

अशोक मैंगोत्रा  
सदस्य सचिव

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



सत्यमेव जयते

**URGENT (BY HAND)**

राष्ट्रीय पिछड़ा वर्ग आयोग  
सामाजिक न्याय एवं अधिकारिता मंत्रालय  
भारत सरकार  
त्रिकूट-1, भीकाजी कामा प्लेस, नई दिल्ली-110 066  
NATIONAL COMMISSION FOR BACKWARD CLASSES  
MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT  
GOVERNMENT OF INDIA  
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DO. No. NCBC/MS/1/2015

Dated 2<sup>nd</sup> March, 2015

Dear *Ms. Agnihotri,*

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

Kindly refer 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. The Commission held a series of meetings on various aspects of the subject and also received inputs and guidance from the officers of MoSJ&E, DFS, DHE, DPE and DoPT. The Commission would like to place on record its gratitude to these Departments and their officers who assisted the Commission in this important task.

3. The Commission has great pleasure in forwarding to the Government its Report on the subject. Specific recommendations have been made on rationalizing and simplifying the Rule of Exclusion and on the Income Criteria. The Government is requested to have the report examined and to take appropriate steps for implementing the various recommendations made in the Report as deemed fit.

With *Regards*

Yours *Sincerely,*

*A.K. Mangotra*  
(A.K. Mangotra) 2/3/15

**Encl: Report (37 pages)**

**Ms. ANITA AGNIHOTRI,**  
Secretary,  
Ministry of Social Justice & Empowerment  
Shastri Bhawan, New Delhi  
Tel: 23382683, Fax: 23385180

**NATIONAL COMMISSION FOR BACKWARD CLASSES**

**REPORT  
ON  
THE REVIEW OF INCOME CRITERIA  
AND  
PROPOSAL TO AMEND THE SCHEDULE (APPENDIX I)  
TO THE GOI DEPT. OF PER. & TRG. O.M.NO.36012/22/93-Estt.  
(SCT)  
dated 8-9-1993 AS AMENDED FROM TIME TO TIME.**

1. Pursuant to the recommendations of the Second Backward Class Commission (Mandal Commission) providing reservations for Socially and Educationally Backward Classes in the services and Educational Institutions under the Government of India, the Government of India issued a Office Memorandum dated 13<sup>th</sup> August, 1990 and 25<sup>th</sup> September, 1991, providing 27% reservations which was the subject matter of the Judgment of the Supreme Court in the case of Indra Sawhney & Ors. Vs. Union of India (W.P.No.930 of 1990) and the 9 Judge Bench of the Supreme Court in the Judgment reported in (1992) Supp 3 SCC 217 held that the said Office Memorandums are valid and enforceable subject to exclusion of socially advanced members of the sections from the notified Other Backward Classes, while giving preference to more backward classes on the basis of degree of social backwardness. Accordingly the Government of India, Ministry of Welfare appointed an Expert Committee for identification of Creamy Layer for exclusion of such socially advanced persons vide Resolution dated 22<sup>nd</sup> February, 1993. The said Committee submitted its report on 10-3-1993 and categorized the list for exclusion of the 'Creamy Layer' suggesting that the children of all the persons holding (I) Constitutional Posts; (II) Service Category (A) Group A/Class I Officers of the All India Central and State Services (Direct Recruitment); (B) Group B/Class II Central Services and State Services (Direct Recruitment); (C) Employees of Public Sector Undertakings, etc., holding equivalent or comparable posts of Group A and Group B; (III) Personnel of the Armed Forces including Para Military Forces at the level of Colonel and above; (IV) Professional Class and those engaged in trade, business and industry having the income limit specified therein; (V) Property Owners (A) holders of



agricultural land, (B) Plantations and (C) Vacant land and/or buildings in urban areas or urban agglomeration and (VI) Income, Wealth test, etc.

**2.** Pursuant to the aforesaid Committee Report, the Government of India, Department of Personnel and Training issued Office Memorandum No.36012/22/93 Estt. (SCT) dated 8-9-1993, which reads as follows:

*"G.I., Dept. of Per. & Trg., O.M.No.36012/22/93-Estt. (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. (S\CT), dated the 13<sup>th</sup> August, 1990 and 25<sup>th</sup> September, 1991 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 Judgment in the Indra Sawhney and others Vs. 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 I)*



(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.

(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".

Schedule to the aforesaid OM is extracted below:

**"SCHEDULE"**

1	Description of Category	To whom Rule of Exclusion will apply
1	2	3
I.	Constitutional Posts	<p>Sons and daughter(s) of –</p> <p>(a) President of India;</p> <p>(b) Vice-President of India;</p> <p>(c) Judges of the Supreme Court and the High Courts;</p> <p>(d) Chairman and Members of UPSC and of the State Public Service Commission; Chief Election Commissioner; Comptroller and Auditor-General of India;</p> <p>(e) Persons holding constitutional positions of like nature.</p>



## 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
- (b) parents, either of whom is a Class I officer;
- (b) parents, both of whom are Class I officers, but one of them dies or suffers permanent incapacitation;
- (c) 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 organization like UN, IMF, World Bank, etc., for a period of not less than 5 years;
- (d) 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 ---
- (b) 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 Undertakings, etc.

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, 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. Criteria specified against Category VI will apply.
- (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".

However, as per the Category II-C of the Schedule to the aforesaid Office Memorandum of the DoPT dated 8-9-1993 read with Explanation (i) to Category VI, the income from salaries or agricultural land of the employees working in the Public Sector Undertakings, Public Sector Banks, Insurance Organizations, Universities etc., shall not to be clubbed and only the income from other sources if exceeds the income criteria, their children will be excluded from the benefits of reservation. As regards the agricultural holdings are concerned, the Rule of Exclusion will not apply to the property owners of agricultural land if the land holding is exclusively un-irrigated upto the ceiling limit and if the irrigated land is more than 85% of the statutory area, their children are excluded from the benefits of reservation. Initially, the cadre based exclusion and the annual income limit of the parents was fixed having gross annual income of Rs. 1 lakh or above or possessing the wealth above the exemption limit prescribed in the Wealth Tax Act.

**3.** The Ministry of Social Justice & Empowerment vide Office Order No.12011/6/97-BCC dated 6<sup>th</sup> October, 2003 in consultation with the Prime Minister entrusted the work relating to review of the income criteria to exclude the Creamy Layer from OBCs to the National

Commission for Backward Classes (NCBC), with the following terms of reference:-

- "(i) 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 8<sup>th</sup> September, 1993 (copy enclosed).
- (ii) To evolve and suggest formulae through which the periodic revision of income ceiling/criteria in terms of quantum of rupee be fixed so that the income ceiling for determining the Creamy Layer amongst OBCs is revised from time to time as per the formula.
- (iii) 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 V, the rule of exclusion be applied".

4. Pursuant to the aforesaid Office Order, the NCBC vide its Report dated 23-1-2004 without making any attempt for evaluation of the posts equivalent or comparable in the Public Sector Undertakings, Banks, Insurance Organizations, Universities or the posts and positions under Private Employment; but only taking into account the changing price levels, Consumer Price Index numbers, known as cost of living index numbers and other data recommended to raise the income limit for determining the Creamy Layer among the Other Backward Classes from the existing limit of Rs. 1,00,000/- to Rs.2,50,000/- and to have the periodic review for every three years. This Report was accepted by the Government and the DOPT issued Office Memorandum No.36033/3/2004-Estt(Res) dated 9-3-2004 revising the income criteria upto Rs.2,50,000/-

5. Thereafter the Ministry of Social Justice & Empowerment vide Office Order No.F.12015/13/2007-BCC dated Nil December, 2007 in consultation with the Prime Minister entrusted the work relating to review of the income criteria to exclude Creamy Layer from OBCs to National Commission for Backward Classes (NCBC) with the following terms of reference:

- "(i) *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 8<sup>th</sup> September, 1993 (copy enclosed).*
- (ii) *To evolve and suggest formulae through which the periodic revision of income ceiling/criteria in terms of quantum of rupee be fixed so that the income ceiling for determining the Creamy Layer amongst OBCs is revised from time to time as per the formula.*
- (iii) *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 V, the rule of exclusion be applied'.

**6.** Pursuant to the aforesaid Office Order, the NCBC vide its Report dated 26<sup>th</sup> June, 2008 recommended to revise the income limit from Rs.2,50,000/- to Rs.4,50,000/- without making any attempt to evaluate the posts equivalent or comparable in the PSUs, Banks, Insurance Organizations, Universities or posts and positions under private employment for the purpose of application of the criteria of category II-A and II-B. Accordingly the DOPT issued Office Memorandum No.36033/3/2004-Estt.(Res) dated 14-10-2008 revising the gross annual income to Rs.4,50,000/- or above for determining the creamy layer amongst the OBCs. In so far as the persons in Categories I, II, III and VA who are not disentitled to the benefit of reservation but have income from other sources of wealth will bring them within the income/wealth criteria of Rs.4.5 lakhs or above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

**7.** The Ministry of Social Justice & Empowerment vide its Office Order No.12015/10/2011-BC-II dated 5-7-2011 entrusted the work relating to review of the income/wealth test criteria to exclude the creamy layer from the OBCs to NCBC with the following term of reference:

*"To review the existing ceiling of income/wealth test to determine the creamy layer amongst OBCs as notified vide Item VI of the Schedule to DOPT OM No.36012/22/93-Estt(SCT) dated 8<sup>th</sup> September, 1993".*

8. Pursuant to the aforesaid Office Order, the NCBC vide its Report dated 14-9-2011, while observing the adequacy of representation of the Other Backward Classes in services in all levels, the Commission indicated that to achieve the required representation of OBCs, they have to send their children in good schools to give them education, exposure to extra-curricular activities with emphasis on academic aspects, inter-mingling with higher cultural groups, they have to spent a reasonable amount, made the recommendations as follows:-

*"Among the identified backward classes are many castes pursuing occupations considered very lowly, undignified, un-clean and polluting by the forward classes/castes. The social stigma suffered by them, the deprivation and degradation to which they have been subjected for millenniums by the Hindu society act as insurmountable barriers for their rise in life – social and economic advancement. Despite acquiring modest wealth after a great deal of effort swimming against the current of societal forces, they cannot extricate themselves from the social backwardness of the class into which they are born. An annual income of rupees twelve lakhs for them for a fairly long period would be the irreducible minimum at which it can reasonably be said that their economic status dwarfs or eclipses their social backwardness.*

*We are, therefore, of the considered opinion that an annual income of Rs. 12 lakhs in urban areas i.e. Metropolitan cities and Rs. 9 lakhs in the rest of the areas for a period of three consecutive years would be the proper limit for applying the creamy layer restriction. The other aspect covered by clause (a) of Category VI, namely possession of wealth above the prescribed exemption limit under the Wealth Tax Act warrants no modification, having regard to the fairly high level of the present exemption limits. Clause (b) of Category VI also needs no modification since it seeks to bring within the fold of creamy layer persons in the specified categories if otherwise they satisfy the income/wealth test. The Explanation to the Category VI that income from salaries or agricultural land shall not be clubbed, in our opinion, is totally unnecessary and should therefore be deleted".*

However, the Government of India, Department of Personnel & Training vide Office Memorandum No.36033/1/2013-Estt.(Res) dated 27<sup>th</sup> May, 2013 raised the income limit from Rs.4,50,000/- to Rs.6,00,000/- to exclude creamy layer from OBCs.

9. NCBC is regularly receiving a large number of complaints and petitions regarding the issuing of 'Non Creamy Layer' Certificates to undeserving candidates. Two major issues centered around the non-

clubbing of incomes and the non-determination of equivalent or comparable posts and positions between Government and PSUs. NCBC took up these matters with the MoSJE. Pursuant to the letters of NCBC dated 10-9-2013, 12-9-2013 and 16-9-2013 addressed to the DOPT seeking clarifications regarding Creamy Layer amongst OBCs and also the letter of the Secretary, Social Justice & Empowerment dated 18-9-2013 addressed to the DOPT to get the matter examined and issue suitable instructions regarding the other conditions which are relevant for determining the Creamy Layer amongst the OBCs, the DOPT vide their OM dated 7-4-2014 requested the Ministry of Social Justice & Empowerment to refer the issues to the NCBC to comprehensively re-examine the criteria for determination of creamy layer of OBCs and accordingly the Ministry of Social Justice & Empowerment vide letter No.12015/18/2013-BC-II dated 27-6-2014 requested the NCBC to examine the aforesaid issues and in order to provide inputs to the NCBC, five concerned Joint Secretaries of Reservation, Department of Personnel & Training, Backward Classes, Ministry of Social Justice and Empowerment, Banking & Insurance, Department of Financial Services, dealing with issues related to PSUs, Department of Public Enterprises and Higher Education, Department of Higher Education were requested to assist the NCBC so as to enable the NCBC to submit its report to the Government of India. The group of Officers as indicated by the Ministry of Social Justice & Empowerment met under the Chairmanship of the Chairman, NCBC, on 25-9-2014, 21-1-2015 and 18-2-2015 at NCBC and discussed the issues relating to (1) examining of the initial Office Memorandum issued by the DOPT dated 8-9-1993 and the clarification letter dated 14-10-2004 as also the proposals which modified from time to time raising the income limit; (2) Streamlining the complicated issues by simplifying the Schedule to the Description of Categories and Exclusion of Creamy Layer; (3) Whether to club the agricultural income with salary and other sources; (4) Determine/evaluate the equivalent or comparable posts in PSUs, Banks, Insurance Organizations, Universities, etc., and also the posts and positions under the Private Employment; (5) Raising of income limit of Creamy Layer.

**10.** It is relevant to mention here that while upholding the implementation of the Office Memorandum dated 13<sup>th</sup> August, 1990 and clause 2(i) of the Office Memorandum dated 25-9-1991 issued by the Government of India pursuant to the Mandal Commission Report providing 27% reservations to the OBCs, the Supreme Court in Indra

Sawhney case held that the 27% reservations in favour of the OBCs shall be implemented subject to exclusion of Socially advanced persons/Sections (Creamy Layer) from Other Backward Classes. The implementation of the aforesaid Office Memorandum dated 13<sup>th</sup> August, 1990 shall be subject to Exclusion of such socially advanced persons (Creamy Layer). While applying the 'means' test and 'creamy layer' so as to enable the Government to fill up 27% of posts/services and admissions in the Educational Institutions under Articles 15(4) and 16(4) of the Constitution, the advanced socially and educationally backward castes/communities shall be excluded. After excluding them all other OBCs would be a compact class. In fact, such exclusion benefits the truly deserving backward. Difficulty, however, really lies in drawing the line-how and where to draw line? For, while drawing the line, it should be ensured that it does not result in taking away with one hand what is given by the other. The basis of exclusion should not merely be economic unless, of course, the economic advancement is so high that it necessarily means social advancement. An example has been given that if a member of a Backward Class say a Carpenter goes to Middle East and works there as Carpenter and if he earns handful of annual income, his children should not be deprived of the benefits of Articles 15(4) and 16(4) unless the raise of income is so high economically as to become a factory owner and engage servants by which only it can be said that his social status is also raised. The drawal of the economic criteria should be a realistic one. While the income of a person can be taken as measure on 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 Supreme Court also quoted the example of service category such as IAS, IPS or other All India Services Officers status in the society (social status). While limiting the income criteria it should not lead to a situation of non-filling the prescribed quota of 27%. Therefore, we have made an attempt to get the data of the recruitment in all categories of Group A, B and C in the Central Government Services, Public Sector Undertakings, Universities, Banks, Insurance Organizations, etc. for the last three years but could not get the full information in all categories. The first hurdle the Commission faced was the non-availability of data in a ready fashion. There is no Centralized Department or Organization which holds or maintains this data. Unless the data is collected and maintained centrally at a nodal point, no monitoring or evaluation can be done as to whether the OBC reservation policy is being implemented across the country or not.


And unless this is done, the outcome of the Government's efforts cannot be assessed, leave aside being enforced. NCBC would strongly urge Government of India to set up a monitoring mechanism to evaluate the extent and efficacy of the implementation of the reservation policy for OBCs. After close follow up, NCBC could manage to get past data from DOPT (for IAS and Central Ministries), DFS (for Banks, Insurance and Financial Institutions), DPE (for 105 PSUS out of 229), DHE (for Central Technical Institutions) and MoSJE (for a few autonomous organizations). An aggregated data-set is enclosed with this report. We have 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 representations of the OBCs is 0% to 12% only. This is due to unrealistic determination of annual income for constituting the creamy layer limit. Many of the Departments are unable to reach the prescribed limit of 27% reservations while there were others which have not kept any posts reserved for OBCs at all.

**11.** Though the Office Memorandum No.36012/22/93-Estt.(SCT) dated 8-9-1993 prescribed that 27% vacancies in civil posts and services under the Government of India are to be reserved and filled by OBCs through Direct Recruitment and candidates belonging to OBCs recruited on the basis of merit in open competition shall not be adjusted against the reservation quota of 27% and the aforesaid reservation shall not apply to the classes of the persons to whom the Rule of Exclusion will apply, the said Office Memorandum has not been implemented in its true letter and spirit. The Rule of Exclusion will not apply to the persons working as artisans or engaged in lowly occupations, callings but such list of occupations, callings have not been issued so far. Though as per para 3 of the said Office Memorandum, the said instructions apply to the Public Sector Undertakings and financial institutions including public sector banks, Category II (C) of the Schedule say that the criteria described for Category A and Category B (Service Category) will apply mutandis mutandis to the Officers holding equivalent or comparable posts in Public Sector Undertakings, Insurance Organizations, Banks, Universities, etc. and to equivalent or comparable posts and positions under private employment, none of the reports of NCBC attempted to determine the comparable or equivalent posts and positions so far. However, as per the said Office Memorandum, unless the comparable/equivalent posts or positions are determined, their salary

income and agricultural income shall not be taken into account. But their income from other sources alone shall be taken into account to exclude their children from the benefits of reservation. That is how instances have come to light how the children of Categories even upto the Chairman/Managing Director of PSUs are also enjoying the benefits of reservation. For that reason, pursuant to the letters of NCBC, the Government of India entrusted the work to NCBC to determine the equivalent or comparable posts in the Public Sector Undertakings, Banks, Insurance Organizations, University Employees, etc. and comparable posts and positions under private employment and also the revision of 'Creamy Layer'.

**12.** We have gathered the information about the Categories of Group A and Group B Officers of All India Central Services and also Class I and Class II Officers of the State Services. We have also gathered the information relating to the posts and pay scales of Defence Services. We have also gathered information from the Public Sector Undertakings with regard to their category and pay scales. We have considered various conditions of services, posts and positions, business, agriculture, plantation income as well as the income of the professionals, etc. In spite of the fact that when there was no exclusion of Creamy Layer, the representation of OBCs in various services of the Central Government and Public Sector Undertakings was meager. Even after exclusion of the Creamy Layer, 27% of vacancies reserved for the Backward Classes have not been fulfilled. Therefore, one of the apprehensions is that when stringent restriction of the Creamy Layer may not achieve the objective of the Government of India in filling up the 27% vacancies by Other Backward Classes.

**13.** We have gone through the earlier Reports on this subject submitted by the NCBC. As per the report submitted by the NCBC under the Chairmanship of Sri Justice S.Ratnavel Pandian dated 26-6-2008, the Commission has organized a meeting of Chairpersons of the State Backward Classes Commissions and Secretaries incharge of the Backward Classes of the States/Union Territories on 11-6-2008 to interact and have their views and suggestions for review the existing income criteria to exclude socially advanced persons/sections (Creamy Layer) from Other Backward Classes. In the said meeting, Puducherry State level Commission for Backward Classes have expressed the view to raise the income upto Rs. 10 lakhs. The States of Madhya Pradesh and Puducherry suggested to increase the existing limit of income



criteria upto Rs. 10 lakhs. The States of Goa, Sikkim and Karnataka suggested to increase the income limit upto Rs. 6 lakhs. The States of Andhra Pradesh, Bihar, NCT of Delhi, Uttarakhand, Uttar Pradesh and Kerala suggested to increase the income limit upto Rs. 5 lakhs. As the view of the majority States to increase the income limit is as stated above and taking into account of the paucity of time, increasing trend in GDP, per capita income, all around economic growth, acceleration in inflation in prices of commodities and continued high escalation in prices of the essential commodities, steady increase in the costs of medical, transport and education and the revision of pay scales by the Pay Commission and taking into account of various other aspects and also in view of the previous Commission's report dated 21-9-2011 suggesting increase of income criteria for the purpose of creamy layer upto 9 lakhs in rural areas and Rs. 12 lakhs in urban areas, the Commission is of the view that it is just and proper to increase the income limit by a substantial amount.

**14.** The children of the employees working under the Public Sector Undertakings, Public Sector Banks, Insurance Organizations, Universities, etc., holding the equivalent or above the posts of Group A and Group B of Central Government Services or Class I and Class II of State Government Services are getting the benefits of reservation in employment and admissions in the Educational Institutions. The Son(s) and daughter(s) of the parents both of whom are working and drawing much more than the income criteria are also availing the benefits of reservation. Taking into account the appointment of reserved quota in the Central Government, PSUs, Banks, Insurance Organizations, Universities, etc., still in many areas the implementation of 27% reservations have not been achieved. We are therefore of the opinion that it is just and proper to fix the income criteria upto Rs.10,50,000/- uniformly except the Cadre criteria for exclusion of the advanced sections of the Other Backward Class people. We, therefore, deem it proper to fix upto Rs.10,50,000/- of the parents income as the criteria for 'Creamy Layer' for excluding them from the benefits of reservation. Streamlining and simplifying the Schedule may achieve the objective of fair implementation of the Reservation Policy to some extent, but, however, it will be achieved to the greater extent only after the classification is done among the OBCs. The classification of OBCs to reach out benefits of reservation to the children of most vulnerable classes such as wandering classes,

etc., to implement the reservation in proportion to their population is under the active consideration of the Commission.

**15.** After elaborate discussion, it was decided that NCBC will attempt a draft proposal based on these discussions and the various inputs and problems being raised before NCBC. A draft proposal was prepared by NCBC and discussed by the full Commission with the Experts Members as nominated by the Government of India. After thread bone discussion on all the issues considered by the previous Commissions and keeping in view the problems cropping up, the draft proposals were finalized. Accordingly the following changes are proposed in the existing guidelines.

### PROPOSED 'SCHEDULE'

Category	Description of Category	To whom rule of exclusion will apply
1	2	3

<b>I</b>	<b>Constitutional/ Statutory Posts whether held presently or formerly</b>	<p>Son(s) and daughter(s) of</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 and Members of the Central and State Administrative Tribunals;</p> <p>(f) Chairman and Members of UPSC and of the State Public Service Commissions; Chief Election Commissioner; Comptroller &amp; Auditor General of India;</p> <p>(g) Persons holding (or who have held) Constitutional posts/positions and of like nature including Ministers, MPs, MLAs and MLCs. etc.</p> <p>(h) Chairpersons and Members of all Constitutional and Statutory Commissions of the Centre and States holding the rank of Secretary to the Government of</p>
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**II****Service  
Category**

India/Secretary to the State Government or equivalent and above.

Son(s) and daughter(s) of

- a) Parents, any of whom, is/was a Group A/ Class I officer in Central or State Governments.

**A.** Group A/  
Class I officers of  
the Central and  
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.

**B.** Group B/Class  
II officers of the  
Central & State  
Governments

Son(s) and daughter(s) of

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

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

- a) 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.

**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

- a) Parents any one of whom is/was working as Executive or above levels.

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

- i) 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.** Employees of the Statutory Bodies, Universities, Private Companies, Firms, Corporate Companies, Cooperatives or any other organizations, bodies and institutes etc., not covered in Category II, the income criteria specified in Category VI below will apply. (For this purpose the gross annual income of both the parents clubbed together will be taken into consideration).

other organizations, bodies and institutes etc., not covered in Category II A,B or C.

### III

**Armed Forces Including Paramilitary Forces** 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;

(Persons holding Civil posts are not included).

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 reached 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.

Explanation: (1) For all other cases not covered by the above Category No.II and Category No.III, the gross annual income of both the parents combined will be taken into account and will be determined as per the Income/Wealth Test specified against Category VI below will be applied.

Explanation (2) 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** Income Criteria as per Income Tax Returns of the preceding two years from Salary/ Business/ Other sources as specified in Category VI below will apply.

(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.

In case the parents are not IT assesses, gross annual income of both the parents combined will be assessed by the local Competent Authorities as per existing procedures.

(ii) Persons engaged in trade, business and industry, etc.

- V**
- PROPERTY OWNERS**
- A. Agricultural holdings** 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.
- (b) The rule of exclusion shall not apply if the un-irrigated land holding of a family is not more than statutory ceiling area.
- Criteria of income/wealth specified in Category VI below will apply.
- B. Plantations**
- (i) Coffee, tea, rubber, spices, etc.
- (ii) Mango, citrus, apple plantations etc.
- Deemed as agricultural holding and hence criteria at 'A' above under this Category 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 / WEALTH TEST**
- Sons and daughters of
- (a) Persons having gross annual income of Rs. 10,50,000/- (Rupees Ten Lakhs Fifty Thousand) or above (as per the last two years' latest IT Returns) or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act during the preceding year.
- (b) In case the parents are not IT assesses, gross annual income of both the parents combined will be assessed by the local Competent Authorities as per existing procedures.
- (c) Persons in Categories II, III and V who are otherwise entitled to the benefit of

reservation but who have income from any source including salary will be tested by the income / wealth criteria mentioned in Category VI (a) above and if the combined annual income of both the parents comes above the income level specified, in that case the rule of exclusion will apply.

Explanation:

(i) Agricultural income shall not be counted. Income from all other sources including salary shall be clubbed except the agricultural income.

(ii) Total income shall be the gross annual income as per IT Return of the preceding two year of both the parents taken together.

(iii) In case the parents are not IT assesses, gross annual income of both the parents combined will be assessed by the local Competent Authorities as per existing procedures.

### **Simplification and rationalization of the Rule of Exclusion:**

**16.** The genesis of the present exercise of re-examining the various issues which have arisen out of over 20 years of implementation of the “Rule of Exclusion”, popularly known as the “Creamy Layer”, is the OM which was issued by the Department of Personnel vide their OM No. 36012/22/93-Estt (SCT) dated 08.09.1993 and which was subsequently clarified by an elaborate letter issued ten years later to various State Governments by DoPT vide their letter No. 36033/5/2004-Estt.(RES) dated 14.10.2004.

**17.** The experience at the ground level and the various complaints and petitions which are being received by the various authorities at different levels

clearly show that the original instructions of DoPT issued in the year 1993 had many complexities which necessitated the issuing of a detailed clarificatory letter in 2004. Even this did not settle the issues fully as a result of which it was seen that many ineligible cases were managing to get the benefits of reservations for OBCs by getting Non-Creamy Layer Certificates from the local authorities.

**18.** While there were a large number of different types of complaints coming from all across the country, the NCBC zeroed in onto two burning issues which were giving rise to a large number of complaints and which were palpably defective. These were:-

- (i) The non-clubbing of salary income with agricultural income if there was no third source of income; and
- (ii) The non-establishment of parity between Government services, public sector undertakings and private sector employment.

**19.** Apart from the above two major issues, there were numerous small-small issues which were also taken up, discussed and sorted out to the extent possible during the deliberations of the Commission with the Members on 5 nominated Departments and also with official Members from some of the PSUs who attended and also with senior representatives from the private sector.

### **Guiding Principles**

**20.** While the guiding principle behind proposing changes to the Rule of Exclusion was the need to keep the instructions as simple as possible to avoid any misinterpretation at the field level – at the same time, it was emphasized again and again by all the participants that giving convoluted instructions from the highest levels of Government of India tended to be counterproductive because the Creamy Layer certificates are to be issued at the end of the day by the local Tehsildar or other empowered authorities at the local level only. Hence, all along the effort of the Commission was to make the instructions as simple as possible so as to be easily comprehensible to the lower level field functionaries and also to

prevent misinterpretation by them. The logic and the reasoning behind each of the changes proposed in the Schedule annexed to the Rule of Exclusion are given below.

**Logic/reasoning behind the proposed changes:**

**21. Category-I – Constitutional Posts:**

In this category, it has been proposed to specifically add Governors and Lt. Governors, Chairpersons/Members of CAT and SAT, Chairpersons and Members of other Constitutional/Statutory Commissions. These changes are being suggested to make it amply clear as to who are ineligible for this benefit.

Another specific change which has been suggested is based on the large number of complaints being received in DoPT and NCBC which is regarding MLAs and MLCs some of whom have managed to get Non-Creamy Layer certificates. It is proposed to add Ministers, MPs, MLAs and MLCs because by the very fact of their having being elected to such high offices, and hence having achieved social elevation, they should logically come within the category of Creamy Layer as propounded by the Supreme Court in the Indra Sawhney case.

**22. Category-II – Service category**

**Clause A**

The first change proposed is to remove the distinction between direct recruits and promotes and between organized services and individual posts. The Commission feels that any Group A/Class-I officer achieves a higher social status the moment he becomes a Group A/Class-I officer whether by direct recruitment or through promotion. Promotee Group A/Class I Officer draws much more salary than the direct recruitee Group A/Class I Officer. This elevation in social status also holds for organized services as well as to individual posts.

**Clause B**

The Commission feels that even if any one of the parents is a Group A/Class-I officer, he should be classified as belonging to the Creamy Layer. As far as Group B/Class-II officers are concerned, the Commission feels that if both the parents are Group B/Class-II officers, then they again come under the Creamy Layer and it has been proposed accordingly.

The rest of the changes in this category are incidental and removal of redundancy.

**Clause C**

This relates to officers in the public sector undertakings including public sector banks, financial organizations of the Central and the State Governments etc. The Commission is of the view that any one of the parents working at Executive or above level in the PSUs etc., makes them Members of the Creamy Layer.

However, in so far as lower level functionaries ( Supervisory Levels ) of the PSUs are concerned, there were a lot of deliberations and differences of opinion and the Commission finally decided not to make any recommendation for Supervisory Level staff of PSUs.,etc.

**23. Clause D of Category II**

This is a new clause added for employees of Universities, Statutory Bodies, Companies, Cooperatives and all other Institutes and organizations not covered above under any of those under category –II-A,B,C. Here, there was general agreement that the non-existence of such a residuary clause was a big loophole in the Rule of Exclusion which was being misused all around. To prevent misuse of this loophole, the Commission has recommended subjecting all employees not covered in A, B, C above to the income/wealth tax as specified under Category-VI below.



**24. Category-III – Armed Forces:**

Though the Armed Forces and Para-Military Forces are enjoying much higher levels of facilities/accommodation under the Rule of Exclusion, the Commission feels that because of their conditions of service, hard life, early retirement and other disadvantages viz-a-viz civil employees, we should continue with the existing provisions of the Armed Forces which would also be applicable to the equivalent ranks under the Para Military Forces.

**25. Category-IV:**

Under category of professional class and those engaged in trade and industries it has been recommended that the gross annual income of both the parents combined, as evidenced by their IT Returns for the preceding two years would be taken into consideration for applying the income test or the wealth test.

**26. Category-V – Property Owners:**

**Clause A:**

After detailed deliberations and considerations of various Members including those who are aware of the difficulties of the agricultural operations in the country, it was decided to retain the limit of 85% of the statutory/ceiling area keeping in view the fragmentation of land holdings since the last orders of 1993 and the fact that many of the irrigated areas have also become water-stressed. There is migration from the agriculture sector and no one is taking up this work voluntarily.

**27. Category-VI – Income/Wealth Tax:**

Laying down the Income Limit was the most complex task before the Commission. As stated earlier in this Report, pursuant to the directions of the



Government of India, the NCBC submitted a report on 14.09.2011 recommending that the income criteria should be increased from the existing level of Rs. 4.50 lakhs to Rs. 9 lakhs for rural areas and Rs. 12 lakhs for Urban areas, i.e. Metropolitan Cities. However, after almost two years of this recommendation, the Government issued orders raising the limit to only Rs. 6.00 lakhs to exclude the Creamy Layer from amongst OBCs. In other words, the Government of India almost halved the recommendation of Rs. 12 lakhs for urban areas made by the NCBC. This was the background under which the present Commission carried out the present directives of the Government of India to recommend another income limit.

**28.** In the Schedule annexed to DoPT's O.M. No. 36012/22/93-Estt (SCT) dated 08.09.1993, it was laid down in Category-VI explanation (ii) 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." As per this clause, the income criteria of Category VI has not been modified every three years. Had it been modified every 3 years, the revisions ought to have been taken for 7 times. But so far only three revisions have been undertaken.

Here, it may be mentioned that although three years have passed since the Commission had made its last recommendation on 17.09.2011, the fact remains that the Government of India orders raising the income limit were issued only on 27.05.2013. In other words, though three years have passed since the Commission made its last recommendation, the three years interregnum between the consecutive orders of DoPT would be over only in May, 2016. However, be that as it may the Commission, under directives of MoSJ&E, has gone ahead with this exercise and have considered the following factors while recommending an income limit :-



## 29. Consumer Price Index (CPI):

(i) The value of the rupees as evidenced by the Consumer Price Index (CPI) movement has been obtained from the Department of Statistics, Government of India. The figures for the Consumer Price Index for General Consumer Price Index (combined for rural and urban areas ) is as follows:-

(i)	January, 2011	-	106
(ii)	January, 2012	-	114
(iii)	January, 2013	-	126
(iv)	January, 2014	-	137.4

From the above it is seen that in the three years period between January, 2011 to January, 2014 the Consumer Price Index has arisen by 29.62%. This incremental figure has been kept in the back of the mind while making recommendations for the new limit of income as also the previous recommendations of the Commission and the existing reduced limit approved by the Government of India in 2013.

## (ii) Salary Structures:

Another set of data which has been studied by the Commission to arrive at a well considered decision is the comparative study of salary structures across the categories which are being placed in the creamy layer category on the basis of their social status.

30. Since the gross annual income of the various categories of officers like Group A/Class-I officers, Group B/Class-II officers, Executives, Army officers, Para Military officers etc., form a very important element of the Rule of Exclusion, the Commission has evaluated the total gross salary of the different level officers which have been indicated in the cut- off limits of the Rule of Exclusion as follows:-

**31, Colonel in the Army:**

To take the typical case of a Colonel who has been promoted from Lt. Colonel:-

		Rs
Pay Band	-	37400-67000
Basic Pay (typical)	-	46100
Grade Pay	-	8700
DA (107%)	-	58636
TPT	-	3200
DA (on TPT)	-	3424
HRA	-	17591
Military Service Pay	-	6000
DA on Military Pay -		6420
Grand Total	-	1,50,071

The gross annual salary of Colonel would thus come to Rs. 1.50 X 12 i.e. **Rs. 18 lakhs.** Hence Colonels are being excluded from the scheme.

**Commandant in Para Military Forces:**

		Rs
Pay Band	-	37400-67000
Basic Pay(typical)	-	46100
Grade Pay	-	8700
DA (107%)	-	58636
TPT	-	3200
DA (on TPT)	-	3424
HRA	-	17591
Military Service Pay	-	-
DA on Military Pay -	-	-
Grand Total	-	1,37,651

A typical case scenario would be the gross annual salary of a Commandant would thus come to Rs. 1.37 x 12 i.e. = **Rs. 16.44 lakhs.** They are also not being proposed for the benefit under these provisions.

**Executive of ONGC at Entry Level:**

		Rs
Basic Pay ( at entry level )	-	24900
Perks (47%)	-	11703
DA (90%)	-	22410
HRA	-	2490
CPF	-	4357
Conveyance Allowance	-	10125
PRP	-	10000
Uniform Reimbursement	-	6388
Mining Allowance (15%)	-	3735
Grand Total	-	92,348

The gross annual salary for Entry Level officer in this Maharatana PSU would therefore come to **Rs. 11.08 lakhs**. They will also be excluded under our scheme of things.

**IAS officers working as District Magistrates:**

Pay Band-3: Typical case of a District Magistrate working in JAG Grade would be:

		Rs
Basic	-	29500
DA	-	39697 +
CCA	-	2950
Total	-	72147

(Here, it may be noted that perks like vehicles, residence and telephone etc., are all provided free of cost to DMs)

The gross annual salary would thus come to Rs. **72147 x 12 = 8.66 lakhs**

Here, it was felt that though the salary per-se may be less but the prestige and power attached to such posts is enormous. Hence the gross annual salary may not be an accurate indicator of the social standing of the District Magistrate. Hence, all Group A/Class I posts are excluded. However, a promote Group A/Class I Officer draws more than 10.5 lakhs annual salary

**Section Officer (Class-II Gazetted):**

Pay Band-2 - 9300-34800

A typical Class-II Section Officer would be having the following salary structures:-

		Rs
Basic Pay	-	13950
Grade Pay	-	4800
DA (107%)	-	20063
TPT	-	1600
DA (on TPT)	-	1712
HRA	-	5625
Military Service Pay	-	-
DA on Military Pay -	-	-
Grand Total	-	47750 x 12 = 5.73 lakhs

Over the full year he would be entitled to a gross salary of Rs. 5.73 lakhs. If **both the husband and wife are Class-II officers they would be getting approximately Rs. 11.50 lakhs.**

Being quite near our cut-off or Rs 10.50 lakhs, the Commission recommends to exclude children from this benefit if both husband and wife are Group B/Class II officers.

### 32. RECOMMENDATION ON INCOME LIMIT

Keeping all the above things in mind and drawing parallels between social standing and the salary structures in Government, PSUs and the Defence Forces etc., the Commission is of the considered view that the recommendation should be for only one income limit applicable to both urban and rural areas. There are many reasons behind a single recommendation. Firstly, the physical connectivity, the information flow and the mobility of people have increased enormously. Secondly, a large number of posts of the PSUs, the Government officers and especially the Defence Forces would be in rural areas as also in remote and far-flung areas. Thirdly many people have urban and rural income. Hence, the Commission recommends to submit only one limit equally applicable to rural and urban areas.

Keeping in mind the two limits of Rs. 9 lakhs and Rs. 12 lakhs recommended by the Commission in the year 2011 and the substantial reduction made by the Government thereto to Rs. 6 lakhs only, the various factors like the Consumer Price Index, the various cut offs now being proposed by the Commission and also the overriding priority of striking a balance between salaried and non-salaried class of people and keeping in view that the overall representations of the OBCs in various departments and categories not even 50% of the reserved quota of 27%, the Commission is of the unanimous opinion to recommend an income limit of Rupees Ten Lakhs and Fifty Thousand ( Rs. 10,05,000/- ) per annum for the income/wealth criteria applicable in Category VI of the Rule of Exclusion.

33. The explanation (ii) to Category VI about the income criteria in terms of the rupee value from 1993 onwards is not a scientific and practicable or lawful rule for implementing 27% reservations in favour of OBCs, but the rule should be to fill up all the 27% reserved vacancies in favour of OBCs as per Indra Sawhney case. In fixing the gross annual income of Rs. 1 lakh and above in 1993 for exclusion of OBCs (Creamy Layer) under Category VI Income/Wealth test and the Explanation (ii) to modify the income criteria in terms of rupees taking into


account the changes in its value every three years, no principle is involved in fixing Rs. 1 lakh. The fixation of Rs. 1 lakh in 1993 and revising the income criteria in terms of diminution value of rupee, is not based on any principle or criteria to brand of such people to have income of Rs. 1 lakh and above as socially and educationally advanced OBC communities. The fact that inspite of three revisions of income criteria, the 27% vacancies reserved in favour of OBCs have not been filled up because of the elimination of OBCs having the income above the prescribed income limit. What the Supreme Court apprehended in Indira Sawhney case that while fixing the income limit what is given in one hand i.e., reserving 27% vacancies in favour of OBCs is being taken away by other hand in fixing unreasonable stringent income criteria. Even though the Commission recommended to increase the income limit upto 10.5 lakhs, still it apprehends that the stringent restriction of the Creamy Layer may not achieve the objective of the Government of India in filling up the 27% vacancies by Other Backward Classes.

34. Finally, it would also be necessary to understand the effect which lowering the income limit recommended by the Commission would have on the filling up of the vacancies reserved for OBCs. For instance, during the last such exercise, the Commission had recommended income limits of Rs. 9 lakhs for rural areas and Rs. 12 lakhs for urban areas. This was reduced to Rs. 6 lakhs by the Government in its wisdom. What was the result of such reduction? From whatever data has so far been provided by DoPT, DFS, DHE and DPE (which was certainly not comprehensive as pointed out earlier), the data very clearly shows that the desired level of 27% reservation for OBCs has not been actually achieved in most of the organisations which have been reported upon. In fact, our fear is that the comprehensive figures may not have been produced because they do not present a flattering picture. So, the net result of the reduction of income limit from Rs. 12/9 lakhs to Rs. 6 lakhs last time around resulted in a much less number of OBC candidates competing for the 27% posts. Since many of them could not come up to the qualifying standards, the OBC's posts remained vacant thus defeating the very purpose of reservation. The Commission therefore would like to stress that the Central Government should compile a

comprehensive picture of the levels of OBCs recruitment under all the Departments, PSUs and all such organisations under the Central Government and only thereafter consider whether their income limit needs to be reduced as was done last time. During the present exercise, it was noted that many Government funded organisations are not reserving any posts for OBCs at all. This is unacceptable.

35. Moreover, the Commission would also recommend that the OBC candidates should be judged by relaxing the qualifying standards to ensure that all the 27% seats available for OBCs are filled up. This system is already prevalent in the case of SC/ST candidates and it is strongly recommended that the same should be adopted for OBC candidates also. Moreover, there should be no de-reservation of posts meant for OBCs and that this process should also be in line with that adopted for SC/ST candidates.

  
(Justice V.Eswaraiah)  
Chairperson

  
(S.K.Kharventhan) 27.02.2015  
Member

  
(A.K.Saini) 27/2/15  
Member

  
(Shakeel-uz-Zaman Ansari)  
Member 27/02/15

  
(A.K.Mangotra) 27/2/15  
Member-Secretary

## OBC RESERVATION DATA FROM MAJOR SECTORS

The following is the synopsis data has been provided so far by the respective departments:-

Sl. No.	Name of Department	Name of Services / Institutions	Years	Level of Posts	Total No. of Vacancies for which recruitment held	No. of Post reserved for OBC candidates	No. of Post filled by OBC candidates	No. of Posts De-reserved	No. of Posts carried forward
	1	2	3	4	5	6	7	8	9
1.	Department of Personnel & Training (DoPT)	IAS	2013	Group 'A'	180	49	62	--	--
			2012		180	45	60	--	--
			2011		170	46	51	--	--
		69 Ministries / Departments (01.01.2013)	2013	Group 'A'	4291	N.A.	1114	De-reservation is banned in direct recruitment	Does not arise in view of column No. 6
				Group 'B'	5697	N.A.	1929		
				Group 'C'	128234	N.A.	46393		
		63 Ministries / Departments (01.01.2012)	2012	Group 'A'	2422	N.A.	543		
				Group 'B'	5176	N.A.	1585		
				Group 'C'	115606	N.A.	31706		
		73 Ministries / Departments (01.01.2011)	2011	Group 'A'	9871	N.A.	555		
				Group 'B'	20106	N.A.	1112		
				Group 'C'	161480	N.A.	17966		
2.	Department of Financial Services	Public Sector Banks	2013	Group 'A'	NA	13546	10986	00	1458
				Group 'B'	NA	1497	1519	00	55
				Group 'C'	NA	14358	14759	00	645
			2012	Group 'A'	NA	9387	6812	00	2338
				Group 'B'	NA	260	233	00	181
				Group 'C'	NA	9551	7865	00	3019
			2011	Group 'A'	NA	9726	7043	04	2162
				Group 'B'	NA	1068	1147	00	21
				Group 'C'	NA	7609	7393	00	187
		Public Sector Insurance Companies	2013	Group 'A'	NA	831	797	00	09
				Group 'B'	NA	1281	1128	00	153
				Group 'C'	NA	713	692	00	157
			2012	Group 'A'	NA	610	546	00	64
				Group 'B'	NA	00	00	00	00
				Group 'C'	NA	713	692	00	157
			2011	Group 'A'	NA	341	340	00	09
				Group 'B'	NA	00	00	00	00
				Group 'C'	NA	00	00	00	136
		Name of Financial Institutions	2013	Group 'A'	NA	40	22	00	18
				Group 'B'	NA	00	00	00	00
				Group 'C'	NA	00	00	00	00
			2012	Group 'A'	NA	37	14	00	23

			2011	Group 'B'	NA	00	00	00	00
				Group 'C'	NA	01	02	00	00
				Group 'A'	NA	42	23	00	19
				Group 'B'	NA	00	00	00	00
				Group 'C'	NA	00	00	00	00
3.	Department of Public Enterprises	CPSEs	2013	Group 'A'	6006	1725 (28.72%)	1470 (24.48%)	00	260
				Group 'B'	500	154 (30.80%)	112 (22.40%)	00	61
				Group 'C'	4534	1004 (22.14%)	910 (20.07%)	00	178
			2012	Group 'A'	5291	1484 (28.05%)	1317 (24.89%)	01	358
				Group 'B'	806	221 (27.42%)	180 (22.23%)	00	66
				Group 'C'	4584	1118 (24.39%)	1177 (25.68%)	00	193
			2011	Group 'A'	4299	1169 (27.19%)	1078 (25.08%)	00	276
				Group 'B'	953	241 (25.29%)	314 (32.95%)	00	49
				Group 'C'	4459	978 (21.93%)	922 (20.68%)	00	85
4.	Department of Higher Education	Technical Institutions	2013	Group 'A'	1726	640	239	00	280
				Group 'B'	331	158	62	01	45
				Group 'C'	499	303	134	00	148
			2012	Group 'A'	1104	529	136	00	234
				Group 'B'	275	123	40	00	28
				Group 'C'	538	300	163	00	23
			2011	Group 'A'	710	428	115	01	184
				Group 'B'	278	164	38	00	38
				Group 'C'	349	266	155	00	30
5.	Ministry of Social Justice & Empowerment	Autonomous / Statutory Organizations (04)	2013	Group 'A'	19	01	01	00	00
				Group 'B'	03	00	01 against UR	00	00
				Group 'C'	20	05	02	00	00
			2012	Group 'A'	14	02	00	00	00
				Group 'B'	00	00	00	00	00
				Group 'C'	07	04	05	00	00
			2011	Group 'A'	18	03	02	00	00
				Group 'B'	00	00	00	00	00
				Group 'C'	09	02	01	00	00