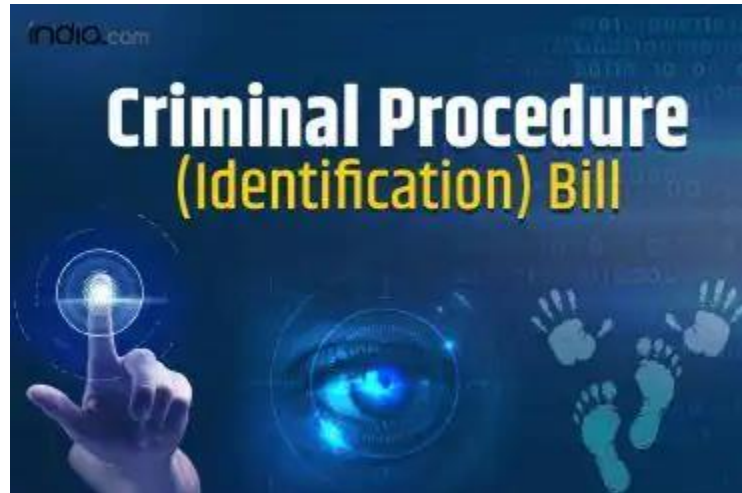




Criminal identification bill: It's not 'draconian'

Context:

1. The accused in one case have refused to provide their voice samples to inform the investigating officer of a case against two political heavyweights during a bandh in Pune in 2010.
2. The telephonic discussion on how to orchestrate rioting, stone pelting and burning of buses between the two leaders was recorded by the special branch of the police.
3. Police asked experts and went through laws to determine if the accused were obliged to give their voice samples. We needed to prove their conversation in court. There was no such provision. The politicians refused to give their voice samples, claiming it was a "violation of their personal liberty".
4. In 2010, there was no provision to collect "voice measurement", a step that the Criminal Procedure (Identification) Bill, 2022, recently introduced in the Lok Sabha, intends to change.



In the changed context of technology

The bill's statement of objects and reasons rightly mentions that technology has changed over the last century and that other countries have gained "credible and reliable results" with improved investigation and better conviction rates.

The Criminal Procedure (Identification) Bill, 2022: Changes proposed

The bill envisages expanding the ambit of "persons" and "measurement" to help investigation agencies gather sufficient legally admissible evidence and establish the crime of the accused person.

1. **The increased ambit of measurements:** The crux of the new bill is the definition of "measurement", which now includes a finger, palm and footprint impressions, photographs, iris and retina scan, physical, biological samples



and their analysis, behavioral attributes including signatures, handwriting or any other examination referred to in section 53 or section 53A of the Code of Criminal Procedure (CrPC), 1973.

- It intends to replace the Identification of Prisoners Act, 1920, which defined measurement only as “finger impressions and footprint impressions”.
1. **The increased ambit of persons covered:** While the 1920 Act empowered the collection of measurements of persons convicted of any offense punishable with rigorous imprisonment for a term of one year or upwards, the new bill envisages so even for lesser convictions i.e. from anyone convicted of an offense punishable under any law for the time being in force.
 2. **Time duration:** The data collected shall be retained in digital or electronic form by the National Crime Records Bureau that shall “store, preserve” or “destroy” the measurements for 75 years. States and Union Territories will have their agencies to do so too.
 3. **In case of arrest:** However, in case of arrests, the new bill has limited the collection of samples to those arrested for offenses with imprisonment for not less than seven years.
 - The 1920 Act covered all those arrested for offenses punishable with rigorous imprisonment for one year and more.
1. **Crime against women and children:** But an accused involved in crimes against women and children, even with lesser punishment, shall be obliged to provide their measurements.
 2. **Wide powers to Magistrates:** Magistrates as per the bill, have wide powers to direct any person to give measurements under this Act. And, the refusal shall be deemed to be an offense under Section 186 of the Indian Penal Code.

In the eye of storm

The Criminal Procedure (Identification) Bill, 2022 would allow the police and prison authorities to store and analyse physical and biological samples, including retina and iris scans of convicts

- The Bill seeks to repeal The Identification of Prisoners Act, 1920, whose scope was limited to recording finger impressions and footprint impressions of limited category of convicts

- The new Bill expands the scope of “measurements” to include iris, signature, handwriting, biological samples

- The records can be stored for 75 years

- It also proposes to record the details of persons detained under any preventive detention law. Opposition says this can be misused against political adversaries

- If a person with no criminal background is released without trial or acquitted by the court, all records of measurements so taken shall be destroyed





Problematic aspects:

1. What is jarring is that those ordered to “give security for good behaviour or maintaining peace” under Section 117 of the CrPC will also be covered under the bill.
2. Many police officers question the wisdom of taking measurements in such cases, which, as per CrPC Section 122, entail one-year detention by a magistrate or a maximum of three years imprisonment by a sessions court, while those arrested for criminal cases, involving less than seven years imprisonment, are not obliged to.

Challenges in implementation:

1. The collection and analysis of finger or footprints and handwriting have long been established in all police organizations. However, the recently introduced measurements need enormous resources and infrastructure. The Center and states will have to allocate funds to meet the commitment.
2. We need more experts to collect measurements from the scene of the crime, more forensic labs, and equipment to analyze them to identify possible accused involved in a criminal case.
3. The lack of experts and resources in forensic labs is the elephant in the room. The training of the investigation officers, prosecutors, judicial officers and collaboration with doctors and forensic experts need to be prioritized.

Positive implications of the bill on law enforcement:

1. There is no doubt that technology should be used only for legitimate law enforcement purposes. But to call the bill “draconian” is absurd.
2. It minimises the threat from organised crime, cybercriminals and terrorists who are proficient in identity theft and identity fraud.
3. On the contrary, the bill will help to check serious national and global threats posed by them.
4. We, in India, can frame rules regarding data collection and storage carefully so that the concept of personal liberty is not violated.
5. Privacy protection measures can also be developed along with robust public oversight.

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6. But depriving law enforcement agencies of the use of the latest technologies would be a grave disservice to victims of crimes, and the nation at large.

Quota and data

No group should get an exclusive reservation without data on backwardness

HOW THINGS UNFOLDED

June 13, 2012 | M S Janarthanam, the chairman of backward classes commission, **recommends to government that separate quota may be provided to the extent of 10.5% for Vanniakula Kshatriyas**

Dec 21, 2020 | The state government constitutes a commission **to collect quantifiable data on castes, communities and tribes of Tamil Nadu and submit a report in six months**

Feb 22, 2021 | M Thanikachalam, the present chairman of the backward classes commission **refers to the recommendation of his predecessor to provide 10.5% within the 20% MBC quota**

Feb 26, 2021 | The AIADMK regime passes a bill to provide 10.5% quota for MBC (vanniyars), MBC having similarity with denotified communities, 7%, and MBC not included in the above categories, 2.5%. **The state gets**

the governor's approval the same day

July 26, 2021 | The DMK government issues an order **to implement the special quota for vanniyars in education and employment with retrospective effect from February 26**



Highlights:

1. The Supreme Court has rightly quashed the Tamil Nadu Special Reservation Act of 2021, or the Vanniyar quota law, on the ground that it was not based on updated quantifiable data.
2. The Act had envisaged the distribution of the 20% quota for Most Backward Classes (MBC) and Denotified Communities (DNCs) in education and public employment by assigning 10.5% to Vanniyars or the Vanniyakula Kshatriya community, 7% for 25 MBCs and 68 DNCs, and 2.5% for the remaining 22 MBCs.



3. Even though a superficial look at the law would give an impression that not just the Vanniyars but also 115 other communities have been covered, the aspect of internal reservation for one community — Vanniyars — had created the impression of special treatment.
4. Such treatment per se is not bad in law, as caste, the Court said, can be the starting point for the identification of backward classes or providing internal reservation, though it cannot be the sole basis.
5. Also, there must be pertinent, contemporaneous data. The Court also pointed out that no analysis had been made of the relative backwardness and representation of other communities in the MBCs and DNCs.

Data based affirmative action:

1. The Court's decision has provided relief to many by holding that the State is competent to design sub-classification among backward classes; prescribe the quantum of reservation based on such sub-classification, and formulate an ancillary law, even with the assent of the Governor, to one included in the Ninth Schedule.
2. Regardless of further moves by the DMK government that had defended the law in the Supreme Court, this episode has important lessons. No community should be allowed internal or exclusive reservation without making a case for it on the basis of quantifiable data.
3. A caste-based census can help in determining the representation of various communities in public employment and in education. After all, it is an adequate representation that holds the key to the special treatment of reservations.
4. But whether caste, narrowly defined and not the socio-economic indicators of the applicants, should be the basis for reservation is another issue.

Exclude the creamy layer for just and fair affirmative action:

1. Tamil Nadu's parties must take a relook at their position against the implementation of the creamy layer rule in the reservation, as otherwise there will always be demand for internal reservation from communities that feel left out.

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2. If the parties believe genuinely in the principle of equity in the reservation, they should not have any problem agreeing to the concept of a creamy layer.
3. Also, the demand for reservation for the economically weaker sections among the caste groups not covered by reservation will carry on if those seen as economically advanced continue to obtain a larger share of the reservation pie.
4. Other than for the SCs and STs, the creamy layer must be excluded in providing for reservation for castes that qualify as backward classes.