

EQUITY OR ARITHMETIC? FUTURE OF AFFIRMATIVE ACTION IN THE LIGHT OF CASTE CENSUS 2027

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ABSTRACT

The recent nationwide caste census announcement by India's ruling party marks a significant juncture in the country's socio-political discourse. This upcoming data collection, the first comprehensive enumeration in decades, has come up after fervent demands from opposition parties and activist groups, rallying behind the slogan "jitni abadi utna haq" (rights proportional to population) — a move some may argue is mere political mobilisation or a fixation on numbers.

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This article examines the permissibility, practicality and necessity of this contemporary demand, primarily through the lens of judicial precedents established by the Supreme Court of India. The focus narrows down to two pressing questions that have been central to the constitutional discourse on reservations: the foundational and often contentious (a) distinction between proportional representation and adequate representation and (b) the debate surrounding judicially imposed 50% reservation ceiling. Through a close analysis of landmark judgments rendered by the Apex Court, this research seeks to determine whether or not the call for proportional reservation truly aligns with, and more importantly, is even permissible under, India's established constitutional principles.

The article interrogates the judicial interpretations that have historically sought to balance the objective of compensatory discrimination with the fundamental right to equality. It further explores how updated empirical data from a census might reshape future policy action, particularly in light of the

judiciary's ongoing insistence on concrete evidence to bolster the effectiveness of affirmative action. Lastly, this article aims to assess the feasibility of achieving proportionality on a purely numerical basis, ultimately contributing to a wider discussion on whether the census can provide the data and the impetus for policies that address the root causes of inequality and lead to a genuine, measurable improvement in the lives of marginalised communities.

Keywords: Caste Census, Affirmative Action, Proportional Representation, 50% Ceiling Rule, Quantifiable Data.

I. INTRODUCTION

Caste in India, a system that has shaped and altered individual lives for centuries, is a social construct believed to be rooted in the historical practices of endogamy. The practice has resulted in the fortification of social and economic divisions.¹ Even though formal structures of discrimination have been legally abolished by virtue of various

¹ Anjali Jaipal, 'Caste System and its Impact on Indian Society' (2018) 1(2) International Journal of Advanced Research in Commerce, Management & Social Science 91 <add URL> accessed 30 July 2025.

legislative enactments, including the Constitution of India,² their deep-rooted impact on social and economic realities persists undeniably. An important chapter in the official state recognition of caste began during the British Raj with the first census in 1872.³ The British administration categorized and ranked caste groups, perhaps inadvertently rigidifying caste distinctions. This, and the subsequent decennial exercises, formalised caste identity as a central social category.

Dr. B.R. Ambedkar, in his address to the Constituent Assembly, described caste as ‘anti-national’,⁴ emphasising the need for its annihilation. Aligning with this vision, the Constitution not only laid down the principles of equality under Article 14, but also provided provisions of affirmative action to address this historical injustice. Reservation, as a means of such ‘affirmative action’, was first introduced for Scheduled Castes (hereinafter referred to as “SCs”) and Scheduled Tribes (hereinafter referred to as “STs”) through the Constitution itself in 1950.⁵ Later, in 1979, the Mandal Commission was appointed to investigate the conditions of socially and educationally backward classes.⁶ As a result, the framework was

² The Constitution of India 1950, arts 14, 15, 16.

³ Rimsha Javed, ‘The caste system in India during British Raj: (1872-1941)’ (2021) 11(12) International Journal of Development Research 52678.

⁴ Constituent Assembly Debates, 25 November 1949 (B R Ambedkar’s speech) <https://www.constitutionofindia.net/debates/25-nov-1949/#130321> accessed 31 July 2025.

⁵ *The Constitution of India* (n 2).

⁶ Mandal Commission, *Report of the First Part* (1980) <https://www.ncbc.nic.in/Writereaddata/Mandal%20Commission%20Report%20of%20the%201st%20Part%20English635228715105764974.pdf> accessed 3 August 2025.

extended to include Other Backward Classes (hereinafter referred to as “OBCs”), to alleviate their relative deprivation. Recently, a more notable development occurred with the Constitution (One Hundred and Third Amendment) Act, 2019, which introduced reservations for Economically Weaker Sections (hereinafter referred to as “EWS”).⁷ This legislative action marked a significant shift in the idea of affirmative action by recognising economic criteria as a standalone basis for reservation. Throughout its intricate history, reservation policy has remained a constant subject of national debate.

In what appears to be a landmark policy shift, the Union government recently announced its decision to conduct a nationwide caste census.⁸ This move came after a sustained demand from opposition parties, activist groups, and social organisations. An ongoing slogan echoing their demand is “*jitni abadi utna haq*”, or rights proportional to population. This demand encapsulates a significant social claim that a community’s numerical strength should be parallel to its share in state resources and opportunities.

This contemporary demand naturally shifts the focus towards the re-examination of the very foundations of India’s affirmative action policy. Policy action on a population-based share inevitably brings two

⁷ The Constitution (One Hundred and Third Amendment) Act, 2019.

⁸ India Today, ‘Population count, caste census to begin from March 1, 2027’ (*India Today*, 4 June 2025) <https://www.indiatoday.in/india/story/population-count-caste-census-likely-to-begin-from-march-1-2027-sources-2735672-2025-06-04> accessed 3 August 2025.

pressing constitutional questions back into the forefront of academic discourse. First, it calls for a re-evaluation of the fundamental debate around proportional representation versus adequate representation. Second, and equally crucially, it reignites the long-standing debate surrounding the 50% reservation ceiling mandated by judicial precedent.⁹ Against this backdrop, the present article addresses the legal and constitutional implications of the proposed caste census through the following structure.

The discussion that follows is organised in four parts. It first outlines the judiciary's understanding of backwardness and its repeated insistence on quantifiable data. It then turns to the distinction between proportional and adequate representation, before examining the evolution of the 50% ceiling rule. The article concludes by assessing the permissibility, practicality, and necessity of caste-based enumeration in shaping future reservation policy.

A. UNDERSTANDING BACKWARDNESS: WHY THE SUPREME COURT NEEDS THE NUMBERS

To lay the groundwork for the analysis of these two central questions, it is imperative to briefly touch upon how the Supreme Court has conceptualised the term “backwardness”, a notion that underpins affirmative action policies in India. The Court in *M.R. Balaji v. State of Mysore* (1962) has clarified that “backwardness” typically implies

⁹ *M.R. Balaji and Ors v State of Mysore* 1962 SCC OnLine SC 147.

both social and educational disadvantage, with caste often serving as a relevant, but not the sole, indicator.¹⁰ While Scheduled Castes and Scheduled Tribes are generally presumed backward due to deep-rooted historical oppression,¹¹ the Court has time and again stressed the need for “quantifiable data” to identify other backward classes.¹² Further, the Court has been of the view that, even if not for identifying backwardness, such data is required to assess their “inadequacy of representation” in services,¹³ and to understand internal disparities within these groups.¹⁴ Moreover, although the “creamy layer” doctrine,¹⁵ was formally established by the Court in *Indra Sawhney v. Union of India* (1993) for OBCs, the Court has recently indicated that a similar principle may be extended to SCs, and STs alike.¹⁶ That extension, however, remains contested by the Union government,¹⁷ with the Court having recently issued notice in a PIL in that regard.¹⁸

¹⁰ *ibid* 21–23.

¹¹ *Indra Sawhney v Union of India* AIR 1993 SC 477 [788].

¹² *M. Nagaraj v Union of India* (2006) 8 SCC 212 [107].

¹³ *Jarnail Singh v Lachhmi Narain Gupta* (2018) 10 SCC 396 [30].

¹⁴ *Jarnail Singh v Lachhmi Narain Gupta* (2022) 10 SCC 55 [32].

¹⁵ *Indra Sawhney* (n 9) [792].

¹⁶ *State of Punjab v Davinder Singh* (2025) 1 SCC 1.

¹⁷ The Hindu Bureau, ““Creamy layer” doesn’t apply to SC/ST quota, says govt. after PM’s assurance to BJP MPs’ (*The Hindu*, 9 August 2024) <<https://www.thehindu.com/news/national/creamy-layer-principle-does-not-apply-to-scast-reservations-pm-assures-bjp-mps/article68505657.ece>> accessed 28 May 2026; Smriti Kak Ramachandran, ‘SC/ST quota: No plan for creamy layer, say govt’ (*Hindustan Times*, 10 August 2024) <<https://www.hindustantimes.com/india-news/scastquota-no-plan-for-creamy-layer-say-govt-101723229963351.html>> accessed 28 May 2026.

¹⁸ *Ashwini Kumar Upadhyay v Union of India and Ors*, Writ Petition (Civil) No 1276 of 2025 (SC, order dated 12 January 2026).

The aim of the said doctrine is to exclude the affluent within these groups and channel benefits to the truly disadvantaged.¹⁹ Most recently, to address internal inequalities, the Court has also permitted sub-classification, or reservation within reservation, for Scheduled Castes, conditioned on ‘quantifiable and demonstrable data’ proving inter se backwardness.²⁰ These judicial precedents have collectively underscored a consistent push for empirical evidence to better understand ‘backwardness’ and to further shape reservation policies.

II. THE DEBATE OVER REPRESENTATION: PROPORTIONAL VS. ADEQUATE

A. JUDICIAL EVOLUTION ON REPRESENTATION

It appears that in the aftermath of the announcement of the census in India, a fundamental debate within India’s affirmative action jurisprudence has re-emerged. The question is whether reservations strive for strict proportional representation, or whether their objective is simply to ensure adequate representation. Clarifying this distinction is crucial for evaluating the legality and legitimacy of the political call for proportional representation.

Proportional representation, at its very core, seems to suggest a direct numerical arrangement. If a community accounts for a certain percentage of the total population, say 15%, it should then secure a

¹⁹ *State of Punjab* (n 16) [499-501].

²⁰ *ibid* [212].

corresponding 15% of seats in government jobs or educational institutions. It is a straightforward, and perhaps overly simplistic, numerical matching based on population share. Adequate representation, on the other hand, implies something different. It suggests ensuring a sufficient or fair presence of a community in public services. This approach acknowledges historical disadvantage, but it does not necessarily mandate a precise numerical equivalence with their population.

The Supreme Court, over the years, has consistently strived to delicately navigate this complex terrain. The prevailing judicial view has generally leaned towards the principle of adequate representation, rather than endorsing strict proportionality. Early judicial pronouncements began to lay the groundwork for this distinction. In *State of Madras v. Champakam Dorairajan* (1951), the Court invalidated a government order which had plainly allocated seats in educational institutions based on fixed community ratios.²¹ This ruling, by rejecting the system of rigid proportionality, highlighted the constitutional imperative to protect individual rights of equality from state-sponsored discrimination. Later, in *Devadasan v. Union of India* (1963), the Court further signalled its caution against numerical excesses by striking down the “carry-forward rule” for unfilled reserved vacancies, because its operation led to more than 50% of the

²¹ *State of Madras v Champakam Dorairajan* (1951) SCC OnLine SC 30 [18].

vacancies being reserved in a particular year.²² The Court was of the view that such a mechanism could create what it termed a “monopoly” for backward classes, thereby violating the guarantee of equality of opportunity for all citizens.²³

Despite the fact that the prevailing judgments have leaned against strict proportionality, some judicial opinions have also introduced important nuances. In *State of Kerala v. N.M. Thomas* (1976), some judges explored what might be called a more ‘expansive vision’ of equality. Justice K.K. Mathew, for instance, advanced the concept of “proportional equality,” suggesting that formal equality alone may not be sufficient to address deep-seated injustices.²⁴ In a similar vein, Justice Fazal Ali, in his concurring opinion, further asserted that the extent of reservation depends upon the proportion of the backward classes to the total population and their representation in public services.²⁵ These views, it could be argued, hinted at a more direct consideration of population figures in achieving “adequate representation.”

Despite the said viewpoints, the nine-judge bench in *Indra Sawhney & Ors. v. Union of India* (1993), popularly known as the Mandal judgment, firmly established the general legal principle. The Court held that Article 16(4),²⁶ specifically refers to “adequate representation,” not

²² *T. Devadasan v Union of India* (1963) SCC OnLine SC 51 [16].

²³ *ibid* [17].

²⁴ *State of Kerala v NM Thomas* (1976) 2 SCC 310 [73].

²⁵ *ibid* [193].

²⁶ The Constitution of India (n 2).

“proportionate representation”.²⁷ As per the Court, article 16(4) was designed to give backward classes a “share in the power structure”, adequate representation could not be equated with “proportionate representation”; to treat it otherwise would disturb the balance between reservation and the constitutional guarantees of “equality of opportunity” under Article 16(1) and the “maintenance of efficiency of administration” under Article 335. The verdict therefore explicitly rejected the theory of strict proportionality based on population.²⁸ This judgment, in essence, significantly curtailed the legal scope for demands based purely on population numbers in public employment.

Not only have the judgments that followed *Indra Sawhney* consistently reinforced the distinction laid out, they have also shed light on the need for data to support it. In *M. Nagaraj v. Union of India* (2006), for instance, the Court mandated that the State collect “quantifiable data” to demonstrate the “inadequacy of representation” as a condition for providing promotional reservations.²⁹ The requirement was not simply to point to population figures, but also to show the underrepresentation of the communities in the actual services. This emphasis on ‘proving’ underrepresentation in actual public employment was again affirmed by *Jarnail Singh and Others v. Lachhmi Narain Gupta and Others* (2022), which stated that the State is required to ascertain the

²⁷ *Indra Sawhney* (n 9) [807].

²⁸ *ibid* [674].

²⁹ *M Nagaraj* (n 10) [102].

inadequacy through quantifiable data.³⁰ These rulings have repeatedly insisted on concrete proof of underrepresentation in services, not as a mere exercise of numerical comparison with a community's demographic strength.

Most recently, a seven-judge bench in *State of Punjab v. Davinder Singh* (2025) continued this line of reasoning. It emphasized “effective representation” and “equality of results” over strict numerical proportionality in services.³¹ The judgment once again established the position that while population numbers are contextually relevant, they do not automatically translate into a right to proportional representation.

B. ANALYSIS: CAN PROPORTIONALITY BE CONSTITUTIONALLY JUSTIFIED?

The contemporary demand for proportional representation appears to face a significant legal hurdle in light of the Supreme Court's established principles. A census will certainly provide precise population figures. The judiciary, however, largely rejects strict proportional representation. Instead, the courts seem to favour “adequate” and “effective” representation, seeking to maintain a balance between social justice and administrative efficiency. Consequently, it is probable that census data, when placed before the

³⁰ *Jarnail Singh* (n 12) [8].

³¹ *State of Punjab* (n 14) [185.4].

courts, will serve as crucial evidence to demonstrate the inadequacy of representation in services. This standard is conceptually different from merely showing population ratios. The judicial stance has also been understood in scholarship as reflecting India's constitutional preference for substantive equality achieved through targeted measures, rather than a mechanical proportional representation;³² with the latter, in the authors' view, risking diluting the efficiency and fostering perpetual identity-based competition.

It has also been suggested by experts that a direct implementation of proportional representation based on population could lead to a highly fragmented and perhaps unmanageable reservation system. There is a risk within such a system that "equality of opportunity" might be reduced to a mere "right to reservation." This could, in turn, result in a "compartmentalisation" of society, potentially directing attention away from broader economic reforms. This concern further advocates that the demand for proportionality often stems from a "narrative dominance" in political discourse. Such a narrative, it is argued, simplifies the complex goals of affirmative action into a numbers game, rather than focusing on the actual upliftment and integration of

³² Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Oxford University Press 1984); Gautam Bhatia, 'Equality under the Indian Constitution' in Ulrike Davy and Antje Flüchter (eds), *Imagining Unequals, Imagining Equals: Concepts of Equality in History and Law* (Transcript Verlag 2022) 231; Madhav Khosla and Pratap Bhanu Mehta, 'Caste Formalism: The Law and Politics of Equality in India' (2025) 87 *Law and Contemporary Problems* 205.

backward classes.³³ Therefore, while the demand for proportional representation highlights the potentially widening gap in disparities, its legal validity, particularly when interpreted as strict proportionality, remains arguable within the routine judicial framework.

III. THE 50% RULE: EVOLUTION AND EMERGING FLEXIBILITIES

A. JUDICIAL EVOLUTION OF THE 50% CEILING RULE

The 50% ceiling on reservations has, over time, solidified and become one of the contested features of India's affirmative action framework. The evolution of this rule is a reflection of the interplay between constitutional interpretation and judicial caution. The political push for a census based on caste is not just about counting people; in the authors' view, it may very well serve as a precursor to a larger strategy of arguing for reservation quotas that may go beyond the Supreme Court's 50% limit. This makes the rule's permissibility and practicality a central point of the current debate.

The first precedent for imposing a quantitative limit on reservations was decisively set in the case of *M.R. Balaji*, wherein the Supreme Court established a 50% ceiling as a "general rule". The Court opined

³³ Seema Laxman, 'The Indian State-Wise Reservation System : A Comparative Analysis' (2025) 12(2) Journal of Emerging Technologies and Innovative Research 180.

that Article 15(4),³⁴ was an “exception” to the principle of equality. It was held that the reservation must be kept within "reasonable limits" to avoid nullifying the fundamental right guaranteed by the Constitution.³⁵ A 68% reservation in Mysore was struck down and described as “plainly inconsistent with Article 15(4)” and a “fraud on the Constitutional power”.³⁶ This judgment, therefore, laid down a crucial quantitative limit. The Court seemed to emphasise that while reservations are permissible, they cannot be allowed to entirely consume the opportunities available to the general category.

This strict approach was further affirmed in *Devadasan*, where the Court applied the 50% rule on a “year-wise” basis. The judgment struck down a “carry-forward rule” where unfilled reserved vacancies from previous years had accumulated, leading to over 50% reservation in a single year. The Court underscored that the guarantee of equality under Article 16(1) extends to each citizen in each recruitment year. Excessive reservations, it was noted, would effectively “create a monopoly or disturb unduly the legitimate claims of other communities”.³⁷

State of Kerala v. N.M. Thomas (1976) offered some initial flexibility in the rigidity of the 50% benchmark, even though it was debated in the

³⁴ The Constitution of India (n 2).

³⁵ *M R Balaji* (n 9) [34].

³⁶ *ibid* [35].

³⁷ *T Devadasan* (n 17) [17].

years that followed. The Court did not provide a single majority opinion on the exact numerical limit. However, judges, including Justice Fazal Ali, suggested that the 50% rule was merely a “rule of caution” rather than an inflexible mandate.³⁸ This view hinted at a judicial inclination towards ‘substantive equality’, which might allow for a greater flexibility in the reservation limit for certain recruitment cycles.

However, the firmness of the 50% ceiling was fundamentally re-established by the nine-judge bench in *Indra Sawhney & Ors. v. Union of India*. The Court upheld the 50% rule as a “binding rule”.³⁹ It further held that any exceptions to the said rule were to be considered only in “extraordinary situations”, and that too would necessitate “extreme caution”.⁴⁰ It also affirmed the “year-wise” application of the rule.⁴¹ Notably, while overturning the *Devadasan* ruling, *Indra Sawhney* managed to settle the carry-forward mechanism by stating that the rule could operate, provided it did not breach the 50% limit of total current vacancies in any given year.

The interpretation of this rule gained further complexity with *M. Nagaraj v. Union of India*. The Court reiterated the 50% ceiling as a “constitutional requirement”,⁴² but importantly, it upheld Article

³⁸ *NM Thomas* (n 19) [193].

³⁹ *Indra Sawhney* (n 9) [809].

⁴⁰ *ibid* [810].

⁴¹ *ibid* [814].

⁴² *M Nagaraj* (n 10) [122].

16(4B).⁴³ This provision allowed “backlog vacancies” to be carried forward as a “separate class of vacancies”. This meant they would not be counted against the 50% limit of the current year’s vacancies.⁴⁴ This effectively permitted the total percentage of reserved posts filled in a year to exceed 50%, introducing a significant operational flexibility.

What some might consider a fundamental shift in the rule’s application occurred with the judgment in *Janhit Abhiyan v. Union of India* (2023). This landmark case held that the 50% ceiling limit does not apply to the 10% reservation for Economically Weaker Sections.⁴⁵ The Court reasoned that this newly formed category, based on economic criteria, constituted a distinct class. It, ergo, operated outside the traditional 50% cap meant for socially and educationally backward classes. This ruling, remarkably, resulted in the total reservation in India reaching 59.50%, pointing towards a major re-interpretation of the 50% rule’s flexibility.

B. ANALYSIS: CAN THE 50% CAP BREACH HOLD UP IN COURT?

The Supreme Court’s complex, and at times seemingly contradictory, journey on the 50% rule highlights a profound tension between formal equality and compensatory justice. The “*jitni abadi utna haq*”

⁴³ The Constitution of India (n 2).

⁴⁴ *ibid* [95].

⁴⁵ *Janhit Abhiyan v Union of India* (2023) 5 SCC 1 [239.1].

narrative, which will inevitably gain more momentum after the new census data, will directly confront the strict reaffirmation of the 50% cap for traditional reservations. This tension makes it challenging for the policy makers to simply increase overall reservation percentages based on a community's population share, even if a census reveals a substantially larger proportion of backward classes. Legal scholars have pointed out that while the 50% limit has often been described as "sacrosanct," the Supreme Court itself has demonstrated flexibility. This suggests that the debate is not entirely closed, especially in what the court has termed "extraordinary situations".⁴⁶

Yet, the decision in *Janhit Abhiyan* to exempt EWS from this cap introduces an important precedent. This seems to create a legal paradox. While the 50% limit generally remains firm for existing caste-based reservations, the possibility of carving out new categories for affirmative action that could then exist beyond this cap now appears to be a likely argument. A census, by providing comprehensive demographic and socio-economic data, might fuel arguments for such new classifications, pushing the boundaries of "reasonable limits" in an evolving legal landscape. Such a move, however, would almost certainly face intense judicial scrutiny. The Court has historically cautioned against extending reservations indefinitely or in a manner

⁴⁶ Umang Poddar, 'Does the EWS judgment remove the 50% cap on reservations?' (*Scroll.in*, 20 November 2022) <<https://scroll.in/article/1037537/does-the-ews-judgment-remove-the-50-cap-on-reservations>> accessed 3 August 2025.

that creates “reverse discrimination”.⁴⁷ The practicality of breaching this limit, therefore, remains contested. The ongoing dynamic underscores that the purpose of the reservation is not just about fixed percentages, but about adapting to socio-economic realities within constitutional bounds. The necessity of breaching the 50% rule is often argued as essential for achieving true social justice, but judicial precedents mandate a compelling, ‘extraordinary justification’ that extends far beyond mere population numbers.

IV. SYNTHESIS: THE CENSUS DATA – RESHAPING THE NARRATIVE FOR SOCIAL JUSTICE

The upcoming nationwide census stands as a potent catalyst.⁴⁸ It not only promises an exhaustive re-evaluation of India’s long-standing affirmative action framework, but also offers considerable scope to

⁴⁷ Anup Surendranath, ‘Judicial Discourse on India’s Affirmative Action Policies: The Challenge and Potential of Sub-Classification’ (DPhil thesis, University of Oxford 2013).

⁴⁸ Office of the Registrar General and Census Commissioner, India, Report, Part-I, Vol-I, India – Census 1931 (1933) <<https://censusindia.gov.in/nada/index.php/catalog/31806>> accessed 28 May 2026; Office of the Registrar General and Census Commissioner for India, Lists of Scheduled Castes and Scheduled Tribes (Census of India 1981) <https://censusindia.gov.in/nada/index.php/catalog/31288/download/34469/26667_1981_LIS.pdf> accessed 28 May 2026; National Commission for Backward Classes, Mandal Commission Report of the 1st Part (1980) <<https://www.ncbc.nic.in/writereaddata/Mandal%20Commission%20Report%20of%20the%201st%20Part%20English635228710201364644.pdf>> accessed 28 May 2026.

policymakers for more evidence-based action. It is more than just an administrative exercise, as it marks an inflection point, forcing a critical re-examination of the balance between constitutional ethics and the socio-economic realities of a stratified society like India. This section will attempt to synthesise the judicial precedents and broader societal discourse to address the permissibility, practicality, and necessity of the contemporary demand for population-based reservations.

A. PERMISSIBILITY

When viewed through the prism of judicial precedent, the permissibility of any demand for increased proportional reservation presents a multifaceted picture. Its position with the Supreme Court's stance on both proportional representation and the 50% rule is particularly concerning. As established in Section II, the judiciary has largely rejected strict proportional representation in public employment. Landmark judgments, including *Indra Sawhney*, explicitly held that the aim of Article 16(4),⁴⁹ is "adequate representation," not a proportionate one.⁵⁰ This principle has been consistently upheld. Subsequent rulings like *State of Punjab v. Davinder Singh* have also reiterated the distinction between "effective representation" and mere numerical proportionality.⁵¹ A direct, blanket implementation of a policy to increase reservation percentages purely

⁴⁹ The Constitution of India (n 2).

⁵⁰ *Indra Sawhney* (n 9) [807].

⁵¹ *State of Punjab* (n 14) [185].

based on population share would, it appears, face significant legal hurdles.

Similarly, the demand's validity seems to clash with the judicial position on the 50% reservation ceiling, as detailed in Section III. This rule, established in *M.R. Balaji*,⁵² and later upheld as a "binding rule" in *Indra Sawhney*,⁵³ limits the extent of reservations for 'traditional' categories. Although *Janhit Abhiyan* introduced some flexibility by exempting the EWS quota from this cap,⁵⁴ this was for a new category based on economic criteria. It does not appear to serve as a 'general allowance' for existing caste-based reservations to breach the limit. Thus, the validity of breaching this limit for traditional reservations would require demonstrating what the court has termed "extraordinary situations",⁵⁵ which, in fact, has a much higher threshold than what population figures alone may satisfy.

B. PRACTICALITY

The practical implementation of increased reservation demands presents substantial challenges. These seem to extend beyond mere legal permissibility, touching upon administrative, social, and economic implications. Directly translating population share into reservation quotas could, for instance, lead to a highly fragmented and

⁵² *M R Balaji* (n 8) [34].

⁵³ *Indra Sawhney* (n 9) [809].

⁵⁴ *Janhit Abhiyan* (n 36) [102].

⁵⁵ *Indra Sawhney* (n 9) [810].

perhaps unmanageable system.⁵⁶ Critics have argued that such a system would inevitably disrupt administrative efficiency. Further, it could also compromise the quality of public services by inadvertently prioritising numerical representation over merit.⁵⁷

Moreover, given India's extensive history of judicial challenges to reservation policies, it appears that the implementation of such a demand is likely to spark prolonged and complex litigation. The judicial insistence on precise data for "inadequacy of representation" in services,⁵⁸ rather than just raw population figures, underscores a practical and reasonable requirement, data that might prove difficult to meet. Perhaps more significantly, a system of direct proportionality could foster increased competition among various caste groups, each vying for a larger share. This situation appears to naturally risk a compartmentalisation of society and a reduction of equality of opportunity to a mere right to reservation. The same could ultimately lead to the undermining of social as well as constitutional structures. This has been observed in the recent state-level caste surveys, where the mere availability of new numbers indeed intensified political and social friction, making practical implementation a significant hurdle.⁵⁹

⁵⁶ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (University of California Press 1984).

⁵⁷ Anup Surendranath (n 38).

⁵⁸ Jarnail Singh (n 12) [67].

⁵⁹ The Hindu Bureau, 'Explained | The impact of the Bihar caste survey' (*The Hindu*, 4 October 2023) <<https://www.thehindu.com/news/national/other-states/explained-the-impact-of-the-bihar-caste-survey/article67381656.ece>> accessed 3 August 2025.

C. NECESSITY

The question of the necessity of population-based reservations ought to be examined through the lens of underlying socio-economic realities. The demand for increased affirmative action may be viewed as a symptom of deeper, unresolved economic challenges. In an environment where overall economic growth might not be generating sufficient quality employment, competition for limited government jobs intensifies.⁶⁰ This scarcity, it appears, makes the enumeration of communities and their corresponding share of opportunities a central political demand. Some critical analyses suggest that if the economy were truly ‘booming’ with abundant jobs, the pressure for caste-based reservations might significantly diminish. This perspective implies that reliance on reservations as a primary solution, rather than robust economic development, risks transforming it into a reactive policy instrument.⁶¹ Scholars have often highlighted that the current focus on these demands reflects the political afterlife of the Mandal Commission’s implementation in the 1990s, shaped by political mobilisation and the continual realities of economic inequality, rather

⁶⁰ P Chandrasekhar and Jayati Ghosh, ‘India’s withering Public Employment’ (*IDEAs*, 28 July 2019) <<https://www.networkideas.org/featured-articles/2019/07/indias-public-employment/>> accessed 2 August 2025.

⁶¹ Pranay Kotasthane, ‘#266 Complex Questions and Easy Answers’ (*Public Policy Substack*, 28 July 2025) <<https://publicpolicy.substack.com/p/266-complex-questions-and-easy-answers>> accessed 3 August 2025.

than solely a social justice imperative.⁶² In this light, the call for proportional representation seems less about solving real social problems and more about gaining political ground. It does not offer a clear path to tackle the deeper issues of social inequality or economic hardship. Instead, it risks becoming just another tool in the political playbook, rather than a step toward real and lasting change.

Be that as it may, it's important not to conflate the limitations of proportional representation with the need for the caste census itself. While the former may lack legal backing, practicality or even the necessity, the census remains necessary in its own right as a tool to assess the effectiveness of existing reservation policies. Needless to say, the data gathered from the new census would also be pivotal in providing a critical evidence base for shaping future policy in a more targeted and informed manner. The Supreme Court's consistent demand for quantifiable data to implement policies like creamy layer exclusion,⁶³ and sub-classification within the Scheduled Castes,⁶⁴ clearly underscores the need for precise information. The census, therefore, offers a significant opportunity to gather this empirical data. This data can then be used to truly understand the extent of disparities and refine policies beyond mere numerical quotas. It has the potential to expose the "big problem" that years of affirmative action have not fully translated into desired ground realities for all backward groups.

⁶² Christophe Jaffrelot, *India's Silent Revolution: The Rise of the Lower Castes in North India* (Hurst & Company 2003).

⁶³ *Jarnail Singh* (n 11) [25].

⁶⁴ *State of Punjab* (n 14) [185].

The real necessity, one might argue, is for data that facilitates ‘caste mobility’, an inherent capacity for individuals to fully participate and thrive.⁶⁵ The ultimate objective of reservation policy, it may be suggested, should be measured not by how many are given, but by how few eventually need them. This reflects a true societal transformation. The census, in this light, appears necessary for guiding the nation towards evidence-based policies that foster holistic development, rather than merely serving as a tool for political mobilisation.

V. CONCLUSION

The announcement of a nationwide caste-based census, it could be stated, represents a critical point for India’s jurisprudence in affirmative action. The Supreme Court of India, through a series of judgments, has crafted an exhaustive legal framework for reservations. This framework aims to balance equality mandated by the Constitution with the broader pursuit of social justice. This evolving landscape has consistently highlighted the judiciary’s role as the arbiter of permissible affirmative action, even as political demands for greater inclusion intensify.

The forthcoming census offers an unparalleled opportunity to introduce essential, contemporary data into this complex legal and policy ecosystem. As the Apex Court has constantly demanded, this data can

⁶⁵ Amartya Sen and Jean Drèze, *An Uncertain Glory: India and its Contradictions* (Allen Lane 2013).

provide the quantifiable and demonstrable evidence necessary to identify genuine backwardness and assess inadequate representation. This move towards evidence-based policymaking holds the promise of making affirmative action more effective, ensuring benefits genuinely reach those most in need. Such an approach, it appears, could more effectively address the big problem of policy impact on the ground.

However, as evident from the analysis, the census also brings with it formidable challenges. The clamour for population-based, proportional representation directly collides with the Supreme Court's long-standing adherence to the 50% reservation cap and its clear distinction between *adequate* and *proportional* representation. As the analysis suggests, the legal validity of a strict numbers-based allocation is largely constrained by judicial precedents that prioritise fairness and efficiency. Further, the practical implications of such a shift are equally concerning, as it potentially risks increased societal fragmentation. While the *Janhit Abhiyan* ruling provided a notable precedent for new categories to exist beyond the 50% ceiling, this elasticity is specifically tied to 'distinct criteria'. It does not appear to validate a general abandonment of the cap for existing caste-based reservations based solely on population figures.

Furthermore, it could be argued that the demand for renewed enumeration underscores deeper, unresolved economic disparities. Relying solely on reservations, without simultaneously addressing fundamental economic failures or the lack of broader opportunity,

could risk enabling a system of mechanical allocation rather than fostering comprehensive societal upliftment. Indeed, a healthy, growing economy with abundant employment might significantly reduce the contentious nature of calls for numerical proportionality.⁶⁶ Affirmative action, it is believed, should be a tool for liberation, not merely a political instrument that risks becoming a game of numbers.

Ultimately, a true success of the caste census would likely hinge upon the commitment of "good faith actors." These individuals, including policymakers and political analysts, must go beyond mere short-term political gains or a zero-sum game of numerical shares. Instead, they must leverage this data to understand, address, and dismantle the structural inequalities that continue to define Indian society. The aim must be to achieve a substantive equality that extends beyond mere freedom from discrimination, leading to genuine emancipation – a state where social mobility is a tangible reality for all. The ultimate objective, it may be suggested, is not just to count, but to count in a way that leads to lasting, equitable change, ensuring that the utility of reservation policies is measured not by how many are given, but by how few eventually need them.

⁶⁶ Pratap Bhanu Mehta, 'Caste questions for Rahul Gandhi' (*The Indian Express*, 30 July 2024) <<https://indianexpress.com/article/opinion/columns/pratap-bhanu-mehta-writes-caste-questions-for-rahul-gandhi-9484275/>> accessed 3 August 2025.