

**IN THE SUPREME COURT OF INDIA  
(ORIGINAL WRIT JURISDICTION)  
WRIT PETITION (CIVIL) NO. 841 OF 2021**

**IN THE MATTER OF:-**

STATE OF MAHARASHTRA ..... PETITIONER

VERSUS

UNION OF INDIA ..... RESPONDENT

**REPLY AFFIDAVIT ON THE BEHALF OF RESPONDENT-  
UOI**

**ADVOCATE OF THE RESPONDENT: AMRISH KUMAR**

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REPLY AFFIDAVIT ON THE BEHALF OF THE  
RESPONDENT/UNION OF INDIA

I, R. Subrahmanyam, presently working as the Secretary, Ministry of Social Justice & Empowerment, Shastri Bhawan, New Delhi-110011, do hereby solemnly affirm and state on oath as under :-

1. That, I am presently working as the Secretary of Ministry of Social Justice & Empowerment and as such I am fully aware with the facts and circumstances of the case and competent to swear this Reply affidavit on the behalf of Respondent/Union of India in the captioned matter.
2. That, I have been read over and explained the contents of the present writ petition. The present short counter



  
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affidavit is being filed to bring on record certain primary facts relevant to the present petition. The answering Respondents seek further liberty of this Hon'ble Court to file a detailed counter affidavit as and when required.

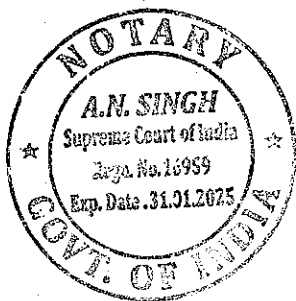
**3.** That the above captioned Writ Petition has been filed seeking the following reliefs:

*"A. A declaration to implement/execute the directions laid down by this Hon'ble court in Gawali's Judgment to disclose the SECC — 2011 raw caste data of the other backward classes (OBCs).*

*B. A Writ of mandamus or in the nature of mandamus be issued to the Respondents directing the Respondents to disclose to the Petitioner the SECC — 2011 raw caste data of the Other Backward Classes (OBCs) which is not made available to them on repeated demands.*

*C. A direction in the alternative to prayers (a) and (b) if the Respondents are unwilling or not in position to furnish the SECC -2011 raw caste data then the Petitioner may be permitted to collect such empirical data regarding the Other Backward Classes (OBCs) within the State of Maharashtra.*

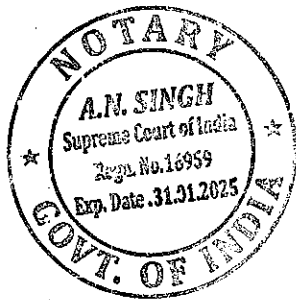
*D. A direction to the Respondents when conducting Census-2020 to gather the data of Socio-Economic to the extent relating to the caste of the citizens of Rural India, to enable the States to calculate population belonging to castes that make a part of BCC in the State.*



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*E. Pending the hearing and final disposal of this Writ Petition, the Respondents, their agents, servants and officers be ordered and directed to disclose the SECC-2011 raw caste data of the other backward classes(OBCs)”*

4. At the outset, it may be noted that the Socio Economic and Caste Census, 2011 (SECC-2011) survey was not an ‘OBC survey’ (i.e. survey of the Other Backward Castes) as alleged, but a comprehensive exercise to enumerate caste status of all the households in the Country, as per their statement. Whereas the socio-economic data of the households, including their ‘deprivations’ were used to identify the poor households based on multi-dimensional nature of poverty, and used in implementation of the anti-poverty programmes by the Central Government Ministries, the caste data has not been disclosed and has been kept with The Office of the Registrar General, India (“ORGI”) for various reasons, but primarily for the technical flaws that were noticed in the raw caste/tribe SECC data which makes it unusable as explained hereinafter. Therefore, the said data has not

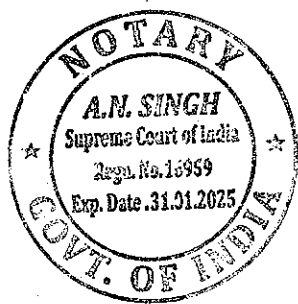


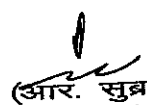
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been made official for any purposes and cannot be mentioned as a source of information for population data in any official document.

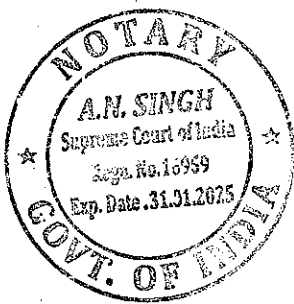
5. At the further outset, it is humbly submitted that the Indian Census is the largest administrative and statistical exercise in the world. Census comes under the Union List [Article 246] at serial number 69 of the Seventh Schedule of the Constitution of India and Census Act, 1948(hereinafter referred as the "Act") forms the legal basis for its conduct. The Indian Census is the most credible source of information on Demography (Population characteristics), Economic Activity, Literacy and Education, Housing & Household Amenities, Urbanization, Fertility and Mortality, Scheduled Castes and Scheduled Tribes, Language, Religion, Migration, Disability and many other sociocultural and demographic data of India since 1872. However, in so far as Caste data is concerned, a Caste-wise enumeration in the census has been given up as a matter of policy from 1951 onwards and thus, the castes other than Scheduled Castes and Scheduled Tribes have not been enumerated in any of the




  
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Census since 1951 till today. It is may be noted that while the preparation for the 1951 Census, the first after independence were under way, the Government of India had decided on the policy of official discouragement of caste. It was decided that in general, no race/ caste/ tribe enquiries should be made and such enquiries should be restricted to the Scheduled Castes and Tribes notified by the President of India in pursuance of Articles 341 and 342 of the Constitution. Based on the above policy decision, in 1951 Census and in all six succeeding Censuses, information was not collected about the castes other than Scheduled Castes (SCs) and Scheduled Tribes (STs).

6. That demands from various sections including Members of Parliament for enumeration of Castes in Census 2011 was received during the year 2010. The matter was discussed in Lok Sabha. Subsequently the Govt. referred the matter to a Group of Ministers (GoM) chaired by the then Union Finance Minister, wherein The Office of the Registrar General, India ("ORGI") opined that conducting

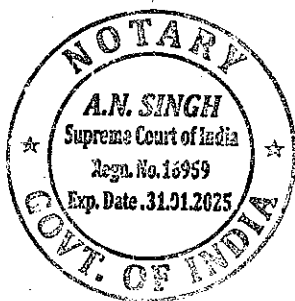



  
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Caste enumeration alongwith population Census 2011 may jeopardize the whole exercise of Census.

7. However, in view of the numerous demands for enumerating castes other than Scheduled Castes in the population Census 2011, The Union Cabinet in 2011 decided to conduct the SECC, 2011, wherein the caste of the household alongwith the social economic status on the identified parameters was directed to be collected. The basis for the SECC was the house-listing exercise done by the Census machinery as per the Census 2011, wherein the Ministry of Rural Development which coordinated the effort, was given the responsibility for conduct of the SECC in the rural areas, and Ministry of Housing and Urban Poverty Alleviation for the urban areas. The SECC was to be conducted as a separate exercise after the Population Enumeration phase of the Census 2011 was over. It was decided to collect the 'caste' of all persons as returned by the households and to formulate a suitable legal regime for collection of data on castes in consultation with the Ministry of Law & Justice. It was decided

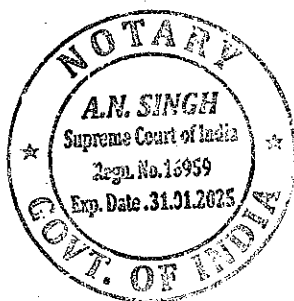



  
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that while the ORGI would conduct the field operations of the caste enumeration, the Ministry of Social Justice and Empowerment (The Respondent Department herein) and the Ministry of Tribal Affairs being the nodal Ministries, on the subject matter, may constitute an Expert Group to classify the caste/tribe returns after the enumeration is completed. It was further decided that the ORGI would hand over the details of the castes/tribes returned in the enumeration to the proposed Expert Group.

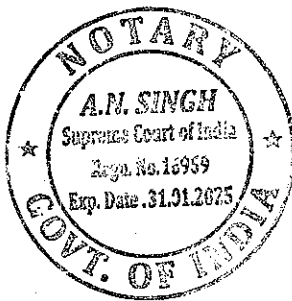
8. That after the completion of the exercise, the data so collected has been stored with the ORGI and the socio-economic data of the households has been used in the implementation for identification of the below-poverty line households for implementation of the schemes by the central government Ministries. Further, as per the decision of the Cabinet, the data has been shared with the Ministry of Social Justice and Empowerment by the ORGI in a hard disk, for taking suitable decision on its use. Pertinently, due to several infirmities found in the aforesaid data as explained hereinafter, it was decided by



  
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the Cabinet to constitute an Expert Committee under the Chairmanship of the then Vice Chairman NIT/ Ayog Prof Arvind Panagariya. However, the other members in the Committee were not named, and the Committee never met. As a result, no action has been taken on the data in the past 5 years.

9. That the caste data containing nearly 130 Cr records were opened in the Department, and analysed, wherein it was noticed that the household level of caste and religion status has been copied in thousands of separate MS Excel sheets. Since this data format is unsuitable for big data analysis, the data had to be transferred from MS Excel into a database management system which would facilitate querying on the database. Accordingly, the database was copied on to a Relational Database Management system (RDBMS) for which MySQL has been used. On conversion, the database could provide State-wise, District-wise and caste-wise data of the number of households and the population.

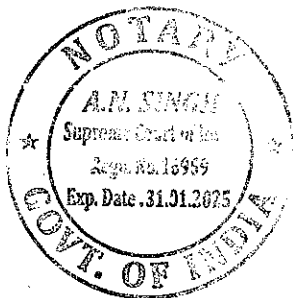



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10. That in so far as the State of Maharashtra is concerned, the analysis of the SECC data pertaining to Maharashtra showed that out of a total population of 10.3 Crores, population with "No caste" was 1.17 Cr. (11.12%), whereas the total castes enumerated were as many as 4,28,677. Pertinently, as against more than 4.28 lakh castes which have been enumerated in the SECC 2011 in the State of Maharashtra, the existing castes which are published in Maharashtra in SC, ST and OBC categories are only (494) as mentioned hereinbelow:

List	Number of castes
ST	47
SC	59
OBC(State)	388
Total	494

11. Considering the aforesaid, it is apparent that the caste enumeration in SECC 2011 was fraught with mistakes and inaccuracies. A further analysis showed that more



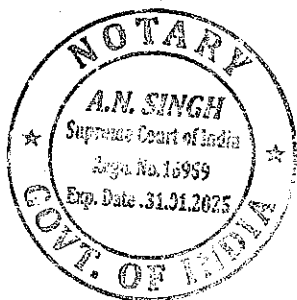
  
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than 99% of the castes enumerated had population of less than 100 persons as mentioned hereinbelow:

	Number of castes	Population (in Cr)
Castes with at least 1000 population	2440	8.82
Other castes enumerated	4,26,237	0.54
		10.53

12. For the aforesaid reasons, the details available in the record of the Census pertaining to castes is not reliable either for the purpose of any reservation, whether in admission, employment or elections to local authorities. The analysis made by the Central Government on data referred above leads to this conclusion due to the following reasons-

(a) The total number of castes during the first Census in India in 1931 was 4,147. The present figures show more than 46 lakhs different castes. Assuming that some castes may bifurcate into sub-castes, the total number cannot be exponentially high to this extent.

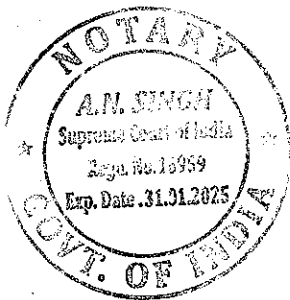



  
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(b) One reason which appears to be the cause of this confusion is that every enumerator who visited each household spelt each caste separately. For eg. - with respect to the caste of "Mappilas" in the Malabar region of Kerala, the said caste has been spelt in 40 different ways by different enumerators resulting into counting of 40 different / separate castes. In a further example, "Pawar" and "Powar", would be grouped together as they are phonetically similar, though only "Powar" are OBCs.

(c) In many cases, the concerned household has refused to divulge their caste and the enumerator has marked "x" in the column of the caste showing either that the castes could not be determined or the household has refused to furnish the same.

(d) It is found that in several hundred cases, the caste column mentions about number or symbol against caste names. There was no registry of caste prepared prior to the conduct of 2011 Census. It would have been ideal for the Registry of Castes that there should have been given a drop down

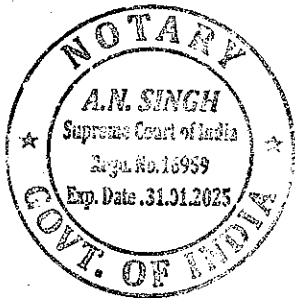



  
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menu for selection of the castes which could have made some consistent data available which can be relied upon.

**13.** For the above referred various reasons either due to the mistakes committed by the enumerators, inherent flaws in the manner of conducting census and several such other factors, there is no reliable or dependable castes based census data available which can be the basis of any constitutional or statutory exercise like reservations in admission, promotion or local body elections.

**14.** That in so far as judgement dated 04.03.2021 passed by this Hon'ble Court in "*Vikas Kishanrao Gawali Vs. State of Maharashtra & Ors*" in WP No. 980 of 2019, is concerned, it is humbly submitted that there was no specific direction passed by this Hon'ble Court to disclose the SECC 2011 raw caste data of the other backward classes (OBCc) as alleged by the Petitioner State. The aforesaid matter pertains to challenge to certain election notifications issued by the State Election Commission, Maharashtra providing for reservation exceeding 50 per

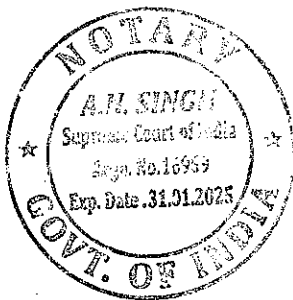



  
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cent in respect of Certain Zilla Parishads and Panchayat Samitis. The SECC-2011 data was neither the subject matter in the aforesaid Petition, nor this Hon'ble Court had adjudicated on the issue of aforementioned infirmities in the SECC-2011 data and the further disclosure of the same to the Concerned State.

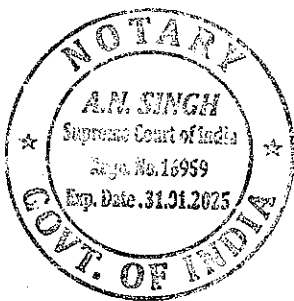
**15.** That in so far as collection of information on Backward Class of Citizens ("BCC") through Census 2020(21) is concerned, the same would not be feasible in view of the following practical difficulties:


- a. The Population Census is not the ideal instrument for collection of details on Caste. The operational difficulties are so many that there is a grave danger that the basic integrity of the Census data may be compromised and the fundamental population count itself could get distorted.
- b. There are two separate OBCs lists viz. Central List and State List. Unlike SCs and STs Lists, the Lists of OBCs are not exclusively Central subject. Five States are without OBCs (Arunachal Pradesh, Lakshadweep, Meghalaya, Mizoram and, Nagaland. Four States/UTs have only the "Central List" (Delhi, Dadra and Nagar Haveli, Daman & Diu and Sikkim).



  
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- c. In Some States, 'Orphans and 'Destitute children' are included as OBCs. In such cases the respondents, an Orphan or a destitute, would not respond to the enumerator's question that whether she/he is OBC.
- d. In many states, "Scheduled Caste Converted to Christianity" is listed as an OBC entry. In such cases, the enumerator has to check the OBC list as well as the SCs list to establish the OBC status. This would be beyond the capacity of the enumerator.
- e. As per the Central List, total number of OBCs in the country is nearly 2,479 including sub-castes, sub-groups, synonyms etc. whereas the corresponding number of OBCs as per lists of States/UTs is 3,150. In case, a question on OBCs is canvassed, it will return names of hundreds of - thousands of castes, sub-castes. And it might be difficult to correctly classify such unspecified returns. The knowledge on sub-castes etc. is highly inadequate and, thus, it would be difficult to meaningfully tabulate and classify SEBCs/OBCs returns. The phonetic similarity in the name of Castes may also lead to their misclassification and, thus, accentuate the problems.
- f. If at all a caste related question is canvassed, it will return names of thousands of castes as the people

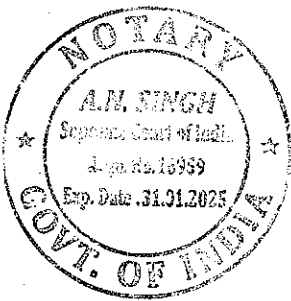



  
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use their clan/*gotra*, sub-caste and caste names interchangeably. Many a sub-castes and clan/*gotra* names are common among different castes. The actual returns will be far more considering fact that the people will return their caste by *gotras*, titles, synonyms, sub-caste, groups/sub-groups, clans etc. According to People of India National Series Volume VIII, there are 79,280 communities identified based on the Censuses, other literature and surveys in the country. As already mentioned hereinabove, the SECC, 2011 data shows more than 46 lakhs caste names, which have not been classified or categorized into appropriate category of Class/Caste till date. Collection of data in respect of backward Classes in the upcoming Census will pose serious challenge to the enumerators who do not have means to verify the authenticity of information and, more particularly, in regard to income or in regard to orphanage/destitution.

- g. It would be difficult to meaningfully tabulate and classify caste returns. The phonetic similarities in the names of castes often lead to misclassification. Social and political movements and change in the names of traditional castes will also lead to problems of classification. Since Castes/SEBCs/BCs/OBCs have become an integral part of politics, motivated returns through



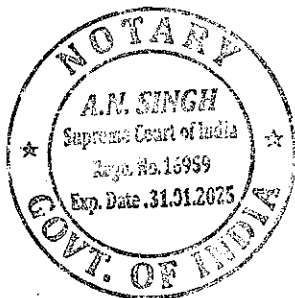
  
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organized or surreptitious means cannot be ruled out. Such motivated returns can seriously influence the Census results and even put the Census process in jeopardy.

h. The enumerator is not an investigator or verifier. The subjective decision of the Census enumerator may not only adversely affect the Census process but also the completeness and accuracy of data. A majority of Census enumerators are drawn from the pool of primary school teachers. They are part-time enumerators who are given a training of just 6-7 days. It would be difficult for the enumerator to refer to several lists before making an entry in the Schedule.

**16.** It is humbly submitted that this Hon'ble Court in *Indra Sawhney v. Union of India*" reported in AIR 1993 SC 477 has also recognised the practical difficulties in ascertaining an identification criteria for backward classes observing as under:

*"The approach [identifying backward classes] may differ from State to State since the conditions in each State may differ. Nay, even within a State, conditions may differ from region to region. Similarly, Christians may also be considered. If in a given place, like Kerala, there are several denominations,*

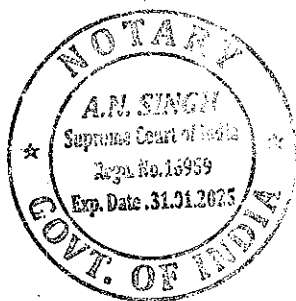


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sections or divisions, each of these groups may separately be considered. In this manner, all the classes among the populace will be covered and that is the central idea. The effort should be to consider all the available groups, sections and classes of society in whichever order one proceeds. Since caste represents an existing, identifiable, social group spread over an overwhelming majority of the country's population, we say one may well begin with castes, if one so chooses, and then go to other groups, sections and classes.”

“[...] In a vast country like India, it is simply not practicable. If the real object is to discover and locate backwardness, and if such backwardness is found in a caste, it can be treated as backward; if it is found in any other group, section or class, they too can be treated as backward.”

17. It is submitted that in addition to the aforesaid practical difficulties, despite the postponement of the work of the Housing listing and Housing Census (Phase-I) of Census 2021 caused by the coronavirus pandemic, inclusion of any additional questions in the consensus schedule at this stage is not feasible. The phases of Census 2021 have

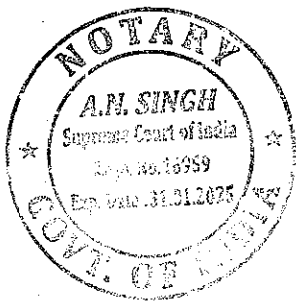



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नई दिल्ली / New Delhi

been finalised after detailed one-to-one deliberations with various line ministries, data-users, recommendations of Technical Advisory Committee and various stakeholders. For the ensuing Census 2021, almost all preparatory works are in place, Census questions have been finalized after pre-test in the field during August-September, 2019, Instruction Manuals for Enumerators and Supervisors have also been finalized. In this regard it may be noted that section 8 of the Act, empowers the Central Government to issue a Notification prescribing the series of information to be collected during the census. Section 8 of the Act is reproduced hereunder:

*“Section 8 – Asking of questions and obligation to answer (1) A census officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the [Central Government] and published in the Official Gazette, he may be directed to ask.*

*(2) Every person of whom any question is asked under sub-section(1) shall be legally*



  
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 Ministry of Social Justice and Empowerment  
 नई दिल्ली / New Delhi

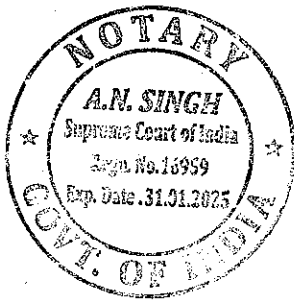
*bound to answer such question to the best of his knowledge or belief:*


*Provided that no person shall be bound to state the name of any female member of his household, and no woman shall be bound to state the name of her husband or deceased husband or of any other person whose name she is forbidden by custom to mention."*

18. That in view of the aforesaid provision, the competent authority of the Central Government, in exercise of the power conferred by sub-section(1) of section 8 of the Act, has already issued a Notification on 07.01.2020 which relates to instructions meant for Census Officers to ask all such questions (31 items in total) from all persons on the items enumerated in the notification for collecting information through the houselisting and housing census schedules in connection with the Census of India 2021, wherein item No. 10 provides as under:

*"10. Whether the head of the household belongs to Scheduled Caste/Scheduled Tribe/Other."*

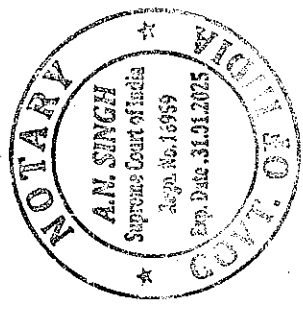
A Copy of the Notification S.O.120(E) dated 07.01.2020 issued by the Registrar General and Census



  
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Commissioner, India is annexed herewith and marked as ANNEXURE R-1 AT (PAGE NO. 30...TO.33.....)

19. It is further submitted that the planning and preparation for the conduct of Census Operation begins 3-4 years prior to the commencement of the Census. The last Census was conducted in 2011 and the next Census is due in 2022. The Census Scheduled and Questionnaires are prepared by the Central Government taking into account the past experiences, the needs of the country to be served by the Census data, recommendations of United Nations, the willingness of the people to respond to the topics and the ability of the enumerator in understanding the definitions and concepts. Comparability of data, both historically and internationally, are also taken into consideration before finalizing the Census Schedule. For this purpose Data User's Conferences is held, their suggestions and requirements are also taken into consideration for finalization of items on which data is required to be collected at a decennial Census. The draft Census Questionnaires are pre-tested in the field to assess their



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feasibility before finalization. After the pre-test the Census Questionnaire is finalized and an approval of the Central Govt. is taken for its notification in the Official Gazette. The instructions for canvassing the Census Questionnaire are prepared by the Census Commissioner's Office. The Census Questionnaires and Instruction Manuals are translated in 16 and 18 languages respectively and printed in adequate number. A large number of Census Enumerators and Supervisors are appointed to carry out the field work. Thus, the inclusion of additional questions is not feasible at this stage.

20. It is humbly submitted that with respect to the implementation of 243D and 243T of the Constitution of India (the "Constitution"), the same provides for reservation of seats only for SCs and STs in the Village Panchayat and Municipality, respectively. It may be noted that delimitation of the Constituencies and reservation of seats for SCs and STs are done on the basis of population figures arrived at decadal Census. Census Figures are mandatory for delimitation of

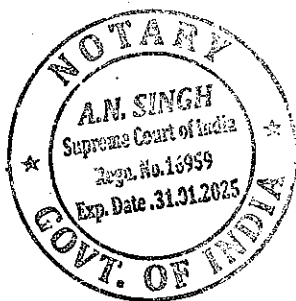



  
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constituency and also for reservation of constituency seats for SCs and STs under Articles 330 & 332 of the Constitution. Unlike mandate for collection of Census data on SCs and STs, there is no such Constitutional mandate for the Registrar General & Census Commissioner, India to provide the Census figures of OBCs/BCCs.

**21.** It is relevant to note that many High courts as well as this Hon'ble Court have declined to grant similar reliefs seeking caste wise census as are being sought in the present writ petition, from to time. It may be noted that a PIL (WP No. 133/2009) titled as "*PattliMakkalKatchi Vs. Union of India &Ors.*", was filed before this Hon'ble Court seeking enumeration of castes of OBCs in 2011 Census. The same was however dismissed as withdrawn *vide* order dated 09.04.2009.

A Copy of the order dated 09.042009 passed in Writ Petition(Civil) No. 133 of 2009 by this Hon'ble Court is annexed herewith and marked as ANNEXURE R-2 AT (PAGE NO<sup>34</sup>.....TO<sup>34</sup>.....)



  
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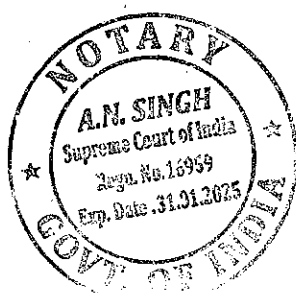
22. Further, the Hon'ble High Court of Madras in W.P No. 25785 of 2005 *vide* order dated 12.5.2010 had directed the Census Department of the Government of India to take all such measures towards conducting the caste-wise census in the country at the earliest. The said order was challenged by the Office of the Registrar General & Census Commissioner, India in Civil Appeal No. 9996 of 2014 arising out of the S.L.P (Civil) No. 480 (2012), wherein this Hon'ble Court *vide* order dated 07.11.2014 was pleased to set aside the aforesaid order observing as under:

*"The centripodal question that emanates for consideration whether the High Court could have issued such is a mandamus commanding the appellant to carry out a census in a particular manner. The High Court has tried to inject the concept of social justice to fructify its direction. It is evincible that the said direction has been issued without any deliberation and being oblivious of the principle that the courts on very rare occasion, in exercise of powers of judicial review, would interfere with a policy decision. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central*



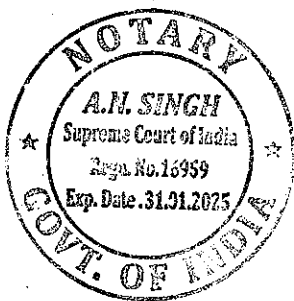
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Government to issue Notification regarding the manner in which the census has to be carried out and the Central Government has issued Notifications, and the competent authority has issued directions. It is not within the domain of the Court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the Executive. If a policy decision or a Notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the Notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner... "From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be



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evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the Court is not expected to sit as an appellate authority on an opinion.....As has been stated earlier, the Central Government had issued a Notification prescribing the series of information to be collected during the census. It covers many areas. It includes information relating to Scheduled Castes and Scheduled Tribes and does not refer to any other caste. In such situation, it is extremely difficult to visualize that the High Court, on the first occasion, without having a lis before it in that regard, could even have thought of issuing a command to the census Department to take all such measures towards conducting the caste-wise census in the country so that the social justice in its true sense, which is the need of the hour, could be achieved. This, irrefragably, is against the power conferred on the court. The High Court had not only travelled beyond the lis in the first round of litigation, but had really yielded to some kind of emotional perspective, possibly paving the adventurous path to innovate. It is legally impermissible. On the second occasion, where the controversy squarely arose, the High Court did not confine to the restrictions put on the jurisdiction and further without any kind of deliberation, repeated the earlier direction. The order is exceptionally cryptical.



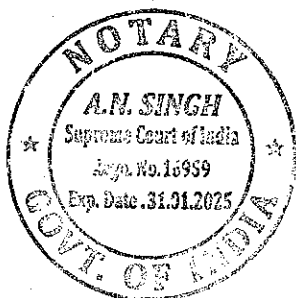
  
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*That apart, it is legally wholly unsustainable. The High Court, to say the least, had no justification to pave such a path and we have no hesitation in treating the said path as a colossal transgression of power of judicial review, and that makes the order sensitively susceptible."*

(Emphasis supplied)

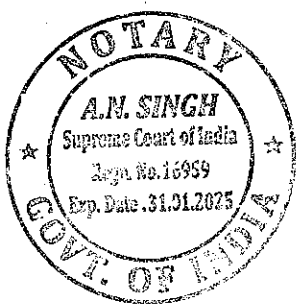
A Copy of the judgement dated 07.11.2014 passed in Civil Appeal No. 9996 of 2014 by this Hon'ble Court is annexed herewith and marked as ANNEXURE R-3 AT (PAGE NO. 35 TO 57.....)

**23.** That the aforesaid facts and circumstances, makes it clear that the enumeration of OBCs/BCCs has been always adjudged to be administratively extremely complex. And, even when Censuses of castes were taken in the pre-independence period, the data suffered in respect of completeness and accuracy. The issue has been examined at length in the past at different points of time. Each time, the view has consistently been that the caste Census of Backward Classes is administratively difficult and cumbersome; it has suffered and will suffer both on account of completeness and accuracy of the data, as also



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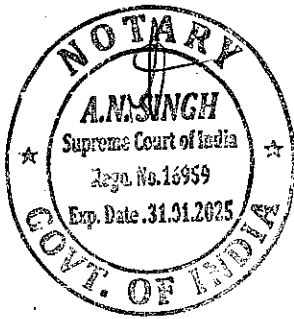
evident from the infirmities of the SECC, 2011 data mentioned hereinabove making it unusable for any official purposes and cannot be mentioned as a source of information for population data in any official document. Further, it is again reiterated at the cost of repetition that the Central Government has already issued a Notification dated 07.01.2020 under the Act, prescribing the series of information to be collected during the census, 2021. It covers many areas including the information relating to Scheduled Castes and Scheduled Tribes, but does not refer to any other category of caste. The exclusion of information regarding any other caste from the purview of census is a conscious policy decision taken by the Central Government as explained in the preceding paragraphs. In such a situation, any direction from this Hon'ble Court to Census Department to include the enumeration of Socio-Economic data to the extent relating to BCCs of Rural India in the upcoming Census, 2021, as prayed, would tantamount to interfering with a policy decision as framed under Section 8 of the Act.



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 Ministry of Social Justice and Empowerment  
 नई दिल्ली / New Delhi

24. Considering the aforesaid facts and circumstances, it is thus humbly submitted that the present writ petition is without any merit and the same may be accordingly dismissed.

**DEBONENT**  
(आर. सुब्रह्मण्यम)  
(R. SUBRAHMANYAM)  
सचिव/Secretary  
भारत सरकार/Govt of India  
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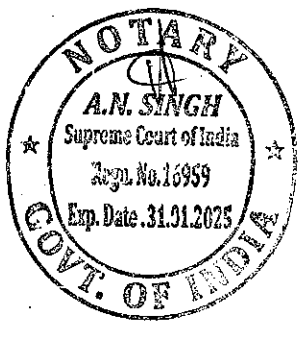


**VERIFICATION :-**

Verified at New Delhi on this **21 SEP 2021** that the contents of the aforesaid counter affidavit are true and correct to my personal knowledge and have been derived from the official records maintained by the answering Respondents. No part of it is false nor has anything material been concealed therefrom.

I Identify the deponent who has Signed/Put T.I. in my presence

**DEPONENT**  
(आर. सुब्रह्मण्यम)  
**(R. SUBRAHMANYAM)**  
सचिव / Secretary  
भारत सरकार / Govt of India  
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Ministry of Social Justice and Empowerment  
नई दिल्ली / New Delhi



**ATTESTED**  
A.N. Singh, Adv.  
Notary Public  
Govt. of India, Delhi  
Mob.: 9718139591, 7982539115

**21 SEP 2021**

Certified that the above Named Dependent identify by Shri/Smt. Smt  
Solemnly affirmed before me at Delhi  
S. No. 2704  
The contents of the affidavit which have been read & explained to me are true and correct  
AN Notary

**21 SEP 2021**

रजिस्ट्री सं. डी.एल.- 33004/99

REGD. No. D. L.-33004/99



# भारत का राजपत्र

## The Gazette of India

सी.जी.-डी.एल.-अ.-09012020-215248

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असाधारण

EXTRAORDINARY

भाग II- खण्ड 3—उप - खण्ड (ii)

Part II-Section 3-Sub-Section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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गृह मंत्रालय

(भारत के महारजिस्ट्रार का कार्यालय)

अधिसूचना

नई दिल्ली, 7 जनवरी, 2020

का.आ.119(अ).—केन्द्रीय सरकार, जनगणना नियम, 1990 के नियम 6क के साथ पठित जनगणना अधिनियम, 1948 (1948 का 37) की धारा 3 और धारा 17क द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करती है कि भारत की जनगणना 2021 से संबंधित मकानसूचीकरण का कार्य 1 अप्रैल, 2020 से 30 सितंबर, 2020 तक होना है।

[फा.सं. 9/7/2019-सीडी(सेन)/3]

विवेक जोशी, भारत के महारजिस्ट्रार

एवं जनगणना आयुक्त



MINISTRY OF HOME AFFAIRS  
(OFFICE OF THE REGISTRAR GENERAL, INDIA)

NOTIFICATION

New Delhi, the 7th January, 2020

**S.O. 119(E).**—In exercise of the powers conferred by section 3 and section 17A of the Census Act, 1948 (37 of 1948 ) read with rule 6A of the Census Rules, 1990, the Central Government hereby declares that the houselisting operations of the Census of India 2021 shall take place from the 1st April, 2020 to the 30th September, 2020 in India.

[F.No. 9/7/2019-CD(Cen)/3]

VIVEK JOSHI, Registrar General  
and Census Commissioner, India

अधिसूचना

नई दिल्ली, 7 जनवरी, 2020

**का.आ. 120(अ).**—केन्द्रीय सरकार, जनगणना अधिनियम, 1948 (1948 का 37) की धारा 8 की उपधारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अनुदेश देती है कि वे सभी जनगणना अधिकारी जिसके लिए उन्हें नियुक्त किया गया है, अपनी नियुक्ति से संबंधित स्थानीय क्षेत्रों की सीमाओं के भीतर भारत की जनगणना 2021 के संबंध में मकानसूचीकरण तथा मकानों की गणना अनुसूचियों के माध्यम से जानकारी एकत्र करने के लिए नीचे प्रगणित मदों के संबंध में सभी व्यक्तियों से इस प्रकार के प्रश्न पूछें, अर्थात् :-

1. भवन नंबर (नगर या स्थानीय प्राधिकरण अथवा जनगणना नंबर)
2. जनगणना मकान नंबर
3. जनगणना मकान के फर्श, दीवार तथा छत में प्रयुक्त प्रमुख सामग्री
4. जनगणना मकान के उपयोग
5. जनगणना मकान की हालत
6. परिवार क्रमांक
7. परिवार में सामान्यतः रहने वाले व्यक्तियों की कुल संख्या
8. परिवार के मुखिया का नाम
9. परिवार के मुखिया का लिंग
10. क्या परिवार का मुखिया अनुसूचित जाति/अनुसूचित जनजाति/अन्य से संबंधित है
11. मकान के स्वामित्व की स्थिति
12. परिवार के पास रहने के लिए उपलब्ध कमरों की संख्या
13. परिवार में रहने वाले विवाहित दंपतियों की संख्या
14. पेयजल का मुख्य स्रोत

15. पेयजल स्रोत की उपलब्धता
16. प्रकाश का मुख्य स्रोत
17. शौचालय की सुलभता
18. शौचालय का प्रकार
19. गंदे पानी की निकासी
20. स्नानगृह की उपलब्धता
21. रसोईघर और एलपीजी/पीएनजी कनेक्शन की उपलब्धता
22. खाना पकाने के लिए प्रयुक्त मुख्य ईंधन
23. रेडियो/ट्रांजिस्टर
24. टेलीविजन
25. इंटरनेट सुविधा
26. लैपटॉप/कंप्यूटर
27. टेलीफोन/मोबाइल फोन/स्मार्ट फोन
28. साइकिल/स्कूटर/मोटर साइकिल/मोपेड
29. कार/जीप/वैन
30. परिवार द्वारा उपभोग किया जाने वाला मुख्य अनाज
31. मोबाइल नंबर (केवल जनगणना संबंधी संसूचना के लिए)

टिप्पणी : मद सं. 1 से 5 भवन के विवरणों से मद सं. 6 और 7 परिवार के विवरणों (पूर्णतः अथवा अंशतः आवासीय उपयोग में लाए गए जनगणना मकान के लिए) से, मद सं. 8 से 10 परिवार के मुखिया से और मद सं. 9 से 31 केवल सामान्य परिवार से जिससे मद सं. 23, 24, 26, 27, 28 और 29 परिवार द्वारा धारित परिसंपत्तियाँ से संबंधित है।

[फा.सं.9/7/2019-सीडी(सेन)/3]

विवेक जोशी, भारत के महारजिस्ट्रार

एवं जनगणना आयुक्त

#### NOTIFICATION

New Delhi, the 7th January, 2020

**S.O. 120(E).**—In exercise of the powers conferred by sub-section (1) of section 8 of the Census Act, 1948 (37 of 1948), the Central Government hereby instructs that all Census Officers may, within the limits of the local areas for which they have been respectively appointed, ask all such questions from all persons on the items enumerated below for collecting information through the houselisting and housing census schedules in connection with the Census of India 2021, namely:-

1. Building number (Municipal or local authority or census number).
2. Census house number.

3. Predominant material of floor, wall and roof of the census house.
4. Ascertain use of census house.
5. Condition of the census house.
6. Household number.
7. Total number of persons normally residing in the household:
8. Name of the head of the household.
9. Sex of the head of the household.
10. Whether the head of the household belongs to Scheduled Caste/Scheduled Tribe/Other.
11. Ownership status of the census house.
12. Number of dwelling rooms exclusively in possession of the household.
13. Number of married couple(s) living in the household.
14. Main source of drinking water.
15. Availability of drinking water source.
16. Main source of lighting.
17. Access to latrine.
18. Type of latrine.
19. Waste water outlet.
20. Availability of bathing facility.
21. Availability of kitchen and LPG/PNG connection.
22. Main fuel used for cooking.
23. Radio/Transistor.
24. Television.
25. Access to internet.
26. Laptop/Computer.
27. Telephone/Mobile Phone/Smartphone.
28. Bicycle/Scooter/Motorcycle/Moped.
29. Car/Jeep/Van.
30. Main Cereal consumed in the household.
31. Mobile Number (for census related communications only).

**Note:** Items 1 to 5 relate to building particulars, items 6 and 7 relate to household particulars (for census house used wholly or partly as a residence), items 8 to 10 relate to head of the household, and items 9 to 31 relate only to normal household of which items 23, 24, 26, 27, 28 and 29 relate to the assets of the household.

[F.No. 9/7/2019-CD(CEN)/3]

VIVEK JOSHI, Registrar General  
and Census Commissioner, India

DITEM NO.23

COURT NO.1

SECTION PIL

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 133 OF 2009 (for prel.hearing)

PATTALI MAKKAL KATCHI (PMK)

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

(With appln(s) for directions)

Date: 09/04/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE P. SATHASIVAM

For Petitioner(s) Dr.Ravivarma Kumar, Sr.Adv.  
Mr.K.Balu, Adv.  
Ms.Sangeeta Singh, Adv.  
Mr. E.C. Vidya Sagar, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
ORDER

Learned counsel for the petitioner seeks permission to withdraw the writ petition with liberty to pursue with the Government. Permission sought for is granted. The writ petition is dismissed as withdrawn.

(G.V.Ramana)  
Court Master

(Veera Verma)  
Court Master

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9996 OF 2014

[Arising out of S.L.P. (Civil) No. 480 of 2012]

Census Commissioner &amp; Others

... Appellants

Versus

R. Krishnamurthy

... Respondent

**J U D G M E N T****Dipak Misra, J.**

The present appeal depicts and, in a way, sculpts the non-acceptance of conceptual limitation in every human sphere including that of adjudication. No adjudicator or a Judge can conceive the idea that the sky is the limit or for that matter there is no barrier or fetters in one's individual perception, for judicial vision should not be allowed to be imprisoned and have the potentiality to cover celestial zones. Be it ingeminated, refrain and restrain are the essential virtues in the arena of adjudication because they guard as

sentinel so that virtuousness is constantly sustained. Not for nothing, centuries back *Francis Bacon*<sup>1</sup> had to say thus:-

“Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their portion and proper virtue.....Let the judges also remember that Solomon’s throne was supported by lions on both sides: let them be lions, but yet lions under the throne.”

2. Almost half a century back *Frankfurter, J.*<sup>2</sup> sounded a note of caution:-

“For the Highest exercise of judicial duty is to subordinate one’s personal pulls and one’s views to the law of which we are all guardians-those impersonal convictions that make a society a civilized community, and not the victims of personal rule.”

3. In this context, it is seemly to reproduce the warning of *Benjamin N. Cardozo* in *The Nature of the Judicial process*<sup>3</sup> which rings of poignant and inimitable expression:-

“The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a

<sup>1</sup> BACON, *Essays: Of Judicature* in *The Works of Francis Bacon* (Montague, Basil, Esq. ed., Philadelphia: A Hart, late Carey & Hart, 1852), pp. 58-59.

<sup>2</sup> FRANKFURTEER, Felix in Clark, Tom C., “Mr. Justice Frankfurter: ‘A Heritage for all Who Love the Law’” 51 A.B.A.J. 330, 332 (1965)

<sup>3</sup> Yale University Press 1921 Edn., Pg- 114

discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in social life'."

4. In *Tata Cellular V. Union of India* (1994) 6 SCC 651, while dealing with the concept of judicial review, this Court referred to a passage worded by Chief Justice Neely, which is as follows:-

'I have very few illusions about my own limitations as a judge and from those limitations I generalize to the inherent limitations of all appellate courts reviewing rate cases. It must be remembered that this Court sees approximately 1262 cases a year with five judges. I am not an accountant, electrical engineer, financier, banker, stock broker, or systems management analyst. It is the height of folly to expect judges intelligently to review a 5000 page record addressing the intricacies of public utility operation.'

5. The fundamental intention of referring to the aforesaid statements may at various times in the history of law is to recapitulate basic principles that have to be followed by a Judge, for certain sayings at times become necessitous to be told and re-narrated. The present case expositis such a situation, a sad one.

6. The chronology has its own relevance in the instant case. One Dr. E. Sayedah preferred W.P No. 25785 of 2005 in the High Court of Madras for issue of a writ of certiorari for

quashment of the order passed by the Central Administrative Tribunal in O.A. No.3/2002 on the foundation that when there is no Scheduled Tribe population in the Union Territory of Pondicherry and there is no Presidential notification under Article 342 of the Constitution of India there cannot be any reservation for Scheduled Tribe in the said Union Territory and, therefore, the appointment of the applicant in the Original Application who was appointed solely on the base that he belonged to Scheduled Tribe was illegal. However, the High Court declined to interfere with the appointment considering the length of service but observed that the appointee was not entitled for any reservation in promotion. The High Court also recorded certain other conclusions which are really not relevant for the present purpose. The direction that really propelled the problem is as follows:-

“When it is the position that after 1931, there had never been any caste-wise enumeration or tabulation and when there can not be any dispute that there is increase in the population of SC/ST/OBC manifold after 1931, the percentage of reservation fixed on the basis of population in the year 1931 has to be proportionately increased, by conducting caste-wise census by the Government in the interest of the weaker sections of the society. We direct the Census Department of the Government of India to take all such measures towards conducting the caste-wise census in the



country at the earliest and in a time bound manner, so as to achieve the goal of social justice in its true sense, which is the need of the hour.”

7. At this juncture, to continue the chronology, it is pertinent to mention that a Writ Petition No. 21172/2009 was filed before the High Court of Judicature at Madras, which was disposed of on 21.1.2010. While disposing of the writ petition, the High Court had directed as follows:

“6. The second respondent, has filed a counter and in paragraph 5 thereof, it is stated that the second respondent have taken up the matter with the Ministry of Social Justice and Empowerment, as the issues relating to SCs, STs and OBCs; are within the domain of that Ministry. The learned counsel for the respondents, on the instructions of the Regional Director, Chennai from the office of the second respondent, states that the petitioner will get a reply from the respondents within eight weeks from today. We hope that the respondents will consider the representation of the petitioner Association in all seriousness and send them an appropriate reply.”

8. Be it stated, the Registrar General and Census Commissioner was the respondent no.2 therein. After the writ petition was disposed of, the representation preferred by Mr. K. Balu, President, Advocates Forum for

Social Justice, was disposed and the order was communicated to the writ petitioner. It reads as follows:-

“2. Caste-wise enumeration in the census has been given up as a matter of policy from 1951 onwards. In pursuance of this policy decision, castes other than Scheduled Castes and Scheduled Tribes have not been enumerated in all the Censuses since 1951. In Census 2011 also no question on enumeration of castes other than Scheduled Castes and Scheduled Tribes has been included. As such, the first phase of Census 2011 enumeration, namely, the Houselisting and Housing Census is commencing on the 1<sup>st</sup> of April, 2010. The forms required for this phase of the Census has already been printed in many States and Instruction Manuals required for training the enumerators has also been finalized and printed. The second phase of Census 2011, namely, Population Enumeration, is due to be conducted in February 2011. The data gathered in the first phase (April to September 2010) is linked to the data to be collected in February-March 2011. Hence, enumerating castes other than Scheduled Castes and Scheduled Tribes will not be possible in that phase also. As such, it is not possible to include any question relating to the enumeration of Castes other than Scheduled Castes and Scheduled Tribes in the Census of India 2011.

3. As regards the policy decision whether castes other than the Scheduled Castes and Scheduled Tribes should be enumerated, the manner in which such enumeration should be done and by whom, the matter has been referred to the nodal Ministry, i.e. Ministry of Social Justice and Empowerment.”

9. At this juncture, it may be noticed that the Writ Petition(C) No. 132/2010 was filed before this Court by one Kishore Govind Kanhere Vidharbha and Another seeking the similar relief, which was disposed of on 13.09.2010 by passing the following order:

“Learned counsel for the petitioners states that as the purpose of the writ petition stands worked out, he would like to withdraw the petition. The writ petition is, accordingly, dismissed as withdrawn.”

10. Presently, we shall proceed to state how the purpose of the writ petition had worked out. The respondent, R. Krishnamurthy had preferred Writ Petition(C) No. 10090/2010 which stood disposed of by Division Bench by the impugned order. As is manifest, the Division Bench has referred to its earlier decision passed in W.P.(C) No. 25785/2005 and after reproducing the paragraph from the said judgment, opined as follows:-

“Since the relief sought for in the present writ petition has already been answered in the affirmative by issuing a direction to the authorities to take all measures towards conducting the caste-wise census in the country, we are of the considered opinion that this petition is also entitled to be allowed. Accordingly, this writ petition is allowed on the same terms.”

11. Criticizing the aforesaid direction, it is submitted by Mr. R.S. Suri, learned senior counsel that the High Court on the earlier occasion had issued a direction without making the Census Commissioner as a party and further there was no justification for issuance of such a direction. As far as the impugned order is concerned, it is urged by Mr. Suri that the direction issued by the Division Bench tantamounts to interference in a policy decision as framed under Section 8 of the Census Act, 1940, (for brevity 'the Act') as amended in 1993. Learned senior counsel would contend that the policy stipulates for carrying out the census which includes scheduled castes and scheduled tribes, but not the other castes. He would urge that many a High Court have dismissed similar writ petitions and, in fact, this Court in WP(C) No. 133/2009 have declined to interfere and the same was dismissed as withdrawn. It is proponed by him the view expressed by the High Court is absolutely vulnerable and hence, deserved to be lanced.

12. Despite service of notice, there has been no appearance on behalf of the respondent.

13. To appreciate the submissions canvassed by the learned counsel for the appellant, it is necessary to refer to Section 8 of the Act, which reads as follows: -

“Section 8 – Asking of questions and obligation to answer

(1) A census officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the [Central Government] and published in the Official Gazette, he may be directed to ask.

(2) Every person of whom any question is asked under sub-section(1) shall be legally bound to answer such question to the best of his knowledge or belief:

Provided that no person shall be bound to state the name of any female member of his household, and no woman shall be bound to state the name of her husband or deceased husband or of any other person whose name she is forbidden by custom to mention.”

14. On the foundation of the aforesaid provision, the competent authority of the Central Government, in exercise of the power conferred by sub-section(1) of section 8 of the Census Act, had issued a Notification on 13.1.2000 which relates to instructions meant for Census Officers. Clause 8 of the said Notification being relevant is reproduced below:

“8. Information relating to the head of the household

- (a) Name of the head of the household
- (b) Male – 1/Female – 2
- (c) If SC(Scheduled Caste) or ST (Scheduled Tribe) or Other? SC(Scheduled Caste)-1/ST(Scheduled Tribe)-2/Other-3”

15. After the said census was carried out, another Notification dated 25.2.2010 was issued. Clause 10 of the said Notification reads as follows:

“10. If Scheduled Caste/Scheduled Tribe/Others.

16. After the Notification in the year 2010 was issued, the Office of the Registrar General and Census Commissioner issued the Instruction Manual for Houselisting and Housing Census. In Paragraph 1.2, the historical background has been stated. It is as follows:

“Historical background of Indian Census

1.2 The Indian Census has a rich tradition and enjoys the reputation of being one of the best in the world. The first Census in India was conducted in the year 1872. This was conducted at different points of time in different parts of the country. In 1881 a Census was taken for the entire country simultaneously. Since then, Census has been conducted every ten years, without a break. Thus, the Census of India 2011 will be the fifteenth in this unbroken series since 1872 and the seventh after independence. It is through the missionary zeal and dedication of Enumerators like you that the great historical tradition of conducting the Census

uninterruptedly has been maintained in spite of several adversities like wars, epidemics, natural calamities, political unrest, etc. Participation in the Census by the people of India is indeed a true reflection of the national spirit of unity in diversity.”

17. Thereafter, the Instruction Manual provides for objectives of conducting a census. We think it appropriate to reproduce the same:

“1.3 India is a welfare State. Since independence, Five Year Plans, Annual Plans and various welfare schemes have been launched for the benefit of the common man. All these require information at the grass root level. This information is provided by the Census.

1.4 Have you ever wondered how the number of seats in Parliamentary/Assembly Constituencies, Panchayats and other local bodies are determined? Similarly, how the boundaries of such constituencies are demarcated? Well the answer to that is also the Census. These are just a few examples. Census provides information on a large number of areas. Thus, you are not merely collecting information; you are actually a part of a massive nation building activity.

1.5 The Houselisting and Housing Census has immense utility as it will provide comprehensive data on the conditions of human settlements, housing deficit and consequently the housing requirement to be taken care of in the formulation of housing policies. This will also provide a wide range of data on amenities and assets available to the households, information much needed by various departments of the Union and State Governments and other non-Governmental agencies for development and planning at the local

level as well as the State level. This would also provide the base for Population Enumeration.

1.6 Population Enumeration provides valuable information about the land and its people at a given point of time. It provides trends in the population and its various characteristics, which are an essential input for planning. The Census data are frequently required to develop sound policies and programmes aimed at fostering the welfare of the country and its people. This data source has become indispensable for effective and efficient public administration besides serving the needs of scholars, businessmen, industrialists, planners and electoral authorities, etc. Therefore, Census has become a regular feature in progressive counties, whatever be their size and political set up. It is conducted at regular intervals for fulfilling well-defined objectives. One of the essential features of Population Enumeration is that each person is enumerated and her/his individual particulars are collected at a well-defined point of time."

18. From the aforesaid, it is graphically vivid that at no point of time, the Central Government had issued a Notification to have a census conducted on the caste basis. What is reflectible is that there is census of Scheduled Castes and Scheduled Tribes, but census is not done in respect of other castes or on caste basis. That apart, the instructions elaborately spell out the necessity and the purpose. It is reflectible of the concern pertaining to assimilation of certain datas that would



help in nation-building, trends of population, availability of requisite inputs for planning and fostering the welfare of the country. Be it noted, the Notifications dated 13.01.2000 and 25.02.2010 enumerate collection of many an information including household number, total number of persons normally residing in the household (persons, males, females), name of the head of the household, ownership status of the house, number of married couple(s) living in the household, main source of drinking water, availability of drinking water source, main source of lighting, latrine within the premises, type of latrine facility, waster water outlet, bathing facility, kitchen, fuel used for cooking, Radio/Transistor, Television, Computer/Laptop, Telephone/Mobile phone, Bicycle, Scooter/Motor Cycle/ Moped, Car/Jeep/Van, and availing banking services, etc. Thus, the Central Government has framed a policy and the policy, as is demonstrable, covers many an arena keeping in view certain goals and objectives.

19. As we evince from the sequence of events, the High Court in the earlier judgment had issued the direction

relating to carrying of census in a particular manner by adding certain facets though the lis was absolutely different. The appellant, the real aggrieved party, was not arrayed as a party-respondent. The issue was squarely raised in the subsequent writ petition where the Census Commissioner was a party and the earlier order was repeated. There can be no shadow of doubt that earlier order is not binding on the appellant as he was not a party to the said lis. This view of ours gets fructified by the decision in **H.C. Kulwant Singh and others V. H.C. Daya Ram and others**<sup>4</sup> wherein this Court, after referring to the judgments in **Khetrabasi Biswal V. Ajaya Kumar Baral & Ors.**<sup>5</sup>, **Udit Narain Singh Malpaharia V. Board of Revenue**<sup>6</sup>, **Prabodh Verma & Ors. Vs. State of U.P. & Ors.**<sup>7</sup> and **Tridip Kumar Dingal & Ors. V. State of W.B. & Ors.**<sup>8</sup> has ruled thus:

“..... if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as

<sup>4</sup> JT 2014 (8) SC 305

<sup>5</sup> (2004) 1 SCC 317

<sup>6</sup> AIR 1963 SC 786

<sup>7</sup> (1984) 4 SCC 251

<sup>8</sup> (2009) 1 SCC 768

it has been passed in violation of the principles of natural justice.”

20. The earlier decision being not a binding precedent, it can be stated with certitude that the impugned judgment has really compelled the appellant to question the defensibility of the same.

21. The centripodal question that emanates for consideration is whether the High Court could have issued such a mandamus commanding the appellant to carry out a census in a particular manner. The High Court has tried to inject the concept of social justice to fructify its direction. It is evincible that the said direction has been issued without any deliberation and being oblivious of the principle that the courts on very rare occasion, in exercise of powers of judicial review, would interfere with a policy decision. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue Notification regarding the manner in which the census has to be carried out and the Central

Government has issued Notifications, and the competent authority has issued directions. It is not within the domain of the Court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the Executive. If a policy decision or a Notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the Notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing

a policy in a specific manner. In this context, we may refer to a three-Judge Bench decision in **Suresh Seth V. Commr., Indore Municipal Corporation**<sup>9</sup> wherein a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely, that of a Member of the Legislative Assembly and also of a Mayor of a Municipal Corporation. Repelling the said submission, the Court held:

“In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In *Supreme Court Employees' Welfare Assn. v. Union of India*<sup>10</sup> (SCC para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated

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<sup>9</sup> (2005) 13 SCC 287

<sup>10</sup> (1989) 4 SCC 187

legislative authority. This view has been reiterated in *state of J & K v A.R. Zakki*<sup>11</sup>. In *A.K. Roy v. Union of India*<sup>12</sup> it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature.”

22. At this juncture, we may refer to certain authorities about the justification in interference with the policy framed by the Government. It needs no special emphasis to state that interference with the policy, though is permissible in law, yet the policy has to be scrutinized with ample circumspection. In ***N.D. Jayal and Anr. V. Union of India & Ors.***<sup>13</sup>, the Court has observed that in the matters of policy, when the Government takes a decision bearing in mind several aspects, the Court should not interfere with the same.

23. In ***Narmada Bachao Andolan V. Union of India***<sup>14</sup>, it has been held thus:

“It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to

<sup>11</sup> 1992 Supp (1) SCC 548

<sup>12</sup> (1982) 1 SCC 271

<sup>13</sup> (2004) 9 SCC 362

<sup>14</sup> (2000) 10 SCC 664

see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution."

24. In this context, it is fruitful to refer to the authority in ***Rusom Cavaisee Cooper V. Union of India***<sup>15</sup>, wherein it has been expressed thus:

"It is again not for this Court to consider the relative merits of the different political theories or economic policies... This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of Parliament in enacting a law".

25. In ***Premium Granites V. State of Tamil Nadu***<sup>16</sup>, while dealing with the power of the courts in interfering with the policy decision, the Court has ruled that it is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy could be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a

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<sup>15</sup> (1970) 1 SCC 248

<sup>16</sup> (1994) 2 SCC 691

challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right.

26. In **M.P. Oil Extraction and Anr. V. State of M.P. & Ors.**<sup>17</sup>, a two-Judge Bench opined that:

“..... The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State.”

27. In **State of M.P. V. Narmada Bachao Andolan & Anr.**<sup>18</sup>, after referring to the **State of Punjab V. Ram Lubhaya Bagga**<sup>19</sup>, the Court ruled thus:

“The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional

<sup>17</sup> (1997) 7 SCC 592  
<sup>18</sup> (2011) 7 SCC 639  
<sup>19</sup> (1998) 4 SCC 117



provisions or arbitrary or irrational or an abuse of power. (See *Ram Singh Vijay Pal Singh v. State of U.P.*<sup>20</sup>, *Villianur Iyarkkai Padukappu Maiyam v. Union of India*<sup>21</sup> and *State of Kerala v. Peoples Union for Civil Liberties*<sup>22</sup>.)”

28. From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded *ipse dixit* offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the Court is not expected to sit as an appellate authority on an opinion.

29. As has been stated earlier, the Central Government had issued a Notification prescribing the series of informations to be collected during the census. It covers many areas. It includes information relating to Scheduled Castes and Scheduled Tribes and does not refer to any other caste. In such a situation, it is

<sup>20</sup> (2007) 6 SCC 44

<sup>21</sup> (2009) 7 SCC 561

<sup>22</sup> (2009) 8 SCC 46

extremely difficult to visualize that the High Court, on the first occasion, without having a lis before it in that regard, could even have thought of issuing a command to the Census Department to take all such measures towards conducting the caste-wise census in the country so that the social justice in its true sense, which is the need of the hour, could be achieved. This, irrefragably, is against the power conferred on the court. The High Court had not only travelled beyond the lis in the first round of litigation, but had really yielded to some kind of emotional perspective, possibly paving the adventurous path to innovate. It is legally impermissible. On the second occasion, where the controversy squarely arose, the High Court did not confine to the restrictions put on the jurisdiction and further without any kind of deliberation, repeated the earlier direction. The order is exceptionally cryptical. That apart, it is legally wholly unsustainable. The High Court, to say the least, had no justification to pave such a path and we have no hesitation in treating the said path as a colossal

transgression of power of judicial review, and that makes the order sensitively susceptible.

30. Consequently, the appeal is allowed, the judgments and orders dated 24.10.2008 and 12.5.2010 passed in W.P.(C) No. 25785/2005 and W.P.(C) No. 10090/2010 respectively are set aside. There shall be no order as to costs.

.....J.  
(DIPAK MISRA)

.....J.  
(ROHINTON FALI NARIMAN)

.....J.  
(UDAY UMESH LALIT)

NEW DELHI;  
NOVEMBER 07, 2014

JUDGMENT