



Caste Census and Constitutional Equality: A Legal Debate

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ARTICLE DETAILS	ABSTRACT
Research Paper	
Keywords : <i>caste census, equality, dignity, autonomy, rights, tradition.</i>	<i>Whether India should conduct a comprehensive caste census has resurfaced as one of the most consequential constitutional and policy questions of the decade. Supporters argue that robust, disaggregated caste data is essential to realise substantive equality under Articles 14, 15 and 16, fine-tune affirmative action, and target welfare to those most deprived. Opponents caution that enumerating caste risks reifying social divisions, intruding on privacy, and triggering distributional conflict, while also raising complex questions of federal competence and data governance. This paper maps the legal architecture around a caste census, traces the jurisprudential arc from Indra Sawhney (1992) to the 103rd Constitutional Amendment (EWS, 2019) and Janhit Abhiyan (2022), and assesses state-level experiments such as Bihar's 2022–23 survey and Karnataka's stalled 2015 exercise. It engages the right to privacy post-Puttaswamy (2017), the limits of the Census Act, 1948, and the scope of the Collection of Statistics Act, 2008. It also examines implications for the 50% ceiling, sub-categorisation among OBCs, and the interface with the Digital Personal Data Protection Act, 2023. Finally, the paper proposes a rights-compliant, privacy-preserving approach to caste enumeration that is consistent with constitutional morality and capable of informing transparent, evidence-based social justice policy. Recent announcements indicate caste details will be</i>

included in India's next national census, heightening the urgency of a clear legal roadmap.

1. Introduction

India's constitutional promise of equality is animated by two simultaneous imperatives: dismantling entrenched hierarchies of caste and ensuring that measures designed to equalise opportunity are rooted in facts rather than conjecture. For decades, the State has implemented reservations and targeted welfare for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs) without a contemporary, nationwide, granular count of caste groups outside SC/ST categories. The nationwide population census counts SCs and STs, but not the full spectrum of caste groups; the last comprehensive enumeration of caste across the board dates back to 1931 (pre-Independence). Attempts to bridge this gap—most prominently the Socio-Economic and Caste Census (SECC) 2011—produced uneven, contested datasets and were never fully released or standardised for policy use.

The caste census debate has been re-energised by state-level initiatives and courtroom battles. Bihar's 2022–23 caste-based survey was upheld by the Patna High Court and allowed to proceed, and the Supreme Court did not stay publication while the matter progressed. The survey's publication sparked pan-Indian calls for updated caste data to recalibrate reservations and welfare delivery. Meanwhile, Karnataka's 2015 survey was effectively shelved, illustrating political economy frictions and the distributional anxieties that accompany enumeration.

In early 2025, multiple reports and official statements signalled that India's next national census—delayed from 2021—will include caste details, a development with profound constitutional and policy implications. This prospective shift raises core questions: What is the legal basis for caste enumeration? How should privacy and data protection be secured? What does equality demand in a post-*Puttaswamy* world? And how would fresh caste data interface with the 50% reservation cap, OBC sub-categorisation, and the 10% EWS quota upheld in *Janhit Abhiyan* (EWS)?

This paper engages those questions, arguing that a constitution-conformant caste census is not only legally feasible but normatively desirable, provided it is embedded within strict privacy, proportionality, and governance safeguards and accompanied by transparent methodologies for translating data into policy.

2. The Legal Architecture: Statutes, Federal Competence, and Administrative Pathways

2.1 The Census Act, 1948

The Census Act authorises the Union to conduct a decennial census and to prescribe schedules, questions, and penalties for non-compliance. While the Act does not prohibit the collection of caste data, the content of census questionnaires is an executive policy choice controlled by the Union. Caste counting of SCs/STs post-1951 has been routine; the question is the inclusion of all caste groups. If the Union opts to collect such data, there is no statutory bar—rather, the Act provides the procedural chassis for a legally secure, standardised, nationwide enumeration.

2.2 Collection of Statistics Act, 2008

Separate from the Census Act, the 2008 statute enables both Union and State governments to collect statistics on matters related to any subject they are competent to legislate upon. States, therefore, can conduct socio-economic surveys—including caste questions—for designing and monitoring welfare schemes. The Patna High Court leaned on this logic to uphold Bihar's survey, finding that identifying backwardness and calibrating affirmative action falls squarely within state competence for education and public employment (subject to constitutional limits).

2.3 SECC 2011 and the Limits of Ad-Hoc Enumeration

The SECC 2011 sought to collect household-level socio-economic data with a caste component. However, concerns about data quality, standardisation of caste codes, and verification resulted in piecemeal disclosure and a 2021 Supreme Court refusal to compel public release of raw caste data. The episode underscores that enumeration without robust design, coding standards, and audit trails risks producing contested data that courts and policymakers cannot confidently rely upon.

3. Constitutional Equality and the Normative Case for Counting

3.1 Articles 14, 15, 16: From Formal to Substantive Equality

Articles 14 (equality before the law), 15 (non-discrimination) and 16 (equality of opportunity in public employment) create space for the State to adopt special measures to remedy historic disadvantages. *Indra Sawhney* (1992) upheld OBC reservations and insisted on contemporary, empirical identification of backward classes; it also articulated the 50% ceiling and the creamy-layer concept. A caste census, properly designed, supplies the empirical substrate that *Indra Sawhney* demands, enabling periodic review of inclusion/exclusion, sub-categorisation to address internal capture within broad categories, and rational limits.

3.2 Article 46 and Commissions under Articles 338B, 340

Directive Principle Article 46 urges the State to promote the educational and economic interests of weaker sections. Articles 338B (NCBC) and 340 (Commissions to investigate conditions of backward classes) envisage ongoing empirical study. A caste census fits within this constitutional architecture of research-informed remedial action.

3.3 EWS and the Reconfiguration of Equality

The 103rd Amendment introduced 10% reservation for Economically Weaker Sections (EWS) based purely on economic criteria and excluding SC/ST/OBCs. In *Janhit Abhiyan v. Union of India* (2022), a 3–2 majority upheld the amendment. EWS shifted the normative frame by decoupling at least one reservation track from caste disadvantage, but it did not displace the need to empirically track caste-based deprivation for Articles 15(4) and 16(4) measures. In fact, EWS heightens the case for high-resolution data to ensure the remaining quota architecture continues to map to actual social disadvantage.

4. Privacy, Proportionality, and Data Governance

4.1 The Puttaswamy (2017) Framework

The nine-judge ruling constitutionalised the right to privacy and laid down a three-part proportionality test for data-intensive state action: legality, legitimate aim, and necessity with narrow tailoring (including procedural safeguards). Caste enumeration has a clear legitimate aim—designing targeted equality measures. Its legality flows from the Census Act and, for states, from the Collection of Statistics Act. The challenge is narrow tailoring and safeguards.

4.2 Applying Proportionality to a Caste Census

Necessity requires demonstrating that less intrusive means (e.g., sample surveys) cannot achieve comparable policy precision. Given the heterogeneity and geographic dispersion of caste groups, a universal census produces the only comprehensive baseline for sub-categorisation and de-duplication of benefits. Narrow tailoring mandates minimising sensitive identifiers, adopting secure coding of caste names to standard taxonomies, and forbidding non-policy secondary uses (e.g., law-enforcement profiling). The DPDP Act, 2023 provides a legislative backdrop for processing personal data, but caste counts as “sensitive” in many global frameworks and demands heightened protections in practice—encryption, purpose limitation, independent audits, and strict penalties.

4.3 Digitisation Risks and Chilling Effects

Recent scholarship flags the risks of digitised caste databases—function creep, doxxing, and stigma amplification—especially if data is granular at the neighbourhood level. A constitutional-compliant census must aggregate public releases, restrict micro-data access to vetted researchers under data-use agreements, and establish an independent statistical authority for governance.

5. Jurisprudence and the “Ceiling” Question

5.1 Indra Sawhney and the 50% Cap

While often treated as sacrosanct, the 50% ceiling was not constitutional text but a judicial rule for balancing equality claims. The Court left room for exceptional circumstances. Updated caste data could empirically justify re-calibration—either maintaining the cap, varying it in specific contexts, or redistributing within it through sub-categorisation to reach the “most backward” among OBCs. Crucially, better data does not predetermine expansion; it improves precision.

5.2 EWS and Doctrinal Tension

The EWS ruling creates doctrinal tension: if purely economic disadvantage can justify a new 10% vertical quota in addition to existing caps, the demand to revisit distribution among caste-based categories will intensify once fresh data exposes intra-category elite capture. This is already visible in political advocacy around OBC sub-quotas and state-level adjustments.

6. Federalism in Practice: Bihar, Karnataka, and Beyond

6.1 Bihar’s 2022–23 Survey

Bihar’s enumeration proceeded under state authority for social justice policy and was upheld by the Patna High Court; the Supreme Court declined interim restraints and the data was published. The legal stance: states may collect statistics to identify backwardness for state-subject welfare, provided they do not purport to conduct an official “census” under the Census Act’s exclusive Union remit. This pragmatic path shows how states can move ahead while the Union readies a national exercise.

6.2 Karnataka’s Stalled Experience

Karnataka’s 2015 survey illustrates political economy constraints: dominant groups fear that accurate counts will undermine their relative share of benefits. The subsequent shelving demonstrates that enumeration is not merely technical but distributive—and hence contested.

6.3 Towards a National Rollout

Reports now indicate that caste details will be included in the next national census (expected in the 2026–27 cycle). A national exercise can standardise taxonomies, reduce duplication, and integrate with household socio-economic indicators, but it must carry state governments as partners and embed privacy-by-design.

7. Arguments for and Against a Caste Census

7.1 The Case For Counting

First, constitutional necessity: affirmative action must be evidence-based. Absent current data, identification of “backwardness” risks ossifying historical assumptions, violating *Indra Sawhney*’s mandate for periodic review. Second, policy precision: disaggregation enables sub-categorisation within OBC lists, ensuring benefits reach the “most backward,” correcting elite capture, and informing targeted scholarships, hostels, and skilling. Third, fiscal rationality: scarce resources should be allocated where marginal impact is highest; rigorous data prevents over- and under-inclusion. Fourth, democratic transparency: publishing aggregated caste-class profiles can depoliticise the debate by substituting facts for mythologies of numbers. Fifth, alignment with EWS: if purely economic criteria can ground a sizable quota, it is inconsistent not to update the information base for caste-grounded measures.

7.2 The Case Against Counting

First, reification risk: enumerating caste might entrench identities the Constitution seeks to transcend, hardening boundaries and incentivising mobilisation for larger shares. Second, privacy and harm: sensitive data could leak or be misused (e.g., denial of housing, profiling), with marginalised groups bearing the brunt. Third, methodological pitfalls: self-ascription, synonymy, and hierarchical fluidity can muddy coding, producing disputable statistics. Fourth, administrative overload: verification, appeals, and standardisation are complex and expensive. Fifth, distributional conflict: fresh data could trigger quota renegotiations nationwide, heightening social tensions.

7.3 Reconciling the Tension

The constitutional pathway is to count responsibly: design the least intrusive, purpose-limited, high-integrity enumeration—then adopt transparent, consultative rules for translating counts into policy. The right to equality and the right to privacy are not antagonists; proportionality doctrines can harmonise them.

8. Designing a Constitution-Conformant Caste Census

8.1 Legal Basis and Purpose Clauses

The Union should anchor caste questions in a Census Rules notification that states the precise purposes: identification and periodic review under Articles 15(4), 15(5), 16(4), monitoring of Article 46 goals, and inputs for NCBC/Backward Classes Commissions under Articles 338B and 340. States may run complementary surveys under the 2008 Act, mapped to the same codebook.

8.2 Taxonomy and Coding

Establish a National Caste Taxonomy (NCT) overseen by an independent statistical council with linguistic and anthropological expertise. The NCT should map synonyms, clan variants, and regional appellations to unified codes, publish public-facing glossaries, and maintain a transparent process for litigating coding disputes. The lack of such a standard helped doom SECC 2011's caste tables.

8.3 Privacy-by-Design

(i) **Data minimisation:** capture only fields essential for equality policy (household link, broad socio-economic indicators, caste code).

(ii) **Separation of identifiers:** Personally identifiable information (PII) stored separately with strong encryption; analytical datasets pseudonymised.

(iii) **Access controls:** micro-data sandboxes for accredited researchers; public release only at safe aggregation levels (district or above).

(iv) **Independent audits:** periodic security audits; incident notification to a data protection authority; criminal penalties for misuse.

(v) **Sunset and review:** legal sunset for raw PII; periodic review (every 10 years) to recalibrate lists and benefits.

These measures operationalise *Puttaswamy*'s proportionality test in practice.

8.4 Quality Assurance

(i) Pilot surveys in diverse states to test questionnaire comprehension and coding fidelity;

(ii) Enumerator training with sociolinguistic modules;

(iii) Back-checks and re-interviews using randomised protocols;

(iv) Third-party validation with academic partners;

(v) Open methodology white paper for public comment prior to rollout.

8.5 Grievance Redress and Social Dialogue

Create a time-bound objection and verification window after provisional codes are assigned, overseen by district-level mixed panels, with appellate review by state commissions. Parallely, conduct public communication campaigns to explain purpose, safeguards, and rights.

9. Translating Data into Policy: From Counts to Justice

9.1 Sub-Categorisation within OBCs

Empirical distributions of educational attainment, income, land ownership, and occupational precarity across OBC sub-groups can justify structured sub-quotas, ensuring that extremely backward classes are not overshadowed by numerically larger or politically dominant groups. This squares with Indra Sawhney's insistence on avoiding overbroad categories.

9.2 Reviewing Inclusion/Exclusion Lists

Periodic review based on agreed criteria (multi-dimensional deprivation indices) can move groups across categories transparently. Where upward mobility is sustained, graduated exit mechanisms (e.g., phased reduction of benefits) avoid shocks.

9.3 Interfacing with EWS

Caste data should not be used to dilute EWS; rather, orthogonal targeting can reduce duplication: households availing OBC/SC/ST benefits could be excluded from EWS by design (as at present), while EWS continues to target economically poor from otherwise unreserved categories. The fresh data can also spotlight within-group poverty to design non-quota instruments (scholarships, hostels, credit).

9.4 Sectoral Policies

Counts should feed into: (i) education (bridge courses, residential schools in caste-deprived clusters), (ii) health (caste-disaggregated malnutrition and maternal health indicators), (iii) labour (skill-linked apprenticeships for most-backward trades), and (iv) rural development (asset transfers tied to caste-specific occupational vulnerabilities).

10. Politics, Public Reason, and Constitutional Morality

Caste is both a structure of oppression and a site of identity. Counting it risks cementing the latter; refusing to count perpetuates the former. Constitutional morality, as invoked in multiple equality cases, demands that the State confronts social facts without surrendering to them. The public reason approach suggests

that policies should be justified through reasons all citizens can reasonably accept: transparency about aims; clear, non-arbitrary criteria; and avenues for contestation. A caste census—conducted with restraint and safeguards—meets this ideal better than opaque, ad-hoc determinations of backwardness.

11. Recent Developments and the Road Ahead

The Union government has signalled that caste details will be captured in the next census cycle, a shift that follows state-level surveys and sustained political advocacy. Media and official reports suggest a 2026–27 timetable for the national headcount with caste, though formal census schedules are subject to administrative finalisation. These developments follow the Bihar survey’s judicial green light and the political controversies around Karnataka’s shelved data—facts that will shape both the legal strategy and the design philosophy of any nationwide enumeration.

To avoid repeating SECC-style pitfalls, the Centre and states must jointly publish a Caste Enumeration Protocol: taxonomy, questionnaires, privacy controls, data-sharing rules, release calendars, and a statutory bar on non-policy uses. Importantly, the protocol should codify “no-harm” rules: no individual-level caste disclosure; no use for policing, credit scoring, or tenancy screening; and civil/criminal penalties for discrimination rooted in leaked or misused datasets.

12. Conclusion

The constitutional debate over a caste census is ultimately a debate about how India realises equality, not whether it should. The framers and the Court alike envisioned empirically informed remedial measures; Indra Sawhney presupposes fresh data, Puttaswamy demands privacy and proportionality, and Janhit Abhiyan reshapes the terrain but does not diminish the need to measure caste-linked disadvantage. Properly designed, a caste census advances substantive equality by aligning benefits with actual need and combating intra-category capture; it also advances democratic accountability by making the distributive basis of policy visible and contestable.

The risks are real—privacy harms, politicisation, and methodological drift—but they are manageable through law: a clear statutory purpose; tight data minimisation; secure architectures; independent oversight; and open methodologies. Counting caste should be a means to dismantle its oppressive consequences, not to entrench its salience. The Constitution requires nothing less than truth in service of justice. With the next census poised to include caste details, India has an opportunity—and a responsibility—to do it right.

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