

## LETTER & SPIRIT

### Why has the creamy layer debate returned to court?

Is the current push based on a misreading of the judgment? Can income be used as a proxy?

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Fresh petitions before the Supreme Court are seeking to extend the creamy layer principle to SC/ST reservations, based on a misreading of the 2024 Davinder Singh judgment. The move revives a decades-old debate about whether income can serve as a proxy for caste-based disadvantage, and whether social justice can be trapped inside an economic test.

#### The renewed push

On March 10, the Supreme Court issued notice to the Centre and all States on a public interest litigation filed by advocate Ashwini Kumar Upadhyay seeking the exclusion of a “creamy layer” from SC/ST reservations. A separate plea, filed in February, sought an income-based prioritisation mechanism within these quotas. Both petitions claim constitutional sanction from the same source: the seven-judge bench decision in *State of Punjab v. Davinder Singh* (2024).

That judgment permitted States to sub-classify Scheduled Caste communities to direct reservation benefits toward the most marginalised within them. Four of seven judges made passing observations that creamy layer logic might apply to SC/ST groups.

#### A doctrine born in ambiguity

The creamy layer principle entered Indian constitutional law through the judgment in *Indra Sawhney v. Union of India* (1992), where the Supreme Court upheld OBC reservations but held that the more advanced sections, the “creamy layer,” should be excluded from benefits.

The 1993 Office Memorandum that followed identified creamy layer exclusion primarily through status, not income. Holding a Class I or Class II post in government was the proxy, a recognition that institutional power compounds across generations.

This architecture was progressively diluted. A 2004 clarificatory letter from the Department of Personnel and Training began treating PSU salaries as a standalone disqualifying criterion. On March 11, the Supreme Court in *Union of India v. Rohith Nathan* struck down that letter, holding that parental salary alone cannot determine creamy layer status. The 1993 OM’s status-based logic was restored, but the deeper premise of the doctrine, that economic attainment adequately measures the erasure of social disadvantage, remained intact and unexamined.

## The Ambedkar objection

In his 1932 note to the Lothian Committee, B.R. Ambedkar warned that excluding wealthy or educated individuals from the category of untouchables was “a totally erroneous view.”

At the Mahar Conference of 1936, Ambedkar put it concretely: the educated, propertied Mahar still cannot open a shop without customers leaving when his caste is known; he still cannot apply for a job without his identity becoming a disqualification. Economic progress and social emancipation travel on different tracks, and the creamy layer doctrine collapses the two.

Data presented in *Jaishri Patil v. Union of India* (2021) showed that even Group D government employees were rendered ineligible for post-matric scholarships due to income-testing. The court noted that a family earning ₹6 lakh a year cannot be equated with one earning ₹24 lakh simply because both exceed a common ceiling. Statistical research published by Nishith Prakash showed that elite capture of quota benefits was a myth. Contrary to the popular notion, the positive impact of quota policy is concentrated among ‘the less-educated SC members in rural areas.’ The doctrine’s bluntness produces what may be called a creamy layer trap: the bar is set low enough to exclude the barely stable, yet the social burdens that reservation addresses persist regardless of salary bracket.

## The SC/ST distinction

The case for creamy layer exclusion was always weaker for SC/ST communities than for OBCs. Sub-classification, what Davinder Singh actually authorised, is a different instrument entirely. It asks which sub-communities within the SC list are least represented and directs preference toward them.

Extending creamy layer logic to SC/ST would mean removing individuals from reservation eligibility based on parental income, precisely what Ambedkar argued was constitutionally and sociologically indefensible. Justice B.R. Gavai, who endorsed the broader principle in *Davinder Singh*, himself acknowledged that the criteria for SC/ST cannot be identical to those for OBCs.

## Parliament’s moment

The *Rohith Nathan* judgment creates a narrow but real opportunity for legislative recalibration, one that measures social backwardness by the subordination they continue to face. Parliament has both the constitutional authority and the democratic obligation to clarify that sub-classification and creamy layer exclusion are distinct instruments, and that the latter has no application to communities whose inclusion in the Presidential list was never conditioned on poverty.

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