the class's backwardness and the inadequate representation of that class in public employment in addition to complying with Article 335 if they intend to exercise their discretion and make such a provision.
- **Second:** Additionally, it reversed course from the Mandal case, where it had rejected the idea of the creamy layer for SCs/STs (which was true for OBCs). The Nagaraj case ruling made it very obvious that, even if the State has strong reasons (as mentioned above), it must ensure that its reservation provision does not lead to excess—breaching the ceiling-limit of 50%, dismantling the creamy layer principle, or extending the reservation indefinitely. As a result, the Court expanded on the creamy layer principle in this ruling by including SCs and STs.

Important Decisions in the M. Nagaraj Case (2006)

Three requirements were set forth by the court in this judgment for the promotion of SCs and STs in the public sector:

Government cannot impose quotas unless it can demonstrate that the targeted population is underrepresented (based on quantitative data) and that granting reservations for promotions would not have a negative impact on the effectiveness of public administration as a whole.

Current demand by Centre:

The Centre urged the Court to reconsider its position on the two matters mentioned above:

Since the Mandal case ruling, which said that Scheduled Castes and Scheduled Tribes are the most backward sections, contradicts the collection of quantifiable evidence demonstrating backwardness. Therefore, it is expected that once the SCs and STs are included to the

⁸ <https://www.drishtias.com/daily-news-editorials/creamy-layer-for-sc-s-st-s>

⁹ AIR 2007 SC 71

Presidential List in accordance with Articles 341 and 342 of the Indian Constitution, it will not be necessary to show that they are less advanced.

The aforementioned List cannot be altered by anybody other than Parliament, in line with Articles 341 and 342, which detail which individuals in each state and Union Territory would be considered to be SCs or STs.

Additionally, the creamy layer idea has not been used to the Indra Sawhney project.

Between these issues arising out related to creamy layer, a case name Ashok Kumar Thakur v State of Bihar¹⁰ came into play, here The Supreme Court rejected the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) (Amendment) Ordinance, 1995. Through this Ordinance, the State of Bihar created a set of criteria for determining the creamy layer. According to these standards, professionals from Other Backward Classes or IAS officers earning more than ten lakhs a year would be included in the creamy layer. In a country where the per capita national income was 6,929 (1993–1994), the Court came to the conclusion that it was untenable to accept that only IAS officers and other professionals earning more than 10 lakhs per year would be included in the creamy layer group. It was decided that the Bihar Government's standards for identifying the creamy layer was arbitrary.¹¹

After all this happens, recently in 2018 taking into consideration of M. Nagraj case¹².

In Jarnail Singh v. Lachhmi Narain Gupta (2018), the Court made clear its position by declining to refer the aforementioned issue to a bigger court. The Court upheld discrimination against SC/STs when it comes to promotions in public jobs. Promotions for SC/STs, however, enlarged the idea of the creamy layer. According to this, SC/STs from the creamy layer aren't able to make reservations for special deals. Reservations are meant to guarantee that marginalized groups can grow alongside other individuals on an equal basis. The "creamy layer" of the SC/ST category, however, was grabbing up the desired positions in the public sector. Those who were actually backward were unable to benefit from reservations. The Court emphasized that one aspect of equality is the elimination of the creamy layer. The general category candidates would be considered differently than the forward among the SC/ST community if the creamy layer principle were not applied. The backward SC/STs would be treated identically to the forward SC/STs in the absence of the creamy layer concept, and vice versa.

The Supreme Court's decision in the Jarnail Singh case, which addressed the applicability of the creamy layer principle, is currently being appealed by the government. As the creamy layer concept can be applied to the castes of SC's and ST's likewise as in OBC's according to taken into consideration of today's needs and developments under the SC/ST's.

¹⁰ 1996 AIR 75, 1995 SCC (5) 403

¹¹ <https://www.scobserver.in/journal/creamy-layer-court-in-review/>

¹² AIR 2007 SC 71

The positive discrimination provided by reservations is sufficient to serve the interests of the economically and socially disadvantaged groups in society. The creamy layer concept also helps to make sure that such particular privileges are exclusively offered to the most deserving and underprivileged individuals of any given community.

6: Difference between Creamy layer and non-Creamy layer under Other Backward Classes

Given that the Indira Sawhney Case established the distinction between a creamy layer and a non-creamy layer for OBCs, an expert committee led by Justice (retired) RN Prasad was established to establish the standards for establishing a creamy layer. The Department of Personal and Training, or DoPT, identified certain groups of persons of a certain level, status, or income who cannot qualify their children for OBC reservation.

- The current income threshold for those outside of government is Rs. 8 lakh. As the upper income cap has increased over time. Despite the DoPT's requirement that it be amended every three years, the first modification since September 8, 1993 (at a cost of Rs. 1 lakh annually) occurred only on March 9, 2004 (at a cost of Rs. 2.50 lakh). This was followed by revisions in October 2008 (at a cost of Rs. 4.50 lakh), May 2013 (at a cost of Rs. 6 lakh), and September 13, 2017 (at a cost of Rs. 8 lakh). Since its most recent revision, more than five years have passed. According to a DoPT clarification, income from salaries or agricultural land is not combined for establishing the creamy layer.
- The cutoff for children of government employees is determined by the parent's rank rather than their income.
- An individual is deemed to be in the creamy layer, for example, if either of his or her parents holds a constitutional job, if either parent was directly recruited into Group-A, or if both parents are employed by Group-B services.
- The children will be in the creamy layer if the parents enter Group-A through promotion before turning 40.
- Offspring of officers with the rank of Colonel or above in the Army, as well as offspring of officers with comparable ranks in the Navy and Air Force, are included in the creamy layer.¹³

7: Conclusion & Suggestions

Conclusion:

The creamy layer rule's effects on social justice and India's reservation system have received both praise and criticism. On the one hand, by making sure that individuals who have already attained a particular level of socioeconomic advancement do not continue to benefit from reservations, it has assisted in addressing issues about justice and equity within restricted

¹³<https://www.youtube.com/watch?v=QhoK9FL2io&t=329s&pp=ygUaY3JlYW15IGxheWVyIHJ1bGUgaW4gaW5kaWE%3D>

categories. More people who are marginalized can now take advantage of these possibilities. However, some contend that the criteria may not always appropriately classify disadvantage and that it may result in the exclusion of some deserving people from the advantages of reservations.

Suggestions:

- **Regular Review and Revision:** To account for shifting economic and social conditions, the creamy layer criteria should be evaluated and modified on a regular basis. This would guarantee that the rule continues to identify people who actually need help.
- **Holistic Assessment:** Factors other than wealth, such as education, employment prospects, and living situations, should be taken into account. A thorough evaluation would give a more realistic picture of a person's socioeconomic circumstances.
- **Transparency:** The use of the creamy layer rule should be open, with precise instructions and channels for appealing judgments. Due to this, fewer situations of potential discrimination or unfair exclusion would occur.
- **Data collection:** For the creamy layer rule to be implemented successfully, accurate and current data on the socioeconomic circumstances of reserved category members are essential. There should be regular data collection efforts.
- **Emphasis on Skill Development:** Along with reservations, there should be a focus on education, vocational training, and skill development for all marginalized groups in society. This would improve people's lives and lessen the need for ongoing reservation benefits.
- **Public knowledge:** Government and non-government organizations should collaborate to raise knowledge of the ramifications and justification for the creamy layer rule. This would encourage acceptance and understanding within communities.
- **Flexibility:** Be aware that communities and regions might experience vastly different socioeconomic conditions. Flexible application of the law can prevent it from unintentionally excluding eligible people due to strict income requirements.

As a result, even if the creamy layer rule significantly contributes to making sure that reservations benefit people who are actually disadvantaged, it is crucial to continuously improve and modify how it is used to prevent unexpected outcomes. A more impartial approach that considers a wider range of variables and evolving socioeconomic dynamics can aid in developing a more just and efficient policy.

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