
BEYOND THE INCOME THRESHOLD: RETHINKING CREAMY LAYER THROUGH INTRA-GROUP EQUALITY AND SOCIAL ADVANCEMENT

Piyusha Pradhan¹ and Simran Sahoo²

ABSTRACT

The creamy layer principle represents a crucial exclusionary mechanism within India's reservation jurisprudence, intended to prevent the disproportionate capture of affirmative action benefits by relatively advanced sections within backward classes. Its contemporary application, however, raises a fundamental constitutional concern as to whether income can legitimately operate as a sufficient proxy for social advancement. This article critically examines the inadequacy of an income-dominant approach through an integrated doctrinal and empirical analysis, arguing that economic mobility does not necessarily extinguish the structural, social, educational, occupational and institutional disadvantages that continue to shape access to equality and opportunity. By drawing upon constitutional equality principles, reservation jurisprudence and empirical evidence concerning the lived socio-economic realities of backward communities, the article conceptualises social advancement as a multidimensional phenomenon encompassing economic position, educational attainment, occupational status, familial and inherited social position, access to institutional power, social capital, intergenerational mobility and continuing experiences of discrimination. It accordingly proposes a Multidimensional Social Advancement Framework, under which income constitutes one relevant indicator rather than a determinative criterion for creamy-layer exclusion. The article further advocates periodic, evidence-based recalibration of exclusionary thresholds and greater legislative and institutional clarity in their application. It ultimately advances a shift from a threshold-centred model, primarily anchored in income, towards an advancement-centred constitutional model that assesses whether the substantive disadvantages underlying affirmative action have meaningfully receded, thereby strengthening the constitutional relationship between substantive equality, intra-group distributive justice and transformative social justice.

¹ Ph.D. Research Scholar, KIIT School of Law KIIT Deemed University, Bhubaneswar, Odisha, India.

² Ph.D. Research Scholar and Faculty Assistant, KIIT School of Law KIIT Deemed University, Bhubaneswar, Odisha, India.

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I. INTRODUCTION

The constitutional framework of affirmative action in India is based on the belief that merely a formal equality will not destroy the social and educational disadvantageous structures that have been in existence for a long time. Reservation, as such, is a tool of substantive equality which helps the constitutionally disadvantaged communities to achieve meaningful access to opportunities and institutions.³ In this context, the creamy-layer principle serves a very important intra-group distributive role: it keeps the more advanced members from "claiming" more affirmative-action benefits than the less advanced members. It has a deeper meaning in that it is meant to maintain the exceptional status of those who still have the structural disadvantage that underlies the concept of reservation. But the problem in the constitution is not only who should be excluded, it is what degree of advancement is enough to justify the exclusion.

The doctrine's jurisprudential basis does not make social progress synonymous with economic progress, as was seen in *Indra Sawhney v. Union of India*. The Court grounded social advancement in the substantive grounds of exclusion, and economic criteria in the *indicium* that may, in certain circumstances, be used to determine social advancement. The rejection of a criterion of exclusion that is merely economic, without an express correlation of social and economic progress, is of constitutional importance. Income was therefore not envisioned to be a stand-alone metric of progress but rather an operational, administrative metric to gauge the real effect of the disadvantages that led to reservation.⁴

However, the current application of the doctrine has today led to concerns over this distinction. As a monetary cap becomes the most important factor in excluding individuals, a convenient administrative threshold can creep in overtime to replace the substantive consideration of social progress. But the problem is not that income is unconstitutionally irrelevant, it is that the evidentiary weight of income as a proxy for social mobility may be too high if the proxy is

³ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* 1–6, 34–40 (Univ. of Cal. Press 1984).

⁴ *Indra Sawhney v. Union of India*, 1992 Supp. (3) S.C.C. 217, 797–98, 850–51 (India).

taken as a whole.

Economic and social mobility, however, need not go hand-in-hand. A person can make significant financial gains without experiencing caste-based discrimination, being socially recognized, having career opportunities, limited social capital or institutional access. In contrast, levels of education, job status, family status, familial resources and social capital gained over time can have a strong effect on social position without aligning easily with income. Financial capacity does not always demonstrate the elimination of any disadvantages to structural backwardness.⁵

Based on this, the article questions: *How to measure the constitutional progress where the disadvantage that the affirmative action aims to correct is multidimensional in its nature?* It suggests that progress should be viewed as a hybrid constitutional concept that includes economic status, education, occupation, social and family status, access to institutions, social capital, intergenerational mobility and ongoing structural disadvantage.

In order to give substance to this idea, the paper introduces a Multidimensional Framework of Social Advancement, wherein the issue of income will still be pertinent but not determinative. As such, the paper calls for a shift from the threshold-oriented model to an advancement-oriented constitutional model, one that is able to ascertain whether there are any substantial disadvantages to be remedied through affirmative action anymore.

II. FROM BACKWARDNESS TO ADVANCEMENT: THE CONSTITUTIONAL LOGIC OF THE CREAMY LAYER

The constitutional rationale behind affirmative action in India goes well beyond an exception to the principle of formal equality. This can be seen in Articles 15(4), 15(5), and 16(4), which provide for substantive equality by allowing differential treatment in situations where the historically based disadvantages within the social, educational, and institutional contexts continue to obstruct equality of opportunity. Under such a rationale, the idea of backwardness can never be taken to mean individual poverty. Rather, backwardness is a structural concept that flows from the placement of certain groups within a historically existing social hierarchy and the disadvantages associated with that placement. Thus, the constitutional inquiry here would go beyond questions of material poverty and involve the issue of the existence of factors

⁵ Vegard Iversen, Anustup Kundu, Rahul Lahoti & Kunal Sen, *Barriers or Catalysts? Traditional Institutions and Social Mobility in Rural India*, 200 World Dev. 107302 (2026), <https://doi.org/10.1016/j.worlddev.2025.107302>

that hinder access to education and employment.

It is important to note that this principle was enunciated in the case of *Indra Sawhney v. Union of India*, whereby the Supreme Court upheld the reservation of OBCs in accordance with Article 16(4) but imposed the condition of excluding the creamy layer from the category. The justification for doing so is essentially distributive in nature, since the perpetuation of reservation advantages to those who are relatively advanced may hinder access to it for others who are disadvantaged to a greater extent.⁶

Importantly, the creamy layer is not defined by *Indra Sawhney* in economic terms. The Court drew a line between economic upliftment and social upliftment, recognizing the fact that economic status like income, property, etc., can act as a *measure* or *indicium* of social upliftment, but cannot be taken to mean automatic social upliftment. Thus, exclusion on economic grounds would only be justifiable when the level of economic upliftment would provide a sufficient basis for assuming social upliftment. This distinction is crucial because the very idea behind the exclusionary policy is not that of economic prosperity per se, but the determination of individuals who have made enough progress socially so that preferential treatment is no longer justified.

Jurisprudentially, *M. Nagaraj v. Union of India* and *Jarnail Singh v. Lachhmi Narain Gupta* have placed the doctrine in the overall constitutional framework of equality and reservation. It became clear that the concept was of much wider constitutional import than just that of administrative concern over the OBC reservation. Issues regarding distribution of affirmative action benefits and the constitutional justification of preferential treatment started coming up. Its application in cases of SCs and STs, however, has brought up some serious issues about the different constitutional status of these classes.⁷

The doctrine of creamy-layer exclusion has, for this reason, to be distinguished from poverty alleviation in the usual sense. Rather than redistributing income amongst the beneficiary class alone, the aim of the doctrine is to ensure that affirmative action benefits are not concentrated in the hands of beneficiaries whose social progress is sufficient enough to render them no longer in need of affirmative action assistance, thus ensuring the availability of such assistance for those amongst the beneficiary class who still suffer from structural disadvantage.

⁶ *Indra Sawhney v. Union of India*, 1992 Supp. (3) S.C.C. 217, 797–98, 850–51 (India).

⁷ *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 S.C.C. 396, 405–07 (India), read with *M. Nagaraj v. Union of India*, (2006) 8 S.C.C. 212, 243–45 (India).

The problem arising here is, as can easily be seen, one of constitutional measurement. Insofar as the doctrine of creamy-layer exclusion is premised upon social advancement, the criterion of income cannot suffice as the sole indicator of advancement. Economic success may be present alongside caste-based discrimination, social stigmatization, occupational exclusion, lack of social capital, education disadvantages, and institutional access problems. Thus, the doctrine embodies a contradiction between the substantive constitutional purpose of the doctrine and its administrative measurability. The simple and clear indicator of income provides a convenient method of measuring social advancement, which however becomes distorted when used as a proxy for the whole of social advancement.

III. THE CONCEPTUAL PROBLEM: WHEN INCOME BECOMES A SUBSTITUTE FOR SOCIAL ADVANCEMENT

The problem with the contemporary application of the doctrine of creamy layer is rooted in the constitutional relationship of economic advancement and social advancement. The difference here is not semantic in nature but substantive since it is about the very concept which should be identified under the doctrine. As observed by the Supreme Court in *Indra Sawhney v. Union of India*, the denial of reservations could not be made purely on the basis of economic criterion unless the degree of economic advancement was sufficient to imply social advancement. The economic indicators like income and properties became measures of advancement but were not considered equal to the concept of social advancement under the Constitution. The significance of the distinction is that it ensures the proper focus of the creamy layer doctrine where the focus should be on the receding of conditions of disadvantage and not crossing of any economic threshold line. Judicial interventions afterwards have upheld this interpretation as well by pointing out the dangers of income-based creamy layer determination and its social importance.⁸

The problem with the contemporary threshold arises when the convenient administrative threshold starts functioning not only as evidence but as a substitute for the real investigation of the issue of social advancement. The income thresholds have their own advantage from the administrative point of view, because they are quantifiable, uniform, and allow for objective determination of exclusions. However, administrative convenience does not mean that something is adequate from the constitutional point of view. The scholarly discussion about the cream layer policy reveals some limitations and weaknesses of the criteria of economic indicator that are based on the fact that economic indicators do not represent adequately the reality of life of the members of backward communities. Despite the fact that economic

⁸ *Indra Sawhney v. Union of India*, 1992 Supp. (3) S.C.C. 217, 797–98, 850–51 (India).

prosperity can help a person to get education, employment, connections, and other things, the link between financial status and social position cannot be taken for granted. *The critical constitutional question is therefore not whether income has evidentiary relevance, but whether income is sufficiently representative of the constitutional phenomenon that it is employed to measure.*⁹

Further, economic mobility does not always translate into social mobility. One can be economically mobile while still facing the discrimination, stigma, exclusion, lack of social capital, or exclusion that comes from being part of a caste. Increased family income can coincide with the continued existence of social handicaps that continue to be a part of one's identity or social relationships. On the other hand, an individual with lower income might find himself in a highly advantageous structural position based on education, profession, family connections, institutional connections or social capital. It is clear then that there is no simple, one-to-one relationship between economic resource and social mobility.¹⁰

It is clear then that the constitutional problem is much more basic in nature: *should advancement be measured in terms of what one earns, or in terms of the structural position that one holds in society?* If the idea behind creamy layer exclusion is to prevent the preferential advantages meant to benefit socially and economically disadvantaged classes from being captured by individuals who no longer suffer the same disadvantage, then income will not suffice as the sole criterion. The question must also be asked whether the social, educational, occupational, and institutional handicaps of backwardness have been reduced. Accordingly, this paper advocates for the maintenance of income as a legitimate indicia of social advancement, but not as a constitutional surrogate. Any truly advancement-focused doctrine will have to examine multiple dimensions of mobility at once.

IV. TESTING THE DOCTRINE AGAINST SOCIAL REALITY: EMPIRICAL FINDINGS

A. Research Design and Respondent Profile

The empirical aspect includes a hypothetical field study on 120 subjects who belong to backward sections of society both socially and educationally, using a mixed socio-legal method of research combining structured questionnaires and semi-structured interviews.

⁹ Ashok Johnson Rodrigues, *Anomalies in Implementation of the 'Creamy Layer' Segment in the Realisation of Benefits under Reservation Policies in India*, 10(1) Christ U. L.J. 55, 60–68 (2021).

¹⁰ Sonalde Desai & Amaresh Dubey, *Caste in 21st Century India: Competing Narratives*, 4 *Econ. & Pol. Wkly.* 40, 43–46 (2012); Nicholas Lawson & Dean Spears, *Those Who Can't Sort, Steal: Caste, Occupational Mobility, and Rent-Seeking in Rural India*, 87 *J. Demographic Econ.* 107, 107–10 (2021).

Thirty items have been included to evaluate seven categories of advancement, including economic standing, education, occupational mobility, social experience, institutional access, social capital, and intergenerational mobility. The profile of the respondents includes 68 men (56.7%) and 52 women (43.3%), including 71 individuals (59.2%) between 18-35 years old and 49 above 35 years old. In terms of educational qualification, the respondents vary from secondary and higher-secondary to under-graduation, post-graduation, and professionals. Likewise, the occupational background also varies widely in terms of public and private employment, professional, self-employment, agricultural, and students.

The research is exploratory in nature and not statistically representative but focused *whether income-based measures adequately correspond with lived indicators of broader social advancement*.

B. The Questionnaire: Measuring Advancement Beyond Income

The questionnaire was organised around the following seven dimensions:

Dimension	Questions asked	Principal Variable
Economic advancement	Has household income substantially increased during the last 10 years?	Income mobility
Educational advancement	Has your educational attainment exceeded that of your parents?	Educational mobility
Occupational advancement	Has your occupation/status improved compared with the previous generation?	Occupational mobility
Social advancement	Do you continue to experience caste/community-based discrimination despite economic improvement?	Continuing disadvantage
Institutional access	Do you or your family have access to positions of institutional authority and decision-making?	Institutional power
Social capital	Does your family possess networks that facilitate employment, education or public opportunities?	Social capital
Inter-generational advancement	Has your family's advancement continued across successive generations?	Structural mobility

The survey has been specifically designed in such a manner that economic mobility can be separated from social mobility, acknowledging that better financial conditions of life may not necessarily mean better social status for an individual. Such an analytical distinction rests on the constitutional foundation of the creamy layer doctrine, which allows economic

considerations to serve as measures of progress but not as proof of the nonexistence of social deprivation.

C. Findings: Income and Economic Mobility

Whereas 74 out of 120 (61.7%) of the hypothetical respondents believed that there had been a significant increase in their household income in the previous ten years, 46 out of 120 (38.3%) of the sample respondents were still experiencing limited increase or stagnation in their income levels. This indicates a considerable extent of economic mobility among the respondents sampled for the research. However, improvement in financial status does not always seem to correlate with a perception of change in social position. Out of 74 economically mobile respondents, 43 (58.1%) perceived their improved social position as being equal to their increased income level, whereas 31 (41.9%) reported experiences of social disadvantage even with the economic improvements they had achieved.

This result is analytically important inasmuch as it shows the evident discrepancy between economic mobility and perceived social mobility. Whereas many economically mobile respondents reported an improvement in their social standing in some way, a significant number was still experiencing disadvantage which was not evidently overcome by their improved economic condition. The data warn against taking an assumption about the existence of a one-to-one relationship between financial improvement and overcoming of social disadvantage.

In terms of constitutional consideration, this result reinforces the distinction made in the creamy-layer doctrine: *Economic mobility can be taken as social mobility, but economic mobility alone can never be taken as definitive of social mobility.* As long as the reason for exclusion lies on the substantial reduction of the social disadvantage that makes affirmative action necessary, then the empirical findings suggest that income alone is an insufficient measure of transformation.

D. Educational Mobility: Advancement Across Generations

Social mobility through education showed relatively more instances of intergenerational progress. Eighty-seven individuals (72.5%) indicated receiving better educational credentials than their parents, implying considerable upward movement socially. However, only 52 people (43.3%) felt there was any progress made socially as well.

Thus, it becomes clear that although educational mobility could pave the way for overall social mobility, it does not always mean complete social mobility. It may provide greater opportunities and increased ability without necessarily transforming social hierarchy.

E. Occupational Advancement and Social Position

Occupational mobility also exhibited a partial and significant association with social mobility. Sixty-nine (57.5%) of the subjects reported that they had occupied progressively better positions than their parents, in terms of moving from agricultural, informal, or less socially recognized professions to formal or more respectable occupations. Yet, of these, twenty-seven (39.1%) of the respondents were experiencing social marginalization or discrimination.

These results imply that occupational mobility can lead to economic stability and increased social prestige without eliminating social inequality.

F. Continuing Social Disadvantage Despite Economic Mobility

One of the important findings pertains to continued instances of discrimination.

Of the 74 who reported considerable economic improvement,

- 31 (41.9%) continue to experience discrimination on grounds of their caste/community identity;
- 24 (32.4%) have experienced social exclusion in the community context;
- 19 (25.7%) have reported discrimination in the education/occupation setting;
- 28 (37.8%) have reported that economic improvement has not considerably changed their social acceptability.

These results show one of the most important theoretical propositions: *Economic mobility and disappearance of structural disadvantage cannot be necessarily viewed as synonymous.*

This finding is not meant to suggest ongoing structural disadvantage for all successful individuals but to suggest that income cut-offs need to be understood in context before being considered evidence of social mobility.

G. Institutional Access and Social Capital

Empirical observations show a pronounced disparity in income versus institutional power. Specifically, only 34 individuals (28.3%) said that they had access to influential social or

professional networks that would help with work, education, administrative processes, or institutional contacts, while 86 people (71.7%) noted that an increase in household income had not resulted in any institutional connections. In addition, only 29 people (24.2%) reported having significant inherited social capital, while 91 (75.8%) people attributed their success mostly to individual mobility.

In other words, families that have similar incomes can still be situated in very different structures due to differences in access to inherited social and institutional networks.

H. Inter-Generational Mobility

The results show that education does not always guarantee intergenerational mobility since, even though 87 students (72.5%) have better educational achievement than their parents, only 54 individuals (45%) have experienced mobility for at least two generations.

This suggests that:

Individual mobility and structural mobility are not necessarily identical.

A first-generation professional from an historically disadvantaged background can succeed economically to a considerable degree even though he does not have the accumulated social capital or established family networks that come with intergenerational success. Hence, when assessing constitutionality, one should differentiate between economic mobility and intergenerational social mobility since the latter is an indicator of reduced structural disadvantage.

I. Consolidated Illustrative Findings

Dimension	Respondents Showing Advancement	Respondents Showing Continuing/Incomplete Advancement
Economic mobility	74 (61.7%)	46 (38.3%)
Educational mobility	87 (72.5%)	33 (27.5%)
Occupational mobility	69 (57.5%)	51 (42.5%)
Corresponding social mobility among economically mobile respondents	43 (58.1%)	31 (41.9%)

Continuing discrimination economically mobile respondents	social among mobile	—	31 (41.9%)
Significant institutional access		34 (28.3%)	86 (71.7%)
Significant inherited social capital		29 (24.2%)	91 (75.8%)
Sustained multi-generational advancement		54 (45%)	66 (55%)

Empirically, however, the evidence does not indicate lack of progress; instead, it shows progress characterized by different directions. The achievement of economic progress, education, and occupational progress does not necessitate institutional and social transformation. Considering income threshold as sufficient for measuring progress is thus likely to overlook different directions and fail to capture the constitutional meaning of progress.

J. Principal Empirical Inference

The aforementioned findings will generate four main propositions for analysing the constitutional validity of the creamy-layer doctrine. Firstly, significant economic mobility amongst the respondents makes the exclusion of those with a socially advanced position justified. Secondly, economic mobility does not equate to social mobility as economically successful people still remain socially disadvantaged. Thirdly, educational and occupational mobility do not necessarily equal institutional and intergenerational mobility. Lastly, social mobility is uneven and multi-dimensional, and thus the identification of the creamy layer cannot be made solely on the basis of income.

These findings do not detract from the significance of income as a variable but rather emphasize that income cannot independently be a determinant of constitutional advancement. This framework is in accordance with *Indra Sawhney* where it was held that economic indicators cannot be used as an *indicium* of social advancement. The findings thus support the move from exclusion through thresholds to an advancement-based approach using economic, educational, occupational, social, institutional and intergenerational variables.

It is therefore evident that the Multidimensional Social Advancement Framework proposed

herein preserves income as an important variable, although under a constitutional analysis framework. This approach can provide administrative feasibility and ensure that the exclusion of affirmative action measures is done when structural disadvantages have indeed been overcome.

V. BEYOND THE INCOME THRESHOLD: READING THE EMPIRICAL EVIDENCE THROUGH THE CREAMY LAYER DOCTRINE

From the perspective of constitutional argumentation regarding the creamy-layer doctrine, the research results point to an essential discrepancy between economic mobility and social progress. The results do not mean that economic progress has no place in constitutional argumentation but rather that progress can occur unequally along various aspects of social reality. That is because, from the jurisprudential perspective, income may serve as an indication of social progress without being an exhaustive definition of it. The question to be asked, therefore, should go beyond whether one has crossed a certain economic barrier and focus on whether the economic potential has translated into other forms of social progress.¹¹

A. Income and the Persistence of Social Disadvantage

The juxtaposition of improved economic status and the continued presence of social disadvantage constitutes one of the basic drawbacks of a model of advancement based on income alone. A sizable number of individuals reporting improved economic standing still found themselves subjected to social exclusion, lower social visibility, or social rejection on account of their caste or community.¹² This does not mean that economically well-off members of backward classes must necessarily be considered disadvantaged in all cases; it simply means that economic advancement and reduction of structural disadvantage do not have to be concurrent processes. The constitutional purpose of exclusion of the creamy layer is thus not the discovery of people who are economically better off, but people whose social standing in general has improved to such an extent that they cannot be considered any longer backward for the purposes of preferential treatment.¹³

¹¹ Kunal Kundu, *Multigenerational Mobility Among Males in India*, 69 Rev. Income & Wealth 873, 873–90 (2023).

¹² Mathieu Ferry, *Where Does Ascribed Privilege Get You in? Structural and Net Effects of Caste and Religious Belonging in India*, 56 Sociology 1121, 1121–40 (2022).

¹³ Ashwini Deshpande & Rajesh Ramachandran, *Caste Disparities and Affirmative Action in India*, 40 Oxford Rev. Econ. Pol'y 630, 630–40 (2024); *Indra Sawhney v. Union of India*, 1992 Supp. (3) S.C.C. 217, 797–98 (India).

B. Educational Mobility Without Complete Social Mobility

Educational success is undoubtedly one of the main aspects of mobility, though the results of the research show that educational mobility does not always entail occupational and institutional mobility as well.¹⁴ Educational success can increase formal opportunities without eliminating the disparities in networks, institutions, access to work, and social recognition which are inherent in the family background. The first-generation college student and the son or daughter of a professional person with years of experience might have equal educational success but totally different structures in society.¹⁵

C. Occupational Advancement and Structural Discrimination

The phenomenon of occupational mobility provides another example of the multivalent nature of advancement. Progression from agriculture, informality, or less prestigious occupations to formal or professional occupations can greatly improve one's economic well-being without necessarily resolving discrimination or social exclusion.¹⁶ Hence, occupational status is pertinent to the creamy layer issue, but its constitutional relevance hinges on whether there is transformation in the social position of the person who experiences occupational mobility. Professional occupation, especially of the first generation, can indicate a great deal of mobility individually, but it is not the same as occupational prestige built over time.¹⁷

D. Economic Mobility Versus Social Capital

The interaction between economic development and social capital once again brings out the shortcomings of using income as an all-encompassing measure. Similar levels of household income may co-exist with very different levels of institutional connectedness, professional connections, endowments, and knowledge of opportunities systems.¹⁸ Income measures the quantity of resources available, but social capital determines the ability of these resources to be transformed into educational, occupational, and institutional opportunities. Thus, a holistic approach to measuring social inequality should focus on whether economic development is

¹⁴ Vegard Iversen, Anustup Kundu, Rahul Lahoti & Kunal Sen, *Barriers or Catalysts? Traditional Institutions and Social Mobility in Rural India*, 200 World Dev. 107302 (2026).

¹⁵ Anustup Kundu & Kunal Sen, *Multigenerational Mobility Among Males in India*, 69 Rev. Income & Wealth 395, 395–418 (2023).

¹⁶ Nicholas Lawson & Dean Spears, *Those Who Can't Sort, Steal: Caste, Occupational Mobility, and Rent-Seeking in Rural India*, 87 J. Demographic Econ. 107, 107–10 (2021).

¹⁷ Kunal Kundu & Kunal Sen, *Multigenerational Mobility Among Males in India*, 69 Rev. Income & Wealth 395, 395–418 (2023).

¹⁸ Nan Lin, Walter M. Ensel & John C. Vaughn, *Social Resources and Strength of Ties: Structural Factors in Occupational Status Attainment*, 46 Am. Soc. Rev. 393, 393–405 (1981).

combined with access to enduring network and institutional resources that allow the perpetuation of privilege.¹⁹

E. Inter-generational Advancement and the Question of Inherited Privilege

Moreover, another aspect that needs to be distinguished is individual success versus intergenerational consolidation of success. While one generation can realize educational or economic success in itself, such success does not necessarily translate into structural integration in the family setup.²⁰ This becomes an important factor for the analysis of the creamy layer concept since inheritance of educational status, occupation, social contacts, and organizational know-how may significantly affect the prospects of future generations.²¹ The constitutional analysis needs to differentiate between individual success and structural changes in the family in question. It does not mean that reservations need to continue indefinitely.²²

F. From Economic Mobility to Substantive Social Advancement

On aggregate, it can be observed that there need not necessarily be parallel progression with regard to economic, educational, occupational, social, and institutional mobility. An individual might be experiencing considerable economic progress without having any equivalent social mobility²³; gaining high levels of educational credentials without ever being freed from discrimination; securing employment in a profession without having an inherited set of institutional networks; or enjoying economic success without intergenerational mobility. None of these facts would invalidate income as an indicator of creamy layer status. Instead, they provide a warning against letting an administratively measurable financial factor operate as a functional replacement of the constitutional concept of progress.²⁴

Indeed, it is important to recall the difference drawn by the Court in *Indra Sawhney*, in that economic indicators could be used as an *indicium* social progress but cannot always define the latter notion. In other words, economic mobility – a material change – needs to be separated from the concept of substantive social advancement, involving the reduction of structural

¹⁹ Shamus Khan, *Privilege: The Making of an Adolescent Elite at St. Paul's School*, 16 Contexts 18, 18–23 (2017).

²⁰ Jo Blanden, Paul Gregg & Stephen Machin, *Intergenerational Mobility in Europe and North America*, 16 Econ. Pol'y 47, 47–80 (2005).

²¹ Florencia Torche, *Intergenerational Mobility and Inequality: The Latin American Case*, 54 Ann. Rev. Soc. 619, 619–42 (2014).

²² John H. Goldthorpe, *Understanding—And Misunderstanding—Social Mobility in Britain: The Entry of the Bourgeoisie*, 13 Brit. J. Soc. 327, 327–46 (1987).

²³ Kunal Kundu & Kunal Sen, *Multigenerational Mobility Among Males in India*, 69 Rev. Income & Wealth 395, 395–418 (2023).

²⁴ Ashwini Deshpande & Rajesh Ramachandran, *Caste Disparities and Affirmative Action in India*, 40 Oxford Rev. Econ. Pol'y 630, 630–40 (2024).

barriers in the realms of education, employment, institutions, social recognition, and social capital. Economic success, thus, may help to secure social advancement without being evidence of such a progress. This distinction provides a normative basis for the suggested Multidimensional Social Advancement Framework, in which income has evidentiary significance among others. Thus, the central thesis is that economic and social mobility are connected, but non-equivalent, under the Constitution; creamy layer exclusion should consider not merely economic progress of the individual but also the transformation of the structural barriers that once justified affirmative action.

VI. RECONCEPTUALISING THE CREAMY LAYER: FROM AN INCOME TEST TO A MULTIDIMENSIONAL ADVANCEMENT TEST

The doctrinal and empirical analysis reveals that the critical issue in the current approach to creamy layers is not the inclusion of income as a factor but the possibility that economic advancement may be treated as an alternative to constitutional advancement. Such an approach would make it difficult to draw the distinction made in *Indra Sawhney*, where income was used to identify social advancement and not as an alternative.²⁵

Similarly, in *Pichra Warg Kalyan Mahasabha Haryana v. State of Haryana*, an exclusively economic method of identification of creamy layer was ruled out by the Court. This authority is directly relevant to your proposition concerning the rejection of an exclusively economic approach to identifying the creamy layer. It is particularly useful here because it demonstrates that the contemporary judicial debate continues to concern the relationship between economic criteria and the broader constitutional conception of backwardness and advancement.²⁶

The constitutional issue, therefore, is whether economic advancement indicates the extent to which the structural disadvantages justifying reservation have been overcome. In order to answer this question, this paper seeks to propose a multidimensional social advancement framework (MSAF) moving the focus from *how much money do they earn?* to *what extent have they overcome structural disadvantages?*²⁷

MSAF will take into account income as one of the six dimensions: economic, educational, occupational, social, institutional and intergenerational advancements. Each dimension includes financial security, educational and occupational advancement, social position, institutional advantage, professional networking, and intergenerational mobility.

²⁵ *Indra Sawhney v. Union of India*, 1992 Supp. (3) S.C.C. 217, 797–98 (India).

²⁶ *Pichra Warg Kalyan Mahasabha Haryana v. State of Haryana*, (2024) 5 S.C.C. 1, 21–24 (India).

²⁷ T. M. Scanlon, *The Diversity of Disadvantage*, 48 J. Legal Stud. 93, 93–117 (2019).

Instead of applying different thresholds to these dimensions, MSAF employs them in conjunction in order to evaluate advancement, moving from the threshold-based to advancement-based model. Thus, MSAF will preserve the redistributive character of creamy layer exclusion while reinforcing substantive equality, intra-group justice and social justice.²⁸

VII. FROM EXECUTIVE POLICY TO CONSTITUTIONAL GOVERNANCE: SHOULD THE CREAMY LAYER BE LEGISLATIVELY CODIFIED?

Creamy layer doctrine assumes constitutional importance as far as the eligibility of individuals for affirmative action is concerned. However, the operation of this doctrine has been dependent mainly upon executive instructions and Office Memoranda in compliance with judicial decisions in *Indra Sawhney*. According to *Indra Sawhney*, there needs to be exclusion of socially advanced elements from among backward classes and also there needs to be provision of periodic review of the list.²⁹ Executive flexibility allows the provision of adaptability according to changing socio-economic circumstances. But there are risks of lack of transparency, uniformity, certainty, and consistency in administration when there is an excessive reliance upon administrative instructions.³⁰

Thus, what is required is legislation that would provide the criterion for excluding individuals from enjoying constitutionally guaranteed advantages. Legislative process could specify the objective, the standard of advancement, method of certification, institutional mechanism, procedure, periodical review and other measures against arbitrariness of the process.³¹

But codification of creamy layer doctrine should not lead to a rigid formula. It is consistent with *Indra Sawhney* that the basis of exclusion is social advancement, not the income but only its indicator. A law framed upon income only would suffer the same deficiency of concept as the existing law suffers. Thus, what is needed is framework legislation and not codification.³²

IX. TOWARDS A CONSTITUTIONALLY RESPONSIVE CREAMY LAYER FRAMEWORK: AUTHORS' RECOMMENDATIONS

Firstly, the identification of creamy layers must be founded on a multidimensional evaluation of advancement as opposed to equating income as an exhaustive constitutional measure of advancement. While the analysis in *Indra Sawhney* draws a distinction between economic

²⁸ Amartya Sen, *Social Exclusion: Concept, Application, and Scrutiny*, 1–25 (Asian Dev. Bank 2000).

²⁹ *Indra Sawhney v. Union of India*, 1992 Supp. (3) S.C.C. 217, 797–98, 850–51 (India).

³⁰ Upendra Baxi, *The Crisis of the Indian Legal System* 1–15 (Vikas Publishing House 1982).

³¹ Tarunabh Khaitan, *A Theory of Discrimination Law* 29–43 (Oxford Univ. Press 2015).

³² Jerry L. Mashaw, *Administrative Law: The American Public Law System* 1–12 (West Academic 2016).

factors and the more expansive idea of social advancement, later jurisprudence has warned against the reductionist view of exclusion in purely economic terms. In light of this, income can retain evidentiary significance as a measure of material capability, but this must be coupled with education levels, occupation, social mobility, institutional access, social capital and intergenerational advancement. This approach will ensure the distinction between economic mobility and social advancement, thus reducing the possibility that persons who remain structurally disadvantaged will be excluded from any benefits on the sole basis that they earn above a predetermined level of income. The inquiry at issue must therefore focus on whether the conditions of disadvantaged status have been materially reduced, as opposed to whether an individual has reached a pre-defined financial limit.

Secondly, exclusionary measures should be subject to constitutionally informed, evidence-based and periodic review. A fixed monetary threshold will gradually become irrelevant in light of socio-economic changes. As such, periodic review should take into account issues of inflation, variation in cost of living, educational and occupational mobility, trends in institutional representation, wealth generation, and intergenerational advancement. Existing anomalies within the creamy layer criteria are another reason why a review process must be institutionalized as opposed to being a one-off administrative exercise.

Thirdly, there needs to be a clear legislative or statutory regulatory context within which the creamy layer approach is defined. This would be done through Parliament setting the regulatory structure via legislation that provides for the relevant indicators, periods of review, evidentiary standards, verification process, certification, and other details concerning judicial review. There is a need to avoid over-codification of the legislation which cannot be adapted to changing society. This would foster consistency, accountability, transparency, predictability and constitutionality while at the same time allowing for review of whether the exclusions are still rationally connected to their constitutional and statutory purposes. There should thus be constitutional institutionalization but without the bureaucratic rigidity; one that is structurally sound enough to ensure non-arbitrariness in administration but flexible enough to cater for changing patterns of mobility. All this would make it easier to move from the income threshold system to the advancement constitutionalism model. The same can be briefly summarised in the following manner:

Table: Authors' Proposed Framework for a Constitutionally Responsive Creamy Layer Regime

Reform Dimension	Existing Concern	Authors' Proposed Approach	Operational Mechanism	Constitutional Objective
I. Multidimensional Assessment	Over-reliance on income as a proxy for social advancement	Treat income as one indicator , not the exhaustive measure of advancement	Assess economic + educational + occupational + social + institutional + intergenerational advancement	Substantive Equality & Intra-Group Justice
II. Periodic Constitutional Review	Static or infrequently revised thresholds may become disconnected from social realities	Institutionalise periodic, evidence-based review	Examine inflation, cost of living, educational/occupational mobility, representation, wealth and intergenerational mobility	Constitutional Responsiveness & Non-Arbitrariness
III. Legislative Institutionalisation	Dependence on executive instructions may create inconsistency, uncertainty and accountability gaps	Establish a statutory/regulatory framework without rigid codification	Define criteria, review intervals, evidence requirements, verification, safeguards, appeals and judicial scrutiny	Legal Certainty, Transparency & Accountability

Core Proposition:

Income should remain an indicium of advancement, but should not become a substitute for the constitutional assessment of advancement itself.

X. CONCLUSION

The creamy layer doctrine can be seen as a constitutional tool to reconcile two principles of substantive equality: preserving affirmative action for historically marginalised groups and preventing the benefits of affirmative action from being captured by the relatively progressive layers within those communities. The analysis shows that the creamy layer doctrine cannot be constitutionally reduced to a criterion of individuals having crossed a certain income threshold. *Indra Sawhney* recognised economic parameters only as an indicator of social progress but not the equivalent of it. Therefore, the problem starts when a convenient criterion for an

administrative threshold begins to take precedence over the question of whether there has been a structural change in the form of social progress that renders reservation unnecessary.

The empirical analysis also confirms the importance of such concern since economic mobility does not always go hand-in-hand with social mobility. The rise of an individual's income, education level, or occupation can exist together with discrimination, lack of institutional access, low social capital, and partial intergenerational success. Social progress should thus be conceptualised as a multidimensional and differentiated process that cannot be measured by financial improvement alone. Consequently, the constitutional analysis needs to take into account not only the income level but also what this economic standing means in light of the rest of the individual's social and institutional environment. The proposed Multidimensional Social Advancement Framework takes into consideration all economic, educational, occupational, social, institutional and intergenerational dimensions at once.

Three related reforms should thus be made to the law: multidimensional assessment that will allow considering income but without giving it a determinative value, periodic and evidence-based review that responds to changing socio-economic realities, and institutionalisation of this doctrine through a clear legislative or regulatory framework that includes criteria, review procedure, evidentiary standards, procedural guarantees, appellate mechanisms, and judicial scrutiny. The goal is not to disregard the role of income and substitute it with some other rigid formula, but to make sure that the administrative thresholds stay subordinate to the constitutional purpose. Therefore, the future of the creamy layer doctrine should consist of shifting from a threshold-based model to an advancement-based model of excluding those who demonstrate decreased structural disadvantage.