

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)**

Writ Petition (Civil) No. _____ of 2020

**(Petition under Article 32 of the Constitution of India read
with Order XXXVIII of the Supreme Court Rules, 2013)**

PUBLIC INTEREST LITIGATION

IN THE MATTER OF :

Tinku Saini

.....Petitioner

Versus

- 1) Union of India, through Secretary,
Ministry of Home Affairs, North Block,
Central Secretariat, New Delhi, Delhi 110001

...Respondent No. 1

- 2) Office of The Registrar General and
Census Commissioner, India
Through its Census Commissioner
NDCC-II Bldg, Jai Singh Road, New Delhi -110001

...Respondent No. 2

3) National Commission For Backward Classes
Through its Chairman
Trikot - 1, Bhikaji Cama Place, Rama Krishna Puram,
New Delhi, Delhi 110066

...Respondent No. 3

(A petition under Article 32 of the Constitution of India read with Order XXXVIII Rule 12 of Supreme Court Rules, 2013 in the nature of Public Interest Litigation praying for a Writ of Mandamus or any other appropriate writs seeking issuance of specific guidelines and/or directions in respect of enumeration of Other Backward Classes in the census to be conducted in 2021 or directions for collection of accurate data with respect to number of Other Backward Class in the country)

To,

The Hon'ble Chief Justice

And His Companion Judges,

Of the Supreme Court of India

The Humble Petition of the
Petitioner Above named

MOST RESPECTFULLY SHOWETH:

1. The present Petition under Article 32 of the Constitution of India in nature of Public Interest Litigation is being filed

by the Petitioner to enforce fundamental rights and the constitutional imperatives particularly guaranteed by the Constitution under Article 15(4), Article 16 (4), Article 81, Article 243D and Article 243T and praying for issue of writ to mandamus commanding the respondent No. 1, 2 and 3 their agents, servants, officers, and subordinates to enumerate systematically each caste-wise enumeration of Other Backward Class category in Census-2021 to be conducted soon in order to attain social justice or carry out the process of enumeration of Other Backward Classes category by other means to attain this objective of social justice.

2. The Petitioner is a public spirited individual, and the Petitioner have no personal interest in the matter but the petitioner being a social worker and working for the advancement and development of the Backward Classes and for their general welfare is deeply pained by retracing of the government from its earlier decision to collect data on Other Backward Classes during the Census 2021 (Newspaper Report dated 01.09.2018 of the Economic Times is annexed as **Annexure P-1 (Pages 26-27)**) That it is submitted that recently there have been reports that Census 2021 is unlikely to collect caste-wise data contrary to the earlier decision of the government. The newspaper report dated 31.07.2019 of the Economic Times is annexed as **Annexure P-2. (Pages 28-29)**) The decision of not collecting data on Other Backward Classes is likely to affect the condition of Other Backward Classes as the constitutional imperatives and social justice cannot be

attained if the enumeration is not carried out and hence the petitioner has filed this Public Interest Litigation to get proper direction from this court in this regard. That the persons affected by the acts of respondents in not conducting an enumeration exercise for counting of OBC population are numerous and are not in a position to approach the Hon'ble Court, hence the petitioner is filing the present PIL on behalf of such affected person.

3. The Petition is purely in public interest and is not at the instance of any other person or organization. The Petitioners has applied his mind to the public interest involved in the petition on hand, and has therefore, resolved to file the present petition. The present petition is not motivated by any other consideration, other than public interest and is filed pro bono public, for seeking to implement the judgments and orders of the Hon'ble Supreme Court of India and the principles laid down by the various High Courts.

5. The Petitioner does not have any personal interest or any personal gain or private motive or any other oblique reason in filing this petition is in Public Interest. The Petitioner has not been involved in any other civil or criminal or revenue litigation, which could have legal nexus with the issues involved in the present Petition.
6. The petitioner has not approached any authority or Court for relief for the subject matter of this petition. The petitioner further declares that the issue raised was neither dealt with nor decided by a Court of Law at the instance of the petitioner or to the best of his knowledge, at the instance of any other person.
7. The last census which was conducted was in the year 1931 and the caste wise data available is old and outdated which is acting as hindrance in attaining social justice and fulfillment of the constitutional imperatives and therefore the enumeration of the OBC population in the census is essential to attain constitutional and social justice.
8. The caste enumeration as declared earlier by the Ministry of Home Affairs had to take place in the census to be conducted in 2021 which have been further delayed due to the current corona virus pandemic which the world is facing and therefore the cause of action is still alive as the pattern and preparation of the census questions are yet to

be made and the exercise of the census is yet to take place. The petitioner has not made any representation to any government authority considering the extreme urgency in the matter.

9. The Respondent no. 1 is the Union of India, represented by Ministry of Home Affairs, which is the appropriate ministry dealing with safeguarding the fundamental rights of the citizens.

10. The Respondent No. 2 is Registrar General and Census Commissioner, the Respondent No. 2, the Registrar General and Census Commissioner, Ministry of Home Affairs, Govt. of India, is the appropriate authority for conducting census every 10 years in India.

11. The Respondent No. 3 is National Commission for Backward Classes is a constitutional body under Ministry of Social Justice and Empowerment empowered under the Constitution to examine complaints and welfare measures regarding socially and educationally backward classes

12. The brief facts and the circumstances leading to the filing of the present Petition are as follows:

13. That the petitioner firms believes that the Constitution of India aims to achieve the objective of securing to its citizens social, economic and political justice, liberty, equality and fraternity. It also indicates the methodology to be followed for reaching this goal of providing social

justice. Article 14 of the Constitution enjoins upon the State to provide to all person's equality before law and equal protection of the laws. The principle of "right to equality" is further reiterated in positive and affirmative terms in Articles 15 and 16 of the Constitution of India.

14. Article 15(1) of the Constitution of India, prohibits discrimination of any citizen and under clause (5) of Article 15, the State is empowered to make special provisions by law for advancement of any socially and educationally Backward Classes of citizens in the matter of admissions to the educational institutions. Special care was taken to declare equality of opportunity in the matter of public employment through Article 16 of the Constitution of India. Clause (1) of this Article declares that in the matter of public employment or appointment to any office under the State, all citizens of this country shall have equality of opportunity. At the same time, Clause (4) declares that nothing in this Article shall prevent the State from making any provision for reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State is not adequately represented in the services under the State.

15. Likewise, under Article 16(4) of the Constitution, reservation is provided to Backward Classes in state services only if such Backward Classes are not adequately represented in the state's services. Adequacy means representation in state's services in proportion to the population of that caste.

16. In order to identify these socially and educationally Backward Classes entitled to special provisions under Article 15(1) of the constitution is important to first ascertain the population of a caste in each state to compare their educational level with the state average and the best way of ascertaining the same is through census which are conducted in India every 10 years. The census should provide Backward Classes as percentages of population, literates, English literates, graduates, doctors, engineers, other professionals and government servants. These percentages can be obtained only if the population figures are available along with the above data. Without this data the social and educational level of a caste cannot be compared with the state's average in order to identify whether a caste or a tribe is backward.

17. Right from the first national commission, appointed in 1953, all the Backward Classes Commissions appointed for the purpose of identifying the Backward Classes have experienced genuine difficulty for want of caste particulars in the census figures. The commissions' reports have devoted chapter after chapter to this question. All the commissions have strongly recommended collection of this data in the census. These recommendations are not considered till this day but are deliberately suppressed. The report of the backward classes Commission (Kalelkar), 1955 and backward classes Commission (Mandal), 1980 are annexed herewith and filed as **Annexure P-4** (Pages _____)

18. Also, For the purpose of attaining the constitutional imperative under Article 16(4) of the Constitution, also, collection of caste particulars is essential. It is needless to point out here that for want of caste population figures Backward Classes Commissions have resorted to other methods. In order to carry out the aforesaid revision of the lists, comprehensive data about each caste included in the list of Backward Classes must be secured. Such data should reflect the population of each caste, educational attainment in each caste and the representation secured by members of such castes in the services of the state. This data can be obtained on a national scale only through the decennial census. Without such data, it is impossible to delete any caste from the list of Backward Classes which has ceased to be a Backward Classes.

19. Furthermore, Article 81 of the Constitution provides for determining composition of the Lok Sabha. It has to be done taking into consideration the ratio between numbers of seats allotted to each state and the population of that state. Article 82 of the Constitution mandates readjustment and allocation of seats in the Lok Sabha to the states. Both these exercises and the delimitation of constituencies will have to be made on the basis of population figures as ascertained at the preceding census whenever decennial census and figures are published. Similar provisions are also made for state legislative assemblies. However, delimitation of constituencies and all other exercises under the aforesaid provisos were frozen by the 42nd amendment

to the Constitution which had postponed such exercise until the relevant figures for the first census taken after the year 2001 are published. Now after 25 years the delimitation of constituencies, composition of the Lok Sabha and allotment of seats to each state, reservation of seats in favour of Schedule Castes and Schedule Tribes will be undertaken. Further, in view of the pending demand for reservation of seats in favour of women and in favour of Backward Class women, the census data is important. From this point of view also it is of utmost importance that the opportunity is not lost to collect caste particulars during the present census. Indeed, non-collection of caste data would virtually shut the door against reservation in favour of Backward Classes in constituencies reserved for women.

20. Furthermore, under Article 243D of the Constitution there is reservation in favour of Backward Classes in panchayats. Similarly, under Article 243T of the Constitution such reservation has to be provided in municipalities, though without adequate data about the population of Backward Classes in each constituency. In these circumstances it is of national importance that caste data is collected in the census of 2021. The identification of Backward Classes, Schedule Caste and Schedule Tribes and reservation of constituencies for Backward Classes women is entirely dependent on the enumeration which can be attained by way of census.

21. It is submitted that the caste in India is a reality and this has been in existence since a long time and is also an indicator of social change and to do full justice to the backward class it is the need of the hour that their enumeration should be done by way of census. It is submitted that, during last seventy years the country has witnessed the gross misuse of Article 340 of the Constitution by the successive governments have been included in the schedule without making any empirical study and that too for political consideration and no periodic revision has been done as per Section 11 of the National Commission for Backward Classes Act, 1993. On the contrary not a single community/caste/tribe has been excluded from the Other Backward Classes list. The Hon'ble Supreme Court on various occasions has commented very adversely on the manner these provisions have been abused for ulterior motives. That till date no steps have been taken for exclusion of affluent castes/tribes from the Other Backward Classes schedule. However, the Governments/political parties have been encouraging inclusion of more and more castes/tribes in the schedule list instead of excluding the advance castes/tribes who have enjoyed the benefits of reservation for a longer period and have become advanced in all respects i.e. socially, educationally and politically etc. And if the periodic revision of lists by the Central and State Govt. is not done every succeeding 10 years for exclusion of Castes/tribes who has ceased to be backward from the Other Backward Class's list then the whole objective of equality and equal opportunity enshrined in Articles 15(4)

and 16(4) of the Constitution appears to have been defeated. That the aforesaid issue of Inclusions and exclusions in the reservations list can be done only with the help of quantifiable data. However, such figures are not available for the last 70 years or so since the census reports provided the results of such caste-wise figures only until 1931.

Historical Background Census and Caste Based Census

22. 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 abreact. Thus, the Census of India 2021 will be the sixteenth in this unbroken series since 1872 and the eighth after independence. Participation in the Census by the people of India is indeed a true reflection of the national spirit of unity in diversity.

23. The Instruction Manual provides for objectives of conducting a census are reproduced: -

"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. 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.

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 inessential 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.

The last caste-based census in India was done in 1931. Accordingly there are no periodic data available on the demographic spread of Other Backward Classes and their access to amenities. Even the Mandal Commission had used the 1931 Census data. Whatever limited data are available, pertain to surveys conducted by NSSO from 1998-99 onwards, which are only 'sample surveys'.

24. In *M. Nagaraj and others v. Union of India and others*, the Supreme Court has held that the Government has to

provide a quantified data for measuring the backwardness of particular castes. In absence of such data, reservation would be invalid it has said. The court held: -

“Clause (4) of Article 16, however, states that the appropriate Government is free to provide for reservation in cases where it is satisfied on the basis of quantifiable data that backward class is inadequately represented in the services. Therefore, in every case where the State decides to provide for reservation there must exist two circumstances, namely, 'backwardness' and 'inadequacy of representation'. As stated above - equity, justice and efficiency are variable factors. These factors are context-specific. There is no fixed yardstick to identify and measure these three factors, it will depend on the facts and circumstances of each case. These are the limitations on the mode of the exercise of power by the State. None of these limitations have been removed by the impugned amendments. If the concerned State fails to identify and measure backwardness, inadequacy and overall administrative efficiency then in that event the provision for reservation would be invalid.”

25. In the Mandal case, the Hon'ble Supreme Court asked the Government to make periodical revision of Other Backward Classes lists. Some of the related text from the case is cited below for a better understanding of the intentions of the Supreme Court:

“We are of the considered view that there ought to be a permanent body, in the nature of a Commission or Tribunal, to which complaints of wrong inclusion or non-inclusion of groups, classes and sections in the lists of Other Backward Classes can be made. Such body must be empowered to examine complaints of the said nature and pass appropriate orders. Its advice/opinion should ordinarily be binding upon the Government. (...) We direct that such a body be constituted both at Central level and at the level of the States within four months from today. They should become immediately operational and be in a position to entertain and examine forthwith complaints and matters of the nature aforementioned, if any, received. It should be open to the Government of India and the respective State Governments to devise the procedure to be followed by such body. The body or bodies so created can also be consulted in the matter of periodic revision of lists of O.B.Cs”

26. Hon’ble Supreme Court of India in a similar matter being Ram Singh vs. Union of India W.P. (C) No.274 of 2014 has set aside the decision of the Central Government to include the caste of Jats in the Central List of Other Backward Classes observing that:

“No doubt that in the matter of inclusion in the Central List of other backward classes, the exercise undertaken by the State Governments in respect of the State Lists may be relevant but what cannot be ignored in the present case in the very significant fact that in respect of all the States

(except Haryana) the inclusion of Jats in the OBC Lists was made over a decade back. A decision as grave and important as involved in the present case which impacts the rights of many under Articles 14 and 16 of the Constitution must be taken on the basis of contemporaneous inputs and not on the basis of antiquated data. It was furthermore observed that the backwardness; and educational and economic backwardness may contribute to social backwardness. But social backwardness is a distinct concept having its own connotations”.

27. The Petitioners submits that, the Hon'ble Supreme Court observed in many of the judgments that owing to historical conditions, particularly in Hindu Society, recognition of backwardness has been associated with caste. Social groups who would be most deserving must necessarily be a matter of continuous evolution. New practices, methods and yardsticks have been continuously evolved moving away from caste-centric definition of backwardness. It is submitted that, the gate would be opened only to permit entry of the most distressed. Any other inclusions would be a serious abdication of the constitutional duty of the State and therefore in order to identify these Backward Classes in order to do justice to such other backward classes, their enumeration is necessary unless that is done it will not be possible to identify these people and therefore it is necessary that writ to mandamus commanding the respondent No. 1 and 2 and their agents, servants, officers, and subordinates to enumerate

systematically each caste-wise enumeration of OBC category in Census-2021 to be conducted soon in order to attain social justice or carry out the process of enumeration of OBC category by other means to attain this objective of social justice should be issued.

28. That the petitioner is filing the present petition inter alia on the following amongst other grounds which are without prejudicial to one and another: -

GROUND

A) BECAUSE the Constitution of India under Clause (5) of Article 15 provides that, the State is empowered to make special provisions by law for advancement of any socially and educationally Backward Classes of citizens in the matter of admissions to the educational institutions and therefore to identity these socially and educationally Backward Classes of citizens it is necessary that data is collected and these socially and educationally Backward Classes are identified as fresh and not in respect of the data which is old and obsolete.

B) BECAUSE the Constitution of India under Clause (4) of Article 16 provides that nothing in this Article shall prevent the State from making any provision for reservation in appointments or posts in favour of any backward class of citizens which, in the opinion of the State is not adequately represented in the

services under the State and therefore in order to identify these backward class of citizens who are not adequately represented in the state comprehensive data about each caste included in the list of Backward Classes must be secured. Such data should reflect the population of each caste, educational attainment in each caste and the representation secured by members of such castes in the services of the state. This data can be obtained on a national scale only through the decennial census.

C). BECAUSE the Constitution of India also provides for certain constitutional imperatives Under Article 243D of the Constitution where there is reservation in favour of Backward Classes in panchayats and under Article 243T such reservation has to be provided in municipalities and therefore in order to avail this reservation for attaining social justice it is imperative that population data specifically identifying the Backward Classes if collected by way of census.

D). BECAUSE the Hon'ble Supreme Court of India has in a number of judgements held that decision as grave and important as involved which impacts the rights of many under Articles 14 and 16 of the Constitution must be taken on the basis of contemporaneous inputs and not on the basis of antiquated data and therefore there is a need to

collect the Other Backward Classes data in the census to be conducted in 2021.

- E) BECAUSE the Census are conducted every 10 years and the premise of all census is to collect maximum details about the given population. Countries usually collect data on religion, race, ethnicities, language, gender, marital status, economic status, and other factors. The purpose of the census, is much more than simply a head count of the people of the country. It is an exercise to collect reliable data on essential characteristics, such as population, economy activity, social and cultural aspects, migration and demography. Therefore, it's pertinent to collect data on caste because it is one of the most important Indian social realities.
- F) BECAUSE the Mandal Commission, had faced problem when it did not have updated data on caste while formulating its report recommending reservation for the Other Backward Classes in 1980. It had to depend on the 1931 census data. It recommended that in the next decadal census, caste data must be collected. At this moment, India's reservation policies are based on data that are 90 years old and therefore in order to give full effect to the Mandal Commission report it is imperative that the data on Backward Classes is collected by way of census.

- G) BECAUSE without caste data, no social group can be excluded from the Other Backward Classes list. So, the National Commission for Backward Castes has not excluded a single caste group from the Other Backward Classes list since its inception and therefore it is required data on Backward Classes is collected by way of census.
- H) BECAUSE the need for a caste based census has echoed over a period of time and states such a Bihar, Orissa and Maharashtra have already passed resolutions in their respective state assemblies demanding for a caste based census to be conducted in 2021 emphasising the fact that the caste based census is extremely important to attain social justice. The Newspaper Report dated 08.01.2020 of Business standard alongwith newspaper report of Outlook and the Hindustan Times are annexed as **Annexure P-5 (Pages ____)**
- I) BECAUSE respondent no.1 i.e. Union of India and Respondent No. 3 i.e. the National Commission of Backward classes, has failed to conduct any periodic review as per Section 11 of the said Act and have failed to exclude the socially advanced castes/tribes from the from the purview of the list/schedule in spite of the directions given by the Hon'ble Supreme Court.
- J) BECAUSE social justice so demands that people who actually belong to the backward category are identified so that they can avail the constitutional

privileges given to them on grounds of belonging to the backward category and social justice is attained in true sense in the spirit of the constitution.

17. That the petitioner does not have any alternative and efficacious remedy for enforcement of fundamental rights.
18. That the petitioner has not filed any other similar petition either in this Hon'ble Court or any other Court.

P R A Y E R

In the facts and circumstances of the case, as mentioned above, it is, therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to:

- A. Issue a Writ, Order, or Direction in the nature of Mandamus to the Respondent No. 1 and Respondent No.2 to include the enumeration of Other Backward Class in the census to be conducted in the year 2021;
- B. Order, or Direction in the nature of Mandamus to the Respondent No. 1, Respondent No.2 and 3 to Conduct the process of enumeration of Other Backward Class in any other way on a national scale;
- C. Order, or Direction in the nature of Mandamus to the Respondent No. 3 to Conduct the process of enumeration of Other Backward Classes at grass root level and review and provide current data with respect to enumeration of Other Backward Classes in any other way on a national scale; AND

D. Issue any other appropriate writ, order or direction that may be deemed to be just and equitable in the facts and circumstances of the case and in the interest of justice.

FOR THIS ACT OF KINDNESS, THE
PETITIONERS/APPLICANTS HEREIN AS IN DUTY
BOUND SHALL EVER PRAY

(Petitioner)

New Delhi

Dated:17.08.2020

Drawn By:

Adv. Sonia Saini

Filed by:

AAKRITI JAIN

(Advocate For the Petitioner)