

**Bill No. 78 of 2021**

THE OTHER BACKWARD CLASSES (REMOVAL OF CREAMY LAYER  
CRITERIA) BILL, 2021

By

SHRI GANESH SINGH, M.P.

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BILL

*to provide for removal of creamy layer criteria while providing reservation in favour of  
Other Backward Class of citizens in services and posts under the Central  
Government and its establishments.*

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Other Backward Classes (Removal of Creamy Layer Criteria) Act, 2021.

Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definition.	<b>2.</b> In this Act, unless the context otherwise requires, "creamy layer" with reference to Other Backward Class means a person belonging to such class and whose annual income exceeds such prescribed limit as notified from time to time by the Central Government for the purpose of excluding him for availing the benefits of reservation provided to Other Backward Classes in civil posts and services under the Central Government.	5
Removal of Creamy Layer criteria amongst Other Backward Classes while providing reservation.	<b>3.</b> Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of any Court, the creamy layer criteria shall not be applicable till twenty-seven per cent. of posts reserved for Other Backward Classes have been filled up by persons belonging to such classes.	
Power to make rules.	<b>4. (1)</b> The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.	10
	<b>(2)</b> Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.	15

## STATEMENT OF OBJECTS AND REASONS

Article 16 (4) of the Constitution mentions that "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State".

So far, people from Other Backward Classes are being given reservation for appointments to the posts under Government services on the basis of social and educational backwardness.

There are various schemes and special provisions for the welfare of the persons of Other Backward Classes in the country. However, despite all these measures, the number of appointments of persons of Other Backward Classes to the important posts is negligible. As a result, no significant change is visible in their social status.

The nine-member Constitutional bench of the Hon'ble Supreme Court in their verdict of 16 November, 1992 in the case regarding reservation to socially and educationally backward classes (Indra Sawhney & others vs. Union of India and others) given on the basis of majority in which Hon'ble Justice Pandian and Justice Sawant in their judgments clearly emphasized that when a person is placed in the unrestricted category, it should be clear without any doubt that social backwardness has come to an end.

The Parliamentary Committee on Welfare of Other Backward Classes (2018-19) has mentioned in its Twenty-First Report (Sixteenth Lok Sabha) that as on 01.01.2016, in 78 Ministries/Departments of Central Government, in posts of Group 'A' and Group 'B', the percentage of representation of Other Backward Classes is 13.01 and 14.78 respectively. It is also mentioned in the report that due to lack of availability of eligible candidates of Other Backward Classes, the prescribed twenty-seven per cent. reservation for Other Backward Classes could not be filled up.

As per the report of Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on Demands for Grants (2020-21) of the Ministry of Personnel, Public Grievances and Pensions, as on 01.01.2019 there are 970 posts vacant in the direct recruitment of Indian Administrative Service Officers and 524 promotional posts of Indian Administrative Service Officers are vacant. In the same sequence, the report also shows that as on 01.01.2018, a total number of 10859 backlog posts of Other Backward Classes are lying vacant in the Department of Posts, Atomic Energy and the Ministries of Defence, Railways, Housing and Urban Affairs and the Home Affairs. Out of this, the maximum posts of 6260 and 3428 earmarked for Other Backward Classes are lying vacant in the Ministry of Home Affairs and Ministry of Defence respectively.

In the following para (para 522, decision today, Vol. 6, No. 9, 30 November, 1992) of the verdict given by Justice P.V. Sawant, the Hon'ble Judge of the nine-member Constitutional Bench of the Supreme Court, the same thing has been fully clarified *i.e.* the basis of reservation is not the scrutiny of income but its main basis is social and educational backwardness.

"The right criterion for judging the forwardness of the forward 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."

Due to the rule pertaining to creamy layer, there is no provision for reservation in appointment of people from Other Backward Classes coming under creamy layer. As a result, the Government cannot provide reservation to them. In this situation, it has become necessary to abolish the concept of creamy layer in order to ensure the social as well as overall development of the people of the Other Backward Classes. In such a situation, the reservation earmarked for Other Backward Classes may be provided by doing away with the concept of creamy layer.

The Bill, therefore, seeks to do away with the concept of creamy layer criteria with a view to ensure adequate representation of the socially and educationally backward citizens in the services and posts under the Central Government till twenty-seven per cent. reservation meant for Other Backward Class citizens is achieved.

Hence this Bill.

NEW DELHI;  
*March 11, 2020.*

GANESH SINGH

#### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

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