

ASHOK KUMAR THAKUR

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v.

STATE OF BIHAR AND OTHERS

SEPTEMBER 4, 1995

[KULDIP SINGH AND S. SAGHIR AHMAD, JJ.]

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Constitution of India—Arts. 14 and 16(4).

Reservation for backward classes of citizens in the services of the State—Criteria laid down by the States of Bihar and Uttar Pradesh, for determining the 'creamy layer', for the purpose of exclusion from the backward classes—Constitutional validity of—Whether violative of Arts. 14 & 16(4) of the Constitution of India.

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Backward class—Meaning of—Under Art. 16(4) of the Constitution—A class which has no element of 'creamy layer' in it.

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The law laid down in Mandal's case to be followed—Protective discrimination in the shape of job reservation under Art. 16(4) has to be programmed—Most deserving section of the backward classes must be benefited—Benefit of reservation must reach the poorer and the weakest section of the backward classes.

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"Means test" to be applied—Imperative to skim off the affluent section of the backward classes.

Rule of exclusion formed by the Government of India in conformity with the law laid down by the Supreme Court in Mandal's case—Same should be followed by the State governments—Similar criteria for identifying the 'creamy layer' ought to be followed by the States.

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For the purpose of reservation of jobs for the members of the SC/ST and the backward classes of the society the respective Governments of the States of Bihar and U.P. laid down the criteria for the exclusion of the 'Creamy layer' from the said classes. While the State of Uttar Pradesh, laid down the criteria by way of schedule II of section 3(b) of the U.P. Public Services Reservation of Scheduled castes & Scheduled Tribes and other Backward classes Act 1994, the State of Bihar introduced, the said criteria by way of an ordinance called the Bihar reservation of vacancies

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- A** in posts and services (for scheduled castes, scheduled tribes and other backward classes) (Amendment) Ordinance 1995. The said criterion, in addition to the rule of exclusion, laid down by the Government of India added further conditions for identifying the 'creamy layer' such a salary of rupees ten thousand or more per mensem, the wife or the husband to be a graduate and one of them owning a house in an urban area, or the family owning immovable property of the value of at least rupees 20 lakhs etc.

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- The said criterion laid down by the respective States of Bihar and U.P. were challenged, by way of writ petitions before the Supreme Court of India on the grounds that : (a) They were wholly arbitrary and violative of the fundamental rights guaranteed under Art. 14 & 16(4) of the Constitution. (b) The criterion were contrary to the guidelines laid down by this Hon'ble Court in 'Mandal case'. (c) The multiple conditions laid down by the said criterion had no nexus to the object sought to be achieved, namely the exclusion of the 'creamy layer' from the backward classes. (d) The State governments should follow the Government of India and lay down similar criteria for identifying the 'creamy layer'.

Allowing the Writ Petitions, this Court,

- E** HELD: 1.1. It has been clearly and authoritatively laid down in 'Mandal case' that the affluent part of a backward class called the 'creamy layer' , has to be excluded from the said class and the benefit of Art. 16(4) can only be given to the class that remains after the exclusion of the 'creamy layer'. [291-C]

- F** 1.2. The benefits of social privileges like job reservation are mostly chewed up by the richer or more affluent sections of the backward classes and the poorer and the really backward sections among them keep getting poorer and more backward. It is only the lowest of the backward class, where the standards of deprivation and extent of backwardness may be uniform.
- G** The jobs are so few in comparison to the population of the Backward class that it is difficult to give them adequate representation in the State services. It is therefore necessary that the benefit of reservation must reach the poorer and the weakest section of the backward classes. [272-H; 273-A]

- H** 1.3. The economic ceiling to cut off the backward class for the purpose of job reservation is necessary to benefit the needy sections of the

class. The means-test is therefore, imperative to skin off the affluent sections of the backward class. [273-B] A

Indra Sawhney v. Union of India, [1992] Supp 3 SCC 217, followed.

2. The backward class under Art. 16(4), means the class which has no element of 'creamy layer', in it. It is mandatory under Art. 16(4) of the Constitution, that the State must identify the 'creamy layer' in a backward class and thereafter by excluding the 'creamy layer', extend the benefit of reservation to the class which remains after such exclusion. [291-C-D] B

3. The criteria for identifying the 'creamy layer', laid down by the Government of India is in conformity with the law laid down by the Supreme Court in *Mandal's* case, but the criterion laid down by the States of Bihar and U.P., which have added further conditions, are wholly arbitrary apart from being contrary to, and in utter violation of the guidelines laid down in *Mandal's* case. [285-C; 291-F] C

4. Multiple conditions have been provided in all the categories under the impugned criterion. The 'spouse' to be a graduate and holding property in urban area, are the conditions attached to almost every category. These conditions have no nexus to the object sought to be achieved. Since the conditions are not severable, the two criteria as a whole have to be struck down. [291-B] D

5. This court has laid down, clear and easy to follow guidelines for the identification of the 'creamy layer'. The States of Bihar and U.P. have acted wholly arbitrary and in utter violation of the same. [291-D] E

6. Thus the criterion for identification of the 'creamy layer', laid down by the States of Bihar and U.P. are violative of Art. 14 & 16(4) of the Constitution and are liable to be quashed. It will be open to the two States to lay down, fresh criteria for the subsequent years in accordance with the law. [292-B] F

CIVIL ORIGINAL JURISDICTION : Writ Petition (c) No. 631 of 1994. G

Under Article 32 of the Constitution of India.

Kapil Sibal, K.K. Venugopal, K.N. Bhatt, Dr. Rajiv Dhawan and H

A Harish N Salve, A. Sharan, Ms. Bina Gupta, N.S. Bisht, D.S. Bora, P.P. Tripathi, N.K. Goel, Mrs. Sheela Goel, B.B. Singh, R.B. Misra, R.C. Pandey, M.M. Kashyap, Ms. Shashi Kiran, Ms. Usha Mishra, Navin Prakash and Irshad Ahmad, for the appearing parties.

The Judgment of the Court was delivered by

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KULDIP SINGH, J. Constitutional validity of the criteria, for determining the 'creamy layer' for the purpose of exclusion from backward classes, laid-down by the States of Bihar and Uttar Pradesh, has been challenged in these writ petitions under Article 32 of the Constitution of India.

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A Nine-Judge Bench of this Court in "Mandal case" - *Indra Sawhney v. Union of India*, [1992] Supp. 3 SCC 217 - authoritatively interpreted various aspects of Article 16(4) of the constitution of India. While holding that article 16(4) aims at group backwardness this Court came to the conclusion that socially advanced members of a backward class - 'creamy layer' - have to be excluded from the said 'class. It was held that the 'class' which remains after excluding the 'creamy layer' would more appropriately serve the purpose and object of Article 16(4).

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The protective discrimination in the shape of job reservations under Article 16(4) has to be programmed in such a manner that the most deserving section of the backward class is benefitted. Means-test by which 'creamy layer' is excluded, ensures such a result. The process of identifying backward class cannot be perfected to the extent that every member of the said class is equally backward. There are bound to be disparities in the class itself. Some of the members of the class may have individually crossed the barriers of backwardness but while identifying the class they may have come within the collectivity. It is often seen that comparatively rich persons in the backward class are able to move in the society without being discriminated socially. The members of the backward class are differentiated into superior and inferior. The discrimination which was practiced on them by the Higher class is in turn practiced by the affluent members of the backward class on the poorer members of the same class. The benefits of social privileges like job reservations are mostly chewed up by the richer or more affluent sections of the backward class and the poorer and the really backward sections among them keep on getting poorer and more backward. It is only at the lowest level of the backward class where

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the standards of deprivation and the extent of backwardness may be uniform. The jobs are so very few in comparison to the population of the backward classes that it is difficult to give them adequate representation in the State services. It is, therefore, necessary that the benefit of the reservation must reach the poorer and the weakest section of the backward class. Economic ceiling to cut off the backward class for the purpose of job reservations is necessary to benefit the needy sections of the class. The means- test is, therefore, imperative to skim-off the affluent section of the backward class.

We may refer to the opinions given by the learned Judges in 'Mandal case' on the question of exclusion of the 'creamy layer' from the backward class.

P.B. Swant, J. spoke about the 'creamy layer' in the following words:

"The correct criterion for judging the forwardness of the forwards among the backward classes is to measure their capacity not in terms of the capacity of others in their class, but in terms of the capacity of the members of the forward classes, as stated earlier. If they cross the Rubicon of backwardness, they should be taken out from the backward classes and should be made disentitled to the provisions meant for the said classes.

It is necessary to highlight another allied aspect of the issue, in this connection, what do we mean by sufficient capacity to compete with others? Is it the capacity to compete for class IV or Class III or higher class posts? A Class IV employee's children may develop capacity to compete for Class III posts and in that sense, he and his children may be forward compared to those in his class who have not secured even class IV posts. It cannot, however, be argued that on that account, he has reached the "creamy" level. If the adequacy of representation in the services as discussed earlier, is to be evaluated in terms of qualitative and not mere quantitative representation, which means representation in the higher rungs of administration as well, the competitive capacity should be determined on the basis of the capacity to compete for the higher level posts also. Such capacity will be acquired only when the backward sections reach those levels or at least, near those levels."

A R.M. Sahai, J. held that the exclusion of 'creamy layer' is a social purpose. Any legislation or executive action to remove such persons individually or collectively cannot be constitutionally invalid. The learned Judge elaborated his conclusions as under :

B "More backward and backward is an illusion. No constitutional exercise is called for it. What is required is practical approach to the problem. The collectivity or the group may be backward class but the individuals from that class may have achieved the social status or economic affluence. Disentitle them from claiming reservation. Therefore, while reserving posts for backward classes, the departments should make a condition precedent that every candidate must disclose the annual income of the parents beyond which one could not be considered to be backward. What should be that limit can be determined by the appropriate State. Income apart, provision should be made that wards of those backward classes of persons who have achieved a particular status in society either political or social or economic or if their parents are in higher services then such individuals should be precluded to avoid monopolisation of the services reserved for backward classes by a few. Creamy layer, thus, shall stand eliminated."

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E B.P. Jeevan Reddy, J. Speaking for the Court enunciated the concept of 'creamy layer' in the following words :

F "The very concept of a class denotes a number of persons having certain common traits which distinguish them from the others. In a backward Class under Clause (4) of Article 16, if the connecting link is the social backwardness, it should broadly be the same in a given class. If some of the members are far too advanced socially (which in the context, necessarily means economically and, may also mean educationally) the connecting thread between them and the remaining class snaps. They would be misfits in the class. After excluding them alone, would the class be a compact class. In fact, such exclusion benefits the truly backward. Difficulty, however, really lies in drawing the line-how and where to draw the 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,

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the economic advancement is so high that it necessarily means social advancement. Let us illustrate the point. A member of backward class, say a member of carpenter caste, goes to Middle East and works there as a carpenter. If you take his annual income in rupees, it would be fairly high from the Indian standard. Is he to be excluded from the Backward Class? Are his children in India to be deprived of the benefit of Article 16(4)? Situation may, however, be different, if he rises so high economically as to become - say a factory owner himself. In such a situation, his social status also rises. He himself would be in a position to provide employment to others. In such a case, his income is merely a measure of his social status. Even otherwise there are several practical difficulties too in imposing an income ceiling. For example, annual income of Rs. 36,000 may not count for much in a city like Bombay, Delhi or Calcutta whereas it may be a handsome income in rural India anywhere. The line to be drawn must be a realistic one. Another question would be, should such a line be uniform for the entire country or a given State or should it differ from rural to urban areas and so on. further, income from agriculture may be difficult to assess and, therefore, in the case of agriculturists, the line may have to be drawn with reference to the extent of holding. While the income of a person can be taken as a measure of 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 income limit must be such as to mean and signify social advancement. At the same time, it must be recognised that there are certain positions, the occupants of which can be treated as socially advanced without any further enquiry. For example, if a member of a designated backward class becomes a member of IAS or IPS or any other All India Service, his status in Society (social status) rises : he is no longer socially disadvantaged. His children get full opportunity to realise their potential. They are in no way handicapped in the race of life. His salary is also such that he is above want. It is but logical that in such a situation, his children are not given the benefit of reservation. For by giving them the benefit of reservation, other disadvantaged members of that backward class may be deprived of that benefit. It is then argued for the respondents that 'one swallow doesn't make the summer', and

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A that merely because a few members of a caste or class become socially advanced, the class/caste as such does not cease to be backward. It is pointed out that clause (4) of Article 16 aims at group backwardness and not individual backwardness. While we agree that clause (4) aims at group backwardness, we feel that

B exclusion of such socially advanced members will make the 'class' a truly backward class and would more appropriately serve the purpose and object of clause (4). (This discussion is confined to Other Backward Classes only and has no relevance in the case of Scheduled Tribes and Scheduled Castes)..... Keeping in mind all

C these considerations, we direct the Government of India to specify the basis of exclusion - whether on the basis of income, extent of holding or otherwise - of 'creamy layer'".

It is difficult to draw a line where a person, belonging to the backward class, ceases to be so and becomes part of the 'creamy layer'. It is not possible to lay down the criteria exhaustively. This Court has, however,

D speaking through Jeevan Reddy, J., dealt with the question elaborately and has brought home the point succinctly by illustrating various stages where a member of a backward class ceases to be backward and starts floating with the 'creamy layer'.

E Pursuant to the directions by this Court in 'Mandal case' Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) issued office memorandum dated September 8, 1993 providing for 27% reservation for the Other Backward Classes. Para 2(c) of the memorandum excludes the persons/sections mentioned in column 3 of the Schedule to the said memorandum. In other

F words, the Schedule consists of the 'Creamy layer'. It would be useful to reproduce the relevant paras of the said memorandum hereunder :

OFFICE MEMORANDUM

G Subject : Reservation for Other Backward Classes in Civil Posts and Services under the Government of India - Regarding.

H The undersigned is directed to refer to this Department's O.M. No. 36012/31/90-Estt. (SCT), dated the 13th August, 1990 and 25th 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 *Indira Sawhney and*

others v. 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. A

2. Consequent to the consideration of the Expert Committee's recommendations this Department's Office Memorandum No. 36012/31/90-Estt. (SCT), dated 13.8.90 referred to in para (1) above is hereby modified to provide as follows : B

(a) 27% (twenty seven percent) 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. C

(b)

(c) (i) The aforesaid reservation shall not apply to persons/sections mentioned in column 3 of the Schedule to this office memorandum. D

(ii) The rule of exclusion will not apply to persons working as artisans or engaged in hereditary occupation, callings. A list of such occupations, callings will be issued separately by the Ministry of Welfare. E

(d)

(e)

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SCHEDULE

Description of category	To whom rule of exclusion will apply
I. CONSTITUTIONAL POSTS	Son (s) and daughter (s) of (a) president of India; (b) Vice President of India (c) Judges of the Supreme Court and of the High Courts;

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- A (d) Chairman & Members of UPSC and of the State Public Service Commission; Chief Election Commissioner; Comptroller & Auditor General of India;
- B (e) persons holding Constitutional positions of like nature.
- II. SERVICE CATEGORY
- A. Group A/Class I officers of the all India Central and State Services (Direct Recruits).
- C (a) parents, both of whom are Class I officers;
(b) parents, either of whom is a Class I officer;
- D (c) parents, both of whom are class I officers, but one of them dies or suffers permanent incapacitation.
- E (d) 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 Organisation like UN, IMF, World Bank, etc. for a period of not less than 5 years.
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- G (e) 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
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not less than 5 years. A

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

(b) A lady belonging to OBC category has got married to a Class-I officer, and may herself like to apply for a job. C

B. Group B/Class II officers of the Central & State Services (Direct recruitment)

Son (s) and daughter (s) of D

(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. E

(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 like UN, IMF, World Bank, etc. for a period of not less than 5 years before such death or permanent incapacitation; F G

(d) parents of whom the husband is a Class I officer (direct recruit or pre-forty promoted) and the H

- A wife is a class II officer and the wife dies; or suffers permanent incapacitation; and
- B (e) parents, of whom the wife is 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
- C Provided that he rule of exclusion shall not apply in the following cases:
- Sons and daughters of
- D (a) Parents both of whom are Class II officers and one of them dies or suffers permanent incapacitation.
- E (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 Organisation like, UN, IMF, World Bank, etc. for a period of not less than 5 years before their death or permanent incapacitation
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- G C. Employees in Public Sector Undertakings etc. The criteria enumerated in A & B above in this Category will apply mutatis mutandi to officers holding equivalent or comparable posts in PSU's, Banks Insurance Organisations Universities, etc. and also to
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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. A
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III. ARMED FORCES INCLUDING PARAMILITARY FORCES (persons holding civil posts are not included)

Sons(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 para Military Forces. C

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; D
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- (ii) the service ranks below Colonel of husband and wife shall not be clubbed together; F
- (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. 11 in Which case the criteria and conditions enumerated therein will apply to her independently G
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A IV. PROFESSIONAL CLASS
AND THOSE ENGAGED
IN TRADE AND INDUSTRY

- B (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 IV will apply :-
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- D (II) Persons engaged in trade, business and industry. Criteria specified against Category VI will apply :

Explanation :

- E (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 only on the basis of the husband's income

- F (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.
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H 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

(a) only irrigated land which is equal to or more than 85% of the statutory area, or

(b) both irrigated and unirrigated land, as follows : B

(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 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 80% or more of the statutory ceiling limit for irrigated land, then the rule of exclusion will apply and dis-entitlement will occur. C D E F

(ii) The rule of exclusion will not apply if the land holding of a family is exclusively unirrigated. G

B. Plantations
(i) Coffee, tea, rubber, etc.

Criteria of income/wealth specified in Category VI below will apply. H

A (ii) Mango, citrus, apply plantations etc. Deemed as agricultural holding and hence criteria at A above under this category will apply.

B C. Vacant land and/or buildings in urban areas or urban agglomerations Criteria specified in Category VI below will apply.

C 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) of

D (a) Persons having gross annual income of Rs. 1 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years.

E (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.

F Explanation :

G (i) Income from salaries or agricultural land shall not be clubbed;

H (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, A
the interrugnum may be less.

Explanation: Wherever the ex-
pression "permanent in-
capacitation" occur in this
schedule, it shall mean in-
capacitation which results in
putting an officer out of ser-
vice."

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We have carefully examined the criteria for identifying the 'creamy layer' laid down by the Government of India in the Schedule, quoted above, and we are of the view that the same is in conformity with the law laid down by this Court in '*Mandal* case'. We have no hesitation in approving the rule of exclusion framed by the Government of India in para 2(c) read with the schedule of the Office Memorandum quoted above. Learned counsel for the petitioners have also vehemently commended that the State Governments should follow the Government of India and lay down similar criteria for identifying the 'creamy layer'.

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In the light of the above background, we may examine the criteria for the identification of the 'creamy layer' as laid down by the States of Bihar and Uttar Pradesh.

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The Government of Bihar promulgated Ordinance No. 5 of 1995 on January 27, 1995 called "the Bihar Reservation of vacancies in posts and services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Amendment) Ordinance, 1995. By the said Ordinance Section 4 of the Bihar Act 3 of 1992 was amended and after the second proviso, the following proviso was added :

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"Provided also that reservation under clause (d) shall not apply to the category of backward classes specified in Schedule III."

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Schedule III is reproduced hereunder :

"Schedule III

[See Section 4(2)]

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- A 1. The son or daughter of the President of India, the Vice-President of India, the Chief Justice and Judges of the Supreme Court of India, the Chief Justice and Judges of the High Courts, the Chairman and Members of the Union Public Service Commission and the Chief Election Commissioner;
- B 2. The son or daughter of such officers who has been directly recruited in Class I Services of the Central Government or a State Government or an Undertaking or an institution fully or partially financed by them; and
- C (a) Whose income from salary is rupees ten thousand or more per mensem, and
- (b) Whose wife or husband, as the case may be, is at least a graduate, and
- D (c) Who or his wife or her husband, as the case may be, owns a house in an urban area, and
- (d) Whose mother or father has also been directly recruited to class I services.
- E Explanation.—Class I means the pay bracket fixed by the State government from time to time for Class I.
3. The son or daughter of such person engaged as doctor, advocate, chartered accountant, tax consultant, financial consultant, management consultant, architect or other professionals, and
- F (a) Whose average income from all sources for three consecutive financial years is not less than rupees ten lakhs per annum; and
- (b) Whose wife or husband, as the case may be, is atleast a graduate; and
- G (c) Whose family owns immovable property at least of rupees twenty lakhs.
- H 4. The son or daughter of such person engaged in trade or commerce, and -

- (a) Whose average income from all sources for three consecutive financial years is not less than rupee ten lakhs per annum; and A
- (b) Whose wife or husband, as the case may be, is at least a graduate; and B
- (c) Whose family owns immovable property at least of rupees twenty lakhs.
5. The son or daughter of such industrialist. -
- (a) Whose level of investment in running unit or units is more than rupees ten crores; and C
- (b) Such unit or units are engaged in commercial production for at least five years; and
- (c) His wife or husband, as the case may be, is at least a graduate. D
6. The son or daughter of such agricultural land-holder.-
- (a) whose average income from all sources other than agriculture for three consecutive financial years is not less than rupees ten lakhs per annum; and E
- (b) Whose wife or husband, as the case may be, is at least a graduate; and
- (c) Who or his wife or her husband, as the case may be, owns house at least of rupees twenty lakhs in an urban area. F
7. The son or daughter of person, other than the persons specified in serial 1 to 6 of this Schedule : G
- (a) Whose main source of income is other than animal husbandry, fisheries, poultry, weaving, craftsmanship, handicraft and artisanship; and
- (b) Whose average income from all sources for three con- H

- A secutive financial years is not less than rupees ten lakhs per annum; and
- (c) Whose wife or husband, as the case may be, is at least a graduate, and
- B (d) Whose family owns immovable property at least of rupees twenty lakhs.

8. If a person included in serial 1 to 7 of this Schedule performs inter-castes marriage with a backward class person other than the categories under serial 1 to 7 of this Schedule, his/her son or daughter shall not be excluded.

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- Note — I. The level of income and the value of property shall be modified taking into account the variation in the money value every three years or less period, as the situation may demand.
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II. An affidavit filed by the father or the mother of the candidate, or in case of their death, by the candidate himself, shall be deemed to be decisive in respect of income, value of property and educational qualification."

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So far as the State of Uttar Pradesh is concerned the categories sought to be excluded from the backward classes (creamy layer) are mentioned in Schedule II read with Section 3(b) of the Uttar Pradesh Public Services Reservation of Scheduled Castes and Scheduled Tribes and other backward classes Act, 1994. The said categories are as under :

	<i>"Categories of Persons excluded</i>	<i>Criteria for exclusion</i>
G	1. sons and daughters of	
	(a) IAS, IFS, IPS Indian Forest Service other central service (direct or promotee)	(i) Income from salary of such member of service is 10,000 or above per mensem.
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- (b) U.P. Civil Service, U.P. Police Service State Service. (direct recruit). (ii) Spouse is at least graduate. A

(iii) He or his spouse owns a house in urban area. B

- (c) Group A/Class I officers of any Deptt. or Ministry of Govt. of India or Educational, Research or other institutions (no.1 included in above (a)). C

- (d) Group A/Class-I officer of any Deptt. or Institution of State Govt. (No.1 included in (b) above. D

- (e) An officer of defence forces or Para Military forces not below rank of colonel or equivalent. E

2. SONS AND DAUGHTERS OF --

persons engaged in profession as a doctor, surgeon, engineers, lawyer, architect, Chartered Accountant, media & information professional, management and other consultant film artist & other film professional running educational institution or coaching institute or engaged in the business as a share broker or in entertainment business

(i) his average income from all sources should not be less than Rs. 10 lakhs per year for 3 consecutive financial years

(ii) Spouse at least a graduate. F

(iii) His family property (immovable) should be worth Rs. 20 lakh. G

3. Sons and daughters of -- Businessman.

(i) Provided whose average income for 3 consecutive financial years is not less than Rs. 10 lakh per annum. H

- A (ii) Spouse at least a graduate.
- (iii) immovable family property worth at least 20 lakhs.
- B 4. Sons and Daughters of Industrialist. (i) Whose level of investment in running units is over Rs. 10 crore and such units are engaged in production for at least 5 years.
- C (ii) Spouse at least a graduate.
5. Sons and Daughters of - a person whose holdings is within limit fixed under the U.P. Imposition of ceiling on Land Holdings Act 1960. (i) has an income of Rs. 10 lakhs in a year from sources other than agriculture.
- D (ii) His spouse at least a graduate.
6. Sons and Daughters of - any others person not mentioned in aforementioned categories. (i) whose income from all sources for 3 consecutive financial years is not less than Rs. 10 lakhs per annum.
- E (ii) Spouse at least a graduate.
- (iii) Immovable family property worth at least Rs. 20 lakhs."

F This Court has categorically held in 'Mandal Case' that a person, belonging to a backward class, who becomes member of IAS, IPS or any other All India Service, his Children cannot avail the benefit of reservation. The States of Bihar and Uttar Pradesh have added further conditions such as salary of rupees ten thousand or more per mensem, the wife or husband

G to be graduate and one of them owning a house in an urban area. so far as the professionals are concerned, an income of Rs. 10 lakhs per annum has been fixed as the criterion. It is further provided that the wife or husband is at least graduate and the family owns immovable property or the value of at least rupees twenty lakhs. Similarly, the criteria regarding

H trades, industrialists, agriculturists and others is wholly arbitrary apart from

being contrary to the guidelines laid down by this Court in '*Mandal case*'. A

Multiple conditions have been provided in all the categories. The 'Spouse' to be a graduate and holding property in urban area, are the conditions attached to almost every category. These conditions have no nexus with the object sought to be achieved. Since the conditions are not severable the two criterias as a whole have to be struck-down. B

This Court, in '*Mandal case*' has clearly and authoritatively laid down that the affluent part of a backward class called 'creamy layer' has to be excluded from the said class and the benefit of Article 16(4) can only be given to the "class" which remains after the exclusion of the 'creamy layer'. C
The backward class under Article 16(4) means the class which has no element of 'creamy layer' in it. It is mandatory under Article 16(4) - as interpreted by this Court—that the State must identify the 'creamy layer' in a backward class and thereafter by excluding the 'creamy-layer' extend the benefit of reservation to the 'class' which remains after such exclusion. This D
Court has laid down, clear and easy to follow, guidelines for the identification of 'creamy layer'. The States of Bihar and Uttar Pradesh have acted wholly arbitrary and in utter violation of the law laid down by this Court in '*Mandal case*'. It is difficult to accept that in India where the per capita national income is Rs. 6929 (1993- 94), a person who is a member of the IAS and a professional who is earning less than Rs. 10 lakhs per annum is socially and educationally backward. We are of the view that the criteria laid down by the States of Bihar and Uttar Pradesh for identifying the 'creamy layer' on the face of it is arbitrary and has to be rejected. E

We, therefore, hold that the above quoted criteria, for identification of 'creamy layer', laid down by the States of Bihar and Uttar Pradesh is violative of Article 16(4), wholly arbitrary - violative of Article 14 and against the law laid-down by this Court in '*Mandal case*'. F

We allow the writ petitions and quash (except clause 1 of Schedule III) the Bihar reservation of vacancies in posts and services (for scheduled castes), scheduled tribes and other backward classes) (Amendment) ordinance 1995 (also the Act if ordinance has been converted into Act). We also quash schedule II read with Section 3(b) of the Uttar Pradesh Public Services Reservation of Scheduled Caste and Scheduled Tribes and other backward classes Act, 1994. G
H

A We further direct that for the academic year 1995-96 the States of Uttar Pradesh and Bihar shall follow the criteria laid down by the Government of India, reproduced above, in the memorandum dated September 8, 1993. It will be open to the two States to lay down fresh criteria for the subsequent years in accordance with law. No costs.

B Mr. Venugopal, learned counsel appearing for the petitioner, stated that there are various other law-points in these writ petitions which were not raised and he sought liberty to raise the same in appropriate proceedings, if necessary. We order accordingly.

T.W.

Petitions allowed.