

Creamy Layer for SC/ST Reservations: Centre Opposes Extension Beyond OBCs

August 11, 2026 • vajiramandravi.com



Creamy Layer for SC/ST Reservations Latest News

- The Union government has filed a counter-affidavit in the Supreme Court opposing petitions that seek to extend the “**creamy layer**” **exclusion** — currently applicable to Other Backward Classes (OBCs) — to Scheduled Caste (SC) and Scheduled Tribe (ST) reservations.
- The government has argued that historical disadvantage suffered by SCs and STs cannot be equated with the economic backwardness criterion used for OBCs.

Background: How the Issue Arose

- The current round of litigation traces back to the Supreme Court’s August 2024 ***Davinder Singh judgment***, delivered by a seven-judge Bench headed by then Chief Justice D.Y. Chandrachud.
- That verdict recognised the **heterogeneity** within SC and ST communities and permitted State governments to sub-categorise within these lists so that more backward groups are not crowded out by relatively

advanced ones.

- In his opinion, Justice B.R. Gavai went further, suggesting the **government seriously consider a creamy layer exclusion for SC/STs too**, similar to what exists for OBCs.
- This observation triggered a debate around this issue.

The Present Petition Before the Court

- The present petition, filed by advocate Ashwini Kumar Upadhyay, alleges “elite capture” of SC/ST reservation benefits by affluent families, seeking income-based exclusions across all reserved categories.
- It cites four of seven Davinder Singh judges who favoured extending the creamy layer principle to SC/STs.

Understanding the Concepts: Sub-Categorisation vs Creamy Layer

- These two tools are often discussed together but serve different purposes:
 - **Sub-categorisation** divides an existing reservation quota into smaller shares within a category, ensuring more backward groups get guaranteed representation. It does **not deny reservation to anyone**; it only redistributes the existing pie.
 - **Creamy layer exclusion** identifies individuals or families who have already achieved sufficient social and economic advancement and excludes them entirely from availing reservation benefits.
- The creamy layer concept originated in the **1992 Indra Sawhney judgment**, which upheld OBC reservations based on the Mandal Commission report.
- Crucially, that judgment explicitly stated the **creamy layer test has no relevance for SCs and STs**, since their backwardness stems from untouchability and social exclusion rather than economic status alone.

The Centre’s Legal Arguments

- The government’s affidavit rests on several strands of reasoning.
- **First**, it draws a **distinction in the basis of identification**: SCs are marked by “historical disadvantage” from untouchability, while STs are identified by distinct culture, geographical isolation and backwardness — neither is an economic classification like OBC status.
- **Second**, it cites **settled precedent**: the 2008 **Ashoka Kumar Thakur case** confirmed creamy layer does not apply to SC/STs, and the **2005 E.V. Chinnaiah judgment** held that any such exclusion, if ever required, could only be introduced by Parliament, not the courts.
- **Third**, the Centre invokes **separation of powers**. Under **Articles 341 and 342**, only the President notifies SC/ST lists, and any inclusion or exclusion requires an Act of Parliament — no other authority, including State governments or courts, can alter these lists.
- On this basis, the government contends that the petition effectively seeks a **writ of mandamus** asking courts to direct executive policy, which is impermissible since reservation policy requires a holistic review and empirical data, not judicial intervention.
- It has also questioned the petition’s maintainability under Article 32, arguing no fundamental right violation has been shown.
- Notably, the Centre has left open a conditional pathway: any change to reservation policy would require a “holistic review and thorough empirical study” of socio-economic data — but such a review must be initiated

by the government, not ordered by the judiciary.

Where Sub-Categorisation Has Actually Been Used

- Unlike creamy layer, sub-categorisation has already been **implemented at the State level** — for instance, Telangana, Haryana and Punjab have sub-classified their SC category, while Mizoram has done so for STs.
- At the Central level, the clearest example is the sub-division of the ST quota in Eklavya Model Residential Schools to ensure representation for Particularly Vulnerable Tribal Groups (PVTGs).
- Meanwhile, the Centre has still not acted on the **2017 G. Rohini Commission report** on OBC sub-categorisation, nor made its national stance clear.

Conclusion

- The debate underscores a fundamental distinction between economic and historical-social backwardness in India's reservation framework.
- While sub-categorisation strengthens equitable distribution within categories, the Centre insists creamy layer exclusion is constitutionally and legally confined to OBCs, leaving any change to Parliament's exclusive domain.

Source: IE | TH

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