



LOK SABHA SECRETARIAT
(Committee on Welfare of Other Backward Classes)

Press Release

Dated : 11th March, 2019

TWENTY FIRST REPORT (SIXTEENTH LOK SABHA) OF THE COMMITTEE ON WELFARE OF OTHER BACKWARD CLASSES ON "RATIONALISATION OF CREAMY LAYER IN EMPLOYMENT FOR OBCS IN SERVICES AND POSTS UNDER THE CONTROL OF GOVERNMENT OF INDIA INCLUDING UNION TERRITORIES, PSUS ETC." PERTAINING TO THE MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT

Shri Ganesh Singh, M.P. and Chairperson, Committee on Welfare of Other Backward Classes (2018-19) presented the Twenty first Report (Sixteenth Lok Sabha) of the Committee on the subject 'Rationalisation of Creamy Layer in employment for OBCs in services and posts under the control of Government of India including Union Territories, PSUs etc.' to the Hon'ble Speaker, Lok Sabha on 9th March, 2019. Observations/Recommendations contained in the Committee Report are as under:

Sl. No.	Subject	Observation/Recommendation
1.	BACKGROUND OF RESERVATION BENEFITS BEING EXTENDED TO THE OBC'S	The Second Backward Classes Commission popularly known as Mandal Commission constituted under Article 340 of the Constitution of India had submitted its Report in 1980. In the light of the Report <i>vide</i> Office Memorandum dated 13 th August, 1990 and 25 th September, 1991 of the Department of Personnel and Training (DoPT), Government of India had issued orders providing for 27 per cent reservation in Central Government posts for persons belonging to the Socially and Educationally Backward Classes, also referred to as "Other Backward Classes". Consequently, a number of Writ Petitions (Civil) were filed in the Hon'ble Supreme Court challenging the Government

Orders. These Writ Petitions were disposed by the Hon'ble Supreme Court in 1992 by its landmark judgement in Case of Indra Sawhney & Ors. Vs. UOI & Ors., AIR 1993 SC 477: 1992 Supp (3) SCC 217. In this judgement, the Supreme Court held that the said OMs are valid and enforceable subject to exclusion of socially advanced members/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 specifying the criteria for identification of Socially Advanced Persons amongst the Socially and Educationally Backward Classes vide Government of India, Ministry of Welfare, Resolution No.12011/16/93-BOC(C) dated 22nd February, 1993. The said Expert Committee submitted its Report to the Government on 10th March, 1993 and subsequently it was laid on the Table of the both Houses of Parliament of India. The Government had decided to accept the recommendations contained in the said Report. In compliance of the Supreme Court judgement and Expert Committee Report for applying the relevant and requisite socio economic criteria for exclusion of the socially advanced persons/sections (Creamy Layer) from Other Backward Classes in Civil Posts and Services under Government of India, the DoPT O.M. dated 13th August, 1990 was modified, vide OM No. 36012/22/93-Estt/SCT dated 8th September, 1993 to provide, inter-alia, reservation of 27 per cent of vacancies for OBC candidates in Civil Posts and Services under Government of India to be filled through direct recruitment subject to the exclusion of the socially advanced persons/sections (creamy layer). The determining factors for identification and exclusion of the creamy layer were laid down in the DoPT O.M. dated 8th September, 1993. The stipulations of the OM *inter-alia* provide for excluding from OBC category, the children of such persons holding (I) Constitutional posts and the persons holding Constitutional positions of like nature; (II) Service Category i.e. (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 Paramilitary Forces at the level of Colonel and above; (IV) Professional Classes and those engaged in trade, business and industry having the income limit specified therein; (V) Property Owners i.e. (A) holders of agricultural land, (B) Plantations and (C) Vacant land and/or buildings in urban areas or urban agglomeration and (VI) Prescribed income/wealth limit etc.

The Committee expressed their satisfaction that on the advice of the Committee, the DoPT has issued fresh instructions on 04.04.2018 relating to application of own merit in Direct Recruitment for appointment of Other Backward Classes. *The instruction issued by the DoPT states that "in direct recruitment to Central Government jobs and services, the reserved category i.e. OBC/SC/ST candidates who are selected on the same standard as applied to general candidates will not be adjusted against reserved vacancies. Only when a relaxed standard is applied in selecting a reserved candidate, for example in the age limit, experience, qualifications, permitted number of chances in written examination etc., such candidates will be counted against reserved vacancies.*

(Recommendation Para No. 1)

2. NON-APPLICATION OF RULE OF EXCLUSION TO PERSONS ABOVE 40 YEARS OF AGE APPOINTED TO GROUP A/CLASS I SERVICES

Category IIA of the Schedule to the O.M. of DoPT dated 8th September, 1993 provides *inter-alia* that rule of exclusion will apply to the son(s) and daughter(s) of the parents, both of whom or either of whom is/are appointed as Class I officers of the All India Central & State Services as direct recruits. Besides, category IIB (b) provides that rule of exclusion will also apply to the son(s) and daughter(s) of the parents of whom only the husband is a Class II officer of the Central and State Services as direct recruit and he gets into Class I at the age of 40 or earlier. This provision gives the impression that the rule of exclusion will not apply to the son(s) and daughter(s) of a parent (father) who is a Class II officer and gets into Class I after the age of 40 years by direct recruitment. When the Committee sought clarification in this regard, DoPT informed that the rule of exclusion would be applied on an officer appointed to Group A as a Direct Recruit; and the stipulations pertaining to promotion

to Group A before 40 years age limit is applicable only for promotion cases, whereas for Direct Recruits, there is no age limit prescribed in the Expert Committee Reports.

The Committee in this regard concur with the views expressed by the Central Administrative Tribunal, Principal Bench, New Delhi vide Case No 579/2018 that the rationale behind excluding a candidate whose parent is a Class I/Group A officer is that such a candidate would have received all facilities and privileges for pursuing his/her education in a most beneficial manner, and such a candidate would not have suffered vagaries of poverty, economic constraints and social discrimination in any manner. A close reading of the OM dated 8th September, 1993 and the Schedule attached to it indicates that the age limit of 40 years has been fixed in Category IIB after taking care of the ground reality that the basic education of a candidate aspiring to pursue a prestigious career would have been over by the time his/her parents cross the age of 40 years. The Committee are of the opinion that if an OBC candidate suffering the vagaries of economic and social constraints all through his/her basic education and the parents being not able to provide the kind of facilities, which the parents in Class I Government services provide to their children, the OBC aspirant will have no benefit of the elevated status of his/her parents in case they get into Class I/Group A Service by whatever means after the age of 40 years. The Committee, therefore, recommend that the rule of exclusion should not be applied to the children of the parents who get into Class I/Group A Service either by direct recruitment or by means of promotion etc., after the age of 40 years. This would be in the spirit of the Expert Committee's Recommendation as well as the compliance shown by the DoPT in the case referred above.

(Recommendation Para No. 2)

3.	CRITERIA APPLICABLE TO GROUP C/ CLASS III AND GROUP D/ CLASS IV SERVICES ENTERING INTO	The Committee note that as per the equivalence of posts vis-à-vis posts under the Government as established by the DFS in 2017, Clerks and Peons in Public Sector Banks (PSBs), Financial Institutions (FIs) and Public Sector Insurance Corporations (PSICs) will be treated at par with Group C employees in the Government. According to the Department of Financial Services
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GROUP A/CLASS I
SERVICES AT AGE OF
40 YEARS OR BELOW

as also expressed by the Representative of the Ministry of Social Justice and Empowerment before the Committee that the income criteria of Rs.8 lakh per annum as revised from time to time will be applicable for Clerks and Peons in PSBs, FIs and PSICs. Also, the son (s) and daughter (s) of the parents working as Clerk and Peon in PSBs, FIs and PSICs who get into junior management grade Scale-I at the age of 40 or earlier will fall under creamy layer. The Committee note in this regard that the representative of Ministry of Social Justice & Empowerment had stated before the Committee that these provisions may not be in consonance with the O.M. of DoPT dated 8.9.1993 but were taken at the level of the Cabinet itself.

The Committee however note that in pursuance of the judgment/order passed by the Apex Court in the matter of Indra Sawhney versus Union of India popularly referred to as "Mandal" case and O.M. dated 08/09/1993 issued by the DoPT based on recommendations of the Expert Committee and after wide consultation and approval of the competent authority, the Class III/Group-C employees have not been included in the rule of exclusion at any stage. The Committee express their concern as to how the Note for the Cabinet could be prepared against the spirit of the Expert Committee Report and 1993 O.M., which the Ministry of Social Justice and DoPT claim to follow in letter and spirit.

The Committee in this regard wish to refer to the DoPT clarificatory Letter dated 14.10.2004 regarding Creamy Layer issue, which makes it clear vide Para 7 that "if father is directly recruited Class III/ Group C or Class IV/ Group D employee and he gets into Class I/ Group A at the age of 40 or earlier, his sons and daughter shall not be treated to be falling in Creamy Layer." The Expert Committee on the Creamy Layer had reflected the same view and the Committee, too, endorse it. Against this backdrop, the Committee are compelled to express the opinion that the Cabinet Note may not have been prepared in the spirit of the judgment/order passed by the Apex Court in the matter of Indira Sawhney versus Union of India popularly referred to as "Mandal" case and O.M. dated 08/09/1993 issued by the DoPT based on recommendations of the Expert Committee and after wide consultation and approval of the

competent authority, which stipulates that the Class III/Group-C employees may not be included in the rule of exclusion at any stage. The Committee feel that the provisions of 1993 O.M. were incorrectly interpreted while preparing the Cabinet Note. This aspect, the Committee feel needs to be further probed.

The Committee strongly recommend that officials of rank/grade below Class II/Group B Officers (Direct Recruitment) i.e. Class III/Group C employees should be exempted from income criteria for determination of creamy layer. Also the rule of exclusion should not be applied if Class III/Group C employees get into Class I/Group A Service at any stage as per the essence of the Expert Committee Report and the provisions of the 1993 O.M. of DoPT.

(Recommendation Para No. 3)

4. ISSUE RELATING TO GROUP B/CLASS-II OFFICERS OF THE CENTRAL AND STATE SERVICES

The Committee note that sub category B of Category II of the Schedule to the 1993 OM deals with the application of rule of exclusion on the son(s) and daughter(s) of Group B/Class II Officers of the Central and State Services (Direct Recruitment). However, it does not distinguish between Group B gazetted officers and non-gazetted officers. There exist a number of grades and posts in Group B service with a wide range of variation with respect to the pay scales and responsibilities as well as prestige attached to these posts, as also the number of years one is required to serve in the lower post, to move up to the higher post of the same Group i.e. Group B. Therefore, to keep the son(s) and daughter(s) of parents joining any of the posts under Group B service without the demarcation of gazetted and non-gazetted category under the creamy layer would be sheer injustice to such candidates as both the gazetted and non-gazetted officers under Group 'B' Central and State Services cannot be placed on the same pedestal for assessing one's social and economic status or advancement.

Keeping in view the true spirit deliberated upon in *paras 3, 4, 5, 33 and 34* spelt out in the Report of the Expert Committee constituted to draw up the exclusion of Socially Advanced Persons/Sections (creamy layer) the Committee strongly recommend DoPT and Ministry of Social Justice & Empowerment to issue a clarification that by 'Group B/Class II

		<p>officer' in O.M. No. 36012/22/93-Estt. (SCT), dt. 8.9.1993 implies 'Group B/Class II Gazetted officer' and the son(s)/daughter(s) of parents who both are directly recruited Class II/Group B non-Gazetted officials would not be treated to be falling under the creamy layer.</p> <p>(Recommendation Para No. 4)</p>
5.	<p><u>ESTABLISHING EQUIVALENCE OF POSTS FOR EMPLOYEES OF PSUs, ETC.</u></p>	<p>Category II-C of the Schedule to the DoPT O.M. dated 8.9.1993 stipulates that the criteria enumerated in the Service Category IIA and Category II B will apply mutatis mutandis to officers holding equivalent or comparable posts in PSUs, Banks, Insurance organisations, <u>Universities, etc.</u>, and also to equivalent or comparable posts and positions under private employment. Pending evaluation of the posts on equivalent or comparable basis in these institutions, the criteria specified in <u>Category VI of the Schedule will apply to the officers in these institutions.</u></p> <p>The Expert Committee report states that: "The evaluation of posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of the persons under <u>II-C Category</u>, it is made clear that so long as the process is not completed and made operative, the income/wealth under Item VI, will govern the persons under IIC Category."</p> <p><u>The Committee observe that the Ministry of Social Justice and Empowerment have shown lack of initiative on their part in evaluation and identification of posts of equivalent or comparable basis in the aforesaid institutions and have kept the matter pending for over two decades for reasons best known to them. This omission or lack of action on the part of the Ministry has inadvertently led to a situation where a number of bonafide OBC candidates have been compelled to seek judicial intervention due to arbitrary interpretation of the provisions of Income/Wealth Test under Category VI of the Schedule to the OM dated 8th September, 1993.</u></p> <p>Moreover, as per the 'equivalence' established by the Department of Financial Services Junior Management Scale-I of PSBs/PFIs/PSICs, which is a low rank post in the hierarchy as</p>

compared to the Government of India Group A posts, will be treated as equivalent to Group A in the Government of India. Simultaneously, in the order issued by the Department of Public Enterprises, all the Board level Executives and other subordinate ranks, which are managerial level posts are to be considered as part of the creamy layer, with the exception that such Executives, whose annual income as per criteria given in DoPT OM of 1993 is less than Rs. 8 lakh, as amended from time to time, will not fall under the creamy layer. The Committee feel that treating Board Level Executives and below board level executives on the same pedestal would not be easily acceptable to the people in general and the stakeholders in particular. The Committee have, in the course of examination of the subject, felt the reverberations of dissatisfaction being experienced on account of the 'equivalence' established both by the DPE and DFS. The public opinion is, by and large extent, against it. They, therefore, recommend that the equivalence set by the DFS and DPE should be revisited in letter and spirit of the Expert Committee Report and the DoPT OM of 1993.

The Committee also recommend that necessary steps be taken with requisite initiative and the large quantum of pending work of establishing equivalence of posts in a wide range of organisations, such as autonomous organisations, Universities, Government aided as well as private schools/colleges, Judiciary, Local Self Government Bodies like Municipal Corporations, etc., with the Government be accomplished in co-ordination with the appropriate Ministries, Departments, Governments, on priority and without any further delay.

(Recommendation Para No. 5)

6. APPLICABILITY OF INCOME/WEALTH TEST

The Committee note that as per the submissions made by the representatives of DoPT & Ministry of Social Justice & Empowerment income from salary of employees of Category II-C has been taken into consideration by DoPT under Sub-Category VI(a) of Category VI on the basis of Para 27 of the Expert Committee Report.

Sub-Category VI(a) of Category VI of the Schedule to the DoPT OM dated 8th September, 1993 regarding Income/Wealth Test inter-alia provides that rule of exclusion will apply to the

son(s) and daughter(s) of persons having Gross Annual Income of Rs. 8 lakh or above (as revised vide DoPT OM dated 13th September, 2017) for a period of three consecutive years. Sub-Category VI(b) of VI of the Schedule to the DoPT OM dated 8th September, 1993 regarding Income/Wealth Test inter-alia provides that "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 VI (a) above." Explanation given below Category VI [Sub-Category 6(a) and Sub-Category VI(b)] is as follows: (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."

The Committee note that the various Courts have specifically held that Income from salaries is not the criteria for determining creamy layer among OBCs for salaried class employees. Para 9 of Clarificatory letter issued by the DoPT dated 14.10.2004 is an incorrect or ill-conceived interpretation and Para 10 is the correct interpretation of 1993 O.M. For category II-C, in the absence of equivalence, income from salaries cannot be taken into account (For II – C category also, Income from other sources alone is the criteria, as is the case for whole category II, including category II – A and II – B). The explanation (i) and (ii) given below the income/wealth test, specified in category VI, applies to the whole category VI [that is both category VI (a) and VI (b). The persons specified in category II-C, in the absence of equivalence, will fall under category VI-b alone, as the category VI-b explicitly mentions that those from the entire category II (II-A, II-B and II-C), who have not been disentitled from criteria mentioned in category II will fall under category VI-B. The court have clearly held that, wrongly counting salary for II-C category has resulted in a "hostile discrimination" vis-à-vis other categories.

The Committee further note that Income from Salary and Income from Agriculture shall be excluded from income criteria, to identify Creamy Layer among OBCs, has been held as the right interpretation of 1993 O.M. by the Supreme Court,

already in three cases – 3 Judges Bench in Siddharth Saini Vs. State of Haryana and others and 2 Judges Bench in Nair Service Society Vs. State of Kerala, 2007 Case no. WP (civil) 598 of 2000 and 5 Judges Bench in Ashok Kumar Thakur Vs. State of Bihar and Others, 1995(5) SCC 403.

On the advice of the Committee, the DoPT and the Ministry of Social Justice & Empowerment sought the Legal Opinion from the Ministry of Law & Justice, Department of Legal Affairs for explanation given below Category VI. On 06.02.2019, the Department of Legal Affairs opined that “the Explanation (i) & (ii) under the Category VI (INCOME/WEALTH TEST) are given after the Sub-Category (a) and (b) of the same and there is no specific indication regarding its applicability with regard to particular Sub-Category. In absence of any specific indication regarding applicability of the Explanation (i) & (ii) with regard to particular sub category, the same, in general sense, seems to be applicable in respect to whole Category VI.

The Committee note that the Sub-Category VI(a) and VI(b), in fact, both prescribe the same methodology for performing Income/Wealth Test. This is amply clear from category VI(b), which reads “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 VI (a) above.” Thus category VI(b) also prescribes the same test as given category VI(a). Hence, Income / Wealth test cannot be applied differently for VI(a) and VI(b) and should be applied in a uniform manner for the whole category VI. The explanation (ii) under category VI, which relates to periodic revision of Income limit for identifying creamy layer, is applicable to both clause VI (a) and VI (b) of category VI. Thus the explanation (i) and the explanation (ii) given under category VI, are applicable to category VI as a whole.

Clarification given in Para 10 with regard to clause (x) of Para 4 in 14.10.2004 clarificatory letter (clarifying 1993 OM) is the rightful clarification of 1993 O.M. Para 10 of Clarificatory Letter of DoPT dated 14.10.2004 clarifies the scope of explanation (i) which reads as “income from salaries or agriculture land shall not be clubbed”, given under category VI.

It clarifies that the explanation (i) applies to the whole of category VI (Both VI (a) and VI (b)). Therefore, while performing Income / Wealth test to determine the creamy layer status of any candidate, income from salaries and agriculture land shall not be taken into account.

The Expert Committee in para 13 of its report, states that: "The evaluation of posts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of the persons under this category, it is made clear that so long as the process is not completed and made operative, the income/wealth under Item VI, will govern the persons under this category. In other words, even during the interim period, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI". Thus, the expert committee states that in the event of absence of equivalence, category II-C cannot be disentitled from availing reservation benefits as such and that, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI. In specific, category II-C falls under category VI (b), as category VI (b) explicitly mentions that the whole category II (including II C) ought to be examined under provisions stated in category VI(b). Hence, in the absence of equivalence there will be no disentanglement from category II-C and as the whole category cannot be disentitled, everyone from category II-C would fall under category VI (b)

Accordingly, the Committee observe that the employees under Category II-C should not be treated to be disentitled to the benefit of reservation and therefore, their income only from other sources should be taken into account without clubbing the income from salaries and agricultural land while applying the income/wealth test in case the equivalence of their posts vis-à-vis Government posts has not been established. The report of the Expert Committee is clear and specific without any ambiguity and any interpretation of the provisions of the rule of exclusion that stretches beyond the spirit of the Expert Committee Report is not acceptable. The Committee strongly recommend that the Ministry of Social

Justice and Empowerment and DoPT act strictly in accordance with the Legal Opinion while applying Income/Wealth Test for determination of creamy layer.

(Recommendation Para No. 6)

7. CLARIFICATORY
LETTER DATED
14.10.2004. ISSUED
BY DoPT REGARDING
DETERMINATION OF
CREAMY LAYER
AMONGST OBCs

The DoPT O.M. dated 8th September, 1993 specifies in detail the criteria to determine the creamy layer amongst the OBCs. The Committee understand that several queries were raised from time to time about the application of the provisions contained in the OM. To address the queries, the DoPT issued clarifications on 14th October, 2004 regarding creamy layer amongst OBCs. During the course of examination of the subject, the Committee found that some of the clarifications given in the letter addressed to the Chief Secretaries of all the States/Union Territories, especially the ones relating to clubbing salary or income from agricultural land while calculating the Gross Annual Income for the purpose of determining creamy layer status of OBC candidates have only caused further controversies thereby infusing allegations and charges of misinterpretation and wrongful application of the provisions of the DoPT OM dt. 8th September, 1993. The Committee interacted with some of the OBC candidates who had qualified the Civil Services Examination, 2015 but were denied 'OBC status on the basis of the clarifications issued by DoPT on 14th October, 2004. The candidates have been compelled to seek judicial intervention in the matter.

The Committee in this regard desired to know the rationale or basis on which these clarifications were issued and whether the Ministry of Social Justice and Empowerment and the Ministry of Law and Justice were consulted before issuing the clarifications. The Committee have been informed that the files relating to the clarifications issued on 14.10.2004 were not traceable from the DoPT Secretariat. The Committee take a serious view of it. More serious is the fact that the Ministry of Social Justice were not consulted in regard to the clarifications issued; and even the Ministry of Law and Justice are not clear whether or not the DoPT had consulted the Ministry in the matter. Consequently, nothing substantial could be established with regard to the issuance of the controversial clarifications by DoPT on

		<p>14.10.2004. The Committee have been informed that every effort has been made to locate the relevant files/notes. Yet, no credible progress in tracing the files/notes has been made. The Committee observed and found that it is difficult to understand the basis, and rationale of the clarificatory letter dated 14.10.2004 issued by the DoPT in the absence of the originating file noting. The Committee are of the considered opinion that the Competent Authority should fix responsibility and take appropriate action against the officer(s) found responsible for the lapse in accordance with the law of land.</p> <p>(Recommendation Para No. 7)</p>
8.	- do -	<p>The Committee do not find any reasoning for applying a different yardstick or interpretation of the provisions listed in Category-VI of the Schedule to the OM dated 8th September, 1993 with respect to the sons and daughters of persons employed in such organizations/PSUs/PSBs, etc. where equivalence of posts vis-à-vis posts in Government has not been established while determining their creamy layer status. DoPT has not been in a position to give any reasonable justification and explanation with regard to the apparent contradiction in the contents of Para 9 and Para 10 of the clarificatory letter dated 14.10.2004 issued by the DoPT purportedly on account of the fact that the files relating to formulation of these clarifications were missing. As indicted earlier, the Ministry of Social Justice and Empowerment, which is the nodal Ministry with regard to determination of creamy layer status amongst OBCs and the Ministry of Law and Justice as well have expressed unawareness in regard to the origination of or the basis on which the clarifications were issued by DoPT.</p> <p>The Committee note that Para 9 of clarificatory letter dated 14.10.2004 issued by the DoPT prescribes that income from salaries can be taken into account for wards of employees in PSUs, PSBs and University, etc. and income from agriculture land is not considered while applying the income/wealth test, till such time, equivalence of posts is established. This stance of selectively taking the income from salary and excluding the income from agriculture land, cannot in anyway, be justified as it is nowhere mentioned in the Expert Committee Report. In</p>

fact, the Income/Wealth test should apply in the same way to all the categories as explained in para 10 of the clarificatory letter of DoPT. Therefore, the Committee are of the opinion that while applying, the income/wealth test, the income from agriculture and the income from salary cannot and should not be taken into account for any of the categories including II-C category. Hence, para 9 of 2004 clarificatory letter (clarifying 1993 O.M.) with regard to clause (ix) of Para 4 would be an incorrect or inappropriate interpretation of Income/Wealth test as mentioned in category VI of the 1993 O.M.

The Committee note that Para 10 clarifies the scope of explanation which reads as: "income from salaries or agriculture land shall not be clubbed", given under category VI. It clarifies that the explanation (i) applies to the whole of category VI (Both VI (a) and VI (b)). And hence, while applying the Income / Wealth test to determine the creamy layer status of any candidate, income from salaries and agriculture land shall not be taken into account. The Committee note that this clarification is in consonance with the para 27 of the Expert Committee Report. Based on such rationale, Clarification given in Para 10 with regard to clause (x) of Para 4 in 14.10.2004 clarificatory letter (clarifying 1993 OM) would be the right and legal clarification of 1993 O.M.

The Expert Committee in Para 13 of its report, states that: "The evaluation of pcsts on equivalent or comparable basis is bound to take some time. In order that this may not become a ground for postponing the implementation of reservation in respect of the persons under this category, it is made clear that so long as the process is not completed and made operative, the income/wealth under Item VI will govern the persons under this category. In other words, even during the interim period, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI". Thus, the Expert Committee expressed that even in the absence of equivalence, category II-C cannot be disentitled from availing reservation benefits as such and that, the employees under this category will get the benefit of reservation and if any exclusion is to be made it shall be on basis of criteria under Item VI. In specifics,

category II-C falls under category VI (b), as category VI (b) explicitly mentions that the whole category II (including II-C) ought to be examined under provisions stated in category VI(b). Hence, in the absence of equivalence there will be no disentitlement from category II-C and as the whole category cannot be disentitled, everyone from category II-C would come under the purview of category VI (b).

The Committee further note the orders of the Delhi High Court dated 22 March, 2018, which inter-alia states: "First respondent in its counter affidavit maintains that impugned communication of 14th October, 2004 has been brought about to clarify the O.M. of September, 1993. The communication of 14th October, 2004 takes into account salary of parents of OBC candidates whereas as per OM of September, 1993, the income from other sources is the basis to determine the creamy layer status of OBCs in case of PSUs, where equivalence has not been established. Undisputedly, equivalence has not been established in case of PSUs viz-a-viz the posts in Government. In such a situation, I find that no rationale or justification is spelt out in the impugned communication of 14th October, 2004 or in the counter affidavit filed by first respondent, to make the salary of OBC employees in PSUs as the basis to determine their Creamy Layer Status...In the considered opinion of this court, there is no basis to rely upon impugned clarification of October, 2004. Thus, impugned communication is set at naught and first respondent is directed to verify the Creamy Layer Status of petitioners while solely relying upon the OM of September, 1993." The Delhi High Court vide order dated 22.03.2018 directed that salary is not a criterion as per 1993 OM, hence, reiterated the fact that only the income from other sources should be seen. Regarding compliance of the afore mentioned order of Delhi High Court, DOPT in a written reply and also during the Oral Evidence before the Committee stated that: "DoPT has complied with the directions of Hon'ble High Court of Delhi by passing a speaking order on 22.05.2018 i.e. within prescribed time limit." The Committee are of the view that the Order of Delhi High Court should be implemented in the letter and spirit.

The Committee note that there are various Court

judgments and Orders which indicate that the clarification in Para 9 of the DoPT Clarificatory letter dated 14.10.2004 is incorrect. The Committee note that the DoPT has insisted upon not changing their stand at all before the final judgement to be given by the Supreme Court in the matter.

The Committee note that DoPT has filed affidavit in the Supreme Court based on the impugned Clarificatory Letter dated 14.10.2004 issued by DoPT, even if the linked file and notings of it which guides the rule-regulations under which the services like IAS are allocated, are not traceable in DoPT even after sustained efforts and the Para 9 of DoPT Clarificatory Letter dated 14.10.2004 has been declared naught by Delhi High Court and complied by DoPT. The Committee strongly recommend that the affidavit based on Para 9 of the impugned Clarificatory Letter dated 14.10.2004, filed by DoPT should be withdrawn. DoPT should issue instructions to the Chief Secretaries of all the State Governments and other related Departments intimating them the position that Para 9 of the Clarificatory letter dated 14.10.2004 has been withdrawn. The process of issuing Non-Creamy Layer Certificates to OBC candidates should be simplified and smoothened.

(Recommendation Para No. 8)

9	CREATION OF SUPERNUMERARY POSTS	The Committee desired to know during the examination about the course of action that would be required in the event of the Supreme Court favouring the OBC candidates in its judgement. The DoPT, in this regard, have assured the Committee that in such a scenario, supernumerary posts would be created for accommodating the affected candidates. The Committee find that the recruitment for the Central Government posts is being carried out year after year by following the same interpretation of Income/Wealth Test as has been applied by the DoPT in the sub-judice cases relating to determining the creamy layer status of the OBC candidates. In the given circumstances, considering the fact the OBC candidates have a strong case, the Committee wonder as to how many supernumerary posts will be created for accommodating all such candidates who continue to be subjected to the 'same' interpretation of Income/Wealth Test as was done for those candidates who have sought judicial intervention. Against this backdrop, the Committee are of the view that any decision taken by the DoPT with regard to creation of supernumerary posts in future will have its own cascading effect by severely disrupting the service allocation and
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		also the seniority within these services. Therefore, it would be desirable that the scope for a just and reasonable solution, pending judgments in these cases is kept by the DoPT in order to preclude these complications.
		(Recommendation Para No. 9)
10	INCOME CEILING FOR DETERMINING CREAMY LAYER	<p>The Committee note that as per the income criteria originally stipulated in the DoPT OM dated 8th September, 1993 under Income/Wealth Test category. the rule of exclusion had to be applied on the son(s) and daughter(s) of the 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. It was also stipulated in the Schedule to the said OM that the income criteria will be modified taking into account the change in its value every three years. Further, if the situation so demands, the interregnum may be less.</p> <p>However, the Committee find that the income ceiling for identification of creamy layer was revised for the first time after a lapse of more than ten years, i.e. on 9th March, 2004, when the income ceiling was raised from Rs. 1 lakh to Rs. 2.5 lakh per annum. The ceiling limit was subsequently revised to Rs. 4.5 lakh on 14th October, 2008 and to Rs. 6 lakh with effect from 16th May, 2013. As per the latest revision made vide DoPT OM dated 13th September, 2017, the income limit has been enhanced from Rs. 6 lakh to Rs. 8 lakh per annum for determining the creamy layer amongst the OBCs. The revised ceiling has been made effective from 1st September, 2017. Thus, the Committee observe that the provisions laid down in the DoPT OM dated 8th September, 1993 on the basis of the Expert Committee report for modifying the income ceiling at three yearly intervals or less, as may be needed, is not being followed by the Government and the revisions are being made at larger intervals, which is not in consonance with and, therefore, violative of the norms set by the Government themselves. With a view to ensuring justice for the OBCs, the Committee desire that the revision in the income ceiling for determining the creamy layer category amongst the OBCs should be effected as per the periodicity stipulated.</p>
		(Recommendation Para No. 10)
11	- do -	The Committee note that in spite of four revisions of the income criteria, the 27 per cent vacancies reserved in favour of OBCs are not being filled up which is amply clear from the data received from 78 Ministries/Departments regarding representation of OBCs in the posts and services of the Central Government (Ministries/Departments including their attached/subordinate Offices) as on 01.01.2016 as shown below:

Groups	Total number of Employees	Other Backward Classes Employees	
		Number	% age
A	84,705	11,016	13.01
B	2,90,941	42,995	14.78
C (Excluding Safai Karmachari)	28,34,066	6,41,930	22.65
C (Safai Karmachari)	48,951	7,076	14.46
Total	32,58,663	7,03,017	21.57

This leads to the inference and also apprehension that when stringent conditions or restrictions are imposed for determining the creamy layer, the objective of the Government to fill up 27 per cent of the vacancies by OBCs may not be achieved. Also, in the course of the examination of various subjects taken up by the Committee, they have often been told that the shortfall in filling up OBC vacancies is due to non-availability of suitable OBC candidates. Against this backdrop, the Committee feel that there is a limit to which the income of a person can be taken as measure of his social advancement. Therefore, policy decisions should not prescribe unusually rigid income limits because such restrictions have the effect of taking away with one hand what is given with the other. They, therefore, observe that the economic criteria prescribed should be a realistic one.

In view of the foregoing, and taking into account, the trend of rise in GDP, inflation, per capita income, all round economic growth, rise in cost of living, increased costs of health care, transport and education, the Committee recommend that the Ministry of Social Justice and Empowerment ensure a judicious and realistic enhancement of the 'income ceiling' for determining the 'creamy layer' category amongst OBCs to a reasonable level; and also to ensure that the income ceiling prescribed is periodically revised in consonance with the stipulations of the DoPT OM dated 8th September, 1993.

(Recommendation Para No. 11)

12	PROPOSAL TO SET UP EXPERT COMMITTEE AND COMPLIANCE OF EQUIVALENCE CERTIFICATES	During the course of examination of the subject, the Committee had suggested that the Ministry of Social Justice and Empowerment and DoPT work in tandem for addressing issues pertaining to establishing equivalence of posts in PSUs/PSBs/Universities, etc. with those in Government. The Committee had also suggested taking legal opinion from the Ministry of Law and Justice wherever required. The Committee have now been informed that the Hon'ble
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Minister of Social Justice and Empowerment has decided to set up an Expert Committee to resolve all the matters relating to establishing equivalence of posts and determination of creamy layer amongst OBCs comprising of the representatives of the related Ministries and all the stakeholders. The Committee acknowledged the initiative taken by the Government in this regard. However, on the issue of establishing equivalence in PSU's universities, educational and medical institutions etc. under State Governments, the Committee had enquired during the Oral Evidence held on 13.02.2019, whether Central Government is empowered to constitute the Expert Committee on the State Subject under List II in Seventh Schedule of the Indian Constitution as well as in light of a landmark judgment delivered by the Hon'ble Supreme Court in case of Keshwanand Bharti. The representatives of the Ministry of Social Justice & Empowerment were found to be non-committal on this issue.

The Committee were informed that Hon'ble Minister for Social Justice & Empowerment held a meeting held on 13.12.2018 with representatives of DoPT, Department of Legal Affairs & Ministry of Social Justice & Empowerment. During the meeting, the Hon'ble Minister mentioned that a representation was received from one successful OBC candidate whose equivalence certificate issued by State body was not being accepted by DoPT. The Hon'ble Minister for Social Justice & Empowerment advised that while considering the cases of the 6 candidates which were referred to the Ministry of Social Justice & Empowerment for comments, DoPT may comply with their O.M. of 08.09.1993 for determination of Creamy Layer and also keep in view of the instances quoted in the representation, of rank holder 621 and rank holder 723 of CSE 2015, wherein DoPT may have accepted equivalence certificates issued by State Bodies"

In view of the foregoing, the Committee strongly recommend that as in the case of rank holder 621 and rank holder 723 of CSE 2015, wherein DoPT have accepted equivalence certificates issued by State Bodies, henceforth in the same way all the equivalence certificates issued by the State Bodies and submitted by the candidates as on date should be accepted by DoPT itself.

(Recommendation Para No. 12)

13	COMPLIANCE OF PARA 29 OF EXPERT COMMITTEE REPORT (ARTISAN CLASS)	The Committee note that the Ministry of Law & Justice, Department of Legal Affairs had referred to para 29 of the Expert Committee report which envisages that persons working as artisans or engaged in the hereditary occupations, callings, etc. like pottery makers, washermen, barbers, etc. are exempted from application of the rule of exclusion. As the said list of the categories on which rule of exclusion are not
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applicable is not included in the 1993 OM, the stipulations of para 29 of the Expert Committee report do not find a place in the 1993 OM. The Committee feel that it is imperative to sensitise the concerned authorities including those engaged in issuing OBC (Non-creamy layer) certificates to be aware of the contents of the Expert Committee Report to make them understand the categories and classes on which the rule of exclusion will not apply. The Ministry of Social Justice and Empowerment and DoPT should take initiative in this regard. The Committee should also be apprised about the action taken in this regard on urgent basis.

(Recommendation Para No. 13)