
DOES THE POPULATION CONTROL BILL AFFECT THE FUNDAMENTAL RIGHTS OF CITIZENS?

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ABSTRACT

Population development was relatively sluggish and quite constant in the long term during most of human history. In general, fertility was very high, but, net population growth was detained in intermittent conflict, hunger and illness, allowing for a time to rise, after a dramatic decline significantly over that of one of two centuries earlier. Today almost every important economic and social concern can be proven causative to the extraordinary growth in human numbers, whether domestically or internationally, which has not been controlled since independence. In certain regions of India, growing awareness of the consequences of this unrestrained expansion, as well as unhappiness with current congestion, has raised the prospect of government restriction of family size. The population control bill explores the grounds for the current constitutional limitations of government authority and investigates any probable contradictions. The State Law Commission, U.P. is working on (control, stabilization and welfare) of the Population of the State and has prepared a draft bill. A bill to reinvigorate efforts, to establish measures for controlling, stabilising, and providing for public welfare by implementing and promoting two-child standards and related or other things in the State. Since there are limited ecological and economic resources in Uttar Pradesh, it is necessary and urgent that all citizens have access to basic necessities of life such as affordable food, safe drinking water, decent housing, access to quality education, economic/livelihood opportunities, power/electricity for domestic consumption, and a secure living. To promote sustainable development with more fair distribution, it is also important to regulate and stabilise the state's population without going against the constitution and by not violating the fundamental rights of the citizens. In this article, the population control bill and its effect on the fundamental rights is discussed.

INTRODUCTION

The Indian population is regarded as the largest barrier to their economic growth and the falling man for administrations attempting to excuse their ineptitude. The “two-child policy” is constantly at the centre of the population discussion. However, a policy to limit the size of the family does not only have a constitutional impact but is also a pointless attempt to manage population increase. In recent years, certain private member bills in the House have advocated the 2 children standard. The Supreme Court and the High Court have also brought several litigations or PILs of public interest. Several States like Assam, Maharashtra, Odisha, Rajasthan, Telangana and Andhra Pradesh have already adopted a two-child standard for elected officials or governmental offices. The pro-natalist attitude in the society is one of the main causes of the growing population in India, namely that more children will have a family income and more individuals will take care of them at old age. Given the limited resources that do not expand in tandem with the population boom, this rapid expansion in the population creates a slew of problems for the country as a whole. For these reasons, it is vital to take efforts to regulate the country’s rising population. It leads to issues such as lack of employment possibilities, deterioration of the environment, etc. Article 47 of the Indian Constitution talks about how since independence, the Indian government has taken a number of steps to curb the country’s population growth, in an effort to fulfil the country’s constitutional soft mandate to promote public health.¹ In the year 1951, a National Family Planning Program was launched, making India the first developing country to adopt such a strategy to curb its population growth.² Despite these government measures, the use of contraceptives for population control remains taboo among the general public, owing to the issue’s tumultuous history, the most controversial of which is the government’s forced sterilisation programme to control the exploding population during the 1976 emergency.

Although in the past several attempts to adopt legislation for population control by proposing private bills have been made, it has not been possible to do the same in Parliament. The government’s employment of harsh population control methods is urgently required. Even more so, considering that the vast majority of the population is still uninformed of contraceptive methods and that the Indian society’s overall attitude is unwaveringly pro-natalist. A glimpse

¹ Report of The National Commission to Review the Working of the Constitution, The Hindu Center, https://www.thehinducentre.com/multimedia/archive/03091/ncrwc_3091109a.pdf accessed August 6, 2021

² “India Prime Minister Calls for Population Control, Says Small Families Are an ‘Act of Patriotism’” (PRI March 5, 2020) <https://www.pop.org/india-prime-minister-calls-for-population-control/> accessed August 6, 2021

of hope for legislation can be found in Dr Abhishek Singhvi's private member bill, the Population Control Bill, 2020.³

THE POPULATION CONTROL BILL, 2020

This Bill is an amalgamation of incentives and disincentives inclined for the establishment of severe population control policies. It addresses the need for a unified law that governs the country as a whole, rather than in parts split by state borders. In the case *Javed v. State of Haryana*,⁴ the disqualified candidates filed a writ petition in the Supreme Court challenging the constitutionality of an election law prohibiting persons with more than two living children after a certain date from holding certain public offices in the Haryana Panchayati Raj Act, 1994 (Sections 175(1)(q) and 177(1)). They claimed that these disqualification provisions violated the Indian Constitution's Article 14 right to equality before the law (as persons with two or fewer children qualified for public office); and Article 21 of the Indian Constitution's right to life and personal liberty (as it prevented individuals from exercising personal liberty of choosing to have more than 2 children). The court held that disqualification provision did not violate the article 14 of the Indian Constitution. The legislation is not arbitrary, according to the Court, because the two categories are well-defined, and the categorization is logically connected to the goal of increasing the people's socio-economic welfare and health care, and is compatible with national population policy. Dr Abhishek Singhvi presented the "two-child" policy as there is a rapid increase in the population but not enough natural resources to keep up with the increase.⁵ The provision of this Act shall apply to a married couple where the boy is not less than twenty-one years of age and the girl is not less than eighteen-years of age.⁶ Some of the incentives under the Population Bill, 2020 are - Contraception are to be made available at a fair cost. If a married couple with a single kid decides to sterilise, the child will be eligible for advantages such as priority admission to higher education institutions and government positions, as well as other benefits as determined by the relevant authorities. If a married couple with a single child who lives below the poverty line voluntarily undergoes sterilisation, they will be eligible for a one-time lump sum payment of sixty thousand rupees (if the single child is a boy) or one lakh rupees (if the single child is a girl) from the Central Government, in

³ The Population Control Bill, 2020 (Draft Bill, 2019)

⁴ *Javed v. State of Haryana*, AIR 2003 SC 3057

⁵ AK A, "Couples with More than Two Children Barred from Contesting Elections, Cannot Avail Subsidies: Am Singhvi Population Control Bill [Read Bill]" (Bar and Bench - Indian Legal news) <https://www.barandbench.com/news/couples-with-more-than-two-children-barred-from-contesting-elections-cannot-avail-subsidies-am-singhvi-population-control-bill-read-bill>> accessed August 6, 2021

⁶ *Supra* 3. The Population Control Bill, 2020 (Draft Bill, 2019)

addition to the benefits already mentioned. In States where the average fertility rate exceeds the replacement level of 2.1 children per woman, an obligatory population control topic should be taught in all senior secondary schools. The Central Government establishes the National Population Stabilization Fund and redistributes the funds collected to States and Union Territories that have adopted population control policies and have been able to considerably lower their population growth rate. The Central Government would prefer individuals with two or fewer two living children while recruiting employees. These are some of the incentives under the Bill which is aimed at convincing the people to have less than 2 children. Next are some of the disincentives under the bill, the Bill establishes that both the husband and wife shall be deprived of the following if the married pair have two or more children - contesting in Lok Sabha, State Legislature, and Panchayat elections. Obtaining a seat in the Rajya Sabha, the State Legislature, or other elective bodies. Getting a promotion in the government services. Applying for positions in the Central and State Governments under the 'Group A' category. If the married pair is above the poverty line, they will not get any type of government assistance. Section 12 of the Population Control Bill, talks about how after one year from the beginning of this Act, every Central Government staff should send the appropriate appointing authority, in writing, to the commitment to procure no more than two children. Employees who have more than two children at the time the Act takes effect must sign an agreement not to have any more children. Some of the draw backs of this bill are - The legislation imposes some limits on the number of children a person is permitted to produce, which are violating the reproductive rights of the individual, which are a component of the rights to privacy in accordance with Article 21 of the Indian Constitution.⁷ Each person has the ability to make his or her own lifestyle choices, such as the number of children he or she wants to reproduce. People with more than two children are prohibited from contesting Lok Sabha, Rajya Sabha, State legislature, and Panchayat elections under this bill. Another important drawback is that there was an increase in the sex selective abortions, people kept aborting till they got a male child. With this bill, the control and regulation over this became difficult and the PCPNDT Act was not being followed. This raise concerns that the Bill may lead to an increase in unlawful sex selective abortions under the PCPNDT Act, because a substantial portion of the country still favours a male kid over a female child, believing that a girl child is a burden on the family. As a result, the sex ratio is reduced.

⁷ Justice K. S. Puttaswamy V. Union of India, (2015) 8 SCC 735.

Therefore, the primary goal of this bill is to control population growth while also supporting the Family Planning Program. It tries to distinguish between persons with more than two living children and those with two or fewer living children for the sake of bestowing various advantages and limits.

Article 14 – Right To Equality

Article 14 of the Indian Constitution ensures that all citizens are equal under the eyes of law and everyone gets protection within the territories of the State. This also ensures no citizen is denied equality before law. In case of this Bill, it discriminates against the people choosing to have more than two children. It does not, however, contradict Article 14, because Article 14 makes an exemption for reasonable discrimination and affirmative action.⁸ The categorization should be founded on the concepts of ‘intelligible differentia’ and ‘rational nexus’ in order to benefit from the exemption. The bill fulfils both the concepts and there persists a clear distinction between the two based on the concept of ‘rational nexus’.⁹ It mainly relies on the fact that the people with two or less children have certain benefits and the people with two or more children have some disadvantages, which is the ulterior motive if the Population Control Bill¹⁰, to promote family planning to curb the rapid increase of population in India. In addition, guaranteeing equal treatment before legislation does not mean equal application for all persons¹¹ of the same rules despite different circumstances, i.e., that the different classes of people need different treatments and treatment of discrimination is equal to a breach of Article 14. If legislation is to violate Article 14, it must be demonstrated that it is arbitrarily classified or has no reasonable link with the aim being pursued. There is no infringement of the principle of equality provided that there is a reasonable foundation for categorization and that all individuals who are under the same class are treated equally.

Article 21 – Protection Of Life And Personal Liberty

Article 21 of the Indian Constitution ensures that all citizens have a protection of their life and personal liberty and it ensures that no person is deprived of the same except for the procedure

⁸ Durga Das Basu, *Commentary on The Constitution of India*, 250 (8th ed. 2010).

⁹ *Vikram Cement V. UOI*, AIR 2007 SC 7; *Ashutosh Gupta v. State of Rajasthan*, (2002) 4 SCC 34

¹⁰ *Budhan Chowdhry V. State of Bihar*, AIR 1955 SC 191; *Hanif V. State of Bihar*, AIR 1958 SC 731; *Harakch and Ratanch and Banthia V. Union of India*, AIR 1970 SC 1453; *Pathumma V. State of Kerala*, AIR 1978 SC 711; *Babu Ram V. State of U.P.*, (1995) 2 SCC 689.

¹¹ *Gauri Shankar V. UOI*, AIR 1995 SC 55; *M. Jagdish Vyas V. UOI*, AIR 2010 SC 1596; *State of Punjab V. Balkaran Singh*, AIR 2007 SC 641; *UP Power Corporation Ltd. V. Ayodhya Prasad Mishra*, AIR 2009 SC 296; *T.M.A. Pai Foundations V. State of Karnataka*, AIR 2003 SC 355.

established by law. In case of this Bill, it seems as there has been violation of this fundamental right as people with two children are not allowed to procreate if they want incentives. It also violates the new aspect of right to personal liberty and how one has complete autonomy to make decision with respect to reproduction and intimate choices.¹² The Bill cannot, however, be said to breach of Article 21, because the core of this right is that individuals have a decent life and the Bill tries to accomplish it by controlling the country's fast-growing population and supporting a family planning program. The Bill must also have a direct, open, palpable, act that threatens the fullness of life of a person, not an ambiguous or remote conduct which threatens quality of life to deprive a person of his or her liberty.¹³ In addition, it may be argued that by means of the limits set in the Bill a child is deprived of its right to life. But Article 21 only applies to “persons”, and an unborn child in the wombs of the mother is a “foetus”, in accordance with the Pre-Natal Diagnostic Techniques Act (Pre-Natal Misuse Regulation and Prevention Act)¹⁴. An unborn child only becomes a “person” after the kid is born, hence not covering an unborn child by the right to life in accordance with that Article. To summarise, the Bill does not violate Article 21 of the Constitution’s right to life, liberty, or privacy, and so is lawful under the Constitution’s provisions.

Article 25 - Freedom Of Conscience And Free Profession, Practice And Propagation Of Religion

Article 25 of the Indian Constitution ensures that all individuals are equally entitled to freedom of conscience and the right to freely profess, practise, and spread religion, subject to public order, morality, and health, as well as the other requirements of this Part. It may be argued from a simple analysis of this provision that the rights given under this article are not absolute but subject to public health conditions. It might be alleged that Muslim personal law enables for the conduct of marriages with four women for the sake of reproduction, and therefore the Bill’s prohibitions would be a breach of Article 25 of the Indian Constitution’s freedom of religion. As a result, it cannot be said that the Bill does not violate Muslims’ rights under Article 25 because, first, while four marriages are permitted under Muslim law, they are neither mandatory nor an integral part of the religion; and second, the Bill imposes disincentives on

¹² Justice K. S. Puttaswamy V. Union of India, (2015) 8 SCC 735 - “Privacy has been held to have distinct connotations including (i) spatial control; (ii) decisional autonomy; and (iii) informational control. Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or modes of dress.”

¹³ Ramsharan V. Union of India, AIR 198 9 SC 549.

¹⁴ S. 2(bc), Pre-Natal Diagnostic Techniques (Regulation and Prevention Of Misuse) Act, 1994

people who have more than two living children with the ultimate goal of improving public health. Furthermore, a non-inclusive practise of religion is not protected under this Article and so can be replaced by the Statutes in the sake of public order.¹⁵

In the case, *Javed V. State of Haryana*¹⁶, this judgement is significant with respect to this bill as it disqualifies any person with more than two children to contest an election for Sarpanch/ Panch/ Gram Panchayat/ member of a Panchayat Samiti or Zila Parishad which comes under the section 175(1)(q) of the Haryana Panchayati Raj Act, 1994.¹⁷ Section 177(1) talks about removing any member if anyone violates section 175(1)(q). The provisions in contention were questioned on the basis of a) a breach of Article 14 rights; b) a violation of Article 21's right to life and personal liberty; and c) a violation of Article 25's right to religious freedom. The Supreme Court held that Persons with more than two live children can be differentiated from those with two or fewer living children under the provisions, which are founded on the principles of intelligible differentia and reasonable connection. Furthermore, the disqualifications provided for in these rules have a reasonable link with the socio-economic goal sought to be attained, namely, to promote the State's Family Planning Program by establishing a disincentive for having more than two children. The court also held that the disqualifications specified by the Act do not violate the right to liberty since they are reasonable and have been incorporated in the Act for the benefit of the entire nation. Last but not the least the court held that Article 25's freedom is constrained by public order, morality, and health. Furthermore, the Muslim Law only permits the marriage of four women; it is not required. In conclusion, the Act's Sections 175(1)(q) and 177(1) were found to be unconstitutional.

THE UTTAR PRADESH POPULATION (CONTROL, STABILIZATION AND WELFARE) BILL, 2021

A new bill on population control has been issued by the Uttar Pradesh State Law Commission. The bill, titled "The Uttar Pradesh Population (Control, Stabilization, and Welfare) Bill, 2021," was introduced just before the state's 2022 Assembly elections.¹⁸ While most of the controversy over the law has focused on whether it is targeted at Muslims or not, the Bill has implications for all inhabitants of Uttar Pradesh, including Muslims and non-Muslims. The Bill

¹⁵ Sarla Mudgal (Smt.), President, Kalyani and Ors. V. Union of India and Ors., 1995 Cri LJ 2926

¹⁶ *Javed v. State of Haryana*, AIR 2003 SC 3057.

¹⁷ Ss. 175(1)(q) & 177(1), The Haryana Panchayati Raj Act, 1994

¹⁸ Sudhir A, "Uttar Pradesh's Population Control Plan Is Not Only UNCONSTITUTIONAL – It May Also Be Disastrous" (Scroll.in July 22, 2021) <https://scroll.in/article/1000631/uttar-pradeshs-population-control-plan-is-not-only-unconstitutional-it-may-also-be-disastrous>; accessed August 7, 2021

will be adopted under entry 20A of the Constitution's Concurrent List, which is listed in the Seventh Schedule. At the height of the Emergency in 1976, the Indira Gandhi administration placed Entry 20A, which deals with "population control and family planning," into the Constitution. The benefits include extra pay rises, 12-month maternity and paternity leave, housing loan support, house tax discounts, electricity, water costs and free health care and extension of the employee's spouse's insurance coverage. Section 6 of the proposed Bill allows members of the general public to receive these benefits provided they agree to "abide by the two-child norm" and undergo sterilisation. Uttar Pradesh's overall fertility rate has dropped significantly from 4.07 in 1999 to 2.7 in 2016 a startling 30 percent drop in just 17 years. It was noted that In Uttar Pradesh, just 18 percent of women used sterilisation as a method of family planning, compared to the national average of 36 percent. Sterilisation has not had a major impact on the reduction in fertility rates. Instead, it was discovered that an increase in the usage of contraceptive techniques among married women was driving the fertility drop in Uttar Pradesh.¹⁹ Article 14 states that all citizens are equal under law, whereas this bill creates two different groups under which the citizens fall under which is those who have undergone sterilization and another those who have not. But according to the bill - to guarantee sustainable development, the state's population needs to be controlled and stabilised. The Bill's proponents will thus first have to show that sterilisation is the only way to ensure the control and stabilisation of the population of the state. Once they have done so, they must demonstrate that limiting population increase guarantees long-term development. By this we can conclude that sustainable economic growth is a laudable pursuit that is undeniably constitutional; yet, the methods used violate Article 14 of the Constitution. If population control was the aim of the Bill, it might be stated convincingly that this objective would be achieved with the incentive to sterilise. However, given that the Bill's main aim is sustainable economic growth, and since a reduction in the overall fertility rate hinders rather than helps that development, a judge should preferably rule that the categorization based on sterilisation is unconstitutional.

CONCLUSION

While India takes pride in having the world's youngest population, this is due in part to the country's rising population. In the current period, COVID-19 remains dominant, even after nearly two years of national lockdowns, the apparent disadvantage of this growing population.

¹⁹ Halli SS and others, "Fertility and Family Planning in Uttar Pradesh, INDIA: Major Progress and PERSISTENT GAPS" (Reproductive Health August 23, 2019) <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-019-0790-x>; accessed August 7, 2021

The cases are constantly rising as it is difficult to curb and ensure that everyone follows the protocols and is maintaining social distancing due to the high density of population. A major part of the Indians' live-in congested towns and houses and with many family members, and it becomes even more difficult to comply with rules on quarantine and to limit the spread of this pandemic.²⁰ When a country's population is low, individuals can live in dispersed areas with less social interaction and a lesser danger of transmission. As a result, there is no better moment than now to acknowledge the major disadvantages of overpopulation. The Population Control Bill has to be on the table when the coronavirus epidemic ends and when India is ready to change for better, to control the fast-growing country's population. The Bill is constitutionally sound, as demonstrated by the interpretations of Articles 14, 21, and 25, as well as the Supreme Court's decision in the landmark case of *Javed v. State of Haryana*. Furthermore, the present state of countrywide lockdown has resulted in food shortages and hunger among the poor, putting the government under pressure to assist them with food and other necessities. This would entail the expenditure of a significant portion of government resources that could have been better spent on upgrading medical facilities or investing in research and development.

²⁰ Ishai PB and others, "The Disconcerting Association BETWEEN Overpopulation and the COVID-19 Crisis" (*Alon Tal / The Blogs* March 25, 2020) <<https://blogs.timesofisrael.com/the-disconcerting-association-between-overpopulation-and-the-covid-19-crisis/>> accessed August 9, 2021