

part four

the two-child norm





the two-child norm: state governments poised to blunder

After the Supreme Court made mistaken observations in respect of the 'two-child norm' in *Javed v/s State of Haryana*, several state governments have taken steps and are on the brink of enacting legislation to enforce a Two-Child Norm. A blunder of epic proportions is about to be committed.

From 1951 to 2001, India's population grew from 360 million to 1020 million. This growth has been characterised as a 'population explosion'. The antidote, we are told is the punitive enforcement of the two-child norm. To understand the folly of such a step one must, as Dr. Almas Ali explains in 'Population and Development', separate myth from reality in the population debate.

All nations typically go through three phases: the first of high birth rates and high death rates, the second of high birth rates and low death rates and the third of low birth rates and low death rates. After World War II, advances in health technology – including the discovery of antibiotics – caused a dramatic decline in the death rates. This caused population to grow at an unprecedented rate. Eighty four percent of India's population increase took place during this period. At the same time, and this is not commonly known, the Total Fertility Rate (TFR) i.e. the average number of children a woman would have, came down from 6 in 1951 to 3.2 in 2001. Yet the population continues to grow not because of the family size but because of, what is called, 'population momentum'. This is an accelerated in-built growth due to the high percentage of young people (60 percent) in the population who, even as they have fewer children, produce large quantum increases. This takes place despite the fact that family size is declining across the board for rural and urban families and for poor and middle class families alike.

The single most important factor that reduces momentum is the raising of the age of marriage. The strongest impact of this comes through increasing the years of schooling for girls. In Sri Lanka where this has been done fertility rates were quickly reduced without coercion.

Based on a misunderstanding that poorer people and particularly those in rural areas and slums are having too many children some were quick to suggest a two child norm with punitive disincentives. Superficial comparisons were made with China and its one-child norm. A closer look shows precisely how wrong these comparisons were. China's TFR drop from 2.8 in 1979 to 2.0 in 1991 was comparable to Kerala's TFR drop from 3.0 in 1979 to 1.8 in 1991, the difference being that as compared to China's atrocious human rights record, in Kerala there was no coercion. Stress on education and development did the trick. However the Chinese decline also stemmed from the emphasis placed on education by the Chinese Communist Party during the prior decade - 1970-1979.

It was the realisation that education, development and woman and child welfare was a better way to lower the family size rather than punitive disincentives that led to the paradigm shift from population control to reproductive health at the Cairo Conference in 1994. It was agreed that quality of life be emphasised and that there would be no force, coercion, incentives or disincentives. India too got out of its 'emergency model' family planning approach and introduced the target free approach and followed this up with the national population policy (NPP) 2000.

NPP 2000 defined the overriding objective as the improvement in the quality of lives. One of the several immediate objectives was to address the unmet needs of contraception. Twenty five percent of poor families seek contraception but are unable to get it. There is no mention made in the policy of the two-child norm, of targets or disincentives.

The two-child norm came in by a side wind. Persons who were disqualified from contesting Panchayat elections in Haryana filed a petition in the Supreme Court impugning the constitutionality of the state notifications laying down the norm. In these proceedings, the central government appears to have given the Supreme Court the impression that the two-child norm was indeed part of the national population policy. Nothing could be further from the truth. The consultations that took place prior show that the two-child norm with its package of disincentives were emphatically opposed due to the anticipated adverse impact on poor women and hence omitted from the policy altogether.

The decision of the apex court in *Javed v/s. State of Haryana* is a classic example of how a court can make a terrible mistake while dealing with an intricate social issue merely because the parties before the court are unable or unwilling to properly explain the complexities involved. The court made several mistakes. First it relied on an obsolete 1960s Club of Rome framework and characterised "the torrential increase in the population....as more dangerous than a Hydrogen bomb" (Russel). It quotes with approval two obscure writers on the subject who say that "the rate of population growth has not moved one bit from 1979". Nothing could be more wrong. The truth is that India has experienced the sharpest

fall in decadal growth from 23.81 in 1991 to 21.34 percent in 2001. This is the lowest population growth rate since Independence!

Secondly, it refers to the five year plans from the first to the seventh (ending 1991) with their emphasis on punitive disincentives and fails to notice the landmark departure in approach in the Cairo Conference (1994) with the emphasis on development, quality of life and women welfare and the rejection of disincentives.

Thirdly, it fails to notice that none of the grounds taken in the petition related to the impact on women. Towards the end of the judgment under the title "incidental questions" reference is made to the impact on women but even these are dismissed out of hand. The court was not informed that population experts throughout the country were unanimous in their view that the impact on poor women would be immediate and severe.

What are the implications and fallout of the judgment? Dr. Ali points out that research conducted in Orissa, Rajasthan, Haryana and Madhya Pradesh indicates that the norm to disqualify candidates has led to the desertion of wives and families, seeking of abortions with the associated abortion related health risks, giving away of children for adoption and initiation of new marriages by male elected members. Women bear the brunt of the disqualification clause.

For breach of the two-child norm several states have put together a package of punitive measures including exclusion from elections, exclusion from ration cards, kerosene and other BPL incentives, denial of education in government schools to the third child and withdrawal of welfare programmes for SCs/STs.

These punitive measures will operate mainly against poor women. Total fertility is 3.47 percent among illiterate women as compared to 1.99 percent for the middle classes. The infant mortality rate among SCs, STs and OBCs is 83, 84 and 76 percent respectively as compared to 62 percent for others. These sections have a high wanted fertility rate due to the prevailing high infant mortality rate.

Clearly, to impose the two-child norm is to widen the inequality gap among the people as the disincentives would disproportionately impact on the already deprived population. More terrible, the two-child norm would provide an impetus for an increase in sex selective abortions and female foeticide, worsening the alarming decline in the child sex-ratio noticed in the 2001 Census.

There is a lesson to be learnt from this. The NGOs are the natural ally of the judiciary. In matters of general social significance they ought to be brought in to guide the court and give it the larger picture, particularly, when the contesting parties have narrow vested interests.

To conclude: momentum will carry through for the next 30 years after which the falling TFR will assert itself and India will move into the third phase of low birth rate and low death rate. In the meanwhile, India must stop counting people and start counting on people, and invest in them, thus improving the quality of their lives.