



# "Examining Tamil Nadu's Reservation Policy : History, Challenges, and Legal Implications"

## GUIDE

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## ABSTRACT :

This article provides a comprehensive examination of Tamil Nadu's reservation policy, highlighting its historical evolution, challenges, legal implications, and recent controversies. The focus is on the recent Constitutional Amendment Act of 2019, which guarantees 10% reservation for economically weaker sections (EWS) within the unreserved category, and the subsequent opposition it faced in Tamil Nadu. The article delves into the constitutional and legal aspects surrounding the reservation policy, including the Supreme Court's stance on reservation limits and the importance of empirical evidence in justifying reservations. It also discusses the impact of Tamil Nadu's reservation policy on social justice, inclusivity, and human development indicators. Additionally, the article analyzes the representation of various communities in educational institutions and government services, highlighting persistent challenges and disparities. Furthermore, it explores the history of reservations in Tamil Nadu, including the recommendations of commissions and government initiatives aimed at addressing inequalities. The recent Supreme Court ruling invalidating Tamil Nadu's special reservation for the Vanniyar community is also examined, providing insights into the legal reasoning and implications of the decision. Overall, the article emphasizes the need for evidence-based policymaking and equitable treatment while upholding constitutional principles in reservation policies.

**Keywords :-** Tamil Nadu, Reservation policy, Constitutional Amendment Act of 2019, Economically weaker sections (EWS), Reservation cap, Supreme Court, Empirical evidence, Social justice, Inclusivity, Human development indicators, Educational institutions, Government services, Scheduled Castes (SCs), Scheduled Tribes (STs), Muslims, Backward classes, Brahmin hegemony, Caste-based barriers, Sattanathan Commission, Most Backward Class, Creamy layer, Vanniyar community, Supreme Court ruling, Constitutional principles, Equitable treatment, Article 14, Article 16, Indra Sawhney case, Quantifiable data, MBCs (Most Backward Classes), DNCs (Denotified Communities), AIADMK, DMK, Madras High Court, Legislative assembly, Socio-educational status, Preferential treatment, Ultra vires.

## Introduction :

The recent Constitutional Amendment Act of 2019, which guarantees 10% reservation for economically weaker sections (EWS) within the unreserved category, sparked controversy in Tamil Nadu. This amendment, surpassing the 50% reservation cap established post the Indra Sawhney Vs Union of India case, faced opposition from the majority of political parties in the state. While the amendment allows states to exceed the reservation limit under exceptional circumstances, the Supreme Court emphasized that economic

disadvantage alone cannot justify reservations. Former finance minister Arun Jaitley argued that the 50% cap was intended for caste-based reservations. However, Tamil Nadu opposed the amendment, citing the lack of empirical support. The state's reservations policy has historically focused on social justice, challenging Brahmin hegemony and promoting inclusivity. The policy has resulted in significant improvements in human development indicators and equitable representation in education and employment sectors, especially for backward classes. Despite these advancements, challenges persist, particularly concerning the representation of Scheduled Castes, Scheduled Tribes, and Muslims, as well as the underrepresentation of certain groups in prestigious institutions like IITs. The state's reservation policy has evolved over the years, with commissions recommending measures to address disparities and prevent the concentration of benefits among certain communities. However, the implementation of the creamy layer concept and the exclusion of certain castes from reservation benefits have been contentious issues. Additionally, compliance with reservation policies by private institutions remains a concern, undermining the original intent of reservations. The recent Supreme Court ruling invalidating Tamil Nadu's special reservation for the Vanniyar community underscores the importance of evidence-based policymaking and adherence to constitutional principles. Moving forward, it is crucial for the state to collect relevant data and justify reservation policies to ensure equitable treatment while upholding constitutional mandates.

### Challenges and Impact of Recent Reservation Amendments :

The recent Constitution (103rd Amendment) Act of 2019, which guarantees 10% reservation for the economically weaker sections (EWS) within the unreserved category, was met with opposition by the majority of political parties in Tamil Nadu.

This constitutional amendment surpasses the 50% reservation cap established after the *Indra Sawhney Vs Union of India* case. While it does provide flexibility for states to exceed this limit in exceptional circumstances, the judgment emphasized that mere economic disadvantage cannot be the sole basis for implementing reservations.

Former finance minister Arun Jaitley, however, construed that the 50% cap was specifically intended for reservations based on caste.

Tamil Nadu's refusal of this constitutional amendment stemmed from the lack of empirical or scientific support. The Supreme Court has consistently opposed altering reservations without comprehensive study, as evidenced in the 2006 case of *Atyant Pichhara Barg Chhatra Sangh Vs Jharkhand State Vaishya Federation*, the 2016 10% reservation initiative for EWS in Gujarat, and similar endeavors by Rajasthan, Odisha, and Maharashtra in 2014.

Tamil Nadu's effective reservation policy has fostered inclusivity in the public sphere, previously controlled by upper caste Brahmins at the start of the 20th century.

Furthermore, the state's outstanding performance in human development indicators provides strong evidence of the significant impact of reservations in Tamil Nadu. Periyar's anti-Brahmin movement not only played a pivotal role in dismantling Brahmin hegemony but also set the stage for inclusive development by eliminating various caste-based barriers in public education and employment.

The reservation percentage in Tamil Nadu has increased from 41% in 1954 to 69% in 1990 in response to demands. Recent data from the All India Survey for Higher Education (2018-19) demonstrates a relatively equitable representation of Other Backward Classes in both public and private higher education institutions in Tamil Nadu.

Category-Wise Teachers in Tamil Nadu Higher Education (2018-19)				
Universities	SCs	STs	OBCs	Muslims
Government	15%	0.69%	61%	1.5%
Private unaided	5.9%	0.21%	63.32%	3.09%
Colleges				
Government	14.28%	0.30%	66.18%	5%
Private unaided	9.5%	0.19%	74.9%	2.36%

Source : All India Survey of Higher Education, 2018-19

However, there is still much to be addressed regarding the representation of Scheduled Castes, Scheduled Tribes, and Muslims. OBCs also lack adequate representation in national institutions, with their presence at 25.7%, while SCs are represented at 6.2%. Particularly alarming is the underrepresentation of

Dalits and OBCs in IITs, where their representation stands at only 2.05% and 9.42% respectively. The history of reservations in the state provides further insight.

The initial backward classes commission of Tamil Nadu, established by M. Karunanidhi and led by A. N. Sattanathan, highlighted in its 1970 report that an elite segment within the backward caste community had been benefiting the most from reservations, hindering the development of the genuinely backward castes.

According to the Sattanathan Commission, nine castes including Vadugas, Thulluva Vellalas, Aghamudiyans, Gavaras, Veerakodi Vellalas, Sourashtrians, Sadhu Chettis, Kaikolan (Sengunthar and Sozhia) and Devangas, which constitute approximately 11.3% of the total backward classes' population, occupied 37% of non-gazetted and 48% of gazetted posts. Additionally, they secured 44% of engineering seats, 47% of medical seats, and 34% of scholarships, thereby creating significant disparities in access to reservation benefits.

The Commission recommended the creation of a distinct 'Most Backward Class' category and proposed an increase in quota in order to accommodate all eligible individuals.

To prevent the reservation of seats from disproportionately benefiting specific communities, the Commission suggested the introduction of economic criteria to prevent the accumulation of all reservation benefits by the "creamy layer."

Additionally, the Commission recommended the exclusion of certain castes from reservation benefits due to their perceived advancement. Consequently, based on the Commission's suggestions, the backward class reservation was raised from 25% to 31%, and that of SCs and STs increased from 16% to 18% by the Dravida Munnetra Kazhagam government in 1971.

However, the recommendation regarding the "creamy layer" was disregarded, and no castes were excluded from reservation benefits. Furthermore, a separate category of 'Most Backward Classes' was not established as suggested.

In 1979, the government led by M. G. Ramachandran of the All India Anna Dravida Munnetra Kazhagam endeavored to implement the creamy layer concept based on the recommendations of the Sattanathan Commission. However, due to vigorous political opposition, it was later retracted. The subsequent loss in the parliamentary elections in 1980 further complicated the situation.

The MGR government defended its decision to introduce the creamy layer concept, asserting that it aimed to benefit economically disadvantaged communities and prevent the rise of a 'neo-Brahminical cult' among the affluent segments of the backward classes.

In response to the political unrest sparked by this development, the government amplified the reservation for backward classes from 31% to 50%. However, the Supreme Court mandated the government to establish a commission to investigate the genuine standing of backward classes in Tamil Nadu.

In 1982, the MGR government appointed the Second Backward Classes Commission, chaired by J. A. Ambasankar. The commission diligently undertook a scientific assessment of the backward classes' status, ultimately finding that approximately 11 castes (Kongu Vellalar, Nadar, Agamudaiyar, Labbai, Gavara, Sengunthar, Kallar, Maravar, Sozha Vellalar, Devangar, and Sadhu Chetty), constituting around 34.8% of the backward classes, held 50.7% of positions in the public service commission, 62.7% of seats in professional courses, and 53.4% of scholarships.

The remaining seats were allocated to as many as 211 castes, constituting approximately 65.2% of the total backward class population in the state. The Commission determined the backward class population to be around 67% and proposed the inclusion of 17 forward communities in the list while eliminating 34 communities from it.

Subsequently, the government augmented the backward classes list with 29 additional communities, retaining the existing 68% reservation for backward classes, SCs, and STs without removing any community from the list.

The Vanniyar caste's protest against the concentration of reservations among a small segment of the backward class population prompted the Karunanidhi-led DMK government to restructure the reservation system in 1989. This led to the allocation of 30% for backward classes and 20% for Most Backward Classes and de-notified communities.

Subsequently, the Jayalalitha government aimed to safeguard the 69% reservation following the Indra Sawhney judgment, which curtailed reservations to 50%. To achieve this, the government enacted the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational

Institutions and of Appointments or Posts in the Services under the State) Act, 1993. This act was included in the Ninth Schedule of the Constitution to evade judicial review.

Under the direction of the Supreme Court to provide quantifiable data justifying the decision, the Janarthanam Commission submitted a report in 2011 titled 'Justification of Reservation under the Tamil Nadu Act 45 of 1994 on Quantifiable Data'. This report, based on data provided by the state government, referenced the Sattanathan and Ambasankar Backward Class Commission reports. However, it failed to address the issue of certain castes within the backward classes disproportionately benefiting from the reservation.

In 2000, the White Paper on job reservations was presented in the state assembly by Chief Minister Karunanidhi, highlighting the over-representation of backward classes and the under-representation of Most Backward Classes, SCs, and STs in jobs in Tamil Nadu. The Janarthanam Commission did not adequately assess the impact of reservation by failing to compare the data collected by the Ambasankar Commission with present-day reality. This comparison would have facilitated a more rationalized approach to the reservation policy in Tamil Nadu.

The concept of the creamy layer has been widely misused across various regions, whereby the exclusion of the creamy section has led to the conversion of reserved seats into the general category under the pretext of not finding suitable candidates within the OBC section.

However, allocating seats within the community, post the exclusion of the creamy layer, could potentially create opportunities for truly deserving individuals within the backward communities. Nevertheless, influential figures within the backward communities, possessing political and economic influence, are prone to obstructing such democratization processes.

With 46% of unassisted private universities and 76% of unassisted private colleges in Tamil Nadu failing to adhere to the reservation policy in recruitment, the original purpose of reservations has noticeably waned in the state.

The underrepresentation of SCs and STs in government institutions and their limited presence in private institutions has further diluted the core principles of social justice in Tamil Nadu. There is an immediate necessity to reevaluate Tamil Nadu's reservation policy on a scientific basis without diminishing its scope or providing leeway for those opposed to reservations based on Brahminical beliefs to undermine what has been a progressive reservation policy.

### **The rationale for the Supreme Court's nullification of Tamil Nadu's special reservation for Vineyards.**

The state failed to demonstrate that the Act was enacted subsequent to a thorough assessment of the socio-educational standing of the Vanniyar community.

The Supreme Court, on Thursday, upheld the decision to strike down the Tamil Nadu Special Reservation Act, 2021. The act had provided for an internal 10.5% reservation to the Vanniyar caste within the existing quota for other backward classes (OBCs) in educational institutions and government jobs. The division bench of Justices L. Nageswara Rao and B.R. Gavai ruled in favor of the Madras High Court judgment, stating that the impugned law is ultra vires Article 14 and 16 of the constitution. They emphasized, "We are of the opinion that there is no basis to treat Vanniyar as a separate group compared to others."

The Madras High Court invalidated the law in November 2021, citing that it was enacted without verifiable data on the socio-educational standing of the Vanniyars in public services and lacked objective criteria for sub-classifying Vanniyars for the purpose of reservations. The HC remarked, "The enactment has been passed by the state without any quantifiable data on population, socio-educational status, and representation of the backward classes in the services. The sub-classification done by virtue of the impugned Act solely based on population data, in the absence of any objective criteria, is illegal in the eye of law and in violation of the constitution of India." Aggrieved by the ruling, Tamil Nadu appealed to the Supreme Court.

### **Understanding the Act**

The Tamil Nadu Special Reservation Act was enacted to address the representation concerns of the Vanniyar community within the Most Backward Classes (MBC) and Denotified Communities (DNC). Recognizing the numerical strength of the Vanniyars and their perceived challenges in competing with other MBCs and DNCs, this legislation designated an internal reservation of 10.5% for the Vanniyar community within the overall 20% quota for all MBCs and DNCs.

The Vanniyar reservation, introduced by the All India Dravida Munnetra Kazhagam (AIADMK) government in 2021 and passed in the legislative assembly earlier that year, was subsequently implemented retrospectively from February 26, 2021, by the Dravida Munnetra Kazhagam (DMK) government of M. K.

Stalin after assuming power. As a result, several MBC communities filed petitions before the Madras High Court, challenging the Act.

### Article 14 and 16: Equitable Treatment for All

The framers of the constitution recognized the unique social, political, cultural, and economic conditions in India compared to other developing or developed nations. Consequently, it is not feasible to apply identical standards to every citizen, community, or class. In incorporating provisions for equality within Articles 14–16, the framers of the constitution empowered the state to equitably treat individuals of equal standing while addressing the unequal circumstances of others. This allows for the creation of laws that support socially, culturally, and economically disadvantaged segments of society, aiming to elevate them to the same level as others. This principle is evident in the implementation of reservations for women, Scheduled Castes, Scheduled Tribes, and Other Backward Classes (OBCs).

The courts have further developed this principle over time through orders and judgments. A landmark judgment in *Indira Sawhney and Ors vs Union of India* was passed by the Supreme Court in 1993, in which it analysed the legality of reservation for OBCs and upheld it. In doing so, the court established specific standards for the government to adhere to when granting reservations to any category.

1. The total reservation under both Article 16 (1) and 16 (4) should not exceed 50% of the appointments within a particular grade, cadre, or service in any given year. This limit may only be exceeded if there is an exceptional need to do so, which must be justified on valid grounds.
2. When determining representation in educational institutions or government positions, emphasis should not be placed solely on the overall numerical strength of the backward classes in the services. Instead, the representation of the community at various administrative levels and in different grades must be taken into consideration.
3. Article 16 (4) enables the government to categorize backward and most backward classes, taking into account the extent of social backwardness. While economic backwardness may be a factor, it should not be the sole criterion for granting reservation.
4. The court also established criteria for identifying backward castes. It noted that a community's backwardness can be determined by its ability to compete with the forward class. The court stated, "If the advanced section of a backward class is sufficiently advanced to compete with the forward classes, it should no longer be classified as backward. Therefore, such an advanced section from the backward class should not be entitled to the benefits of reservations under Article 16 (4)."
5. The aforementioned criteria were established to ensure equal treatment for every class of citizens. Quoting a portion of the ruling, the court stated: "No provision of reservation or preference can be so forcefully pursued as to undermine the fundamental concept of equality. Favorable discrimination or protection cannot, under any constitutional system, become a fundamental principle. Equality is the standard; protection is the exception. An exception cannot negate the standard itself."

### CONCLUSION

In simpler terms, the government is permitted to enact special laws to safeguard marginalized groups in society under Articles 14, 15, and 16 of the constitution. However, such measures must be supported by measurable data relating to the socio-educational status of the specific class or community in question. If sufficient data demonstrates that a particular group is socially and economically disadvantaged and requires reservations, these reservations cannot exceed 50%. If the state exceeds this 50% limit, it must provide valid justifications. Otherwise, it would be considered as granting preferential treatment within the same class, which contradicts Articles 14 and 16 of the constitution. In light of the current circumstances, the state failed to demonstrate that the Tamil Nadu Act was enacted following an assessment of the socio-educational status of the Vanniyar community. Additionally, it could not provide sufficient justification for surpassing the 50% cap established in the *Indira Sawhney* judgment. Therefore, establishing a distinct category for the Vanniyar community in the absence of proven necessity and supporting data would constitute preferential treatment, infringing upon Articles 14 and 16 of the constitution. Consequently, both the Madras High Court and the Supreme Court deemed this law to be *ultra vires* the constitution and invalidated it. To offer reservations for Vineyards, the state government must collect pertinent data and build a compelling case for its implementation.

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