

Uttar Pradesh Population Policy 2021-30: A Feminist Exploration

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ABSTRACT

The Uttar Pradesh Govt has recently released the draft of The Uttar Pradesh Population (Control, Stabilization and Welfare) Bill, 2021 in pursuance of its aspirational population policy, which sought to curb the population explosion in India's most populous state. However, such a legislative attempt intends to discount the reproductive autonomy of women in some ways. Thus, the authors in this article examining the policy and the draft bill at the verge of becoming the *lex loci*, attempt to highlight the repercussions of such overt state-sponsored measures of family planning upon females and on their constitutionally guaranteed rights in the light of the Puttaswamy ruling.

Keywords: Reproductive Autonomy, Abortion, Sterilization, Family Planning, Incentivisation, Sex Ratio.

INTRODUCTION

The recent trend in government policies insinuates that despite the need for legislation does not seem apparent or sought by the targeted groups, the state, acting under the paternalistic impression, comes up with policies which are, sometimes, questioned by those groups themselves. In the long list of such legislative interventions, the latest entry is Uttar Pradesh's Population Policy 2021 2030 and its counterpart, The Uttar Pradesh Population (Control, Stabilisation and Welfare) Bill, 2021²⁶⁶. The government is appreciating its policy mechanism of incentivisation as well as disincentivization for more than two 'able' children as the best measure for population control in India's most populous province. The fundamental objective behind devising this policy is to scale down the fertility rate in the concerned demography from the existing 2.7 per thousand to 2.1 in the next five years and 1.9 by the end of this decade. However, the efficacy of state-sponsored regulation of family planning is devoid of any evidentiary support and thus, such coercive measures need serious deliberation due to their uneven impact on various stakeholders owing to the socio-economic disparities prevailing

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²⁶⁶ Gaur, *UP Population Bill Draft: Incentives for Couples with Less than 3 Kids*, NEWSCLICK (July 10, 2021), <https://libguides.uno.edu/how/notavail>.

therein. Since a lot has already been said and written on the implications of disincetivisation over the lives of lower castes and minority religions who are treated as real breeders subversing population balance, the authors, in this paper, attempt to examine the population policy in the light of Supreme Court's judgement recognizing reproductive autonomy as a constitutional entitlement.

UP POPULATION POLICY & INCENTIVISATION OF ILLEGAL ABORTIONS

The lack of use of modern contraceptives due to multiple socio-cultural factors or sheer economic constraints, contribute largely to unwanted pregnancies in India. The population policy, thus, has a likely consequence that the women, in order to save themselves and their families from the brunt of the policy, would be forced to undergo termination of pregnancy²⁶⁷. That said, once this policy comes into effect, women would either have to feign "serious detriment to physical or mental well-being" to legally terminate the pregnancy or have to resort to illegal means, wherein, the abortions are carried out with the help of untrained medical practitioners involving a possible prejudice to their life. Many times such unlawful medical interventions lead to a situation where the females are left infertile thereby severely undermining their right to procreation under article 21.²⁶⁸

In India, it is not that the illegal abortions are not performed but the pace with which they are currently taking place would certainly sore to new height on account of this policy. The reason behind this tendency in Indian society can be attributed to the strong male-child preference. Since such preference has been the subject matter of religious morality in society,²⁶⁹ the repercussions of state-regulated family planning on women go beyond its conceived objectives. It would certainly lead to frequent subjection of females' bodies to non-consensual medical intervention. A steep rise, thus, can be expected in sex-selective abortions in order to conform to the policy. In the states where the adherence to the two-child norm is made mandatory for contesting panchayat elections, similar practices like resorting to sex selection tests and

²⁶⁷ Faujdar et al., *Contraceptive Use Dynamics and Unmet Need for Family Planning in India: Evidence from DLHS-3*, 49 DEMOGRAPHY INDIA 115, 125 (2014).

²⁶⁸ Mishra, *Population Policy and Women's Reproductive Rights*, 57 SOC. SCIENTIST 3, 13 (2001).

²⁶⁹ Visaria, *Fertility Transition in India: An Overview*, in INDIA'S DEMOGRAPHIC TRANSITION: PROCESSES AND CONSEQUENCES 21, 37 (Srinivasan et al. eds., 2015).

abortions of the female foetus have been recorded previously.²⁷⁰ Resorting to such practices even when the stakes were minimal in the form of contesting panchayat elections gives a fair projection of the mass-level pregnancy termination once this policy comes into effect, as it has a plethora of disincentives associated therewith. The implementation of such a policy measure, therefore, would make pregnancy termination the norm, and motherhood the exception.

Sex-selective abortions have the ability to not only affect the reproductive autonomy of the females but also subvert the already skewed child sex ratio in India and, particularly in UP, where it is far below the national average of 919 females for 1000 males.²⁷¹ A research study also projected that, in the 2017-2030 period, UP would witness the highest downfall in the number of female child births²⁷². With the formulation of such a coercive framework, the malady of sex-selective abortions will get exacerbated and will outrightly lead to increase in the instances of female infanticides, as witnessed in China, which observed a sudden spike in female feticide after the promulgation of its single-child policy.²⁷³

Thus, it seems that the policy has been devised with utter ignorance to the current social demography of the state, and especially to the gender realities prevailing therein. Coercive policy interventions pertaining to childbearing and family planning have the ability to impact the livelihood of women of all social groups in multifaceted ways. In this particular instance, by placing high stakes in the form of disincentivization, the state has (in)advertently ventured into the further subversion of gender bridges that exist between men and women.

STATE-SPONSORED STERILIZATION VIS-A-VIS “FREE CONSENT”

The draft bill prescribes that those families who are Below Poverty Line (BPL) in the poverty index, will be eligible for a monetary incentive of Rs. 1 lakh subject to the condition that either of the spouses will get sterilised subsequent to the birth of one female child, a daughter,

²⁷⁰ Buch, *Panchayat Elections and Women: Experiences from Madhya Pradesh*, ECON. & POL. WKLY., Mar. 19, 2005, at 1149.

²⁷¹ Kamdar, *UP Population Control Bill: A Recipe for Disaster*, NEWSCLICK (July 14, 2021), <https://www.newsclick.in/UP-Population-Control-Bill-Recipe-Disaster>.

²⁷² Chao, *India's skewed sex ratio at birth: drivers and future implications*, NAT. SCI. REP. (Oct. 15, 2020), <https://www.nature.com/articles/s41598-020-73413-5>.

²⁷³ Aravamudan, *Why India's Two-Child Policy is a Bad Idea*, THE WIRE (Aug. 23, 2019), <https://science.thewire.in/the-sciences/why-india-two-child-policy-bad-idea/>.

whereas if the sterilisation takes place after the birth of a male child, a son, the incentive would be Rs. 80,000²⁷⁴. While the monetary incentive will operate as a lucrative scheme for the weaker socio-economic sections of the society, and thus appreciable, the extremely high threshold of disincentives, nonetheless, will unequivocally work as a penal prospect for the families who look upon their children more as a future breadwinner and caregiver.

Highlighting the coercive overtones in such policies, Nobel laureate Economist Amartya Sen compared this indirect method of birth control with the overtly coercive policies adopted in contemporary China in the form of 'One Child policy' and forceful attempts of Indira Gandhi government during National Emergency in mid-70s in India.²⁷⁵ He argues that at times the avenue embarked is even indirect in nature, for instance through policies that disentitle families having more than the prescribed number of children from accruing welfare schemes of the state, such as public employment or other developmental schemes. The current policy, thus, undoubtedly adopts this indirect pathway of birth control which Sen argues. Considering the demography of the state, this becomes even more fatal especially where the utmost emphasis is laid upon conceiving welfare schemes of the government.

By incentivizing sterilization in an extremely patriarchal social setup, the state has asserted an additional burden upon women where they do not only bear the burden of sterilization alone but are also expected to give birth to only male children every time they procreate. The National Family Planning Survey-4 in 2015-16, to this effect, testifies that while 17.3 percent of women in UP, in pursuance of family planning, have undergone voluntary sterilization, whereas a mere 0.1 percent of males have done that (*NFHS-4, 2015-16*)²⁷⁶. This reflects the self-compromising psyche of females, prompted by the lack of access to contraceptive measures, sensitization, and education, which places them in an even more precarious position where despite being aware of the irreversible character of the female sterilization & complications related therein, they sacrifice their ability to procreate. Thus, sterilization on state sponsorship further infringes bodily integrity of women as the consent given for the medical intervention is founded, not upon their free will, but on the associated incentives as well as disincentives.

²⁷⁴ Vatsala Gaur, *UP Population Bill Draft: Incentives for Couples with Less than 3 Kids*, NEWSCLICK (July 10, 2021), <https://libguides.uno.edu/how/notavail>.

²⁷⁵ Sen, *Fertility and Coercion*, 64 U. CHI. L. REV. 1035, 1036 (1997).

²⁷⁶ NAT'L FAMILY HEALTH SURVEY-4, 2015-16, UTTAR PRADESH, FACT SHEET 10 (2016), http://rchiips.org/nfhs/pdf/NFHS4/UP_FactSheet.pdf.

CONCLUSION

Though the intended objectives of the population policy cannot be termed as illegitimate or unwarranted per se, the means adopted by the state government seem so. In fact, there could have been a cooperation-based approach which would have given, unlike coercive methods, autonomy to choose and make informed decisions. Personal autonomy & dignity, thus, cannot be compromised at the cost of obtaining governmental benefits especially when it is the constitutional obligation of the State to ensure welfare benefits to its citizenry. This becomes equally important when it is an accepted notion that the policy decisions should be informed of scientific temperament. Education and sensitization, thus, would be a more effective and viable medium to transcend the intended objectives of birth control as they would tend to imbibe a sense of empowerment and dignity within the female psyche.

