



# **FACULTY OF JURIDICAL SCIENCES**

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**KUMAR TRIPATHI**

# Lecture-14



## Mandal Commission[

The decision to set up a second backward classes commission was made official by the president on 1 January 1979. The commission popularly known as the Mandal Commission, its chairman being B. P. Mandal, submitted a report in December 1980 that stated that the population of OBCs, which includes both Hindus and non-Hindus, was around 52 per cent of the total population according to the Mandal Commission. The number of backward castes and communities was 3,743 in the initial list of Mandal Commission set up in 1979-80.<sup>[11][12]</sup> The number of backward castes in Central list of OBCs has now increased to 5,013 (without the figures for most of the Union Territories) in 2006 as per National Commission for Backward Classes.<sup>[13][14][15]</sup> Mandal Commission developed 11 indicators or criteria to identify OBCs, of which four were economic.<sup>[16]</sup>

The National Sample Survey puts the figure at 41%.<sup>[17]</sup> There is substantial debate over the exact number of OBCs in India, with census data compromised by partisan politics. It is generally estimated to be sizable, but lower than the figures quoted by either the Mandal Commission or and National Sample Survey.<sup>[18]</sup>

27 percent of reservation was recommended owing to the legal constraint that the total quantum of reservation should not exceed 50 percent. States which have already introduced reservation for OBC exceeding 27 per cent will not be affected by this recommendation. With this general recommendation the commission proposed the following overall scheme of reservation for OBC:

1. Candidates belonging to OBC recruited on the basis of merit in an open competition should not be adjusted against their reservation quota of 27 per cent.
2. The above reservation should also be made applicable to promotion quota at all levels.
3. Reserved quota remaining unfilled should be carried forward for a period of three years and de-reserved thereafter.
4. Relaxation in the upper age limit for direct recruitment should be extended to the candidates of OBC in the same manner as done in the case of scheduled castes and scheduled tribes.
5. A roster system for each category of posts should be adopted by the concerned authorities in the same manner as presently done in respect of scheduled caste and scheduled tribe candidates.

These recommendations in total are applicable to all recruitment to public sector undertakings, both under the central and state governments as well as to nationalised banks. All private sector undertakings which have received financial assistance from the government in one form or other should also be obliged to recruit personnel on the aforesaid basis. All universities and affiliated colleges should also be covered by the above scheme of reservation. Although education is considered an important factor to bring a desired social change, "educational reform" was not within the terms of reference of this commission. To promote literacy the following measures were suggested:

1. An intensive time-bound programme for adult education should be launched in selected pockets with high concentration of OBC population.
2. Residential schools should be set up in these areas for backward class students to provide a climate specially conducive to serious studies. All facilities in these schools

including board and lodging should be provided free of cost to attract students from poor and backward class homes.

3. Separate hostels for OBC students with above facilities will have to be provided.
4. Vocational training was considered imperative.
5. It was recommended that seats should be reserved for OBC students in all scientific, technical and professional institutions run by the central as well as state governments. The quantum of reservation should be the same as in the government services, i.e. 27 per cent.<sup>[1]</sup>

### **Sub-categorisation of OBCs**

In October 2017, President of India Ram Nath Kovind notified a five-member Commission headed by Delhi High Court's former Chief Justice G. Rohini under Article 340 of Indian Constitution,<sup>[19][20]</sup> to explore the idea of OBC sub-categorisation.<sup>[21][22][23]</sup> The National Commission for Backward Classes had recommended it in 2011 and a standing committee too had repeated this. The committee has a three-point mandate:<sup>[24]</sup>

1. To examine the "extent of inequitable distribution of benefits of reservation" among various castes and communities that come under the Central OBC list.
2. To work out the mechanism, criteria and parameters for the actual sub-categorisation. The actual OBC reservation will continue to be 27% and within this the committee will have to do the re-arranging.
3. Bringing order to the Central list of OBCs by removing any repetitions.

The committee will have to deliver the report in 12 weeks of its constitution.<sup>[25]</sup> The lower OBCs form around 35% of the population in Uttar Pradesh. OBC sub-categorisation have already been implemented at State level by 11 states : West Bengal, Tamil Nadu, Maharashtra, Andhra Pradesh, Telangana, Karnataka, Jharkhand, Bihar, Jammu and kashmir region and Haryana, and the union territory of Puducherry.<sup>[26]</sup> The term of the commission has been extended to 31 May 2019. Its report stated that prime beneficiaries of 97% OBC reservation includes Yadav, Kurmi, Jat (Jats of Rajasthan except those of Bharatpur and Dholpur district are in Central OBC list), Saini, Thevar, Ezhava and Vokkaliga castes.<sup>[27]</sup>

### **Legal disputes**

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#### **Creamy layer and Indra Sawhney vs Union of India[**

The term creamy layer was first coined by Justice Krishna Iyer in 1975 in State of Kerala vs NM Thomas case, wherein he observed that "the danger of 'reservation', it seems to me, is three-fold. Its benefits, by and large, are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake".<sup>[28][29]</sup> 1992 Indra Sawhney v Union of India judgment laid down the limits of the state's powers: it upheld the ceiling of 50 per cent quotas, emphasized the concept of "social backwardness", and prescribed 11 indicators to ascertain backwardness. The nine-Judge Bench judgement also established the concept of qualitative exclusion, such as "creamy layer".<sup>[30][31][32]</sup> The creamy layer is only applicable in the case of Other Backward Castes and not applicable on other group like SC or ST. The creamy layer criteria was introduced at Rs 100,000 in 1993, and revised to Rs 250,000 in 2004, Rs 450,000 in 2008 and Rs 600,000 in 2013.<sup>[33]</sup> In October 2015, National Commission for Backward Classes proposed that a person belonging to OBC with an annual family income of up to Rs 1.5 million should be considered as minimum ceiling for OBC.<sup>[34]</sup> NCBC also recommended sub-division of OBCs into 'backward', 'more backward' and 'extremely backward' blocs and divide 27% quota amongst them in proportion to their population, to ensure that stronger OBCs don't corner the quota

benefits.<sup>[35][36]</sup> In August 2017, NDA government announced the creamy layer ceiling in the OBC category from getting reservation in jobs, has been raised from Rs 6 lakh a year to Rs 8 lakh.<sup>[37]</sup>

### **Supreme Court interim stay[**

On 29 March 2007, the Supreme Court of India, as an interim measure, stayed the law providing for 27 percent reservation for Other Backward Classes in educational institutions like IITs and IIMs. This was done in response to a public interest litigation — Ashoka Kumar Thakur vs. Union of India. The Court held that the 1931 census could not be a determinative factor for identifying the OBCs for the purpose of providing reservation. The court also observed, "Reservation cannot be permanent and appear to perpetuate backwardness".<sup>[38]</sup>

### **Supreme Court verdict**

On 10 April 2008 the Supreme Court of India upheld the government's initiative of 27% OBC quotas in government-funded institutions. The Court has categorically reiterated its prior stand that those considered part of the "Creamy layer" should be excluded by government-funded institutions and by private institutions from the scope of the reservation policy. The verdict produced mixed reactions from supporting and opposing quarters.

Several criteria to identify the portion of the population comprising the "creamy layer" have been recommended, including the following:<sup>[39]</sup>

- Children of those with family income above ₹ 250,000 a year, and then ₹ 450,000 a year as of October 2008 and now ₹ 800,000 a year, should be considered creamy layer, and excluded from the reservation quota.
- Children of doctors, engineers, chartered accountants, actors, consultants, media professionals, writers, bureaucrats, defence officers of colonel and equivalent rank or higher, high court and Supreme Court judges, and all central and state government Class A and B officials should be excluded.
- The Court has requested Parliament to exclude the children of MPs and MLAs as well.

### **Supreme Court conclusions from Ashoka Kumar Thakur vs. Union of India**

1. The Constitution (Ninety-Third Amendment) Act, 2006 does not violate the "basic structure" of the Constitution so far as it relates to the state maintained institutions and aided educational institutions. Question whether the Constitution (Ninety-Third Amendment) Act, 2006 would be constitutionally valid or not so far as "private unaided" educational institutions are concerned, is left open to be decided in an appropriate case.
2. The "Creamy layer" principle is one of the parameters to identify backward classes. Therefore, principally, the "Creamy layer" principle cannot be applied to STs and SCs, as SCs and STs are separate classes by themselves.
3. Preferably there should be a review after ten years to take note of the change of circumstances.
4. A graduation (not technical graduation) or professional course deemed to be educationally forward.
5. Principle of exclusion of Creamy layer applicable to OBC's.
6. The Central Government shall examine as to the desirability of fixing a cut off marks in respect of the candidates belonging to the Other Backward Classes (OBCs) to balance reservation with other societal interests and to maintain standards of excellence. This would ensure quality and merit would not suffer. If any seats remain vacant after adopting such norms they shall be filled up by candidates from general categories.

7. So far as determination of backward classes is concerned, a Notification should be issued by the Union of India. This can be done only after exclusion of the creamy layer for which necessary data must be obtained by the Central Government from the State Governments and Union Territories. Such Notification is open to challenge on the ground of wrongful exclusion or inclusion. Norms must be fixed keeping in view the peculiar features in different States and Union Territories. There has to be proper identification of Other Backward Classes (OBCs). For identifying backward classes, the Commission set up pursuant to the directions of this Court in *Indra Sawhney* 1 has to work more effectively and not merely decide applications for inclusion or exclusion of castes.
8. The Parliament should fix a deadline by which time free and compulsory education will have reached every child. This must be done within six months, as the right to free and compulsory education is perhaps the most important of all the fundamental rights (Art.21 A). For without education, it becomes extremely difficult to exercise other fundamental rights.
9. If material is shown to the Central Government that the Institution deserves to be included in the Schedule (institutes which are excluded from reservations) of The Central Educational Institutions (Reservation in Admission) Act, 2006 (No. 5 of 2007), the Central Government must take an appropriate decision on the basis of materials placed and on examining the concerned issues as to whether Institution deserves to be included in the Schedule of the said act as provided in Sec 4 of the said act.
10. Held that the determination of SEBCs is done not solely based on caste and hence, the identification of SEBCs does not violate Article 15(1) of the Constitution.

### **Supreme Court scrapped Jat Reservations in Central OBCs list**

In March 2015, Supreme Court of India scrapped Jat Reservations saying that Jats are not socially and economically backward in reference with National Commission for Backward Classes' (NCBC) opinion.<sup>[40][41][42][43]</sup> Supreme Court judgement quashed the proposed inclusion of Jats in Central list of OBCs on the basis that Jats are already given OBC status in 9 States.<sup>[44]</sup> On 21 July 2015, Supreme Court rejected Centre's review plea for its verdict of quashing Jat reservation in OBCs.<sup>[45]</sup>

### **OBC Christians**

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The Karnataka State Government has issued notification granting OBC reservation benefits to Brahmin Christian, Kuruba Christian, Madiga Christian, Akkasali Christian, Sudri Christian, Scheduled Caste converted to Christianity, Setty Balija Christian, Nekara Christian, Paravar Christian and Lambani Christian.<sup>[46]</sup>

The Kerala government grants OBC reservation benefits to Latin Catholics, Anglo Indians and Nadar Christians included in South India United Church (SIUC).<sup>[47]</sup>

The Government of Maharashtra grants OBC reservation benefits to East Indians, East Indian Christian and East Indian Catholic.<sup>[48]</sup>

