

## NO QUOTA WITHOUT QUANTIFIABLE DATA

Relevant for: Developmental Issues | Topic: Rights & Welfare of STs, SCs, and OBCs - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

The Madras High Court's recent verdict of quashing the 10.5% special reservation for Vanniyakula Kshatriyas within the overall 20% quota for Most Backward Classes (MBC) and Denotified Communities (DNC) has again highlighted the importance of quantifiable data as a prerequisite for reservation in education and employment.

Adopted on the last day of the previous State Assembly in February when the All India Anna Dravida Munnetra Kazhagam (AIADMK) was in power, the special quota law, which envisaged 10.5% special reservation for the Vanniyakula Kshatriyas comprising seven sub-castes; 7% for 25 MBCs and 68 DNCs; and 2.5% for 22 MBCs, triggered controversy from the word go. Expectedly, the legislation was challenged before the High Court, which held it unconstitutional for a host of reasons. Even though the Court described the submission that the law was enacted only on the basis of "adequate authenticated data on population" of the MBCs and DNCs enumerated by the second Backward Classes (BC) Commission as the "main thrust" of arguments of Tamil Nadu's Advocate General, it concluded that "there is no data, much less quantifiable data, available with the State government before the introduction" of the law.

It is a fact that no exhaustive study has been done to collect quantifiable data on the representation of different communities in education and employment since the second BC Commission, popularly known after its chairman, J.A. Ambasankar, carried out one during its existence (1982-1985). Even the State BC Commission, in its report of July 2011 to the State government in justification of 69% reservation for BC, MBC/DNCs and Scheduled Castes (SC)/Scheduled Tribes (ST) under the 1994 Act, did not give any community-wise break up of representation in government services. It furnished only the numbers of candidates belonging to the BCs and MBC/DNCs, who were chosen for the State Services and Subordinate Services during 2005-09, quoting the data furnished by the Tamil Nadu Public Services Commission, apart from those from SC/ST and Other Backward Classes selected by the Railway Recruitment Board, Chennai. Even though the mandate given to the BC panel was to come out with its defence of the 69% quota, the Commission could have provided the community-wise break up of recruitments made by the State government.

At least, now, with the High Court pointing to the absence of data as a reason to annul the 10.5% quota law, the State government should commission a study to compile the data on the way the benefits of reservation got distributed among BCs, MBCs and the DNCs. The study can be carried out either by the present BC Commission or by an exclusive panel, as decided by the previous AIADMK government in December 2020. When the existing BC Commission was set up in July 2020, one of the terms of reference was to examine the demand for internal reservation within the reservation provided for MBCs and make a recommendation on the matter. As made clear by the Court, the quantifiable data are required for providing any form of quota in favour of any community because the Constitutional stipulation of adequate representation in the services has to be met along with that of social and educational backwardness for any community to become eligible for reservation in employment.

The need for internal reservation has been felt for more than one reason. Even in the 1970s and 1980s, two BC Commissions found certain sections of the communities more backward than others. The situation has got compounded in the absence of application of the creamy layer rule in reservation, a concept that is being opposed by political parties including the Dravida Munnetra Kazhagam and the AIADMK. Ironically, the first BC Commission (1969-70), headed by

A.N. Sattanathan, talked of having a device for “skimming off periodically” top layers of the communities. The Ambasankar Commission advocated compartmental reservation, by grouping the BCs on the basis of backwardness. It went to the extent of saying that the words, “any backward class of citizens” in Article 16(4) of the Constitution “contemplates [sic] a plurality of backward classes and consequent separate reservation for these classes.”

The concept of quota within quota is nothing new to Tamil Nadu. In March 1989, a new category — Most Backward Classes and De-notified Communities — was carved out of the BCs and given 20% exclusively from the then quantum of 50%. In September 2007, Muslims in the BCs were provided with 3.5% and in January 2009, 3% for Arunthathiyars out of 18% quota for the SCs.

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