

P. WILSON

Senior Advocate

Member of Parliament (Rajya Sabha)

Tamil Nadu



- Member, Parliamentary Standing Committee on Personnel, Public Grievances and Law & Justice
- Member, Parliamentary Committee on Privileges
- Member, Parliamentary Consultative Committee on Defence

2nd July 2022

To,
Thiru Narendra Modi
Hon'ble Prime Minister of India,
Prime Minister's Office
South Block, Raisina Hill
New Delhi – 110 011.

Respected Hon'ble Prime Minister,
Sir,
Vanakkam!

Sub: Injustice to OBC communities in India – constitutional deadlock in providing OBC reservations in local body elections due to judicial pronouncements - Breaking the constitutional deadlock by amending certain provisions of the Constitution - Shifting census from Union List to Concurrent List – Regarding:

Ref: My Zero hour speech made in Parliament on 29.3.2022.

I trust this letter finds you in good health.

1. In continuation of my speech on the floor of the Rajyasabha on 29.3.2022, I am writing this letter to bring to your kind attention the long standing lawful demand for due representation of the Other Backward Classes (OBC) in local bodies and mend historic injustice meted out to these communities by the caste system for last 30 years.
2. The enactment of the 73rd and 74th Constitutional Amendment Acts in the year 1992 was a watershed moment in Indian Democracy. The introduction of Chapters IX and IXA established local self-governments at the grass root level. The prime objective was democratic decentralization of power and participation of the oppressed and backward classes in governance. This would make

governance more accountable, participatory and would uplift rural communities. Since the objective was equitable distribution of powers to the masses, the amendments provided for mandatory reservations for SC & ST communities and women belonging to these communities. In so far as the other backward classes, Articles 243-D(6) and 243-T(6) enabled the State Legislatures to enact legislation to provide for reservation of seats. However, Articles 243-D(6) and 243-T(6) do not specify the proportion of reservation to be provided for OBC's unlike the case of SC and ST where the Constitution stipulates that such reservation would be based on the proportion of population belonging to these categories vis-à-vis the total population of that area.

3. However, when States use this enabling provision to provide OBC reservations in local body elections, certain legal difficulties have cropped up and reservations granted to OBC communities in local bodies have been struck down by the Hon'ble Supreme Court. Recently, the State of Maharashtra wanted to give reservations to OBCs in local body elections, but the State's policy was struck down by the Hon'ble Supreme Court of India on the ground that there was no empirical data, local body wise, on the percentage of OBCs living in each local body. Likewise in Madhya Pradesh, after a legal battle, OBC reservations in local body elections were allowed by the Hon'ble Supreme Court but with a condition to examine the same with reference to data. In Union Territory of Puducherry, reservations for OBC's has been denied since 1995 in local body elections. The UT Government withdrew the reservations granted in 2019 for OBCs and STs in the 2021 local body elections on the ground that there is no empirical data available. This withdrawal was challenged by my party the Dravida Munnetra Kazhagam before the Hon'ble Madras High Court.
4. In all these cases, the legal obstacle to States granting OBC reservations in local body elections is the want of 'empirical data', which has been made a prerequisite by the judiciary. As per judicial pronouncements, the State has to appoint a dedicated Commission to gather information for ascertaining political backwardness of the backward classes to specify the proportion

of the reservation required local body-wise. For this exercise, it is vital to have access to the caste census data relating to OBC's.

5. In March 2011, pursuant to the 15th Lok Sabha passing a resolution to undertake Socio Economic Caste Census which includes census of all castes other than SC/ST, the Union Cabinet spent a sum of Rs. 4893.60 crores to conduct the caste census with the assistance of the States /Union Territories. This SECC raw caste data was collected by the Union Government in 2011 and the Cabinet Committee Chaired by your good self decided to screen the raw caste data through an expert Committee under the NITI AYOJ to find out any infirmities. Yet, till today, the said committee has not functioned and the caste census data has not been released. Thus even though caste census was taken in "SECC 2011" by the Union, the same is not published till today for unknown reasons. The union is also refusing to undertake fresh caste census.
6. Further, with the advent of 105th Constitutional Amendment and insertion of Article 342A(3) a State or a Union Territory may by law, prepare and maintain for its own purposes, a list of socially and educationally backward classes. However, the question that arises is how can a State prepare such a list when the Union refuses to publish the screened caste census data? To exacerbate the problem, the States are powerless to conduct their own census to ascertain the population of backward classes within their States since census is a Union Subject as per Entry 69, List I, Schedule VII of the Constitution of India. Therefore, States are not constitutionally competent to conduct their own census. If census is moved to the concurrent list, it would enable States to conduct its own census and would aid the State in maintaining an accurate list of backward classes contemplated under Article 342-A(3) and have empirical data of OBC communities local body wise. The States can then grant reservations in accordance with this data and there can be no challenge before Constitutional Courts and shadow fighting in the legal arena can be avoided. This would be a win-win situation for both the Union and the States. The

Union is saved from the time and expense and the States need not wait indefinitely on the Union to provide caste census data.

7. Thus there is a constitutional deadlock prevailing in granting reservations to OBC's in local bodies. The judicial declarations restraining grant of OBC reservations in local bodies has created obstacles in achieving the object of the 73rd & 74th Constitution amendments. The Union for its part has issued a press release that it will seek review of these judicial pronouncements before the Hon'ble Supreme Court but no steps has been taken even till today. However, it would be more useful if the Union just shares the caste census data that it has collected 11 years ago.
8. Therefore, due to these myriad of problems, it is the OBC communities across the nation who have paid a heavy price and lost their lawful representation over thirty years in political posts despite the Constitution enabling grant of reservations. What should have logically flowed from the Constitutional amendments have been stemmed at the threshold. Thus, the enabling provisions in Articles 243 (D)(6) and 243 (T)(6) have to be converted in to mandatory provisions, mandating the grant of OBC reservations, so that the benefit is not stalled further.
9. I would suggest a three pronged approach to remedy the problem and set right the injustice being done to OBC communities: (i) To move the entry 'census' falling under Entry 69 of the Union List to the Concurrent List giving both the Union and the State concurrent power to conduct census and (ii) simultaneously bring necessary constitutional amendments in Art 243(D)(6) and Art 243(T)(6) to compulsorily grant OBC reservations in local body elections on the basis of empirical data (iii) Until then release the caste census data collected by the Union forthwith.
10. Therefore, I hereby beseech your good self to look into this matter with urgency and enact the above proposed amendments to the Constitution in order to remove the prevalent constitutional deadlock and release the caste census data and set right the

historical injustice done to OBC communities by giving them due representation in local governments and oblige.

Thanking you,
Yours faithfully,

P. WILSON