

## LEGAL ASPECTS OF COLONIAL CENSUS POLICY IN INDIA

(1872 -1948)

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### Abstract

Indian census has been the basis of partition of India (1947), linguistic reorganisation of the states (1956), identification of the scheduled castes and the scheduled tribes (1935) and later the 'other backward castes' by the Mandal Commission. Indian census has origin in the colonial past to strengthen British control over the country rather than to improve the administration. British used the census to counter the emerging nationalism and to pursue their policy of divide and rule. The British administrators used census findings to institutionalize divisions amongst the people of India. This policy was changed by passing census act, 1948.

### I Introduction

CENSUS IS the process of collecting, compiling, analysing and disseminating demographic, social, cultural and economic data relating to all persons in the country, at an interval of ten years. Conducting population census is undisputedly the biggest administrative exercise of peace time in a country like India, where great diversity of physical features exists. The wealth of information collected through census on houses, amenities available to the households, socio-economic and cultural characteristics of the population makes Indian census the richest source for planners, research scholars, administrators and other data users.<sup>1</sup> The planning and execution of Indian census is challenging and fascinating. The Indian census is the largest single source of a variety of statistical information on different characteristics of the people of India. This reliable, time tested exercise has been bringing out a veritable wealth of statistics every 10 years. The first census was conducted in years 1872, in India non-synchronously in different parts. It has been a fascinating source of data for scholars and researchers in demography, economics, anthropology, sociology, statistics and many other disciplines. The rich diversity of the people is truly brought out by the decennial census which

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<sup>1</sup> Office of The Registrar General of India, website, Ministry of Home affairs.

has become one of the tools to understand and study India. It is the most important source of material on social and economic and political issues concerning 19<sup>th</sup> and 20<sup>th</sup> century in India. <sup>2</sup> Initiated for informational purpose in mid 19<sup>th</sup> century, the census became regularized and evolved as an institution, growing and changing each decade, besides generating a staff trained to collect and to present information. The census played important role in influencing legislation and bureaucratic procedure with the overall preservation of information on India.<sup>3</sup> British concerns varied with time and region, so the information elicited from the decennial census operation also shifted emphasis from ethnography and religion, economic and industrial matters in the 20<sup>th</sup> century. The personality and perspective of individual census commissioner bears his stamped in the material but the census covers a panorama of Indian life and it has been widely used by scholars from different disciplines.

## II Brief history of Indian census

India is one of the very few countries in the world, having proud history of holding census after every ten years. The Indian census has a very long history behind it. The earliest literature 'Rig Veda' reveals that some kind of population count is to be maintained. Kautilya's Arthashastra, written around 321-296 BC, laid stress on census taking as a measure of state policy for purpose of taxation.<sup>4</sup> During the regime of Mughal King Akbar, the administrative report '*Ain-e-Akbari*' included comprehensive data pertaining to population, industry, wealth and many other characteristics.<sup>5</sup> In ancient Rome, too, census was conducted for purpose of taxation.<sup>6</sup> The history of Indian census can be divided in two parts i.e. pre and post independence era.

The history of census began in years 1800 from England but the population of dependencies was not known at that time.<sup>7</sup> Census was conducted in town of Allahabad in 1824<sup>8</sup> and in the city of

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<sup>2</sup> N.G. Barrier, *The census in British India New Perspective*, Manohar Delhi, 1981 at 1.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> S.C. Srivastava "Indian Census in Perspectives, Census of India" 7 (Office of the Registrar General of India, New Delhi 1971).

<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Id.* at 8.

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.* at 4.

Banaras in the year 1827-28 by James Prinshep on similar guidelines.<sup>9</sup> The first complete census of an Indian city was conducted in 1830 by Henry Walter in Dacca.<sup>10</sup> The statistics of population with sex and broad age group and also the houses with their amenities were collected in this census. Second census was conducted in 1836-37 by Fort St. George.<sup>11</sup> The government of India ordered Local administration to conduct quinquennial returns of population in 1849. As a result, a system of periodical stock taking of people was inaugurated in Madras which continued till the imperial census was ordered. These stocks were taken during the years 1851-52, 1856-57, 1861-62 and 1866-67 respectively.<sup>12</sup> The census was conducted in North Western province in year 1852, from house to house, numbering of all the people at the night of December 31, 1852<sup>13</sup> and the quinquennial census of 1866-67 was merged in the imperial census of 1871.<sup>14</sup>

The Home Department of Government of India had desired, under Statistical Dispatch no.2 of July 23, 1856,<sup>15</sup> that a general census of population might be taken in 1861,<sup>16</sup> which was postponed in 1859 due to the mutiny.<sup>17</sup> However on January 10, 1865 a census by house to house enumeration was undertaken in North Western provinces.<sup>18</sup> A similar census was undertaken in November, 1866 in central provinces and in 1867 in Berar. The census in Punjab territory was taken in January 1855 and 1868 respectively.<sup>19</sup> The census of Oudh was taken in 1869.<sup>20</sup> The census was conducted in the cities of Madras, Bombay and Calcutta in year 1863, 1864 and 1866 respectively.<sup>21</sup> An experimental census of lower provinces of Bengal was conducted in 1869, by H. Beverley, Registrar General.<sup>22</sup>

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<sup>9</sup> Asiatic research volume 1<sup>st</sup> 1872 at 34.

<sup>10</sup> Cohan Bernard S, "An Anthropologist And Among Historians And Other Essays 233 (OUP New Delhi 2001).

<sup>11</sup> *Supra* note 4 at 10.

<sup>12</sup> Madras Census Report, 1871, ch. 1.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Ibid.*

<sup>15</sup> Punjab Census Report, 1855 at 1.

<sup>16</sup> *Supra* note 12 .

<sup>17</sup> Court's dispatch no.-2 in the statistical Department. 856 on July 23, 1856 London (Home public May 22, 1869 No.-79-90).

<sup>18</sup> Statistical dispatch to secretary of state no.1 of 1859 on April 6, (Bombay census report 1872) at 2.

<sup>19</sup> Home Public providing, June, 1965 No.36.

<sup>20</sup> Punjab Census Report 1868 Ch.1.

<sup>21</sup> Oudh Census Report 1869 Ch.1.

<sup>22</sup> Bombay, Census Report, 1871.

The Government of India and home administration had agreed upon the principle that a general population census would be taken in 1871. But census was undertaken in year 1866-67 by the actual counting of heads in most of the part of the country, which is known as the census of 1872.<sup>23</sup> This census did not cover all territories possessed or controlled by the British. A house register was canvassed with 17 questions in this census. The information collected pertains to name, age, religion, caste or class, race or nationality, attending school /college and able to read and write. These common questions were asked separately from males and females but occupation was canvassed from males only.

The census of 1881 which was undertaken on February 17, by W.C. Plowden, the Census Commissioner of India and it was a great step towards a modern synchronous census. In this census, emphasis was laid not only on complete coverage but also on classification of demographic, economic and social characteristics.<sup>24</sup> This census took in entire continent of British India (except Kashmir) which also includes feudatory states in political connection with the government of India. However it did not includes French colonial possessions. However, a census of Portuguese colonial dominions in India was also undertaken at the same time as the British provinces *viz.*, Bengal, North West Provinces, Madras, Bombay, Punjab, Assam, Baruch, Berar, Coorg and Ajmer besides native states of Rajputana, Central India, and the Nizam's dominions, Mysore, Baroda, Travancore and Cochin.<sup>25</sup> Since then, censuses have been undertaken uninterruptedly once every ten years.

### III Legal aspects of census

During the entire colonial period, the census in India rested on a temporary piece of legislation. One may thus naturally ask why a statute was considered at all necessary for carrying out the head counting. Theoretically, a legislative enactment was not strictly essential for this action. Yet it was considered so, the chief motivation being to squarely put both the census personnel and the enumerated within a legal framework of enforceable duties and obligations. This was all the more necessary as the census staff especially of the lower levels, were, as a rule, non-officials and thus not under traditional governmental discipline. The census work was voluntary. A law

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<sup>23</sup> Public dispatch from secretary of state No.66, 8<sup>th</sup> Sep. 1865.

<sup>24</sup> Imperial census report, 1881

<sup>25</sup> *Ibid.*

was also required as rumors of all sorts surrounded the census work when it first began in India. Census one may note, was viewed as preliminary to fresh taxation in many areas. Making people suspicious and uncooperative. It was even believed in some areas that the census was being taken to forcibly take away Indian women for the British. Thus, the people were not only hesitant but even positively hostile to census taking in the initial stage. Even troops had to be called occasionally to maintain law and order even though, fortunately, such instances were not many. Popular perception to census passed from deep suspicion to indifference to calmness. The point to be noted is that in such a situation a law was considered to be absolutely essential to oblige the people to cooperate.<sup>26</sup> Because the census organization was purely temporary the law enacted too was temporary. The census act of 1880, for instance, said: "Whereas it has been determined to take a census of British India during the year 1881 and it is expedient to provide for certain matters in connection with the taking of such census, it is enacted as follows." Thus the time-honored practice in India with regard to population counting has been to enact legislation every time a census is taken. This Census Act was a temporary one. Relapsing as soon as the census was over.<sup>27</sup> The question of introducing a permanent<sup>28</sup> Act was raised by Sir Edward Gait, the Census Commissioner in 1909 for the first time. The issue was again considered in 1920. A temporary Act has advantages of its own and, was in conformity with the practice in Great Britain. Hutton, the Census Commissioner, in his report on the Census of India 1931 strongly urged for a permanent legislative provision to back the census. Hutton's recommendation received reinforcement from another report submitted around this time, by Bowley and Robertson. The question of a permanent legislation was integrated with a decision on the more important question of a quinquennial census with a permanent staff. The census act which was passed was a brief one and was silent on many matters. It did not specifically laid down that all counting was to be completed within one night. It also did not specify the mode to be adopted for taking the census. The census was *de facto*, which means, it aimed at a return of all persons actually found in India at a given moment. It was customary to fix a date for the census in consultation with the provincial governments. J. H. Hutton, the Census Commissioner, made the suggestion that the census should cease to be *de facto* and that *de jure* census is substituted such

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<sup>26</sup> S.R. Maheshwari "*The Census Administration under the Raj and After*" 137 (Concept Publishing Company New Delhi, 1996).

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

as that taken by the United States (US). Hutton favored a permanent census act mainly with the idea of making possible a permanent census department and quinquennial census: while the Bowle-Robertson report advocated permanent census legislation because it was basic to their suggested plan for an economic census. In his defence of a permanent legislation, Hutton saw the advantage of avoiding political log-rolling in matters of counting. As India was on way to evolve a new Constitution (of 1935). Hutton believed that the provision for taking periodic census was better included in the future Constitution.

The proposal for a comprehensive economic survey and the setting up of a permanent economic staff and the holding of an interim quinquennial census was turned down by the government on the score of expenses. The plea for permanent census legislation was also ultimately voted down by F.H. Puckle, the Secretary in the Home Department. Puckle wrote in his note of November 23, 1938, "In the ten years which follow 1941, before the next census is due, there may be many constitutional developments which we cannot foretell, and I am inclined to prophesy that, if we now put permanent legislation on the statute book, it will require extensive amendments before the census of 1951. Another and a very practical argument against permanent legislation is the dislike which the assembly has evinced to legislation being put forward in anticipation of and taking for granted the inauguration of federation". The Home Secretary concluded: 'My conclusion is that we should stick to a temporary act'. R.M. Maxwell, who was Member, Home, agreed with the Secretary, and India continued with the temporary Act.<sup>29</sup> The census act made ample provision for delegated legislation by the Central Government. The rule-making powers conferred upon the latter were also exercisable by the provincial governments. The provincial governments were entrusted with the power to frame rules on a wide variety of census matters. But before they were so entrusted, their consent was obtained. To save time the normal practice with the government of India was to inform provincial governments that unless they intimated any objections by a particular date, the Central Government would issue the formal notification of entrustment. Under this delegation the provincial governments could appoint persons as census officers and make other decisions on census matters. During the entire period of the British Raj, census rested on a temporary piece of legislation though the census hierarchy was

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<sup>29</sup> Home F45/12/38-Pubhc.

supportive of a permanent statute. It was only after independence that it was firmly underpinned by a permanent legislation.

#### IV The Census Act, 1948

One of the earliest tasks of the government of independent India was to draft a permanent legislation and thus to put census on a statutory basis. Within a year of independence, the government got ready the necessary legislation on census, which was introduced in the Constituent Assembly of India (Legislative), which was the Parliament of the time. Yeasts was the census chief at the time. The bill was piloted by Sardar Vallabhbhai Patel, the Home Minister. Patel advanced two main arguments in support of the legislation. “First, the proposed bill would ensure that the census would not only be scientifically organized but also the enumeration figures would be accurately prepared, updated and maintained. This was absolutely necessary as census is made the basis of internal constitutional changes when necessary”. He further observed: “There was a time when census was apt to be regarded as a mere formality yielding certain statistics—not very accurately prepared, obtained indifferently but tabulated very carefully. This kind of census has caused immense injury on occasions when very important constitutional changes take place. As the house is aware, in the last constitutional changes, the government had to rely upon the census which was very imperfectly prepared. Even portions of India were partitioned, relying on the census which was very inaccurate. Experience has shown very few occasions have arisen, when one has to rely upon census figures, which, if not accurately prepared, lead to a result other than what is desired. As the world is progressing towards a scientific appreciation of an important operation of this nature, we think it is necessary to have a proper census prepared and for that purpose we would not rely upon periodical enumeration or operation of this nature, but we should have some kind of permanent process of enumeration and checks and counter-checks introduced by which a correct census—a more or less accurate census—may be prepared and kept ready. For this purpose this is an attempt to put in a permanent piece of legislation on the statute book.”<sup>30</sup>

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<sup>30</sup> The Constituent Assembly of India (Legislative) Debates. 429 (Aug. 18, 1948).

The need for maintenance and updating of house list, as true basis of census, was very important. Patel continued: “It is obvious that the census operation must largely centre round the house list. It is proposed to prepare the house lists in advance of the main census operation. The provinces have agreed to cooperate in this business. It is intended to keep these house lists up to date, so that except for the floating population, there will be an estimate of population annually available to us. At present, we made annual estimates on the figures of the vital statistics which on account of their imperfections are not a safe guide. For the maintenance of these house lists alone, it would be necessary to have permanent legislation and I have explained to the House why we consider this legislation necessary”.<sup>31</sup>

The Census Bill was passed in one brief session taking less than one and a half hours. In all, eighteen members spoke but the points of intervention were generally procedural though some pertinent observations were also made. Sardar Patel, of course, dominated the debate and never let the initiative slip out of his hands. Broadly, the Census Act, 1948 was on the pattern of previous legislation. The only material change was in the enhancement of the penalty or fine in committing or an abatement of census offence. In the provision relating to the tampering of records and making it mandatory for persons nominated as census officers to serve in that capacity as directed. Enhanced punishment was preferred on the ground that this would check the interplay of sectional, religious or communal rivalries which, unfortunately, came to light in the past censuses. Secondly, the act made the abetment of census offences punishable to discourage their occurrence. Thirdly, anyone appointed as census officer could not refuse appointment. Such a provision was necessary for the efficiency and orderly progress of the census operations.

Members, who spoke on the proposed Bill, were M. Ananthasayanam Ayyangar. Pattabhi Sitaramayya and P.S. Deshmukh. Ayyangar emphasized the need to keep out religious and communal considerations in the enumeration of the population. He said: “Though some communities are not able to multiply as quickly as other communities, the census has taken advantage of their large number of children. That is unfortunately what happened in Bengal and other places some time ago. Very great care is necessary in this respect. All loopholes must be

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<sup>31</sup> *Ibid.*

avoided so that no minority community may get a larger number of seats. All those who try to increase their number during census operations should be punished”.<sup>32</sup> Pattabhi Sitaramayya narrated a case confirming the genuineness of such a fear. “I remember a case which was narrated to me from East Bengal. There was some census and a man gave the names of 27 members. When the police went there and he was compelled to produce ration cards he could produce only four cards. The mistakes are there but how are you going to overcome them.”<sup>33</sup> Complete unanimity prevailed to keep the census uncontaminated by communal considerations. Physical verification of the enumerated was suggested but the prevalence of the purdah system stood in the way. This problem however, could be overcome by recruiting female enumerators and ascertaining the names from neighbors.

Whether caste of the person should be ascertained or not came up for brief but animated discussion. P.S. Deshmukh preferred its retention and argued that this would indicate whether all sections and sectors of the population were more or less equally progressing or the progress was lop-sided, benefiting only a few castes. He said: “In my own province (Bombay) 3 per cent of the people whose population is five lakhs have as many as 415 gazetted posts while the scheduled castes that number 30 lakhs have only three. The Malis are 12 lakhs in population but have only five and Marathas and Juabis numbering 20 lakhs have 12 posts only. If such state of affair continues to exist, it is too early to expect that people will agree to the abolition of caste. These very people now wish to continue their exploitation in the name of no-caste. Census operations are very important for all people, it serve as an excellent index to ascertain the progress they have made from time to time. If India is to progress the progress must be all-sided. It should be incumbent upon us to see that every section of the Indian population shares the advancement and only then we shall be able to claim that India has advanced. There is no doubt that the advancement of India is lop-sided and those at the top are exploiting the situation.”<sup>34</sup> The general consensus, however, was in favor of deletion of caste from the census schedule altogether, branding it as a barrier to India’s cherished dream. A column should be inserted in the

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<sup>32</sup> *Supra* note 30 at 430.

<sup>33</sup> *Id.* at 434.

<sup>34</sup> *Id.* at 435.

census schedule to ascertain whether the person belonged to scheduled castes and scheduled tribes. The Bill was unanimously passed and became a law in September 1948.

The Census Act, 1948 is a brief piece of legislation comprising eighteen sections and running into bare four pages. It empowers the Central Government to take a census whenever it wants, The Central Government may appoint a Census Commissioner and Superintendents of Census Operations in the states. (The latter functionary was renamed in 1974 as the Director of Census Operations: 'superintendent' apparently was not very appealing or glamorous to independent India's mandarins.) The Census Commissioner is to supervise the census operation throughout the area in which the census is intended to be taken and the Directors of Census Operations to supervise the census operation within the several states.

Census being a subject of national importance, consultation with the states is provided for in the Census Act, 1948. State governments are consulted while finalising the schedule of questions to be put to the population. What is more important is the original law provided that the state governments could add additional list of queries considered by them to be necessary; but the centre's approval is needed for it . As the responsibility for taking census falls on the state government, the latter appoint persons as census officers to take or help in or supervise the census operation within any specified local area. Such persons cannot refuse their appointment. All census functionaries are conferred the status of public servants' and are thus bound by the Indian Penal Code, 1860. In case any census officer neglects his duty he is liable to be punished. The Act puts the enumerated also under a set of obligations that they must answer questions put by the census officer (enumerator) and must cooperate in his official work. The act ensures confidentiality to the census information. Records of census are neither open to inspection nor admissible in evidence. Finally, the Central Government has been authorised to enact subordinate legislation under the Act.

## **V Conclusion**

The Indian census has a very long history behind it encompassing variegated dimensions which are yet to be explored in the mainstream academia. It is the most important source of material on social and economic and political issues concerning 19<sup>th</sup> and 20<sup>th</sup> century of the country. India is

one of the very few countries in the world having proud history of holding census after every ten years without break. It has origin in the colonial past to strengthen British control by creating new identities and divide society to counter the emerging nationalism. The British administrators used census data and findings to institutionalise divisions amongst the people of India. However, the census also exhibited a number of novel features whose relevance remains intact even today. One such aspect has been the evolution of the legal framework to conceptualise, design and conduct census operations in a way that data and information could be obtained to formulate appropriate socio-economic developmental policies for the country. Thus the temporary colonial census policy meant for divide and rule come to an end for balanced development of homogenous India.