

Coercion Versus Empowerment

PERSPECTIVES FROM THE PEOPLE'S TRIBUNAL ON
INDIA'S COERCIVE POPULATION POLICIES AND TWO-CHILD NORM



Editors

Shruti Pandey • Abhijit Das • Shravanti Reddy • Binamrata Rani

HUMAN RIGHTS LAW NETWORK, INDIA

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dedicated to
those living on the margins of our societies
and their brave fight for human rights

acknowledgements

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- The survivors of coercive population policies and the TCN, who shared their experiences candidly and bravely. Through their testimonies, they highlighted the negative impact of coercive and target-based approaches to population control.
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preface

This book is basically a compilation of information generated from the People’s Tribunal on Coercive Population Policies and the Two-Child Norm, co-organised by the Human Rights Law Network (HRLN), Healthwatch UP Bihar, Sama Resource Group for Women and Health, The Hunger Project, and Jan Swasthya Abhiyan on 9-10 October 2004 at the Indian Social Institute in New Delhi. The information has been edited and structured so that it can be readily utilised in the ongoing advocacy against coercive and target-based population policies in India and elsewhere.

The People’s Tribunal on Coercive Population Policies and the Two-Child Norm was organised in response to the alarming rate at which various Indian states have been introducing coercive population policies that include incentives, disincentives, and targets, thereby backtracking from, and in total violation of, the provisions of India’s Constitution as well as the National Population Policy (NPP) adopted in 2000, apart from the international standards agreed upon in the ICPD and CEDAW. At the time the Tribunal was organised, individuals who breached the Two-Child Norm (TCN) faced punitive measures in eight states including exclusion from contesting local elections, education in government schools for children third or higher in the birth order, welfare programmes for Scheduled Castes (SCs) and Scheduled Tribes (STs), as well as ration cards, kerosene, and other Below Poverty Line (BPL) initiatives. The urgency for the People’s Tribunal was compounded when the Ministry of Health and Family Welfare of the Government of India (GOI) proposed to launch a targeted family planning programme in 209 “high fertility districts” in the fall of 2004.

The People’s Tribunal examined the implications of the TCN and coercive population policies through a series of individual and expert testimonies before a panel of highly distinguished Tribunal Members¹:

- Syeda Hameed – Member, Planning Commission
- Shabana Azmi – Member of Parliament, noted film personality, and activist
- Poornima Advani - Chairperson, National Commission for Women
- Sandeep Dikshit – Member of Parliament
- Jashodhara Bagchi – Chairperson, West Bengal State Commission for Women
- Imrana Qadeer – Professor, Jawaharlal Nehru University
- Vasanthi Devi – Chairperson, Tamil Nadu State Commission for Women

¹ Positions listed for Tribunal Members were held by them at the time of the People’s Tribunal.

- Ruth Manorama – Chairperson, National Alliance of Women’s Organisations
- Mira Shiva – Noted Health Activist

The objectives and activities of the People’s Tribunal were four-fold:

1. To highlight the growing trend in Indian states of introducing targets and coercive measures in family planning programmes, through state overviews and individual testimonies.
2. To bring out the impact that the TCN and coercive population policies have on people in general, and specifically on the poor and marginalised in relation to the quality of services they receive, particularly health services, through personal testimonies by affected individuals.
3. To present expert opinions on the need, legitimacy, and impact of coercive population policies.
4. To occasion and precipitate recommendations against coercive population policies and the TCN by a distinguished panel of citizens on the basis of testimonies and presentations.

Over 50 individuals from 15 affected Indian states recounted their personal experiences with coercive population policies. These personal testimonies were preceded by overviews by representatives of civil society organisations who are engaged in advocacy on this issue from 15 states. The presentations by experts, which punctuated the individual testimonies, highlighted various facets of coercive population policies, especially the following:

- Population explosion myths;
- The history and evolution of population policies in India;
- The impact of coercive population policies and the TCN on:
 - People’s political participation and representation in local governance in light of the 73rd and 74th Constitutional Amendments
 - India’s increasingly imbalanced sex ratio
 - Women’s status in society including their disownment, desertion, abuse, and the impact on women’s health due to forced abortions and failed sterilizations
 - Other marginalised sections of society such as SCs, STs, Other Backward Classes (OBCs), children, and the poor.

These overarching themes guided the two-day proceedings and were illustrated by individual testimonies and substantiated by the experts’ presentations.

A heartening feature of the People's Tribunal was that the Secretary of Health and Family Welfare for the Government of India attended and spoke on the behalf of the Government of India. The People's Tribunal culminated with recommendations put forth by the eminent Tribunal Members that show the way forward for the GOI in an unequivocal manner.

In addition to documenting the conditions that people face in the name of population 'stabilisation', we hope that this book will be instrumental in exposing the flaws in the GOI's present approach to population growth and will ultimately lead to the adoption of a humane approach in its place.

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abbreviations

ACR	Annual Confidential Report	DPL	Double Puncture Laparoscopy
ADM	Additional District Magistrate	DWACRA	Development of Women and Children in Rural Areas
AIDS	Acquired Immune Deficiency Syndrome	ESCR	Economic, Social and Cultural Rights
ANC	Ante-Natal Care	FGD	Focus Group Discussion
ARI	Acute Respiratory Infection	FIR	First Information Report
ART	Assisted Reproductive Technology	GFR	General Fertility Rate
ANM	Auxiliary Nurse Midwife	GOI	Government of India
BC	Backward Caste	GDI	Gender Development Index
BDO	Block Development Officer	GHI	Gender Health Index
BIMARU	Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh	HRLN	Human Rights Law Network
BPL	Below Poverty Line	HIV	Human Immunodeficiency Virus
CED	Centre for Environment and Development	IAS	Indian Administrative Service
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women	ICCPR	International Convention on Civil and Political Rights
CMA Act	Child Marriage Restraint Act, 1929	ICESCR	International Convention on Economic, Social and Cultural Rights
CMO	Chief Minister's Office	ICDS	Integrated Child Development Scheme
CRC	Convention on the Rights of the Child	ICPD	International Conference on Population and Development, Cairo, 1994
CSSM	Child Survival and Safe Motherhood	IFA	Iron and Folic Acid
CHC	Community Health Centre	IMR	Infant Mortality Rate
CMP	Common Minimum Programme	IRD	Integrated Rural Development Plan
CPR	Couple Protection Rate	IUD	Intra-Uterine Device
DC	District Collector	JSA	Jan Swasthya Abhiyan
DDPO	District Development and Panchayat Office	MASUM	Mahila Sarvangeen Utkarsh Mandal
DM	District Magistrate	MBBS	Bachelor of Medicine and Bachelor of Surgery
DMPA	Depo Medroxyprogesterone Acetate	MLA	Member of the Legislative Assembly
		MMR	Maternal Mortality Rate

MP	Member of Parliament	SHRC	State Human Rights Commission
MTP Act	Medical Termination of Pregnancy Act, 1971	SIFPSA	State Innovations in Family Planning Services Project Agency
NACO	National Aids Control Organisation	ST	Scheduled Tribe
NDA	National Democratic Alliance	STD	Sexually Transmitted Disease
NFPP	National Family Planning Programme	STI	Sexually Transmitted Infection
NGO	Non-Governmental Organisation	TBA	Traditional Birth Attendant
NRHM	National Rural Health Mission	TCN	Two-Child Norm
NFHS	National Family Health Survey	TFA	Target-Free Approach
NDC	National Development Council	TFR	Total Fertility Rate
NHRC	National Human Rights Commission	TT	Tetanus Toxide
NPP	National Population Policy	UDHR	Universal Declaration of Human Rights
OBC	Other Backward Class	UN	United Nations
OCN	One-Child Norm	UNFPA	United Nations Population Fund
OC	Oral Contraceptive	UPA	United Progressive Alliance
ORS	Oral Rehydration Solution	USAID	United States Agency for International Development
PC &		UTI	Urinary Tract Infection
PNDT Act	Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994	VAW	Violence Against Women
PDS	Public Distribution System		
PHC	Primary Health Centre		
PIL	Public Interest Litigation		
PRI	Panchayati Raj Institution		
PSU	Public Sector Undertaking		
RCH	Reproductive and Child Health		
RHS	Rapid Household Survey		
RISUG	Reversible Inhibition of Sperm Under Guidance		
RSS	Rashtriya Swayamsevak Sang		
RTI	Reproductive Tract Infection		
SC	Scheduled Caste or Supreme Court (according to context)		
SDM	Sub Divisional Magistrate		
SHG	Self-Help Group		

introduction

Shruti Pandey*

The innocuous sounding ‘two-child norm’ is lethal any way one looks at it. It is based on myriad dangerous premises and assumptions. Its modus operandi is deeply perilous. And in its impact, it is violative of every rule in the book of human rights in general and reproductive rights in particular. For all the reasons, the two-child norm, as any coercive practice, is liable to be forthwith struck down totally as illegal and unconstitutional.

To really get to the bottom of how and why the two-child norm still came about and continues to be promoted by the Government and protected by the Courts, it is vital to deconstruct the norm and tease out the layers of issues within it, beginning from the most basic, even seemingly simplistic ones. For today, the norm has wide, almost total, social acceptance in the Indian psyche, which is unquestioningly convinced that the two-child norm is the only answer to almost every predicament India faces today.

The fallacious foundation of the two-child norm

First of all, the two-child norm is based on the continuing perceived threat of a “population explosion” in the country. Nothing can be more misleading. That this is deliberate propaganda (the reasons for which we will come to shortly), is disclosed by the fact that to begin with, there is a total blocking of the information, foremost by the Government itself, on the latest demographic trend of a population decline firmly setting in, as revealed by its own data and sources. The Government not only refuses to acknowledge this uncomplicated fact, but also goes farther by plainly rubbishing the theory of “population momentum” with all its reason and logic: surely the growth of a population as huge as the Indian could not have come to a complete halt at once, its sheer inertia would keep it moving for sometime, much like a huge truck that keeps rolling, even after the brakes have been pushed! However, the Government pretends not to comprehend this simple principle or even register it with them.

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But why should the Government not accept its own finding and instead join the bogey of “population bomb”? It is not difficult to see that these alarm-bells of population explosion are actually being rung by the vested interests who do it from the wings while on the stage is a pliant establishment that gets sold for a song. These vested interests are several but united by one commonality among them: their insidious agenda of wiping out certain sections of the population who just do not have a right to live within the life-view of these vested interests.

The rich and middle classes who are growing richer at the cost of the poorest of poor in India, are not happy still, and insist that they do not have enough because the poor are breeding like “pigs” and hogging all the resources! Never mind that infact the Indian poor are starving, homeless, jobless and have no access to any of the resources or services. The recurrent allegations are: the poor must stop breeding or else there would be no “development”, they are the reasons why India is still a ‘developing’ country, they are sapping all the resources of the country dry. In all these insinuations, there is no mention of the obnoxious acquisitiveness, greed, wastefulness and unabashed consumerist consumption by the rich themselves. There is no mention that in the first place, the poor have no resources left for them to sap away, which is precisely why they bank on children as their only resources, which in turn is one of the well-settled reasons for their resistance to planning family size.

If one digs deeper, beneath this ‘development’ logic at the surface of the two-child norm, lie the more sinister reasons, mainly the politics of ‘religion’ and ‘caste’, showing the classic intertwining of class with caste and religion. In a country where the majority lives in a manufactured nightmare of the minority communities outnumbering them, the two-child norm provides them the tool to contain the minorities. This is especially true for those belonging to a particular religion most of all, which the proponents of two-child norm quote as retrogressive as well as one that aggressively proselytizes, a deadly combination indeed and a sure recipe, in their view, for wiping out the majority. Similarly, much like those from the religious minorities, the lowest castes and those outside the caste pale are also outside the pale of civilization, and the brahmanical world of the ‘forward’ castes: they are the ones who cause slums to grow into eyesores, they are the scum of the earth and must be checked by hook or by crook.

The viciousness of these fascist trends wearing the cloak of ‘development’ is appalling. Since the targets of two-child norm are the ‘undeveloped’ sections of population, it is seemingly true that they perpetuate underdevelopment. But no one is asking who is responsible for the lack of development opportunities that leads to

their underdevelopment in the first place. A person who is born secure with resources on a platter for him could not be less bothered with this manifest injustice, but is surely going to stop anyone from even casting a glance at his own platter. The entire politics of the country is woven by these privileged classes, castes and communities, the entire show is run by them. It is hardly surprising then that they should protect themselves, their own resources and interests, in the garb of population policy and the two-child norm, justifying it with the cock-and-bull bomb and explosion story.

The Government benefits from adopting the two-child norm in that with this norm it can absolve itself, with impunity, of its basic responsibility towards development of the country and of providing right to life and equality to everyone, including the poor and the underprivileged. The entire focus shifts swiftly to meeting the targets of the two-child norm. The targets and fulfilling the targets gives the Government a false sense of achievement or atleast something they can hold out to show their achievement. The Government knows best that the internationally recognized and tested norms and standards establish a direct link between the development indices of a population, the empowerment of its vulnerable sections, including women, the equitable distribution of resources on one hand, and on the other hand the ability of the population to regulate its growth. But this is an onerous responsibility for any government; for a government that does not believe in it, it is anathema. Anything that allows the Government to wriggle out of it would be lapped up by the Government. The dictates of multinational corporates which are interested only in consumerist markets, combined with the politics of superpowers of the world today that are actually threatened by the size of Indian population, are helping the government in even making it 'politically correct' to 'control' the population. It is therefore not surprising at all that there is no respect for, only rubbishing of, the internationally accepted standards by the Government.

There is simply no recognition of the fact that the sections of population which are successful in planning their families' size today can do so because they had access to information and services – of basic health (which gave them the assurance of survival of their offspring) and of contraception (which technically made it possible to contain procreation within marriages and other sexual relationships) as also of basic life conditions of food, education, employment and the development indices leading to empowerment of their women. There is also no recognition of the fact that those in the 'lower' rungs of population who have somehow managed to rise somewhat, desire to limit their families' size but are unable to do so in the absence of access to all these.

To confound the citizens, the Indian Government insists that there is no ‘coercion’ in two-child norm: it only entails ‘incentives’, ‘disincentives’ and ‘targets’, all of which, they argue, are in fact necessary to maintain the focus and to sustain the efforts, so crucial in a situation of explosion. They fail to acknowledge the simple truth that these incentives and disincentives, being linked to basic survival conditions like food (ration card), education (admission to schools and fee waiver), livelihood (jobs, promotions, for farmers irrigation and other facilities), health (provision of public health facilities including contraception and abortion services) and empowerment (eligibility to contest in Panchayat elections), attract only the sections that depend totally on government for them and cannot do without Government support. The incentives and disincentives therefore end up exerting coercion on these sections in their practical effect, whatever may be said on paper. Also monetary incentives to acceptors of family planning, motivators or providers have often resulted in misuse/abuse and they get reduced to an exercise in tokenism.

On the ostensibly successful example of China, it is important to point out that China’s one-child policy was preceded by a broad and equitable expansion of social and economic opportunities for women – the proven way to reduce fertility rates - and that is why it yielded whatever results it did. It is also important to learn the lesson from China that even then, the one-child policy has created several social problems in China: adoptions, for instance, rose sharply from around 200,000 before the one-child policy was introduced, to around 500,000 a year in 1987, and among the children thus given away, a significantly higher proportion of girls are put up for adoption than boys. That the abortion rates, including sex-selective abortions due to social son-preference there like in India, have gone up considerably in China is also directly linked to the same policy, causing considerable damage to women’s health, apart from skewing its sex ratio. In contrast, is the healthier model right here in our own country, in the state of Kerala, which achieved similar results as China, but through the development of its population.

Efficacy and effect of two-child norm

At this point one would also like to examine the two-child norm, both as a means to addressing population growth as well as an end by itself, which in turn would take one to the numerous means that are employed to achieve the end of two child norm, ranging from the principles of incentives, disincentives and targets, to the various kinds of strategies of operationalising the incentives, disincentives and targets.

Is it necessary at all to enforce the two-child norm? For anyone doing an honest inquiry on these lines, the answer is a straight and simple ‘no’. There is no doubt that is impractical, unnecessary and undesirable – it does not have any positive outcome, only ill consequences.

The most important fact first: as explained in the beginning, there is *no* population explosion today. The fertility transition in India is well underway as population growth rates continue to fall across India and birth rates are steadily declining. In States like Kerala, Tamil Nadu, Karnataka, Goa, Andhra Pradesh, Himachal Pradesh, Delhi and Punjab, replacement level, or close to replacement level fertility, has been reached.

The second important truth is that the present growth in population is inevitable and *cannot* be checked significantly by any means whatsoever, not even by the two-child norm. This is because of the phenomenon called ‘momentum growth’, which means that the momentum of increase in population will continue for some more years because high total fertility rates (TFRs) in the past have resulted in a large proportion of the population, estimated to be nearly 58 percent of the total population, being currently in their reproductive years. Given this age structure with a large proportion of women in the reproductive age group, according to projections, 75% of the projected increase in India’s population between the years 2001- 2026, will occur due to the ‘population momentum’ (according to Dyson, Cassen and Visaria). The brakes, as said above, cannot and must not be applied suddenly. This growth will continue to happen for sometime in spite of substantial reductions in family size in several states, including those that have already achieved replacement levels of TFR. The remaining 25% of the population increase will be accounted for by those living longer and having more than two children.

Thirdly, imposing the two-child norm is actually unnecessary when most people, particularly women, even the poorest, and those living in rural areas and belonging to minority groups – all of whom are the primary targets of this norm - in fact want to have fewer children. According to the National Family Health Survey-2 (NFHS) of 1998-99 almost half (47 percent) of ever-married women consider two to be the ideal number of children born to them and 72 percent women consider two or three to be ideal. The same survey also revealed that 72 percent of women with two living children and 86 percent of women with four or more children do not want to have any more children. If these women have more children than they want to have, it is only because the State has failed to provide them adequate access to safe and

appropriate reproductive health services, improved services for child survival, and most importantly, the freedom, and empowerment, to make fertility choices.

In contrast, the ill effects of the two-child norm are many; to say they are horrific is an understatement. Women are among its worst sufferers. Given the strong son preference in our society, any enforcement of the norm forces repeated abortions on women, which has obvious consequences on their health. The targets result in thousands of sterilizations being carried out, primarily on women, lured or forced into them, sometimes without even taking their consent and almost invariably without any counseling. The manner in which the sterilizations take place – in huddled, camp-like conditions, with no thought to basic operative care or post-operative care and zero adherence to medical standards – results in the sterilized women suffering from shocking incidents of high morbidity and mortality – some just bleed away to death. There are documented instances when minor girls have been sterilized without taking their consent, shown on paper as married with two-children, to complete the numbers on paper. Worse still, if people can have only two children, they would prefer to have two or at least one son, and would leave no stone unturned to avert birth of two daughters or even one daughter: not surprisingly, in States where the norm has been imposed, the incidence of pre-birth, even pre-conception, sex-selective practices has grown graphically, thus worsening the already fast declining sex ratio in the populations there, which would have long-term consequences on the entire social fabric and especially the status of women that would suffer most drastically. Studies have also shown that the two-child norm is directly related to men deserting their wives, denying paternity of their children or even giving the children away in adoption.

At another level, penalties for having more than two children, through both disincentives and denial of incentives, are clearly biased against the poor, the non-literate and all the socially disadvantaged groups in general in the society. By their very nature incentives and disincentives tend to be unfair and inequitable in terms of whom they attract and affect in society and this is borne out and government's own records. Firstly, according to NFHS-2, the Total Fertility Rate among women in the reproductive age group 15-49 years is higher in rural areas (3.07) than in urban areas (2.27); the TFR is higher among Scheduled Caste and Scheduled Tribe communities than among the rest of the population; the TFR is higher among non-literate women than among those who have been educated beyond Class X. It is clear that these are the very people who are the targets of the two-child norm. Secondly, since the incentives and disincentives invariably hold out or withhold benefits or doles like the ration-card, school admissions, irrigation-facilities, related

to basic survival, they attract only the underprivileged and deprived. Anyone can see plainly that the middle class and affluent are unlikely to get lured or deterred by these kinds of carrots and sticks, which are irrelevant to their lives. Further, those who get affected by it are also the same groups that have historically faced discrimination and neglect and whom the 73rd and 74th Constitutional Amendments seek to empower through inclusion in the grassroots democratic institutions of Panchayat. Infact, the two-child norm fundamentally negates the spirit of these Amendments by preventing women, younger people and those belonging to the weaker sections of society from participating in democratic elections, merely because they have more than two children. In many States the ban on people with more than two children from contesting Panchayat elections has emerged as the main reason for removal of elected members of Panchayats, irrespective of the performance of the members.

The illegality of two-child norm

What follows clearly from the above is that the two-child norm is totally discriminatory, arbitrary and hence unconstitutional and must be struck down totally.

The international standards endorsed by India, including the International Conference on Population and Development (ICPD) 1994 have repeatedly held against any coercion for addressing population growth and have instead emphatically advocated development and empowerment, especially of women. Article 16 (1) of Convention on Elimination of All forms of Discrimination Against Women (CEDAW), gives women the rights to decide freely and responsibly on the number and spacing of their children and to have access to information, education and the means to enable them to exercise these rights. Article 17 (1) of International Covenant on Civil and Political Rights (ICCPR) gives everyone a right against being subjected to arbitrary or unlawful interference with his/her privacy and family. The implementation of such rights, however formulated, reduces State power to compel individuals to account to governmental officers for their reproductive choices, and to compel individuals to employ their reproductive capacities in compliance with governmental preferences. However none of these standards is being complied.

What is more important, and strangely, less recognised, is that India's National Population Policy (NPP) does not mention any "two-child" norm; the only 'norm' that is mentioned in the NPP is the "small family" norm. And as far as coercion is concerned, the Preamble of the NPP significantly states, inter alia, as follows:

“The National Population Policy, 2000 (NPP) affirms the commitment of government towards voluntary and informed choice and consent of citizens while availing of reproductive health care services, and continuation of the target free approach in administering family planning services.”

The NPP repeatedly stresses throughout, the importance of empowering women for improved health and nutrition, promoting child health and survival, and meeting the unmet needs for family planning services, which are the proven measures for achieving population stabilization proposed.

To conclude, undoubtedly, the two-child norm, or for that matter any policy or legislation that bans people with more than two children from certain privileges or rewards them with something they are in any case entitled to, is discriminatory, disempowering, anti-people and undemocratic. It is also against the Constitutional mandate of welfare state and justice - social, economic and political. It is totally against all international norms and standards as well. It is therefore indeed an irony that still it has repeatedly received the stamp of legality from the Indian Judiciary, including the Apex Court. The least that can be said is that this is infact a sign of how deeply entrenched the norm has grown in the Indian psyche since the Indian judges are some of the most enlightened and progressive in the world who have stood steadfast in defence of human rights and international standards. It is ironic that today the country’s civil society is apprehensive about approaching the judiciary and instead is banking on the Government itself to roll back the norm. On its part the Government, at best, has shown its ambivalence, verbally expressing its agreement that the norm is coercive and must be taken off, but still letting it be. In the meanwhile the little man’s – and woman’s – struggle for justice and human rights will go on.

chapter one

expert papers



Population Growth

Population Policies

Population Policies and Political Participation

Population Policies and Sex Ratio

population: myths and facts

Almas Ali*

Let me begin by asking why we are so overwhelmingly concerned with numbers when we discuss population. No doubt, I agree that numbers are fascinating and usually carry with them the weight of so-called undeniable truth. However, in our country, the numbers related to population have led to extremely debatable, and often misinformed, public policies that have serious consequences.

The fact is that India's population has increased from 36 crores in 1951 to over 102 crores in 2001. This population growth has become a perennial source of worry for everyone including politicians, public leaders, administrators, bureaucrats, development planners, public health experts, demographers, social scientists, researchers, and even the general public. To be frank, a 'fear psychosis' or 'number phobia' has set in. Discussions about population invariably begin with expressions such as "India has over one billion people", "it is the second most populous country in the world" "in the near future it will overtake China and become the most populated country in the world", or "the large population of India is the real reason for high levels of poverty, low per capita income and slow economic growth." An uncontrolled population explosion has become the country's scapegoat, and it must bear the entire responsibility of holding back India's progress, economic growth, and development.

The first question that must be answered is whether or not there really is a population explosion in India. Is the population really growing at an alarming rate? The answer is simply NO. Yet, this straightforward answer is not enough to convince anyone on its own. We must ask and answer many other questions to gain an understanding of the basic issues.

We begin with the issue of population growth, a natural occurrence that has taken place in every region of the world: India is no exception. Population growth has been shown to be an evolutionary process of transition that takes place in three stages. In the first stage, high birth and fertility rates are accompanied by high death rates. In the second stage, high birth and fertility rates continue unabated, but several factors lead to a steep fall in mortality rates; this naturally results in high growth.

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Birth rates slowly begin to decline during this phase due to advancements in economic and material progress, education, women's empowerment, and the increased availability of contraceptives. Rapidly, thereafter, stage three is reached wherein birth and death rates are equal, once again achieving a low balance. This cycle, known as demographic transition, occurs in all populations.

STAGES OF DEMOGRAPHIC TRANSITION	
Stage 1	High birth rates and high death rates (high balance)
Stage 2	High birth rates and low death rates (high rate of natural increase)
Stage 3	Low birth rates and low death rates (low balance)

We should look closely at the second stage of demographic transitions, which exhibit high rates of natural increase because of a rapid decline in death rates while birth rates remain at initial high levels. This second stage characterised the world's unprecedented demographic growth in the second half of the 20th Century: the world population doubled from 3 to 6 billion in less than 40 years (1960 to 1999) and increased from 5 to 6 billion in just 12 years (1987 to 1999). It took four times as long to double from 1.5 to 3 billion, and nearly a millennium to reach 1 billion. The unprecedented growth rate that followed World War II was the result of the sudden decline in mortality rates due to medical achievements in advanced countries and the ability to replicate these advances in modern medicine within developing countries at very low costs. Armed with the knowledge of how to curb diseases and epidemics, developing countries with stagnant growth at a high balance experienced a sudden decline in death rates, while birth rates remained the same. This led to unprecedented high levels of natural growth in many countries including India. Since Independence, India's death rate began declining rapidly while its birth rate remained high, leading to a phase of rapid population growth from 1961 to 1981.

Table 1 correctly reflects the theory of demographic transition, which puts forth that after passing through the stages of stagnant population, high growth rate, and rapid growth rate the decadal growth rate begins to decline.

As can be seen in the *Table 1*, in 1951 India's total population was a little over 36 crores. The population then grew to about 44 crores in 1961, and to almost 55 crores in 1971. The period from 1961 to 1971 recorded the highest ever decadal growth rate at 24.8 percent, with a corresponding average annual exponential growth rate of 2.22 and an absolute increase of about 11 crores. The 1971 to 1981 period

Table 1

Demographic Transition in India (1901-2001)					
Year	Total Population (crores)	Absolute increase (crores)	Decadal Growth Rate	Average Annual Exponential Growth Rate	Phase of Demographic Transition
01-1951	23-36	13	-	-	Near stagnant population (Stage 1)
51-1961	36-44	8	+21.6	1.96	High growth (Stage 2)
61-1971	44-55	11	+24.8	2.22	Rapid high growth (Stage 2)
71-1981	55-68	13	+24.6	2.20	
81-1991	68-84	16	+23.9	2.14	High growth with definite signs of fertility decline (Stage 3)
91-2001	84-102	18	+21.3	1.93	

was already marked by a marginal decrease in the decadal growth rate from 24.8 percent in 1961-71 to 24.6 percent in 1971-81. After 1981, the population growth rate (both decadal growth rate and average annual exponential growth rate) was considerably reduced. In the last 20 years the decadal growth rate and annual average exponential growth rates have decreased from 24.6 percent and 2.22 (1971-81) to 23.9 percent and 2.14 (1981-91), to 21.3 percent and 1.93 (1991-2001). In fact, India registered its sharpest decline in decadal growth rate since Independence during the 1991-2001 period.

As explained above, India's population growth rate and Total Fertility Rate (TFR) has been steadily declining over the last two decades. In 1951, a woman would have an average of over six children (although many of them would die early): today, the average is a little over three. In technical terms, the TFR had decreased from 6 to 3.2 by 2001. Couples now have fewer children and most opt for small families. In addition, the 2001 Census shows that the proportion of children under six years of age has also declined, which indicates fertility decline.

Then why, you may ask does the overall growth in numbers still appear to be high? Fertility and mortality trends from 1951-81 have shaped the country's population age structure in such a way that there is a tremendous in-built growth potential; in other words, there is a bulge in the proportion of people in their prime reproductive years. For example, India has a high proportion of young people (about 60 percent)

India has a high proportion of young people who are in the reproductive age group.

Even if there are fewer children per couple, the quantum increase in numbers will remain high because the number of reproducing couples is high.

who are in, or soon will be in, the reproductive age group. Even if this 60 percent of the population produces fewer children per couple, the quantum increase in numbers will remain high, because the number of reproducing couples is high; thus, the birth rate will still be high, even though the TFR is low. Improvements in mortality rates for older generations and an increased life expectancy also fuels this in-built growth tendency, referred to as population momentum in demographic literature.

According to some estimates, during the period 1991-2001 the proportion of population growth attributable to population momentum was almost 70 percent, while unwanted fertility contributed only about 25 percent; only 5 to 6 percent of population growth was attributed to couples' desiring to have more children. Even if we could bring fertility rates immediately down to the replacement level of 2.1, maintain mortality rates, and ensure zero migration, there would still be tremendous population growth in the near future in absolute terms. This trend will continue for the next few decades because of the large proportion of young people in the Indian population. It will take some time before we see explicit results of the declining fertility rate. In other words, India is like a fast moving express train whose brakes have just been applied; since it is very heavy and moving very fast, it will take time before it actually stops. The important thing to note is that the brakes have indeed been applied.

Population Growth: Five Myths and Facts

Myth #1: India's population is growing because the uneducated rural poor are having more children now than they did 50 years ago, while the educated and urban middle class controls its family size.

Fact: Family size is decreasing among all social groups, including rural and urban populations and among the poor and middle classes. Rural and urban families now have approximately 44 percent fewer children than they did a few years ago. When comparing rural and urban TFRs, rural women have 2.1 (5.6 in 1970, 3.5 in 1999) fewer children than they did 30 years ago, while urban women have 1.7 (4.1 in 1970, 2.4 in 1999) fewer children over the same time period.

Myth #2: Poor people have more children because they do not appreciate the benefits of family planning.

Fact: Poor families have a strong desire to practise family planning; however, they are unable to do so because they lack access, or the financial resources, to utilise contraceptive methods. In some states, the unmet need for contraception is as high as 25 percent.

Myth #3: India's population growth since Independence has overtaken the country's food production.

Fact: Food production has actually outpaced population growth from Independence to 2001. While the population has almost tripled from 36 crores in 1951 to 102 crores in 2001, food production has quadrupled from 50 million metric tonnes in 1951 to over 200 million metric tonnes in 2001.

Myth #4: The fastest way to achieve population stabilisation is for the government to adopt coercive and authoritarian approaches, such as implementing a Two-Child Norm (TCN) that is similar to China's one-child policy.

Fact: While China has had remarkable success in reducing its population growth, the southern Indian state of Kerala has been even more successful in reducing its population growth, without resorting to coercive measures. China's TFR was 2.8 in 1979, which dropped to 2.0 in 1991; Kerala's TFR, was 3.0 in 1979, which dropped to 1.8 in 1991.

It is also not entirely clear how much of China's fertility rate decline can be attributed to its one-child policy. China's dramatic reduction in population growth mainly occurred between 1970 and 1979, and it actually had its roots in improvements that occurred after the Communist Revolution, but prior to the introduction of its one-child policy: improvement in the economy, the status of women, and access to education.

Myth #5: The TCN is not only useful in controlling the population and for development efforts, it is also positive for women's health.

Fact: The TCN must be understood in the context of son-preference, which is a common feature of Indian society. The imposition of a TCN will lead to the widespread misuse of technologies for sex selection or pre-natal diagnostic sex determination, which will lead to sex-selective abortions of female foetuses. Needless to say, repeated abortions due to social pressures carry obvious health-related risks for women.

Conclusion

I would like to conclude by stating that population stabilisation is not a technical problem that requires a technical quick-fix solution. The answer also does not lie in pushing sterilisations and chasing targets. We have now discovered that the obvious route to population stabilisation is through social development, women's empowerment, and greater gender equality. In particular, women's empowerment is critical to human development. It is also important to improve people's access to quality health care, in particular the need for essential and emergency obstetric care for women. Programmes that make contraceptives available to the public should be enlarged and expanded, and community-based health initiatives should be revitalized.

Given the crucial importance of population momentum, which assures population growth in the near future, imposing a TCN to coerce people into having two children or less may be both irrelevant and ineffective in reducing the growth rate. We may simply be barking up the wrong tree. In fact, one of the single most effective ways to reduce population momentum is to raise the age of marriage/cohabitation, especially for girls. Increasing the number of years that a girl stays in school is one way to achieve this goal. In general, adopting significant policies that encourage women to delay child bearing will lengthen the time between generations, which can ease population momentum.

The Common Minimum Programme (CMP) of the United Progressive Alliance (UPA) government is a very progressive document, but among its provisions is a line stating that "a sharply targeted population control programme will be launched in the 150-odd high-fertility districts." This again reflects the mindset of a country that believes it has a population problem, which is indeed a worrying trend. Given that Reproductive and Child Health (RCH) programmes are recording significant

structural and long-term impacts, the Indian experience does not warrant a shift away from the social development approach. There also appears to be a very thin line dividing efforts to create awareness, gentle persuasion, and voluntary decision-making from coercion. If this is not handled properly, it can lead to the TCN ultimately increasing the already widespread practices of sex selection and sex selective abortion of female foetuses, which is distorting sex ratios in the 0-6 year old age group. The other possible fall out of adopting a TCN is that health functionaries may again become pre-occupied with family planning goals, targets, and terminal contraception, and in the process neglect the two cardinal features of RCH: services related to women's health and quality of care.

census and fundamentalism

Charu Gupta*

I would like to raise the issue of how the politics of population and the Census have historically been distorted by Hindu fundamentalist forces to target religious minorities, particularly Muslims. By enforcing a Two-Child Norm (TCN), we are repeating the mistakes of the past, except this time it is the government that is targeting religious minorities, along with the poor, lower caste persons, and tribals.

The first Indian Census was conducted in 1871, and it became a critical tool for Hindu communal forces to assess the number of Hindus in relation to other religious groups. It became not only a tool for enumeration, but also comparison. Conservative forces have historically used it to create and/or perpetuate population myths that divert attention away from the real issues. For example, when there is an increase in communalism, the myth of a declining Hindu population and an increasing Muslim population rears its head. In the 1920s, a large number of pamphlets were distributed with titles such as *Hinduon ka sanrakshan aur aatm rakshan*,¹ *Hindu ke saath vishwaashghaath*,² and *Hinduon ki ghatathi sankhya par chintha*.³ At the same time, other pamphlets were decrying the increasing Muslim population. In 1925,

The myth of a declining Hindu population and an increasing Muslim population rears its head when communalism increases.

Swami Shraddhanand wanted to emphasise that the Hindu population was diminishing and that the Muslim population was on the rise. He manipulated the Census data to do so, thereby distorting it. The British colonial authorities also fed into this argument and encouraged conflict. In 1925, even the Jagadguru Shankaracharya stated that Hindus would completely disappear by the turn of 21st Century. There are also various publications of the Hindu

Mahasabha that state “they (Muslims) count their gains, we (Hindus) calculate our losses.” As a result, the idea of numerical strength has been ingrained into the communal consciousness and become necessary to stabilise the Hindu communal identity.

This has also had serious implications in terms of gender and sexuality, which will be demonstrated through a fragmented example from the historical data. If we look

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¹ English translation: Conservation and self-preservation of Hindus.

² English translation: Hindus have been betrayed.

³ English translation: Concern about the declining Hindu population.

back at the debates surrounding the remarriage of widows in North India, we can observe that a significant shift occurred in the 1920s. At that time, the belief was that both higher fertility and sexual appetite led to a large Muslim population. Concurrently, there was also widespread concern about upper caste Hindu widows who eloped with Muslim men and gave birth to Muslim children, thereby helping to increase the Muslim population. These concerns eventually led to a campaign that encouraged Hindu men to marry Hindu widows, particularly upper caste Hindu widows, to ensure that their reproductive capacities would increase the Hindu population rather than the Muslim population. In this way, the initial liberal premise of allowing widows to remarry collapsed into an effort to control their reproductive capacities. The same thing is occurring today under the guise of the TCN, which uses coercive measures and targets to control the reproductive capacities of women, mainly the poor, lower castes, and Muslims.

The entire discourse put forth by Hindu conservative forces regarding the Census obliterated the pluralism of identities and instigated and perpetuated the myth of a declining Hindu population. History has shown us the strength of such population myths. Such myths succeeded in convincing a Hindu majority that it was in fact an endangered religious minority, despite the fact that they were disproved by historical, statistical, and other empirical evidence. Today, we see a similar population myth at work, although the current myth of population growth blames not only the poor, but also religious minorities, Dalits, and women. TCN laws have targeted these groups because it is widely believed that they have the highest fertility rate and therefore, they need to be kept under strict control.

indian population policy: an overview

A. R. Nanda*

Because of my experience in government, I know that when the Government of India (GOI) formulated the National Population Policy (NPP), it was at best a compromise between people's perceived needs and what the government, in its wisdom, perceived as the requirements to meet those needs. Its adoption was an evolutionary process: it was extensively debated in Parliament and a consensus was achieved among all the political parties present. It was also vetted by state governments and experts in the field.

The evolution of government population stabilisation efforts date back to 1951-52 and the onset of the five-year development plans. The first population policy launched was the National Family Planning Programme (NFPP) in 1952; it made India the first country to officially declare such a programme. In fact, the 1950's Communist Revolution in China borrowed a few things from the Indian NFPP, but administered it in a different manner during the Maoist era. It adopted an equitable social development approach to tackle its population problem and operated with the premise that the country's population was its biggest asset and adopted many benign measures geared towards social development. Whereas China considered its people an asset, India viewed its people as a liability from the very beginning. This remains the basic difference between the Chinese and Indian approaches.

There has been a lot of discussion about India emulating the Chinese model. While China did solve its population problem, it did not do so simply by implementing a One-Child Norm (OCN) in 1979. Prior to that, from 1949-79, China adopted an equitable social development approach - a people's approach. In India, we seem to have lost this opportunity. If we really want to emulate China, we must adopt the social developmental approach that stabilised the Chinese population. Also, it must be kept in mind that India is a democratic country, so, our approach has to be slightly different than China's and well within the four walls of democracy.

In India, an apex committee was created known as the Family Planning Research and Programme Committee, which sat for its first meeting in July 1953 in Bombay. The Committee took quite a comprehensive and broad view of family planning and

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suggested that family planning not be defined in the narrow sense to mean only birth control or the spacing of children, but in a holistic manner. The Committee made many recommendations, including that family planning centres be opened around the country for sex education. Other recommendations dealt with issues such as marriage counseling, marriage hygiene, planned parenthood, and infertility issues - because infertility was seen to be as much of an issue as fertility control. Keeping all this in view, the Committee gave its recommendations in the year 1953.

China took note of the Indian Committee's recommendations and began to look at its people's basic needs in addition to contraceptive measures such as marriage counseling. In this way, the needs of the people and the State converged, resulting in a cultural revolution that led academics, bureaucrats, and service providers to work with peasants. A similar programme was never conceptualised or implemented in India. China's path was more suited to addressing the basic needs of its people, therefore, they witnessed a tremendous rise in women's empowerment and equitable access to health, education, and income, all of which had a direct effect on the fertility rate: the country's birth rate fell sharply by 1979. It is clear that the basic concept of family planning services that China followed was in tune with what the Indian Committee had envisioned during the Bombay meeting.

When Mao Zedong exited from the Chinese political scene, a paradigm shift occurred in China's approach to population control and family planning. The contagion of western education led to the perception that its growing numbers were a threat. This idea took deep root in the mindset of some Chinese scholars and leaders. The Chinese who had pursued higher education in the United States backed the idea that China needed to control its population, and they advocated restrictive population policies like the OCN. The results of this new approach were disastrous: rather than assisting the smooth stabilisation of the population, it created more societal and family problems such as a skewed sex ratio, an increase in crimes against women, and female infanticide and the elimination of female foetuses. It is noteworthy that China is now reviewing its policies and may adopt a law against sex determination. Therefore, there are lessons to be learned from the Chinese experience, but we tend to misrepresent the Chinese story when we compare it to India's approach to quickly solving its 'population problem' through coercive population policies like the TCN and incentive/disincentive regimes.

There are lessons to be learned from the Chinese experience, but we tend to misrepresent them.

It is a pity that our policy makers and bureaucrats merely paid lip service to the rational and sane advice of the Family Planning Research and Programme Committee, and ultimately adopted a top-down contraceptive programme that contained targets for sterilisation. A separate Department of Family Planning was created in the Health Ministry, which launched a centrally-sponsored target - oriented programme in 1966 that provided financial incentives to those undergoing sterilisation operations. While the programme was later integrated with maternal and child health and health and nutrition, the primary objective remained the achievement of male and female sterilisation targets, which has done more harm than good.

Nonetheless, the various Committees formed before and after Independence have clearly emphasised the adoption of a comprehensive approach to primary health

People's needs must be understood and addressed in a holistic manner before they will voluntarily accept family planning.

care, with no compromises to be made in this regard. The perception of families and the State must converge when it comes to accepting a small family norm. People's needs must be understood and addressed in a holistic manner before they will voluntarily accept family planning, but, unfortunately, we are again revisiting the use of targets.

National Population Policy

I will now place the National Population Policy (NPP) within this context. There are seven states that have introduced population policies that contain incentives and disincentives, which is not in accordance with the NPP. The NPP is the affirmation and articulation of India's commitment to the agenda of the 1994 International Conference on Population and Development (ICPD), which is the blueprint for population and development programmes in the country. The ICPD was the very first time that a consensus was reached concerning population and development issues among many countries, including India. It is a remarkable achievement in many ways. The ICPD successfully adopted a Programme of Action that constituted a paradigm shift in thinking and action on population issues globally. Although India has yet to fully incorporate the ICPD provisions into its domestic laws, Indian civil society has a moral right to ask that the government not deviate from the commitment it made to the ICPD agenda by virtue of being a signatory to the document.

The NPP was formulated and announced in February 2000 and is the country's first comprehensive and holistic population policy. The NPP envisions overall economic and social development, and its main goals are improving people's quality of life,

enhancing their well being, and providing them with opportunities and choices within a comprehensive, holistic, and multi-sectoral agenda for population stabilisation. It envisions population stabilisation as a function of accessible and affordable reproductive health; increased coverage and outreach of primary and secondary education; assured availability of basic amenities like sanitation, safe drinking water, and housing; women's empowerment through enhanced access to education and employment; and infrastructure development like roads and communication. It promotes open information, awareness, empowerment, and a development-based approach that envisions population stabilisation as a multi-sectoral endeavour. In principle, it unequivocally rejects any approach that includes targets or incentives and disincentives, and it calls for a Target-Free Approach (TFA). The NPP is a gender sensitive policy that incorporates a comprehensive holistic approach to the health and educational needs of women, female adolescents, and the girl child. A primary theme running through the NPP is to provide quality services and supplies as a basket of choices: people must be free and enabled to access quality health care, make informed choice, and adopt measures for fertility regulation that best suit them.

Objectives of the National Population Policy

The immediate objective of the NPP is to address unmet needs in the areas of contraception, health infrastructure, and health care personnel in order to provide integrated service delivery for basic reproductive and child health care. Its mid-term objective is to bring the Total Fertility Rates (TFR) to replacement level countrywide by 2010 through the vigorous implementation of multi-sectoral operational strategies. Its long-term objective is to stabilise the population by 2045, consistent with the requirements of sustainable economic growth, social development, and environmental protection. Some specific goals of the NPP are as follows:

- Universal access to information, counseling, and services for fertility regulation;
- 100 percent registration of births, deaths, marriages, and pregnancies;
- Containing the spread of HIV and promoting better integration with the National AIDS Control Organization (NACO);
- Managing reproductive tract infections (RTI) and sexually transmitted infections (STI);
- Mainstreaming Indian systems of medicine;

- Promoting a small-family norm to achieve a replacement level TFR: a small-family norm is not a two-child or one-child norm, but could mean anywhere between one to five children and depends on the necessity, need, and requirement of a family; and
- To bring about convergence in the implementation of related social sector programmes so that family welfare becomes a people-centered programme.

Strategic Themes

A transformation in the mindset, style, and functioning of bureaucrats, technocrats, and service providers is necessary to approach the population issue and implement the strategies and the Action Plan of the NPP, particularly accountability, planning, monitoring, and coordination. The most important strategy is the decentralisation of planning and programme implementation. In India, there are more than 620 districts, 6,38,000 villages, and 4,000 cities and towns. The decentralisation of planning and programme implementation will require that each village and city/town/ward create its own annual plan and that health service personnel involved in the Integrated Child Development Scheme (ICDS), and others, work together. A community-needs assessment, using participatory methods, should be carried out by way of a house-to-house survey of each family to assess their specific needs and requirements in relation to infertility, death due to disease, and contraceptives. Elected representatives of village Panchayats/Gram Sabhas should be charged with the task of ensuring that a thorough needs assessment is conducted, and that planning for the effective implementation of programmes is undertaken. In this way, a holistic plan for health, population, and social development can be created in each village and ward. These village and ward plans can in turn become the basis for creating district plans, state plans, and ultimately a central plan that will truly reflect the needs of families and communities.

If the sharply targeted population control measures remain in the Common Minimum Programme (CMP), we can supplement them with village, ward, and town specific community plans that do not impose targets set by the local, state, or central governments. It will then truly be a people's programme.

In addition to decentralised planning and implementation, other important strategies of the NPP include

- Convergence of service delivery at village levels;
- Empowering women for improved health and nutrition;

- Child survival and child health initiatives;
- Addressing unmet needs for family welfare services;
- A special strategy for under-served population groups in urban slums, tribal communities, hill-areas, and displaced and migrant populations;
- Addressing adolescents' needs;
- Increasing the participation of men in family planning;
- Diversification of health care providers;
- Collaboration with Non-Government Organisations (NGOs) and the private sector and establish commitments from them;
- Mainstreaming Indian systems of medicine and homeopathy;
- Researching contraceptive technologies and reproductive and child health;
- Providing for the older population; and
- Assuring people's access to information, education, and communication.

In the field of contraceptive technology and research on reproductive and child health, some excellent research has taken place and new products have already been released into the market. The non-hormonal male contraceptive known as Reversible Inhibition of Sperm Under Guidance (RISUG) is an example of the ingenuity of Indian scientists. There are many other products, such as Saheli, that are also non-hormonal and safe for women's health. One immediate concern is providing for the older population. The Census revealed that 7.6 percent of the population is 60 years of age or older. As the average life span in India has increased due to the direct intervention of modern science and technology, we must find a way to look after this ageing population.

Since I have worked for the government, I have had a behind the scenes look at the way it functions. I know that there were many failings, but I am happy to see that the present CMP is an excellent blueprint for the effective implementation of policies, barring the particular portion that discusses population. I am hopeful that the People's Tribunal will take up this issue and recommend that the government drop this particular strategy, because it will kill the comprehensive Primary Health Care (PHC) approach. Any strategy adopted has to be within the people's health mandate, only then can population stabilisation efforts proceed on a smooth course that will create a people's movement producing the desired results.

two boy norm: state governments poised to blunder

Colin Gonsalves*

Several state governments in India are on the brink of enacting legislation that will enforce the Two-Child Norm (TCN) as a general disqualification clause. This follows the Indian Supreme Court's mistaken observation in respect of the TCN in *Javed vs. State of Haryana*.⁴ The Apex Court acted on the presumption that the TCN was incorporated in the National Population Policy (NPP) of 2000; however, nothing could be further from the truth.

Actually, the TCN came in by a side wind. Individuals who were disqualified from contesting Panchayat elections in Haryana filed a petition in the Supreme Court impugning the constitutionality of state notifications that lay down the TCN. In these proceedings, the government appears to have given the Apex Court the impression that the TCN was indeed part of the NPP; however, the consultations that took place prior to the adoption of the NPP show that the TCN, with its package of disincentives, was omitted from the policy because of its anticipated adverse impact on poor women.

The International Conference on Population and Development (ICPD) in 1994 led to a paradigm shift from population control to reproductive health with the realisation that implementing education, development, and women and child welfare programmes is a better way to lower family size than the use of punitive disincentives. It was agreed that the emphasis should be placed on quality of life and that there would be no coercion, incentives, or disincentives. With that, India left behind its emergency model of family planning and introduced a Target-Free Approach (TFA), which was followed up by the NPP.

The NPP defined its overriding objective as improving quality of life. One of its several immediate objectives was to address unmet needs for contraception. As many as 25 percent of poor families want to use contraception but are unable to access it. There is no mention of the TCN, or of targets and disincentives, in the NPP. Yet, several states have put together a package of punitive measures for those who breach the TCN such as exclusion from elections, denial of ration cards,

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⁴ 2003 8 SCC 369, for text see Annexure 5

kerosene and other Below Poverty Line (BPL) incentives, denial of education in government schools to the third child, and denial of welfare programmes for Scheduled Castes (SCs) and Scheduled Tribes (STs).

The decision of the Apex Court in *Javed vs. State of Haryana* is a classic example of how the Court can make serious mistakes when dealing with intricate social issues, merely because the parties before the court do not explain the complexities involved. The Court relied on an obsolete 1960s Club of Rome framework and characterised “the torrential increase in the population” as “more dangerous than a hydrogen bomb.” It quotes two obscure writers on the subject who say that “the rate of population growth has not moved one bit from 1979.” In fact, India has experienced the sharpest fall in its decadal growth rate, from 23.81 percent in 1991 to 21.34 percent in 2001, and its lowest population growth rate since Independence.

The Court also refers to the first seven five-year plans, that cover the period up to 1991, which emphasised punitive disincentives; it failed to note the landmark departure in the approach to population stabilisation that occurred at the ICPD in 1994 that rejected disincentives and emphasised development, quality of life, and women’s welfare.

The decision of the Apex Court in *Javed vs. State of Haryana* is a classic example of how the Court can make serious mistakes when dealing with intricate social issues.

The Court also failed to recognise that none of the grounds taken in the petition related to the TCN’s impact on women. While a reference is made to its impact on women towards the end of the judgment (under the title “incidental questions”), even these were dismissed as out of hand. Research in Orissa, Rajasthan, Haryana, and Madhya Pradesh indicate that utilisation of the TCN to disqualify Panchayat candidates has led to the desertion of wives and families, increased the number of abortions with all its associated health risks, motivated people to give their children up for adoption, and the initiation of new marriages by elected male Panchayat members. Punitive disqualification measures operate mainly against poor women. The Total Fertility Rate (TFR) is 3.47 among illiterate women, as compared to 1.99 for those among the middle classes. The infant mortality rate among SCs, STs, and Other Backward Classes (OBC) is 83, 84, and 76, respectively, as compared to 62 for other groups. These populations have high fertility rates because they also experience high infant mortality rates.

The TCN will widen the inequality gap among people, as disincentives disproportionately impact the already deprived sections of the population. It also provides an impetus for sex-selective abortions and the elimination of female fetuses, thereby contributing to the alarming decline in the child sex ratio revealed in the 2001 Census.

India's TFR had decreased from 6 in 1951 to 3.2 in 2001, but the population will continue to grow due to population momentum. The single most effective way in which to reduce this population momentum is to raise the age of marriage. China's TFR dropped from 2.8 in 1979 to 2 in 1991: this drop is traceable to its emphasis on education. India should learn to stop counting its people, and instead count on them.

the two-child norm law in panchayats: people's experiences

Nirmala Buch*

India's concern with the issue of population began with the adoption of a National Family Planning Programme (NFPP) in 1952. In 2000, the National Population Policy (NPP) was formulated in the spirit of the International Conference on Population and Development (ICPD) of 1994, which recognised the linkages between population, development, and gender; however, some states have adopted laws restricting participation in local government units (Panchayats and municipalities) under what is broadly known as the Two-Child Norm (TCN). It applies only to individuals who give birth to a third (or higher) child after a specified cut-off date. The assumption is that this disincentive will deter people from having large families and ensure that local elected officials become role models for their communities. The TCN has also been extended to bar entry into public service and to restrict the benefits of development and welfare programmes. This has mostly affected the vulnerable sections of society who recently entered political life and have weak bargaining power. It also affects women's already low status.

This paper is concerned with exploration of people's experiences with the TCN in Panchayats in the states of Andhra Pradesh, Haryana, Himachal Pradesh, Madhya Pradesh, Orissa, and Rajasthan. All of these states adopted the TCN in 1994, except for Madhya Pradesh and Himachal Pradesh, where it was introduced in 2000. In 2003, Maharashtra also legislated the TCN, making it in force in a total of eight states: this number includes the new state of Chhattisgarh, which inherited the amended Panchayat law with the TCN from Madhya Pradesh, the state from which it was formed. This paper is based on the exploratory studies conducted by Mahila Chetna Manch in 2001 and 2002 in Andhra Pradesh, Haryana, Madhya Pradesh, Orissa, and Rajasthan that was supported by the United Nations Population Fund (UNFPA).¹ These studies sought to explore the implications and consequences of the TCN on people's lives, with special reference to people's ability to make reproductive choices and identify the constraints and effects of the law. The paper also draws upon the experiences and data collected by us during our on-going

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¹ All names have been changed to protect participants' identities.

study of women's experiences in Panchayats in Madhya Pradesh, Rajasthan, and Uttar Pradesh.

The evolution of the TCN law must be seen in the context of the 73rd and 74th Constitutional Amendments, adopted in 1992, which sought to achieve more inclusive and gender-sensitive rural and local government units. We looked at the variations in TCN laws in different states and analysed the responses we received from various people including policy makers, programme implementers, members of the media, lawyers, and other civil society organisations. We noted the significant trends in legal pronouncements on this subject, which culminated in the Supreme Court judgment of 2003 (*Javed vs. State of Haryana*)², and then analysed the experiences of the Panchayat representatives affected by TCN laws. Finally, we looked at the implications of TCN laws on the process of democratic decentralisation, the participation of women and vulnerable groups in Panchayats, human rights, and gender justice. We also examined the efficacy of the TCN in achieving its stated objective of stabilising the population by encouraging contraceptive use and a smaller family size.

The TCN's history begins with the 1991 Census and policymakers' subsequent focus on the issue of population growth. In 1992, the Committee on Population, created by the National Development Council (NDC), recommended that legislation be enacted in Parliament to prohibit anyone with more than two children from holding any political post, spanning from Panchayats to Parliament. This recommendation pre-dated the ICPD agreement and the NPP of 2000, and at that time it was believed that a TCN for all political offices would convey the country's seriousness about adopting a small-family norm. The then Chief Minister of Rajasthan, who was a member of the NDC Committee, had already introduced a TCN measure for Panchayats and municipalities in Rajasthan's state law, and he suggested that it be adopted by the Committee. Of course, Rajasthan only implemented the TCN law after including it in its Panchayat Law in 1994 because of protests following the Panchayat elections of 1995. The states of Haryana, Orissa, and Andhra Pradesh

² Even the Supreme Court observed, "We do not think that with the awareness which is arising in Indian women folk, they are so helpless as to be compelled to bear a third child even though they do not wish to do so" (p. 37 of the Judgement of July 31, 2003 in *Javed & others vs State of Haryana & others.*), and the Supreme Court observed, "Complacence in controlling population in the name of democracy is too heavy a price to pay, allowing the nation to drift towards disaster" (p. 22 of the Judgement cited above), but the Supreme Court observed, "Who can better enable the discharge of functions and duties and such constitutional goals being achieved than the leaders of Panchayat themselves taking a lead and setting an example." (p. 25 of the judgement cited above)

soon followed suit: they included similar TCN provisions within their respective Panchayat laws, which were originally enacted to conform to the 73rd and 74th Constitutional Amendments.

The 73rd and 74th Constitutional Amendments ushered in a major change in the composition of Panchayats by introducing reservations for Scheduled Tribes (STs), Scheduled Castes (SCs), and women, thereby ensuring that vulnerable sections of society are represented in the political process. The Amendments also reduced the minimum age requirement to become a Panchayat member from 25 to 21 years in order to encourage more young people to become involved in politics.

It is clear that the TCN disproportionately affects the very sections of society that the constitutional mandate sought to include. TCN laws were drafted with a bias against these new aspirants to the political process.

However, the restrictions to political participation introduced by the TCN run counter to advances made by the 73rd and 74th Amendments. It is clear that the TCN disproportionately affects the very sections of society that the constitutional mandate sought to include. TCN laws were drafted with a bias against these new aspirants to the political process. For example, family size before the cut-off date does not lead to disqualification, ensuring that the TCN will only affect young people in the reproductive age group. Other states' TCN laws are merely replicas of the original Rajasthan law.

The executive authorities in most of these states, (commissioners, collectors, sub-divisional officers) enforce the TCN. In Andhra Pradesh, the civil judiciary (Munsif) is responsible for dealing with complaints as a civil case, and this has led to an executive or judicial manner of implementing this law. Proceedings are initiated by a complaint, although it can also be initiated by the executive officer in the absence of a complaint; as a result, the TCN has become a new weapon to use in local political rivalries, rather than a tool to promote small families. The main motives for initiating TCN proceedings seem to be preventing rivals from contesting elections or ousting rivals from their elected positions. While executive officers generally do not use their powers to initiate actions, a single direction from any of the relevant state governments could spur them to take action. In fact, some officials have started to do just this, since 2003, as a way of proving that they are contributing to population stabilisation efforts.

We must also mention some of the difficulties and limitations of our study. Despite the ‘national interest’ and the crisis of ‘population explosion’ that have been cited as rationales for the TCN law, there is virtually no data available on disqualification cases involving violations of the TCN law. Even though legal proceedings take place, concern for this important measure requires its constant review. When the number of disqualified people is indicated at all, our subsequent fieldwork found the information to be incomplete. This, along with the time available for the study, made sample selection difficult. Monitoring and documentation of TCN cases is still poor and official numbers have been disproved by other studies. For example, official agencies claim that the TCN laws in Madhya Pradesh and Rajasthan have affected 852 people as of March 2004. However, the Non-Government Organisation (NGO) Sama Resource Group for Women and Health’s records indicate that 866 people have been affected by TCN laws as of only February 2003.

The intimate nature of this subject and the inter-state/inter-district movement that takes place for sex-selection tests and abortions in order to circumvent the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PC & PNDT Act) are serious problems. With the exception of the opponents of TCN victims, people in the community did not want to talk about this subject. There seems to be a conflict between the ‘personal’ and the ‘national’ in regards to family size and this has translated to people supporting the law in statements, but violating it in practice. Thus, a female ex-Sarpanch who expressed her strong desire to contest elections again in 2005, spoke in support of the TCN law; however, when she was reminded that she was currently pregnant, and would therefore be disqualified from contesting elections, she simply told us she would deal with it at the appropriate time.

The NFPP promoted the concept of a small family. Its key slogans of “*do yaa teen bachche ghar men rahte achche,*”³ “*hum do humare do,*”⁴ and “*do yaa teen bachche bus,*”⁵ along with images of parents with two children (a boy and a girl) exhibit a strong son preference. People are very familiar with these slogans and this has affected the responses we received in the field regarding TCN laws. People were generally surprised that anyone would even question the need for, or desirability of, a small family: they equate the TCN law with issues such as social development and women’s autonomy. However, these slogans and images also contribute to

³ English translation: “the home is happy with two to three children”

⁴ English translation: “we two, our two”

⁵ English translation: “only two or three children”

some of the questionable practices people resort to in order to meet the requirements of TCN laws when they are unable to break away from cultural and social practices and attitudes biased against female children. They also reflect the government's attitude concerning the ideal number of children, which naturally influences people's thinking. The false belief that China succeeded in reducing its population growth by enforcing a One-Child Norm (OCN) has also contributed to support for the TCN. In general, the difference between an externally imposed norm that is enforceable by law and the idea of responsible choice is quite blurred. These trends were found in respondents from all five states included in our survey. We interviewed 272 people: 10 community members who participated in Focus Group Discussions (FGD), 56 government officials, and 70 other people including lawyers, media persons, and NGO personnel. We also interviewed 136 Panchayat representatives from two districts each (except for Andhra Pradesh and Orissa where representatives from only one district each were interviewed) who were either disqualified or faced a TCN enquiry or proceeding. The interviews and perspectives will be analysed below.

Perspectives and Opinions of Officials and Civil Society

Government Officials

There was unanimity among senior government functionaries across all states concerning the importance of TCN provisions. They cited the 'population problem' and 'national interest' as reasons for their opinion. One senior health policymaker said "how long can we wait for social development? The population problem is too serious." Another policymaker concerned with Panchayats said "the population is too serious a national problem. Everything is fair to deal with it."

There was also uniform acceptance of the unproved assumption that a TCN provision will make Panchayat members have smaller families, and that this will lead the community-at-large to also have smaller families. The officials discounted the notion that the TCN could potentially increase women's vulnerability to abortions and desertion, and they were under the mistaken impression that Indian women elected to Panchayats are so empowered that they can freely decide the timing and number of their children and resist familial and/or social pressures to have a son. At the implementation level, the TCN law was seen as just one of among eleven or twelve conditions that define eligibility for Panchayat posts. There were other noteworthy comments. One official in Haryana stated that the TCN was an important tool for harassment; he referred to it as the Harassment Act. In Orissa, medical college professors actually called for harsher laws similar to China's OCN. This is very

interesting given the low population growth rate in Orissa. In Andhra Pradesh, the only southern state that has a TCN provision, a district medical officer claimed that the law is unnecessary because the desire to have small families is nearly universal.

Lawyers

Lawyers from the superior Courts of all five states agreed that the TCN law is justified. In the North Indian states, ‘national interest’ was the main reason they supported the TCN law. In Rajasthan, there has been more than one case in which the High Court ruled in favour of the norm and the lawyers agreed with its decisions. However, one lawyer practicing in a subordinate Court in Andhra Pradesh was categorical about the questionable practices adopted to abide by the TCN: “This act is deceiving the poor. The educated are deceiving the illiterate. Wrong certificates are being produced. Some people say they have given their child for adoption, others deny that the child is theirs. All sorts of things happen, and, anyway, most candidates complete their terms by the time the Court trials are finalised.” One lawyer in Orissa felt that the law violated civil rights and was an invasion of privacy. For lawyers who have handled TCN cases, it was just another law. Most felt that problems associated with implementing the TCN law could be avoided if there was better dissemination of information about it.

Media

The role of the media in each state has been limited to mentioning that the TCN law exists and reporting on cases of complaints and disqualifications. Members of the media from all states believe that there has been little debate in the media about the norm and its impact on people’s democratic rights, especially those of women. There is also the feeling that the TCN should be extended to cover state and national legislators as well.

Non-Government Organisations

Opinions from the NGO community were mixed. While some supported TCN legislation, others felt that it was not in the interests of women and had great potential for abuse. In some cases, NGO leaders believe that the norm adversely affects Dalits and the poor because they tend to have larger families for a variety of reasons. NGOs also admitted that they have not analysed the TCN’s implications and do not highlight it in training programmes for Panchayat representatives.

Community Members

There was a difference of opinion regarding the TCN among members of the community. Men and people in the upper classes tend to agree that the norm is

useful, while women and poor people are anxious about the norm and refer to anxiety about their children's survival due to inadequate health services. Members of the community also commented on the misuse of the TCN to settle personal and/or political scores and the fact that people with resources are able to circumvent it. FGDs with community members revealed that affluent individuals are less likely to be challenged if they violate the norm, and if they are challenged they can afford to contest the charges through litigation. In contrast, the poor, particularly women, are in no position to do so; therefore, they are extremely vulnerable to such challenges. Our case studies substantiate these observations. For example, a complaint against an influential female Sarpanch was closed after the female infant died, obviously of illness and neglect; however, the commissioner disqualified another person who had a stillborn child.

The lack of extensive debate about these issues seems to stem from the fact that the Courts have consistently upheld the validity of this law from the very beginning and have extensively referenced the 'population explosion' and the 'crisis of population control' in their reasoning.

Experiences of Panchayat Representatives Facing Disqualification

A total of 136 Panchayat representatives facing disqualification were respondents in our study. All respondents were interviewed and forty-three detailed case studies were prepared. The picture that emerged from the interviews reveal that:

- Women form 41 percent of the respondents (almost half), while the overall proportion of women in Panchayats is a little over one-third.
- The weaker sections of society such as SCs, STs, and Other Backward Classes (OBCs) form an overwhelming 80 percent of respondents. This same trend is seen in the total number of people affected by the TCN law in Madhya Pradesh as of March 2004: 72 percent belong to one of these groups.
- Roughly 50 percent of respondents have an annual income of less than Rs. 20,000.

Most representatives were young and fell within the age range of 21 to 49 years. An overwhelmingly large number (95 percent) of representatives were from the village level, and they generally had lower educational and income levels than those from block and district levels. The proportion of Sarpanches (49 percent)

was higher than Panches (46 percent), ostensibly explained by the fact that Sarpanches are believed to exercise more power; therefore, they are more likely to be targets for disqualification.

The findings of these case studies, and the interviews, are summarised below.

Contraceptive Use and Family Planning

The main objective of the TCN law is to promote contraception so couples have smaller families. Most (80 percent) of the affected representatives are aware of the importance of having small families and over a half (53 percent) have adopted permanent contraceptive methods, but this was only after they achieved their desired family size: more than two children and at least one or two sons. Roughly one-fourth (23 percent) of the respondents practiced some form of contraception. In eleven cases, abortions were induced; pre-natal sex-determination tests were performed in four of the cases.

Of the 23 Panchayat representatives interviewed in Andhra Pradesh, the majority of those disqualified (15 out of 17) claim they adopted permanent contraceptive measures, but only after they obtained their desired family size. Most of the respondents are aware of family planning methods and the advantages of having a small family. They claim that their decision to undergo sterilisation had no connection whatsoever with their decision to contest elections. On the other hand, in a sample of twenty affected Panchayat representatives in Madhya Pradesh, only twelve were aware of family planning methods. Among these, only eight practiced some form of contraception.

It was observed that families tried to show that they had fewer children than they actually did to avoid disqualification for violating the TCN. A 35-year-old Sarpanch from a backward potter caste in Nalgonda has four children from two wives. He insists that he is not in violation of the TCN because he left his second wife, who is the mother of two of his children, although she continues to live in the same village. Another 40-year-old cobbler SC Sarpanch in the same district, sent his wife away to her parents' home when she became pregnant for the third time. A complaint was made against him, but then dropped when a Dalit organisation threatened to expose cases of TCN violations by other influential persons in the district. The cobbler then quietly remarried another woman.

Mitwa, the most educated OBC woman in her family, was selected to be a Pradhan of a Panchayat Samiti in Rajasthan in 1995. She did not want to have a third child, but her husband wanted a second son. Mitwa had three abortions after the elections, and as a lactating mother she was unable to openly feed her undeclared child or take the child with her to meetings. She continued this way until 1998, when she was finally disqualified for violating the TCN law. Her experience with TCN complaints and the resulting litigation has made her bitter and disillusioned.

The wife of Mangatram, Sarpanch of a Gram Panchayat in Morena district in Madhya Pradesh, gave birth to their third child in November 2001. He maintains that the child could not be his since his wife was living at her parents' home in Uttar Pradesh since November 1999. He requested permission from the Additional District Magistrate (ADM) to divorce his wife on grounds of adultery.⁶ A thirty-year-old well-placed Rajput Sarpanch from Sawai Madhopur district had one son and two daughters. She had her fourth child while she held the post of Sarpanch. Her family wanted one more son, since they consider one son equal to only one eye. She admitted herself into a hospital and delivered under her sister-in-law's name. Later she abandoned the female infant in town and the child died six months later, allegedly of rickets. In this way, she was able to have the complaint against her dropped. Her husband also has two children with his second wife, who is a nurse.

Maheshwari had an abortion because she wanted to stand for the post of Sarpanch in the Panchayat elections of August 2001. She lost the election, and later her two-year-old son died when he accidentally drank kerosene. She denied the fact that she had an abortion, perhaps fearing an enquiry. She was pregnant again at the time of our survey.

Twenty-six-year old Menka is a ST Sarpanch in Angul district of Orissa. She has three daughters, one of which was born after the TCN cut-off date. She does not use any contraceptives and will not undergo sterilisation because she wants a son. During her third pregnancy, she had a sex-determination test and the doctor told her that she was carrying a boy: however, the doctor was mistaken and the child actually turned out to be a girl. All she could say was "if I had known, I would have aborted. Now I have lost my position and there is no son." She tried to prevent her disqualification by obtaining a false certificate declaring the child was in fact her sister's.

⁶ Nav Bharat, Bhopal edition, 16th April 2002

There are others who continue to have more children for a variety of personal reasons, despite the existence of the TCN. Rachna is a 35-year-old illiterate and SC wage labourer and Sarpanch from Faridabad district. Her illiterate husband works as a mason. She contested the Panchayat election in 2000 and was elected to a seat reserved for SCs. She gave birth to her eighth child at the time she was Sarpanch. She did not contest the disqualification notice when she received it. She simply said: “What anger can a poor person show? It does not matter if the Sarpanch post has gone. I was working as a wage labourer before, so do I now.”

Rama is a tribal Sarpanch in Betul, Madhya Pradesh. He has six children by three different wives. The last child, a boy, was born in February 2001. When asked about the TCN, he took it very lightly and said that he had heard about it from the Panchayat secretary. When we informed him that he was subject to disqualification from his post because of his son he replied: “The Sarpanch post is not going to support me during my old age, but my son will. It does not really matter if I lose the post of Sarpanch.”

At the time of our study there were a number of cases involving TCN violations, but no action had been initiated against the offending representatives. While a number of representatives were disqualified in Betul district in 2004, representatives’ opinions remained unchanged in desiring old age security in a son or in their concerns about child survival. Sarupi, a 30-year-old illiterate Panch, who had undergone sterilisation after her fifth child escaped disqualification by the TCN law because her youngest child was born before the 2001 cut-off date. Upon receiving a notice from the GP Sarpanch, she said “we produce more children so that even if we lose one or two, some will survive for old age security.”

Radha, a 30-year-old SC woman, was elected Panch in 1997. She was holding the post of Panch at the time of her fourth pregnancy. She had a sex-determination test and was told that the foetus was female, so she had an abortion. During her next pregnancy, she had a sex-determination test again and was told that this time it was a boy. She did not terminate this pregnancy and gave birth to a son; afterwards, she was removed from her post. For Radha, having a boy was more important than holding a political post. Similar stories were found in all the states.

Two-Child Norm Complaints and Disqualification

Those with money and influence are able to delay or influence inquiries and prolong court proceedings, so that they can continue in their posts, even if they did indeed

violate the TCN law. Among the twenty representatives that were interviewed from the districts of Ajmer and Alwar in Rajasthan, seven had been disqualified, two exonerated, and eleven had enquiries pending against them. There are also many cases in which violations by representatives are not reported, and when they are reported, fraudulent documents are produced to ensure that no action can be taken to remove them.

When Ramlal contested against Mukesh for the post of Sarpanch in Sawai Madhopur district, he raised the issue of Mukesh's four children. Ramlal filed an election petition with supporting documents: Anganwadi record, birth-death register, immunisation record, ration card, etc. However, no action was taken against Mukesh and he won the election. In another case, the Pramukh, as well as other members of the Zila Parishad, knew that another Zila Parishad member from the Mina caste had violated the TCN; however, they were afraid to speak out against him because he came from a dominant caste and belonged to the party in power.

Because action is only taken after a TCN complaint is lodged, there are many cases in which the TCN is being used to settle political scores. Among the ten case studies in Andhra Pradesh, three of the complaints were politically motivated. In two of the cases, the representatives held office earlier and were in violation of the TCN at that time, but no complaint was made against them during their earlier terms. In the third case, the complaint was false because the representative's third child was born before the TCN cut-off date. Another case involve young OBC female Sarpanch who was elected to a reserved seat after five decades of having a single party in power. She faced mental and physical assault: red chilli powder was thrown in her face. After the police intervened, the TCN was used to harass her, even though her youngest child was born before the legal TCN cut-off date. In all three cases, the representatives were from backward castes and two of them were women. Interestingly, in all three cases the couples adopted permanent methods of contraception before contesting elections, but people still sought their disqualification.

In Haryana, we came across disqualified representatives that were certain the complaints against them were politically motivated. They cited other Panchayat members who have violated the TCN, but have not had any complaints filed against them. Some disqualified representatives claim that they would not have contested elections if they had been aware of the TCN law. Hoshiar, an OBC Panch in Ambala, was unanimously elected to his post. The community had agreed at that time that a complaint would not be raised against him for having four children; however, when

he went with other Panchayat members to remove encroachments on Panchayat lands, the opposition party filed a complaint against him; he was disqualified.

Circumventing the TCN Law

Representatives who face complaints for violating the TCN law use many strategies to avoid being disqualified such as denying the birth of a child, hiding or misreporting children, tampering with documents, and providing fake documents. In Rajasthan, we came across several methods that were attempted or successfully used to escape TCN disqualification. In one case, a child's horoscope, details on the child's ration card, and the child's school records were provided as proof of birth to no avail. Another case involved tampering with an Auxiliary Nurse Midwife's (ANM's) records. Someone else had a doctor certify that their child was not theirs. One female representative tried to hide her child among the other children in her joint family and one OBC Sarpanch had a sex-determination test, and then an abortion, to avoid TCN disqualification.

In Haryana, the study team came across different strategies to avoid TCN disqualification. The common practice in Gurgaon district is to obtain stay orders from a higher authority, and then continue in the post for some time. In fact, it was disqualified representatives from Haryana who were at the forefront of the Supreme Court case that decided the legality of the TCN for Panchayats in 2003.⁷ The study team also observed that children are given up for adoption to avoid TCN disqualifications.

In Andhra Pradesh, birth certificates, sterilisation certificates, and certificates indicating failed sterilisations are all used to contest TCN disqualifications. There are also cases involving the desertion of wives. In Orissa, the desire to contest TCN complaints is not very strong since people are poor and cannot afford prolonged litigation; however, there were some cases in which representatives provided documents in an effort to prove that the complaints lodged against them were ill-founded.

In Madhya Pradesh several tactics are used to avoid TCN disqualification, ranging from expressing ignorance about the norm to pushing the conception date prior to the cut-off date; for this, they use Anganwadi/ANM records and ration cards. Some

⁷ Please see Annexure 5: Javed vs. Haryana.

people have also given their children up for adoption to relatives. In one case, a couple planned to divorce simply to avoid a TCN disqualification.

There is an overwhelming opinion among key actors (policymakers and implementers, lawyers, NGO workers, etc.) that the TCN law is necessary to reduce family size and population growth, which will then provide an impetus to development. The judiciary has also accepted this idea of population control and supports the TCN, citing limited resources and a ‘population explosion’ as the major problems facing the country. However, there is no conclusive evidence proving that the TCN law is motivating Panchayat leaders to adopt smaller families or set an example for their communities. In fact, the TCN law seems to have no bearing on the functioning of Panchayat representatives.

A large proportion (76 percent) of disqualified representatives in our study practice contraception; however, this had little to do with a preference for small families. When given a choice between a leadership role and a male child, the male child won hands down in most cases. A number of respondents only learned of the TCN after disqualification proceedings against them were already underway. Others were fully fully informed about the law, but it did little to motivate them to refrain from having more than two children.

There is no conclusive evidence proving that the TCN law is motivating Panchayat leaders to adopt smaller families or set an example for their communities.

The study also showed that a large number of disqualified representatives resort to abortions when faced with the prospect of a TCN disqualification. Implementing the TCN in Panchayats is causing poor gender indicators, low female literacy rates, declining child sex ratios, desertion of women, bigamy, and pre-natal sex-determination and the sex-selective abortions of female foetuses, all of which are affecting the already precarious status of women.

The TCN law has an adverse impact on the participation of women and the weaker sections of society in local self-governance. Our study indicates that a disproportionately high number of people from the weaker sections of society are among those facing TCN disqualification. The democratic rights of the poor, the backward, and women are further compromised by their vulnerability to TCN complaints and their inability to pursue protracted and expensive litigation. On the other hand, those with political or financial clout can more easily circumvent the law.

One major concern emerging from the interviews, and from judicial pronouncements, is the lack of awareness about the strong linkages between population, development, and gender. The concept of a ‘population explosion’ and a scarcity of natural resources remains the dominant discourse, despite the fact that the ICPD aims to bring social and human development center-stage in population stabilisation and development discourse. There is also an inherent bias that implies it is mainly the poor, illiterate, and certain sections of society that have large families; therefore, stringent corrective measures such as a TCN law are needed. Candidates are staying in power by adopting questionable practices that demean the social status and dignity of women and have long-term implications for the declining child sex ratio.

Is it merely a coincidence that TCN provisions were introduced in Panchayat laws at the same time that the 73rd and 74th Constitutional Amendments were passed? The application of the TCN has the potential to reverse the democratic rights of those groups who are supposed to benefit from these amendments; the overwhelming presence of these groups among disqualified representatives confirms the impression that it is indeed not a coincidence.

We need to have serious debate and discussion about the TCN and its impact on democratic participation, gender equity, and human rights; about judicial pronouncements that claim that the right to contest elections is not a fundamental right, but a statutory right upon which conditions can be imposed. Our study shows disturbing trends and consequences, especially for women, that result from the implementation of TCN laws. It is a matter of deep concern that stricter and more expansive applications of the TCN are under consideration such as using it as a criterion for eligibility for basic services (or the denial of services).

India, as a democracy, can achieve the objective of population stabilisation only by promoting democratic participation and protecting the rights and choices of its people, not through coercion. The linkages between population, development, and women’s autonomy and status need to be widely debated while the application of the TCN is put on hold.

two-child norm and the political participation of women and marginal communities

Rita Sarin*

There is no doubt that Two-Child Norm (TCN) provisions stipulating that those with more than two children be dismissed from elected Panchayat posts were introduced with the positive intention of controlling population growth. However, there are many complexities and contradictions involved with TCN provisions, and this has made it necessary to reconsider its use; particularly given its impact on civil rights, democracy, law, and the right to vote. For example, TCN laws were implemented in a hurried fashion and with weak political will: they are only applied to Panches and Sarpanches, while Members of Legislative Assembly (MLAs) and Members of Parliament (MPs) do not fall under their purview. The TCN is probably also the first law of its kind that comes into force only when a complaint is filed against an elected Panchayat representative. Finally, the victims of TCN laws overwhelmingly belong to social groups that are benefiting from recent constitutionally-mandated reservations for Panchayat Raj Institutions (PRIs). There is no other way to describe this scenario except to observe that what one hand is giving, the other hand is taking away. In fact, an in-depth analysis reveals that TCN provisions have, in fact, defeated one of the most significant objectives of village self governance: handing over the reins of rural development to the weaker sections of the society.

It is highly doubtful that the majority of Panchayat representatives elected to reserved seats, and then subsequently dismissed, were even aware that a TCN provision for Panchayats existed. Even if they were aware of this rule, there may have been little they could have done to control their circumstances to insure they did not violate it; for example, women are often not in a position to decide family size and low child survival rates and inadequate access to contraceptives and health care also play roles.

There are many questions that have not been adequately addressed by those who adopted and implemented the TCN. What if a second pregnancy leads to the birth of twins? If both husband and wife are Panchayat representatives, will both of them

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be dismissed from their posts if they have a third child? If a Panchayat representative already has two boys, but than has another child that is female, does that not contribute to improving the sex ratio? These are some of the questions that need to be considered and answered.

The Hunger Project Survey

The Hunger Project illustrates these issues through a sample study conducted in thirteen districts of Madhya Pradesh: Dhar, Vidisha, Katani, Tikamgarh, Panna, Jhabua, Raisen, Shahdol, Anoopur, Hoshangabad, Sagar, Sihor, and Ashta.¹ The study had three main focuses: to record the views of the disqualified Panches and Sarpanches, to record village/community opinions regarding decisions to disqualify Panchs or Sarpanches for violation of the TCN, and to investigate the opinions of those in the administration and senior citizens concerning the TCN.

The study involved 34 different communities and 38 Panchayat representatives, who had been dismissed for violating the TCN. Also included are the accounts of detailed conversations with 19 Panches and Sarpanches, who were on the verge of being dismissed, and conversations with 30 officials in order to gain an understanding of the local administration's attitude in regards to the affected Panchayat representatives. The study was conducted over only a two-month period, which explains the dearth of statistical figures, but there is ample qualitative data that should, in any case, be given more weight when discussing findings on socio-political matters. The study aimed to answer the following questions:

- Are villagers aware of the new TCN provision in the Madhya Pradesh Village Self Governance Act, 2001?
- How does the lack of information about the TCN law affect the attitudes of male and female Panches and Sarpanches?
- What is the attitude of the administration? Does the District Administration (DA) prepare a list of Panchayat representatives who have had a third child after they are elected? Do they verify complaints they receive about TCN violations?
- How is the TCN affecting female Panchayat representatives?

¹ Many others have contributed to this study by collecting relevant data, surveying the Panchayats, and making case studies of individual Panchayat representatives. These include the activists of Gramin Vikas Pratishthan; representatives of HARD, Shahdol; friends from Gram Sewa Samiti, Hoshangabad district; activists of Pushp Kalyan Kendra, Sihor district; of Samarthan, Sihor district; and friends from Mahila Chetna Manch, CEO of Sihor district. Please see Annexure 7 for a full report of the study.

- How does literacy affect the behaviour of Scheduled Castes (SCs) and Scheduled Tribes (STs) in Panchayats?
- How, and on what basis, are TCN complaints received by the District Collector's office confirmed?
- Do the respective Gram Sabhas approve the TCN dismissals of elected Panchayat representatives?
- Which representatives received stay orders against their dismissals? Are they predominantly male or female?
- How have villagers' attitudes been effected by methods used to avoid TCN disqualifications such as fake certificates, adoption, DNA tests, and divorce?
- What has been the state government's attitude following the Haryana & Punjab High Court's decision to uphold TCN laws?

Survey Results and Findings

The removal of Panchayat representatives for violating the TCN must be understood within the context of democracy and elections. Democracy means a system of governance wherein people elect their own representatives. However, the voters' will, and hence democracy, is thwarted when elected representatives are not allowed to assume their posts because of the size of their family.

The majority of villagers believe that dismissing Panchayat representatives for having more than two children is wrong. Decisions regarding family size are considered by them to be personal and private matters that have nothing to do with public service or the objectives of the Panchayat Raj. Women who are Panchayat leaders have been the most adversely affected by the TCN law. While women were recently given a 33 percent reservation in Panchayats, they make up 58 percent of those affected by the TCN: 69 percent were Sarpanches, 5 percent were Up-Sarpanches, and 25 percent were Panches. Women are afraid of becoming entangled in litigation therefore, they fail to contest their dismissals.

By providing women with a 33 percent reservation in PRIs, the 73rd and 74th Constitutional Amendments allowed them to realise their potential leadership qualities and empowered them to participate in local politics. Women have participated in Panchayats for the past nine years; they have written a new chapter in the history of Indian women. They completed Panchayat work on top of their other responsibilities to carry out agricultural work, wage labor, or domestic chores. Many of the women were able to do this despite also living with the stigma of being a Dalit or a tribal. As products of a patriarchal society, many women have been illiterate, passive, and

submissive, but they have now emerged as active agents of social change in their communities. The introduction of the TCN seems to pose additional challenges for these women: “what do you want, home or Panchayat?” Forcing women to make this choice does not empower them. As we said earlier, women are the products of a patriarchal value system that teaches them to give top priority to their homes, husbands, and children: when asked to choose between their homes or Panchayats, the majority of women will naturally choose their homes.

It is ironic that the country is in the midst of an information revolution, yet people continue to remain unaware of a new law that has been that affects them. Why doesn't this issue generate state or nation-wide debate?

The poor and lower castes are also disproportionately affected by the TCN. Action is taken against representatives under the TCN law only when a complaint is filed, and the majority of complaints target the weaker sections of society: 50 percent of all complaints are against members of STs, 22 percent against SCs, and 6 percent against Other Backward Classes (OBCs).

Overall, public opinion about dismissed representatives was positive. Most villagers believe that these people are hard working and committed. They claim that these representatives were easily accessible to them, and that it will not be easy to replace them.

The majority of dismissed representatives had no information about the TCN rule, as such their dismissal orders came as a rude shock, particularly for the female representatives. It was found that 64 percent of those participating in our survey had no knowledge of the TCN law, while 36 percent were aware of it, but did not know when it had come into force or what the procedure was for dismissal. It is ironic that the country is in the midst of an information revolution, yet, people continue to remain unaware of a TCN law that affects them. Why doesn't this issue generate state or nation-wide debate?

The administration has not prepared a systematic list of all Panchayat representatives dismissed so far. Complaints are currently lodged against 69 percent of all elected representatives, indicating that the TCN has become a tool to settle personal and political scores. Furthermore, although the Panchayati Raj Act states that Gram Sabhas are supreme bodies, only 10 percent of all TCN dismissals were placed before them for approval. The Gram Sabhas have not received, or even been informed of, 81 percent of all TCN dismissal orders.

People have become disillusioned with the system. Ninety-four percent expressed their displeasure with the TCN law and 6 percent indicated that they were going to leave Panchayat work because they considered it a troublesome affair - half of these are women. Panchayat representatives do not believe that the TCN law is fair, and 80 percent of them are not willing to accept it under any condition: objections have been raised about the TCN's validity in 73 separate cases.

The TCN law must also be understood in the context of rural and tribal populations. In most rural and tribal areas, basic health care facilities and services are still not accessible to people. As a result, child mortality rates in these areas are very high and confidence in child survival is low. Within this context, living by a TCN is fraught with the real risk of becoming childless. People in tribal and rural areas are in no way at fault for their lack of access to health care services; therefore, they strongly oppose the provision.

The TCN also disproportionately affects illiterate representatives because they do not understand legal jargon, and they usually cannot afford to legally contest any charges against them: 56 percent of representatives removed from their posts were illiterate. Among those dismissed from Panchayat posts, only 3 percent have any prior Panchayat experience; the majority were fresh entrants to the political process.

According to official records, the cases of 284 Sarpanches, 15 tehsil Panchayat representatives, and 488 Panches were under consideration during the 2002 and 2003 period. If village self-governance is based on rules and laws that predominantly disqualify Dalits, rural populations, the illiterate, women, and weaker society - thereby going against the very spirit and concept of *Gram Swaraj* - than what groups will constitute Panchayat leadership? One can infer that if this situation continues unabated, Panchayat membership will become a monopoly of the upper classes and educated men. According to our survey, 72 percent of Panchayats are already run by men, while women are in reality only operating as Sarpanches in 8 percent of Panchayats. In the remaining 20 percent of Panchayats, male secretaries are actually at the helm of Panchayat affairs. Following is a summary of the main findings of the survey:

- No Sarpanch had any prior knowledge of the TCN provision prior to contesting elections.
- The list prepared by District Collector's (DCs') office is based on the complaints that it receives. DCs do not enquire into these complaints to confirm the allegations.

- Most Sarpanches named on the DCs' lists were elected to their posts for the first time in 1999.
- Gram Sabhas have not given their approval to decisions to dismiss Panchayat representatives, even though such proposals were placed before Gram Sabhas in several places.
- Panchayat representatives who have been dismissed, but are able to obtain stay orders are reinstated. However, economically poor representatives, who cannot afford the expenses related to obtaining legal redressal, are removed from their posts.
- Where Sarpanch-patis (husbands of female Sarpanches) run Panchayat affairs, female Sarpanches are not aware of the TCN law for dismissal.
- Most male Sarpanches have managed to obtain fake certificates indicating that they only have two children. They either give their third child up for adoption or send the child away from the village.
- The TCN is being used to harass Panchayat representatives by making false complaints against them.

Despite the concerns discussed above, the TCN law has already been implemented and Panchayat members with more than two children are being dismissed from their posts. Some have accepted their dismissals because it is a government order, some have filed petitions in the courts to contest their dismissals, and some have taken morally questionable steps to try and save their posts. Male Sarpanches and Sarpanch-patis have given their third children up for adoption or uses fake birth certificates to try and obtain stay orders. Some men are also declaring their wives to be of loose moral character and claim that they are not the fathers of the children they give birth to.

declining sex ratio: a national emergency

J.K. Banthia*

In reading the Census 2001, it is now possible to narrate the story of India from the urban to the rural areas. When we issued our report entitled *Child Sex Ratio: Bare Truth – A report on the missing girl child based on the census of India 2001*, it was already clear that the sex ratio in the 0-6 years age group had decreased since 1981 at a much faster pace than the overall sex ratio for the country. The skewed sex ratio in the 0-6 years age group must surely have a negative impact on the overall sex ratio. Perhaps it has already created a cascading effect on the population over a period of time that will now lead to a diminishing sex ratio for the entire country. In fact, the imbalance that has been created within this age group will be difficult to remove and will haunt the population for a long time to come. Undoubtedly, the current sex ratio of 927 in the 0-6 years age group does not augur well for the country's future.

Coming from a government report, the information about the child sex ratio was a bold statement; unfortunately, we were right. The Census data reveals that the female population deficit has risen from 3 million in 1901 to 36 million in 2001.

Table 1

Population of India (in millions)			
Census Year	Population	Male	Female
1901	238	121	117
1951	361	186	176
1961	439	226	213
1971	548	284	264
1981	683	253	330
1991	846	439	407
2001	1,028	532	496

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What is the “Sex Ratio”?

The sex ratio is an index of the male-female (im)balance in the population. Internationally, the sex ratio is defined as the number of males per 100 females: the sex ratio at birth is 105 boys for every 100 girls. In India, however the sex ratio is defined as the number of females per 1000 males in the population.

The skewed sex ratio in the 0-6 years age group must surely have a negative impact on the overall sex ratio. Perhaps it has already created a cascading effect on the population over a period of time that will now lead to a diminishing sex ratio for the entire country. In fact, the imbalance that has been created within this age group will be difficult to remove and will haunt the population for a long time to come

The sex ratio at birth, or the biological ratio, is usually a constant with a value somewhere in the range of 942 to 954. In normal populations, male infant mortality is higher than female infant mortality; as a result, the child sex ratio would tend to increase and improve over the globally accepted constant.

The child sex ratio is the sex ratio for the 0-6 years age group; it has become a powerful indicator in the recent past for examining attitudes and social responses towards the girl child. If the impact of differential sex-selective undercount, age reporting, and migration is negligible, then the child sex ratio is principally influenced by the sex ratio at birth and sex-selective mortality at young ages.

India’s Declining Sex Ratio

In the 2001 Census, India’s sex ratio was 933 females per 1000 males, a marginal increase from 927 recorded in the 1991 Census. However, the recorded sex ratio was higher than 970 in the past, so the actual decrease over time has been significant and is occurring in both rural and urban areas (as can be seen in *Tables 2-A and 2-B*). Although rural migration created a positive bump in the urban sex ratio, the overall sex ratio is still in steady decline and the female deficit will likely surpass 36 million by the 2011 Census. The situation appears even more grim when we note that in developed and western countries, the sex ratio is 1040 or 1050 females per 1000 males.

Table 2-A

Sex Ratio of Population, Communities and Residence (India, 1991)			
Religious Communities	Total	Rural	Urban
All	927	934	906
Hindus	925	932	898
Muslims	950	955	938
Christians	964	965	964
Sikhs	786	788	778
Buddhists	942	945	935
Jains	870	869	870
Others	976	976	967

Table 2-B

Sex Ratio of Population, Communities and Residence (India, 2001)			
Religious Communities	Total	Rural	Urban
All	933	946	900
Hindus	931	944	894
Muslims	936	953	907
Christians	1,009	1,001	1,026
Sikhs	893	895	886
Buddhists	953	958	944
Jains	940	937	941
Others	992	995	966

The 2001 Census revealed that Christians and Muslims have a higher sex ratio than all other religious communities as indicated by *Table 2-A* and *Table 2-B*.

Table 3

Child Sex Ratio (0-6 years)			
Census	Total	Rural	Urban
1981	962	963	931
1991	942	948	935
2001	927	934	906

A sharp decline in the child sex ratio from 942 in 1991 to 927 in 2001 (*see Table 3*) finally activated the political, legal, and administrative sectors to address the issue; however, these Census findings have yet to be converted into a tangible action plan to assist the girl child.

Table 4

Child Sex Ratio: Top Ten Districts in India	
District	Child Sex Ratio (2001)
East Kameng (Arunachal Pradesh)	1035
Pulwana (Jammu & Kashmir)	1033
Kupwara (Jammu & Kashmir)	1021
Dantewada (Chhatisgarh)	1014
Upper Siang (Arunachal Pradesh)	1010
Bastar (Chhatisgarh)	1009
Lower Subansiri (Arunachal Pradesh)	1005
Badgam (Jammu & Kashmir)	1002
Nabarangapur (Orissa)	999
North (Sikkim)	995

Table 5

Child Sex Ratio: Bottom Ten Districts in India	
District	Child Sex Ratio (2001)
Fategarh Sahib (Punjab)	766
Kurushetra (Haryana)	771
Patiala (Punjab)	777
Ambala (Haryana)	782
Mansa (Punjab)	782
Kapurthala (Punjab)	785
Bhatinda (Punjab)	785
Sangrur (Punjab)	786
Sonipat (Haryana)	788
Gurudaspur (Punjab)	789

If you examine *Table 4* and *Table 5*, indicating the districts with the top ten and bottom ten child sex ratios in the country, you will see that the districts in which we find a favourable sex ratio for women are located in tribal belts that have poor access to technology, communications facilities, and other infrastructure. The districts in which we find unfavourable sex ratios for women are in relatively advanced areas. One reason for this discrepancy is that Scheduled Tribes (STs) do not have cultural or social biases against the girl child.

The media regularly reports the shocking decline that is occurring in the sex ratios of New Delhi, Gujarat, Haryana, Punjab, and Rajasthan. In examining sex ratios on a state-by-state basis, we find that more than 60 districts in Gujarat have shown a 50 percent decline in their sex ratios. In Himachal Pradesh, 23 districts have shown a 40 to 49 percent decline in their sex ratios. Jaisalmer district in Rajasthan has exhibited a rapid decline in its sex ratio, and Haryana and Punjab are experiencing equally rapid declines in their sex ratios.

The status of the child sex ratio looks even bleaker when we examine the rural areas of these states. *Tables 6 through 10* show a remarkable increase in the number of villages exhibiting low sex ratios using data from the 1991 and 2001 Censuses

Table 6

PUNJAB		
Child Sex Ratio Ranges (0-6 years)	Number of Villages	
	1991	2001
Less than 800	3,853	6,376
800-849	1,464	1,621
850-899	1,655	1,263
900-949	1,402	882
950-999	1,360	813
1000+	2,694	1,323
Total	12,428	12,278

Table 7

HARYANA		
Child Sex Ratio Ranges (0-6 years)	Number of Villages	
	1991	2001
Less than 800	1330	2965
800-849	749	1236
850-899	886	1010
900-949	738	624
950-999	565	433
1000+	934	496
Total	5202	6764

Table 8

MAHARASHTRA		
Child Sex Ratio Ranges (0-6 years)	Number of Villages	
	1991	2001
Less than 800	6,884	8,763
800-849	3,210	4,310
850-899	4,346	5,216
900-949	5,042	5,105
950-999	5,761	5,165
1000+	15,169	12,536
Total	40,412	41,095

Table 9

NEW DELHI		
Child Sex Ratio Ranges (0-6 years)	Number of Villages	
	1991	2001
Less than 800	28	70
800-849	27	38
850-899	45	23
900-949	49	15
950-999	18	6
1000+	32	6
Total	199	158

Table 10

GUJARAT		
Child Sex Ratio Ranges (0-6 years)	Number of Villages	
	1991	2001
Less than 800	3069	3859
800-849	1755	2157
850-899	2235	2586
900-949	2465	2516
950-999	2514	2255
1000+	5987	4693
Total	18025	18066

Tables 11 and 12 provide further information on New Delhi's sex ratio, which is exhibiting an alarming decline at the tahsil or taluka level. It appears to be quite clear that sex selective abortions are very widely practiced in New Delhi.

Table 11

Child Sex Ratio in New Delhi Tahsils		
Tahsils	1991	2001
Sadar Bazar	917	932
Darya Ganj	947	932
Connaught Place	934	926
Kotwali	910	913
Chanakyapuri	939	898
Kalkaji	910	897
Defence Colony	924	885
Hauz Khas	910	882
Seemapuri	910	882
Model Town	917	880
Preet Vihar	923	879
Seelam Pur	922	876
Paharganj	921	874
Parliament Street	895	871
Karol Bagh	941	869
Civil Lines	918	869
Patel Nagar	919	868
Shahadra	915	862
Rajouri Garden	913	862
Vasant Vihar	905	859
Saraswati Vihar	913	858
Gandhi Nagar	920	846
Punjabi Bagh	901	843
Najafgarh	893	841
Delhi Cantonment	929	838
Vivek Vihar	895	836
Narela	908	828
NEW DELHI	915	868

Table 12

Child Sex Ratio: Delhi and Districts – 2001 Census			
Districts	Total	SCs	General
Delhi	868	901	861
North West	857	901	845
North	886	932	875
North East	875	882	874
East	865	906	856
New Delhi	898	941	881
Central	903	896	905
West	859	907	849
South West	846	890	837
South	888	904	884

Remedies

Following the publication of the provisional Census results, which had the plight of the girl child as one of its focuses, there has been an enormous amount of activity in the legal, social, and governmental spheres to control this menace. A Public Interest Litigation (PIL) has been filed in the Supreme Court, religious priests in Punjab have issued fatwas, and there have been amendments to the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PC & PNDT Act). In Tamil Nadu, the Chief Minister introduced an innovative scheme in 1992 to address the declining sex ratio. In order to prevent female infanticides, cradles are maintained in social welfare department offices to receive unwanted female babies. These babies are then cared for by the state government. This scheme has saved the lives of 302 babies in Salem district alone. These examples clearly signal that interest has generated action on this issue. However, the ‘save the girl child’ campaign needs more active support from governmental and non-governmental agencies if it is to succeed in restoring a balanced sex ratio.

The country cannot afford to wait until the 2011 Census to find out whether or not the sex ratio has improved or further deteriorated.

The country cannot afford to wait until the 2011 Census to find out whether or not the sex ratio has improved or further deteriorated. One positive step is that the Registrar General of India has instructed the Chief Registrars of each state to monitor their state's sex ratio on a monthly basis and to disseminate this data to the government and the public. We need to act now!

declining sex ratio, the two-child norm, and women's status

Manisha Gupte*

The Sex Ratio: A Downward Spiral

The sex ratio of India has experienced an alarming drop from 945 in 1991 to 927 in 2001. A number of states including Gujarat, Haryana, Himachal Pradesh, Maharashtra, and Punjab have recorded more than a 50-point decline in their child sex ratios over the past ten years.

In Maharashtra, the overall child sex ratio in the year 1991 was 946; this dropped by 29 points to 917 in 2001. Districts in Central and Southern Maharashtra, stretching from Jalgaon in the north to Kolhapur in the south, recorded child sex ratios of 950 in 1991; these declined to below 900 by 2001. The beginning of a steep decline in child sex ratios have also been recorded in other districts, stretching from Jalna to Nagpur, where by 2001 they had already dropped below 950. The gravity of this situation comes to the fore when we begin looking at the figures by districts in *Table 1* below.¹

Table 1

Maharashtra Child Sex Ratio by District			
District	1991	2001	Point Decline
Sangli	924	851	73
Kolhapur	931	839	92
Jalgaon	925	880	45
Satara	941	878	63
Ahmednagar	949	887	62

* Manisha Gupte is the co-founder of Mahila Sarvangeen Utkarsh Mandal (MASUM), Pune and is also associated with Medico Friend Circle (MFC).

¹ The facts and figures relating to the sex ratio have been taken from UNFPA posters on "Missing Daughters", 2004.

Ironically, the child sex ratio was most adversely affected in the more economically developed districts and tehsils. This is true not only for Maharashtra, but for the entire country and it indicates that economic development does not necessarily go hand in hand with an increase in women's status. In fact, economic development has actually adversely affected women's status in India, not only in terms of the sex ratio, but also because upward economic mobility has increased expectations of dowries, ostentatious wedding ceremonies, and a resurgence of medieval notions about women's honour and chastity. Violence has emerged as a major cause of death for women in the reproductive age group and severe neglect, maternal mortality, undernourishment, and drudgery takes its toll on women's lives and their physical and emotional well-being.

Population Control Programmes and Women

Family planning programmes have been implemented in ways that have led to numerous human rights violations for women, some of which are recounted below.

- Asha Shelar was given anesthesia far in advance of her tubectomy operation. The doctor came later than expected and, as a result, her anesthesia began to wear off during the surgery. To prevent Asha's screams of pain from being heard outside, the Primary Health Centre (PHC) staff began to play loud music on a tape-recorder.²
- Our experience of living in a drought prone village in the same tehsil from 1987 to 1991 was that the Primary Health Centre (PHC) staff would ask to borrow our jeep to transport women to the sterilisation camp. When we asked how the women returned home after their operations, they told us it was not their concern.
- People have recounted their experiences of being hounded into jeeps for tubectomies and vasectomies during the Emergency period.
- The average age of sterilisation for women in my area is 20 or 21 years. This

Family planning programmes have been implemented in ways that have led to numerous human rights violations for women.

is one of the grossest violations of women's bodies because it not only irreversibly ends their reproductive choices at such a tender age, but also because it makes them vulnerable to violence and desertion within their households if a child dies at some later date, especially if it is a male child.

² The incident was recorded during a *Jan Sunwai* that was organised by the *Jan Swasthya Abhiyan* on May 12, 2004, in Purandar *tehsil* of Pune district.

- Manda Padwal, an Auxiliary Nurse Midwife (ANM) in the tribal Talasari tehsil of Maharashtra, committed suicide in the mid-1980s on the 27th of March (coinciding with the year ending for family planning targets) because she was twenty short of her sterilisation target.
- Our survey in three tribal villages of Dhule district revealed that over 85 percent of all adult men under went vasectomies during the Emergency because they were promised that the land they tilled would be regularised in their names. These mass sterilisation drives even took place in tribal areas, where family size was already small and population growth low.
- Women are verbally abused, and some times even slapped, at PHCs if they scream or shout while in labour. There have been instances where women have been forced to sign consent forms for tubectomies while they are in labour. Often women's relatives are required to clean the labour room after deliveries.
- Though the Medical Termination of Pregnancy Act, 1971 does not say so, women's access to abortion in the public sector is often linked to her post-abortion acceptance of a contraceptive method chosen by her provider. Therefore, although abortion is legal and free, women are forced to utilise the private sector at their own expense or resort to illegal and potentially unsafe abortions.
- A study by Sama Resource Group for Women and Health in New Delhi revealed that a Dalit woman Sarpanch was forced to resign from her post after giving birth to her third child and was not reinstated after the child died a few months later. According to village gossip, she killed her child to try and remain in political office. A male Sarpanch, who was also asked to resign after his wife gave birth to their third child, denied that he fathered the child and threatened to desert his wife.

Women's Status and the Two-Child Norm

India is a signatory to the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Conference on Population and Development (ICPD), and the Beijing Platform for Action. Clearly, India has committed itself to removing all forms of discrimination against women.

The Two-Child Norm (TCN) is enforced through a mechanism of incentives and disincentives that are anti-women. In fact, women are the main targets of this campaign. The public health service sector's perception of women is as either mothers or potential mothers. They quickly lose interest in a woman's health and well-being

once she has a tubectomy. This callous and instrumentalist approach adversely affects women's health and neglects their needs.

The resurgence of communicable diseases such as tuberculosis, the silence surrounding reproductive and sexual health needs, and the disinclination of families to include women in decision-making have all contributed to women's low health status. Reproductive health issues such as cervical prolapses, cancers of the reproductive system, Reproductive Tract Infections (RTIs), and Sexually Transmitted Infections (STIs) are not treated at PHCs or rural hospitals, despite the fact that it is well known that the road to HIV/AIDS begins with untreated RTIs and STIs. Illnesses often affect men and women differently in terms of stigma, desertion, violence, and care given at home. However, women who are ill are still expected to look after men who are ill, as is evident in many HIV/AIDS cases; yet, women's families desert them as soon as their ailing husbands die.

Rather than making comprehensive health services a fundamental right, the government is moving in the opposite direction: we have seen a gradual withdrawal of government services in this area. The privatisation of health services and reductions in health budgets are exacerbating the deterioration of health services, with the poor now expected to fend for themselves.

The two-way linkage between health and violence has been well established. Violence not only causes short and long-term health problems for women, but on the other hand, disclosure of illnesses makes women more vulnerable to domestic violence. It is shameful that in a country where *Mata Devo Bhava*³ is preached as an ideal, a pregnant woman is more vulnerable to violence. The fate of women who do not deliver sons, or remain childless, is also well known.

During the past two decades, we have seen an influx of more and more invasive contraceptives targeted towards women, and even after the debacle of the Emergency, targeted population control measures are still focused on women. While the government is imposing a TCN, women's families still want them to produce at least two sons. Sex-determination during pregnancy becomes the logical answer to this situation in a society that pressures couples to only have one or two children.

Furthermore, the ideology of population control has now become a killing machine. It is increasingly used to define 'good' and 'bad' citizens; in fact, even to define

³ English translation: Mother is akin to God

citizenship. The family planning jingle “we two, our two” was appropriated by the Hindu right wing to differentiate between Hindus and Muslims during the Mumbai-based program of 1993: graffiti read “we two, our two: they five, their twenty-five,” alleging that Muslim men have four wives and that the Muslim population is rapidly increasing. This is in spite of the fact that Hindu bigamy rates have always been higher than Muslim bigamy rates in India. This ideology was also visible during the Gujarat carnage of 2002: the rape and killing of Muslims was accompanied by verbal abuses relating to the number of children they had. Recently, we found pamphlets in Marathi titled “*Ahindu lokasankhyecha visphot*”⁴ that were being circulated in villages in Pune district. It is merely a sequel to the unscientific misrepresentation of the 2001 Census figures regarding the Muslim population.

On the other hand, fundamentalists of all religions want ‘their’ women to produce more children, and particularly to bear numerous sons. Dr. Praveen Togadia (the Secretary of the *Vishwa Hindu Parishad*) has exhorted the Hindu woman to be a *Ashtaputra*, or mother of eight sons. Mr. Sudarshan, the patriarch of the Rashtriya Swayansevak Sang (RSS), has called on Hindu women to produce at least three sons each, so that the strength of Hindus is not outnumbered by other religions. The increasingly anti-abortion policies of nations, under the rising influence of the Vatican and the USA and the promise of heaven to martyrs of political Islam, are targeted towards manipulating women’s fertility. Women’s wombs have become the battlefield on which the war between religions, and the politics of hate, is fought. Honour killings and other forms of family violence or sexual assaults by the ‘other’ group become tools through which to control women’s sexuality and lives. Having a daughter in such an environment becomes doubly hazardous.

The anti-poor ideology of population control needs to be continually exposed. Over-population is the result, and not the cause, of poverty. Unless we are ready to talk of the unequal consumption of national and global resources, we cannot in all honesty target those very groups that have been denied their fair share of development. The slogan given by our erstwhile Health Minister, Dr. Karan Singh, in 1974 at the World Population Conference in Budapest was “development is the best contraceptive.” The preferred alternative to any population control programme is to make sure that development is accessible to all. It is essential to gain an understanding of why the poor bank on children and consider them their only assets.

Over-population is the result, and not the cause, of poverty.

⁴ English translation: The Population Explosion of Non-Hindus

The safety of all women in society is compromised by the increasingly skewed sex ratio as the number of women in the population continues to decline as a result of the sex-selective abortions of female foetuses, infanticide, neglect, and violence inside and outside the home. Restrictions placed on women's mobility in the name of safety and protection only increases men's control over women's lives.

What Needs To Be Done?

First, we need to redefine 'development.' Conventional development does not reach every poor home, or the most marginalised person within each household, and modernisation may not necessarily bring with it a modernity of thought. This is one potential explanation for the sharp decline in the child sex ratios occurring in economically developed districts throughout India. Often, a lopsided development programme creates a cultural backlash, the brunt of which is usually borne by women.

We should combine our efforts to strengthen Jan Swasthya Abhiyan's demand for the right to universal access to health care. The right to comprehensive health care, including reproductive and sexual health care, must become a fundamental right and should not merely remain a directive principle of the Indian Constitution. The right to health care, and to health in general, must be linked to other economic, social, and cultural rights such as education, food security, employment, and fair wages. In turn, economic, social, and cultural rights must be linked to civil and political rights, such as the right to information and the right to participate in decision-making. To strengthen any one right, the struggle to make all other human rights justiciable is mandatory.

We must address violence against women within the domestic and public spheres. Wars, riots, conflicts, and rising fundamentalism in this era of globalisation and militarisation has had an adverse impact on women's well being. We cannot afford to leave communal or domestic violence unanswered. Furthermore, laws that aim to enhance women's status by preventing child marriages, bigamy, and pre-natal sex-determination must not only be enacted, but also effectively implemented.

The Role of Non-Government Organisations

Non-Government Organisations (NGOs) cannot and should not replace the State in the provision of services. Instead, the role of NGOs is to show that alternatives are possible and raise awareness among civil society of the State's obligation to respect, protect, fulfill, and promote people's rights.

When NGO's work with the government, they must maintain their independence, and their commitment to the people should not be compromised under any circumstance. For example, some NGOs have been campaigning against the discriminatory practice of sex-determination and the sex-selective abortion of female foetuses since the early 1980s. We worked on government committees in Maharashtra in 1986 and 1987 and with the Central Government in 1992 and 1993 to bring about the PC & PNDT Act in 1997. However, when not one single doctor had been booked under this Act as of 2000, we co-filed Public Interest Litigation (PIL) with Centre for Inquiry into Health and Allied Themes (CEHAT) and Dr. Sabu George against the State in the Supreme Court of India. We work with the government when it is in the interests of the groups we are representing, but we also work against the State when it is violating or neglecting people's rights. If India is truly serious about its commitment to women's issues, its target-oriented population control programme must be replaced by the just and equitable distribution of resources within the home, the community, and at the national level.

chapter two

state overviews



andhra pradesh, bihar, gujarat, haryana, himachal pradesh
jharkhand, madhya pradesh, maharashtra, manipur, orissa
punjab, rajasthan, tamil nadu, uttar pradesh, uttaranchal

andhra pradesh

G. Francis Raj and Vijay Lakshmi*

The Government of Andhra Pradesh argues that population control is the key to increasing the quality of life and standard of living in the state and expresses fear that food production will not keep pace with the state's growing population. As a result, they have adopted a population policy that includes a number of positive provisions and goals, but that also resorts to the use of coercive measures which they hope will rapidly decrease population growth.

While the population growth rate in the state may be decreasing, the standard of living and quality of life have not significantly improved, and health care services have actually deteriorated as a result of a population policy that focuses on sterilisations, rather than basic health care services. Quality health care is no longer available, accessible, acceptable, or affordable to the majority of people. Human rights are also routinely violated in the name of population control, particularly political and social rights.

State Population Statistics

Andhra Pradesh's decadal growth rate was 13.86 percent between 1991 and 2001, down from 24.2 percent during the 1981 - 1991 period: this was the first time Andhra Pradesh experienced a decline in the growth rate. The state government is examining four core indicators in its goal of stabilising the population: Maternal Mortality Rate (MMR), Infant Mortality Rate (IMR), Total Fertility Rate (TFR),

Table 1

Core Indicators: Where Does Andhra Pradesh Stand?			
	Andhra Pradesh	Kerala	India
Maternal Mortality Rate^a	1.54	1.95	4.1
Infant Mortality Rate^a	66	16	69
Total Fertility Rate	2.25	1.51	3.1
Couple Protection Rate (%)	59.6	63.7	41

^aper 1000 live births

* Dr. G. Francis Raj is the Director of VOICES. Vijay Lakshmi is associated with the Centre for Environment and Development (CED) and contributed to the Field Study in Vishakapatnam Section

and Couple Protection Rate (CPR). *Table 1* provides data demonstrating that in 1998 Andhra Pradesh fared better than the country as a whole with respect to these indicators, but lagged behind Kerala the best performing state, in three of the four indicators. *Table 2* provides additional information on demographic trends in Andhra Pradesh from 1981 to 1996.

Table 2

Demographic Trends in Andhra Pradesh ^a			
	1981 – 1985	1991 – 1995	1992 - 1996
Life Expectancy at Birth	58.4	61.8	62
Life Expectancy at 1	62.5	65.1	65.2
Infant Mortality Rate	91	55	
Under Five Mortality Rate	139	67	
Death Rate	11.1	9.7	8.3 (1997)
Maternal Mortality Rate	283 (87-96) ^b	154(1997) ^c	159(1998) ^c
Overall Sex Ratio	975 (1981)	972 (1991)	978 (2001)
Sex Ratio (0 – 4)	1000 (1981)	978 (1991)	964 (2001)
Total Fertility Rate	3.9 (80 – 82)	3.0 (90-92)	2.8 (95-97)
Avg. Annual Pop. Growth (%)	2.10 (71-81)	2.19 (81-91)	1.31 (91-01)
Below Poverty Line (%)	28.91 (1983)	22.19 (93-94)	15.77 (99-00)
Growth in Employment	2.4 (83 to 93-94)	1.1 (93-94 to 99-00)	15.77 (99-00)
Incidence of Unemployment	1.3 (1983)	1.1 (93-94)	1.4 (99-00)
Human Development Index	23 (1981)	23 (1991)	
Gender Development Index	10 (1981)	23 (1991)	
Human Poverty Index	20 (1981)	19 (1991)	
Women Married Before 18 (%)	44.1 (1993)	32.8 (98-99)	
Women Married Between 10 and 14 Years of Age (%)	22.5 (92-93)	22.1 (98-99)	

^aNational Human Development Report 2001, published by Planning Commission, GOI, March 2002.

^bP.N. Mari Bhat, Maternal Mortality in India: An Update, 2001, Institute of Economic Growth, New Delhi.

^cCompendium of India's Fertility and Mortality Indicators 1971-1997, RGI, 1999, in National Human Development Report 2001, India.

The Andhra Pradesh Population Policy

The Andhra Pradesh Population Policy's approach to population control is a mixed bag of positive social, economic, and health initiatives, as well as coercive measures that include threats, incentives, and disincentives. *Table 3* lists the policy's main demographic goals.

Table 3

AP Population Policy Demographic Goals (%)			
	1996	2010	2020
Natural Growth Rate	1.44	0.80	0.7
Child Birth Rate	22.7	15	13
Child Death Rate	8.3	7	6
Infant Mortality Rate	66	30	15
Maternal Mortality Rate	3.8	1.2	0.5
Total Fertility Rate	2.7		1.5
Couple Protection Rate	48.8	70	75

Measures to achieve these goals are outlined within the policy and include:

- Promotion of spacing, terminal, and male contraceptive methods;
- Increasing pregnant women's coverage for Tetanus Toxoid (TT) inoculation and Iron Folic Acid (IFA) tablets;
- Increasing the number of trained and institutional deliveries;
- Strengthening referral systems and equity in accessibility of services;
- Eradicating polio, measles, and neonatal tetanus by 1998;
- Reducing deaths due to diarrhea, Acute Respiratory Infections (ARIs), and the incidence of low birth weight babies;
- Increasing female literacy levels;
- Increasing the median age of marriage for girls;
- Reducing severe and moderate malnutrition among children; and
- Reducing the incidence of child labour.

The policy also explicitly suggests the use of lures, threats, incentives, and disincentives to control population growth. For example, people who adopt the Two-Child Norm (TCN) are rewarded with access to free educational and health care services, as well as loans from cooperative societies. The government has

already introduced various incentive schemes through Public Sector Undertakings (PSU) and the corporate sector to compel people to limit family size and meet sterilisation targets. There are now rumors that jobs and promotions will be denied to those with more than two children.

At the community level, performance in Reproductive Child Health (RCH) programmes and the CPR are determining whether or not a community benefits from public works such as the construction of school buildings and funding for rural development programmes. Performance in RCH programmes is also a criterion for receiving full coverage under programmes such as Training of Rural Youth for Self Employment (TRYSEM), Development of Women and Children in Rural Areas (DWACRA), the weaker section housing scheme, and the low cost sanitation scheme. *Text Box 1* lists a sampling of existing schemes.

Text Box 1

Sample of Payment Schemes in Andhra Pradesh	
Scheme	Incentive
Sterilisation	Rs. 500 for those below the poverty line
Sukhibhava	Rs. 300 after the second institutional delivery
National Maternity Benefit Scheme	Rs. 500 after the birth of the second child and then an additional Rs. 500 for undergoing sterilisation.
Arogyaraksha	Rs. 20,000 over five years for health insurance for sterilisation after two children

At the individual level, cash prizes are awarded to couples that undergo sterilisation. An award of Rs. 10,000 is given to nine couples in each district based on a lottery as follows: three couples who have two girls and have opted for sterilisation, three couples who opt for sterilisation after having only one child, and three couples with two children or less in which the husband undergoes a vasectomy. Couples who opt for sterilisation also receive preference in the allotment of surplus agricultural land, housing sites, and benefits under the Integrated Rural Development Plain (IRDP), Scheduled Caste (SC) Action Plan and the Backward Caste (BC) Action. They are also eligible for special health insurance schemes, such as Arogyaraksha (see *Text Box 2*). Couples that opt for sterilisation after the birth of their third or fourth children are denied access to all of these benefits.

Text Box 2

Aarogyaraksha

With an understanding that population stabilisation cannot be achieved without increasing maternal well-being and child survival rates, Aarogyaraksha aims to alter attitudes about optimal family size by increasing confidence in child survival.

Under the Aarogyaraksha scheme, couples that opt for sterilisation after having only two children will receive health insurance for a period of five years; Rs. 20,000 at Rs. 4,000 per annum. The beneficiaries are provided with in-patient treatment in identified Private Nursing Homes, and also receive accident insurance coverage for children.

The premium is Rs. 75 per family. A total of 2,71,137 certificates have been issued to Aarogyaraksha beneficiaries and 6,184 beneficiaries have availed of the facility with Rs.41,60,863 reimbursed to tie-up hospitals thus far.

According to the Government of Andhra Pradesh, “the single most important intervention that has resulted in the commendable performance of Andhra Pradesh on the population front is the large-scale availability of family planning operation services to eligible couples of the State.” Government documents openly claim that the large number of couples undergoing sterilisation operations every year reflects the demand for these services; however, it is actually the state that is generating this demand by providing cash and other incentives for sterilisation. The government has now increased the compensation provided for sterilisation from Rs.120 to Rs.500: Rs. 25 crores of the state’s budget is spent on compensation for sterilisation.

Since 1996, Andhra Pradesh has been performing more sterilisation operations than any other state. Data on the state’s family planning performance over the past five years show that the number of sterilisation operations has been steadily increasing, with a slight dip in 2001, from 5.14 lakhs (1996-97), to 6.3 lakhs (1997-98), to 7.33 lakhs (1998-99), to 7.92 lakhs (1999-2000), to 8.14 lakhs (2000-01), and to 8.08 lakhs (2001-02).

Panchayats and Population Control: A Field Study

Andhra Pradesh is also one of the few states in the country that has passed a TCN law for all Panchayats. People with more than two living children are no longer

eligible to contest Panchayat elections, or to continue serving as a Panchayat member if they have already been elected. Haryana, Madhya Pradesh, Rajasthan, and Himachal Pradesh have all passed similar laws. In our study of 75 Panchayats, 36 Sarpanches and Ward Members from Andhra Pradesh were prohibited from contesting the last Panchayat elections because of the TCN. Panchayat members who are literate or have some legal knowledge were able to retain their posts by giving their children up for adoption, usually to relatives. Others were not able to, or did not dare to, do so and faced losing their posts.

Government documents claim that the large number of couples undergoing sterilisation operations every year reflects the demand for these services. However, it is actually the state that is generating this demand by providing cash and other incentives for sterilisation.

Individuals from marginalised groups have been the most affected by the law: hundreds of Panchayat members from marginalised groups who were unanimously elected to their posts have been removed for violating the TCN. Disqualified Panchayat members believe they have been specifically and unfairly targeted since the TCN law is not universally applied at all political levels. Members of the Rajya Sabha, Lok Sabha, legislative assemblies and councils, and other nominated posts do not face removal from their elected posts for having more than two children. Others complained about female Sarpanches who merely act as figureheads, while their husbands actually undertake

all administrative and Panchayat-related work behind the scenes; in this way, circumventing the goal of reservations to increase female political participation. In addition, according to our field investigations, official orders were not served to Panchayat members disqualified by the TCN law: they were merely verbally informed of the government's decision. In some places, notices were placed on boards in the offices of the Mandal Revenue Officer, Mandal Development Office, and village Secretariats.

Has the Population Policy Been Successful?

The broad objectives laid down by the population policy have not been achieved and there is a need to scrutinise and analyse the implications of using coercive measures to enforce the TCN by increasing sterilisation efforts. While sterilisations have increased, there has not been significant improvement in the other population policy goals. There has been no rise in the juvenile sex ratio, female literacy, or age at which women marry. There is also no significant improvement in the core indicators

of MMRs or IMRs. In addition, compliance with government policies has led to the massive privatisation of the state's health sector, with nearly 70 percent currently under private domain.

Finally, the quality of health care has not improved, but rather it has become narrowly focused on sterilisation efforts. This has resulted in some disquieting practices. Hysterectomies are on the rise and the age at which women are undergoing sterilisation is decreasing. Women are still conceiving soon after marriage and spacing methods are not utilised to a significant degree. Auxiliary Nurse Midwives (ANMs) are also visiting couples only when they are expecting their second child. Women are provided with care and support up until they deliver the child, and then they are quickly sterilised a few days after the delivery. Sterilisations have been performed on women as young as 18 or 20 years old.

It is only by compromising the quality of health care services that the state's fertility levels have been reduced.

It is only by compromising the quality of health care services that the state's fertility levels have been reduced. What we need in Andhra Pradesh is to stop counting the number of people and start counting on the people. Let us not compel teenage girls to be sterilised. Let us make services available, accessible, affordable, and acceptable to the people. Let us make policies that are based on gender equity and equality and that are sensitive to the needs of the people without the use of coercion. Let us address the problems that cause population growth and hinder development by supporting the right to health, social and cultural rights, and political rights. Let us not commit the mistake of taking Andhra Pradesh as an example to be followed. It is high time for the Government of Andhra Pradesh and other state governments to scrap population policies that are coercive and launch comprehensive development policies in their place, based on the International Conference on Population and Development (ICPD) and the Universal Declaration of Human Rights (UDHR).



Devika Biswas*

Overview of Demographic and Health Indicators¹

Bihar is a small state comprising only 2.97 percent of India's total geographical area and 8 percent of the national population. Of the 9.75 crores people living in Bihar, 4.31 crores are male and 3.97 crores are female. The sex ratio is 921 females to 1000 males and the child sex ratio (0-6 years) is 938.

Economically, Bihar is one of the poorest states in the country with 42 percent of the population living below the poverty line, compared to the national average of 26 percent. In 1996 - 1997, the annual per capita income was only Rs. 3,838. Bihar's literacy rate is only 47.53 percent, which is far below the national average of 65.38 percent. The low literacy rate is mainly a product of the poor female literacy rate (33.57 percent): the male literacy rate (60.38 percent) is much closer to the national average.

Bihar's Human Development Index (HDI) is 47, its Reproductive Health Index (RHI) is 32, and Gender Health Index (GHI) is 52. The crude birth and death rates are 30.9 percent and 7.9 percent, respectively. The Infant Mortality Rate (IMR) is 61 and the Maternal Mortality Rate (MMR) is 451, falling far short of the goals set by the state for 2000. Post-birth benefits are only available to 26.4 percent of the population, and only 14.5 percent receive pre-natal benefits. Auxiliary Nurse Midwife (ANM) facilities are accessible to a scant 14.7 percent of women, whereas the national standard is 65.8 percent. Only 10.6 percent of children are vaccinated, and an alarming 60 percent of women are married before they reach 18 years of age.

Bihar's population growth rate remains quite high in comparison to the national average, indicating that contraceptive methods distributed to the population (like condoms and pills) have had minimal impact. The Total Fertility Rate (TFR) is 4.3 percent and the rate of birth control use is a mere 23.4 percent: 450 laparoscopic tubectomies were performed, 1,26,758 Intra Uterine Devices (IUDs) were inserted,

*Devika Biswas works with the Bihar Voluntary Health Association

¹ The majority of the data was procured from the Bihar Government.

² While the authorities would not provide us with the following information in writing, we obtained it from a board in their office.

6,62,542 birth control pills were distributed to women, 26,93,429 condoms were distributed, and 768 abortions were performed.²

Health services in Bihar are in a state of disarray. In 1999, the per capita medical expenditure, including salaries and benefits for health care staff, was a mere Rs. 41.38. Furthermore, the government has failed to provide the number of health facilities and staff levels that they themselves sanctioned as necessary to meet the state's health care needs, particularly in regards to primary health centres and sub-centres (see *Table 1*).

Table 1

Health Care Infrastructure in Bihar: Shortages Abound				
Health Facility	Numbers	Sanctioned	Staff Level	Vacancies
Sub-Centres	10,332	10,956	10,267	1,689
Primary Health Centres	396		1,100 ^a	272
Additional Primary Health Centres	1,247	2,366	1,728	638
Community Health Centres	89		2,919	
Mandal Hospitals	23			
District Hospitals	24			
Medical Colleges	6			

^aThere should be at least four doctors employed at each Centre

Bihar's population policy is an amalgam of the old Child Survival and Safe Motherhood Programmes (CSSM) and family welfare programmes, merged with the principles contained in the International Conference on Population and Development (ICPD) and the National Population Policy (NPP). Yet, the Bihar Department of Health has failed to deliver services under its own Reproductive and Child Health (RCH) scheme, as is evidenced by the decadal growth in the birth rate.

While the government has rightfully shed its target-based approach in exchange for a Target Free Approach (TFA), in line with the ICPD and the NPP, it has still not taken the additional step of ensuring access to and improving the quality of health care and family planning services that are the cornerstones of any TFA. For example, the shift to a TFA has led to an increase in the level of negligence and corruption

among health care providers. With performance no longer evaluated through targets, many health service providers in government hospitals have been emboldened to further shirk their duties. They now routinely tell patients that services are no longer available. Patients are then referred to private health clinics that charge fees for their services. The poor have also been made to pay for medication and surgical equipment when they avail of services in government hospitals.

The government created awareness about limiting family size under its target-based approach, but under the new Target-Free Approach (TFA) it has pulled away from providing family planning services in government facilities.

While consumer laws are in place to protect patients from negligence by medical professionals, very few complaints are lodged with the appropriate consumer forums; people have very little hope that it will ultimately lead to reform because the government authorities have failed to address complaints filed in the past. As a result, people's confidence and trust in government health services is extremely low. Our investigations in the field have revealed that women and men who have adopted contraceptive methods,

particularly sterilisation, often experienced post-operative complications; however, they seek treatment from private practitioners rather than avail of government services because they are widely seen as neither credible, nor consumer friendly.

While the government created awareness about limiting family size under its target-based approach, it has now pulled away from providing family planning services in government facilities to people voluntarily seeking information and services. Those interested in permanent contraceptive methods do not receive free services, and there is no follow-up after sterilisation operations or the insertion and distribution of other contraceptive devices. People remain ignorant about their own right to make reproductive choices and to demand family planning services from Primary Health Centres (PHCs).

While the adoption of a TCN could lead to population stabilisation; food, shelter, and quality health services are the immediate needs of the poor in Bihar. The 42 percent of the state's population living below the poverty line does not see limiting family size as a priority over attaining these basic necessities. If the government could ensure that basic needs are met, then there is no doubt that people would adopt a small family norm voluntarily. Until then, children will continue to be seen as a human resource, fertility will be considered an asset, and coercive population measures are unlikely to succeed.



Subhalakshmi Nandi*

There are 14,010 MISSING FEMALES in Gujarat today¹ - WHY? HOW?

- Son preference is prevalent in India's patriarchal society: India ranks sixth on the Index of Son Preference
- 'Dudh Piti' is a traditionally acceptable practice of eliminating girls
- Dowry is on the rise due to 'Sanskritisation'
- Affluence has increased access to new reproductive technologies
- Collective suicides by families
- Women are targets in inter-community conflicts

As a result of the above factors, there was a frightening decrease in the child sex ratio (0 – 6 years) from 928 to 878 between 1991 and 2001, particularly in some of the wealthiest districts with the highest literacy rates such as Ahmedabad (813.83), Gandhinagar (816.39), Rajkot (843.99), and Mehsana (797.89).

Table 1

Development Indicators: Where Does Gujarat Stand?		
Indicator	India	Gujarat
Sex ratio (2001)	933	921
Child Sex Ratio (0-6) (2001)	927	878
Literacy Rate (%) (2001)	65	70
Total Fertility Rate (2001)	3.2	3
Infant Mortality Rate (2001)	70	63
Maternal Mortality Rate	4.53	3.89
Per Capita Income (Rs.) (1997-1998)	13, 193	16, 998

* Subhalakshmi Nandi works with ANANDI: Area Networking and Development Initiatives. She was unable to make an oral presentation to the Tribunal but provided this written testimony.

¹ Agnihotri (1995)-"Missing Females: A disaggregated analysis", August 19th, 1995

Table 2

Gujarat Population Policy Goals for 2002		
Indicator	India	Gujarat
Total Fertility Rate (TFR)	3 (1998)	2.1
Contraception Prevalence Rate (CPR%)	54.2 (2001)	70
Maternal Mortality Rate (MMR)	3.89 (1992 – 93)	< 1
Infant Mortality Rate (IMR)	63 (1999)	16
Under 5 Mortality Rate	20.4 (1996)	< 10
Children Fully Immunized (%)	48 (1998 – 99)	100
Deliveries by trained attendants (%)	74.2 (1998 – 99)	100
Institutional deliveries (%)	46 (1998 – 99)	80

Recommendations

- The declining child sex ratio is indicative of the misuse of the Medical Termination of Pregnancy Act, 1971 (MTP Act), the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PC & PNDT Act), and the use of Assisted Reproductive Technologies (ARTs) for sex-selective abortions. Effective mechanisms must be put in place to ensure the enforcement of these laws.
- Policy goals often emphasise numbers, and ignore the human component of the problem. Figures that indicate positive trends often overlook negative trends such as social malaise. This should be properly addressed and the Government of Gujarat's preliminary efforts to hold awareness drives should be encouraged.
- State policies need to be more gender conscious.

The logo for Haryana, featuring the word "haryana" in a bold, lowercase, sans-serif font. Above the text is a horizontal grey bar.

Jagmati Sangwan*

Following the adoption of the 73rd and 74th Constitutional Amendments, Haryana adopted its Panchayati Raj Act and included a Two-Child Norm (TCN) provision under Section 175 (1) (q). As of 25 April 1995, individuals with more than two children can not contest Panchayat elections in Haryana.

In 1995, general elections were held in Haryana, but very few people were disqualified for violating the TCN because the 25 April 1995 cut-off date had yet to pass. Still, there were one or two cases in which people were disqualified from their posts because a child was born to them after 25 April 1995. General elections were held again in March 2000, at which time people were asked to declare if they had been previously disqualified due to the TCN. Many people concealed this information on their nomination forms, and this led to a small number of complaints regarding TCN violations. The Deputy Commissioner, the competent authority to hear TCN cases, inquired into these complaints and disqualified many people.

The government justified the TCN law by stating that Sarpanches are role models for their communities and should set an example for others to follow.

Some of the disqualified candidates challenged the legality of the TCN and the decision of the Deputy Commissioner by filing a petition in the Haryana High Court, which unfortunately upheld the TCN provision: the government justified the law by stating that Sarpanches are role models for their communities; and should set an example for others to follow. The matter was taken to the Supreme Court following this defeat, but the Apex Court rejected the disqualified candidates' argument that the TCN violated human dignity and human rights: it upheld the findings of the Haryana High Court in a judgment on 30 July 2003.¹

The TCN remains in effect today in Haryana and has led to a large number of disqualifications. To date, 1,350 people have been removed from Panchayat posts for violating the TCN: 144 Panches, 249 Sarpanches, 49 members of the Panchayat Samiti, and eight members of the Zilla Parishad. This data was culled from the

* Jagmati Sangwan is associated with the All India Democratic Women's Association (AIDWA). Her statement is based on the experiences of Jan Swasthya Abhiyan and PRIA in Haryana.

¹Please see Annexure 5, *Javed vs Haryana*

State Election Commission's own reports following by-elections conducted after disqualifications. The reports clearly show that 99 percent of all disqualifications were for violation of the TCN. The number of people disqualified will inevitably increase following the upcoming by-elections in October 2004.

TCN and Discrimination

The 73rd and 74th Constitutional Amendments were passed to overcome discrimination and increase the political participation of marginalised groups through reservations for women, Scheduled Castes (SCs), and Other Backward Castes (OBCs). It is a positive and important step in ensuring the *de facto* right to political participation of groups that have been historically denied political rights due to discrimination and intimidation. Unfortunately, the adoption of the TCN has completely undermined the spirit and intent of the 73rd and 74th Constitutional Amendments by providing a tool for those who wish to maintain the status quo. The TCN is explicitly being used to prevent women, Dalits, and other marginalised groups from obtaining Panchayat posts, which is a violation of their constitutional right to political participation.

Our ten years of experience in Haryana has revealed that there is a strong class bias within society. It is one of the main reasons that there is a lack of political will to implement state welfare policies. The upper classes hold social and economic power in rural areas, and they use this power to prevent lower class individuals from becoming members of Panchayats.

Dalit Sarpanches, who have contested elections and won, have diligently tried to serve in their roles as elected representatives. However, the upper castes are unhappy with their presence in Panchayats and try to control them, or force them to submit to their will through harassment and intimidation. For example, they will often vote against Dalit Sarpanchs, regardless of whether they agree with them or not. If a Dalit Sarpanch does not behave as they instruct, upper caste Panches will not attend officially convened meetings to ensure that decisions cannot be taken for want of the required quorum, essentially making the Panchayat a non-functioning body. In addition, there have been many instances in which Dalit Sarpanches, including women, have been publicly humiliated and physically intimidated. The fact that a number of Dalit Sarpanches have disappeared, and may have been killed, is even more alarming. Despite repeated calls for the state to intervene and protect Dalits' political rights, it has remained unengaged in the situation. Elected officials from marginalised groups will continue to become puppets in the hands of powerful upper

caste politicians, or face removal from their posts under the TCN regardless of whether or not they actually have more than two children. The cycle of false accusation, dismissal, and litigation can take four to five years, and many cannot afford to commit the time and money necessary to fight false charges levied against them.

People are adopting measures to avoid TCN disqualifications that have negative implications for the health and welfare of women and children.

Conversely, members of the upper castes ensure that upper caste individuals fill Panchayat seats reserved for women. Such women, sarcastically called ‘Sarpanch Patis’ or ‘Panch Patis,’ act as puppets for male members of their families, who actually carry out the Panchayat-related work and make decisions. Immediate and stiff action has been taken against women and Dalit Panchayat members who have violated the TCN, but nothing has been done to stop this open fraud.

During our discussions with community members, it was revealed that people are adopting measures to avoid TCN disqualifications that have negative implications for the health and welfare of women and children. For example, in order to conceal a third pregnancy, wives have been relocated to remote areas with little or no access to health care services; as a result, they do not receive the necessary vaccinations. Third children are also removed from their natural parents’ home, depriving them of parental care and love.

It is a myth that the TCN will control population growth in Haryana. Despite the fact that it is a comparatively progressive state, it still faces the problem of malnutrition, infant mortality, and birth defects. There is no way to guarantee child survival, or that children will not become ill or physically and mentally challenged. In addition, son preference is very strong. Under these conditions, parents are unlikely to, and cannot be expected to, comply with the TCN.

If the framers of the TCN legislation were more aware of the realities on the ground, they would understand that the TCN will not lead to population control. People will continue to defy the TCN until the government takes steps to improve health service delivery and child welfare programmes that significantly increase child survival rates. Instead, the TCN has merely become an instrument to reintroduce discrimination into the political process and prevent marginalised groups from exercising their constitutional right to enter the political arena.

himachal pradesh

Sandhya Gautam*

On 8 April 2001, Himachal Pradesh adopted a Two-Child Norm (TCN) law disqualifying people with more than two children from serving as members of Panchayats. As of May 2004, data collected from ten districts reveals that 248 people have been removed from Panchayat posts for violation of the TCN law. Of these 248 people, 78 were women and 170 were men, 25 were Pradhans (12 women and 13 men), 34 were Deputy Pradhans (5 women and 29 men), 186 were Ward Members (60 women and 126 men), one was President of the Block Samiti, and two were Vice Presidents of the Block Samiti (1 male and 1 female). Percentage wise, more women were disqualified than men. The ten districts were Kangra (0), Hamirpur (1), Bilaspur (33), Una (8), Kullu (32), Shimla (33), Solan (34), Chamba (36), Mandi (48), and Sirmaur (55).

Many of the disqualified officials were completely unaware of the TCN law and were shocked when they were removed from their posts for violating it. They believe that the government must raise awareness about this law and disseminate information explaining its provisions. However, even when people were aware of the law, it

Even when people are aware of the TCN law, it seems to have little effect on family planning decisions.

seemed to have little effect on their family planning decisions. Elected officials continue to have more than two children, but go to great lengths to avoid TNC disqualification. For example, any child born after the second is registered under another person's name to avoid TNC disqualification, often the father's brother to protect inheritance rights. Pradhans are particularly

susceptible to this practice because of the importance of the post, hence, the desire to maintain it. In contrast, many Vice Pradhans (34) have been removed from their posts for violating the TCN law because this post is not considered desirable enough for them to register their children in another person's name. Those with clout or standing in society have simply refused to register children until after their elected term of office expires, secure in the fact that no one will report them for TCN violations.

Most individuals who deposed before the People's Tribunal about their experiences are young, in the 25 to 37 year age group. The majority of people participating in

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the survey were also under 37 years old. As per the present law, these young men and women can never join Panchayati Raj Institutions (PRIs) unless they adhere to the TCN. As a result, older relatives are replacing young disqualified Panchayat members. Hence, with the present state of the law, it seems that only the elder generation will be able to enjoy the privilege of Panchayat membership and that the percentage of young people serving in Panchayats will continue to remain low.

Himachal Pradesh is a developed state that has won awards for its health services, and it has high education levels and literacy rates. Yet, the population of the girl child is less than 750 per 1000 boys. In Sirmaur, the district with the largest number of disqualifications, son preference is prevalent, and the practice of eliminating female foetuses is widespread. During an awareness programme, an 11-year old girl recounted that her mother had aborted three female foetuses, at the instruction of her father, before her younger brother was finally born. In discussions with men in the community, it was revealed that almost every one of them has forced their wives to undergo ultrasound tests and then an abortion, at least three times if the foetus was female. If the foetus was male, the men allowed themselves to be disqualified from their posts, rather than abort the pregnancy.

In discussions with men in the community, it was revealed that almost all of them forced their wives to undergo ultrasound tests, and then an abortion, atleast three times, if the foetus was female. If the foetus was male, the men allowed themselves to be disqualified from their posts, rather than abort the pregnancy.

It is highly questionable that the TCN will succeed in controlling Himachal Pradesh's population growth. It will more likely lead to the exclusion of young people from local politics and the elimination of female foetuses, which will result in an even more skewed sex ratio.

jharkhand

Kalyani K. Meena*

While a Two-Child Norm (TCN) law has not yet been adopted in Jharkhand, it is now under discussion at high levels within the state government. The adoption of a blanket TCN law in Jharkhand is complicated and ill advised. Population statistics vary greatly among different communities within the state, with some groups actually exhibiting a decreasing population. In addition, most people in Jharkhand accept the concept of a small family, making it unnecessary to impose a TCN that would only exclude people from elections and deny them admission to schools and hospitals. People are interested in controlling family size, but lack access to quality facilities and services at affordable rates and information on contraceptive methods.

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Among Scheduled Castes (SCs), birth rates and death rates are very high and child survival rates are very low. However, SCs also have a more balanced sex ratio in comparison to other communities. Among the Muslim population, there is also a high birth rate, but a lower infant mortality rate, which is attributed to traditional post-natal care: this has resulted in a larger Muslim population. Finally, according to our data, tribal family size is already small because tribal women use traditional herbal medicines and abortions to limit family size. However, methods to terminate pregnancies are often carried out with only the assistance of a friend or midwife, and this has led to complications such as

bleeding, genital infections, cancer, and even death. Maternal Mortality Rates (MMRs) for tribal women are high, particularly during pregnancy, and the life expectancy of newborns is very low: for every five births, only one or two children survive. In some communities, fertility rates are almost zero. This is occurring mostly among tribal groups such as the Birhor and Ansur, which have rapidly decreasing, not increasing, populations: only one or two children are born within the community each year. As such, doctors, nurses, and academics agree that target-oriented sterilisations should not be conducted in tribal areas.

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Panchayat elections have yet to take place in Jharkhand, but they will be a big step in empowering women in the state. Traditionally, women have not served as Panchayats, but now for the first time 33 percent of all Panchayat seats are reserved for female candidates to ensure their political participation. One Panchayat representative is elected for each Ward, which consists of approximately 500 people. Elected members have a more direct understanding of the problems and difficulties facing the 50 to 80 families that they represent, and they can bring their problems to the notice of the government. However, because Panchayat elections have been deferred, female participation in the political process is still missing, and the adoption of TCN legislation in the interim could act to disqualify many potential female candidates from contesting elections.

It is clear that the main problem in Jharkhand is the poor quality of health care services. There is a pressing need to overhaul the health system and recruit more doctors and Auxiliary Nurse Midwives (ANMs). People are interested in using contraceptive methods, but have no access to facilities services, or information. In a survey, we found that many Primary Health Centres (PHCs) remain closed until 11 AM. When we were able to persuade security guards to let us enter PHCs, we found conditions that can only be described as horrendous. As a result, we have formed three groups: one to study to PHCs, one to study referral hospitals, and one to conduct an exhaustive study of villages. Health camps are also in abysmal shape. In addition to being extremely unhygienic, the staff are insulting and degrading to tribal people: they treat them like animals. In one case, surgical instruments were not sterilised until a Non-Government Organisation (NGO) working in the village intervened and began to sterilise them in boiling water. While people are initially interested in taking advantage of the services offered at health camps, they soon learn to avoid them because of their poor sanitation practices, their ill treatment of patients, and their absence of post-operative care.

While the government is seeking to pass unnecessary legislation that will punish people who violate the TCN, they have not taken any steps to address the inadequate health care system and the gross negligence of health care officials. The state has presented no policy to penalise doctors and ANMs for the dereliction of their duties, which could deter such behaviour

Overall, the health care system is lacking adequate staff levels and is plagued by corruption. Vacancies in the health care system remain because health care professionals are not interested in working in remote areas, and the government has not yet devised creative ways to attract qualified medical staff to work in these

underserved areas. Corruption must also be urgently addressed. In the entire state of Jharkhand, there are only nine x-ray machines, of which seven are burnt, indicating that malpractice is thriving in various forms. Bribery is also a major problem. There is an ‘unofficial’ minimum price of Rs. 50 for inserting a Copper-T Intra-Uterine Device (IUD) in Jharkhand. People are afraid that if they do not pay at least this amount, the procedure will be done in a callous manner. As a result, people have asked if they can purchase the Copper-Ts from ANMs at Rs. 10 each and then visit our hospital to facilitate insertion because they trust our services.

Poor people will continue to be reluctant to use government facilities if these situations are not rectified. Expenses incurred for travel to and from health centres and endless hospital delays also figure in the list of problems in obtaining health services.

The government should not adopt a TCN law when existing family planning programmes do not meet the needs of the communities they serve.

The increasing presence of NGOs in the area has helped and people are now beginning to utilise modern contraceptive methods, but the number of NGOs is still small considering the needs of the area. In our meetings with the Health Minister and Health Secretary, we proposed that two people be elected from each Ward to receive intensive health care training. These elected members can act as a bridge between the people and the government by

supervising and monitoring a population of 500 people. This same structure could be replicated for every Ward unit that implements government development schemes.

While the government is seeking to pass unnecessary legislation that will punish people who violate the TCN, they have not taken any steps to address the inadequate health care system and the gross negligence of health care officials. The state has presented no policy to penalise doctors and ANMs for the dereliction of their duties, which could deter such behaviour.

While health care facilities exist, service delivery continues to remain a failure in Jharkhand. A TCN law should not be adopted when current family planning programmes do not meet the needs of the communities they serve. People should be given the tools and the services they need to make reproductive decisions, such as health education, so that they are informed decision-makers when it comes to planning and deciding their family size.

madhya pradesh

Anuj Kapilashrami and Parul Saraswat*

The Madhya Pradesh Population Policy

The Madhya Pradesh (MP) Population Policy has both positive and negative aspects. The policy stresses the need to curb high fertility and mortality rates and takes cognizance of the democratic decentralisation process currently underway. It focuses on issues such as raising the age of marriage for women, Reproductive Child Health (RCH) services, and the education and empowerment of women. The focus has also noticeably shifted away from promoting sterilisation. Following are the specific objectives of the policy:

- To reduce the Total Fertility Rates (TFRs) from 4 in 1997 to 2.1 in 2011;
- To increase contraceptive and sterilisation services,
- To increase the age of first child birth to 20 by 2011;
- To increase the registration of pregnant women;
- To reduce the Infant Mortality Rate (IMR) through increased immunisations,
- To increase the use of Oral Rehydration Solution (ORS) therapies for diarrhea in rural areas;
- To reduce the incidence of Acute Respiratory Infections (ARIs);
- To increase the number of pregnant women and children taking Vitamin A and Iron and Folic Acid (IFA) tablets;
- To increase HIV testing and services for infertile couples; and
- To increase access to primary education by 2005 for 30 percent of all girls in the 14 - 15 year old age group.

Strategies advocated by the policy to achieve these goals include making men more aware of their role in empowering women, strengthening local women's group, reducing women's burden of housework and drudgery by providing cooking gas connections and electricity in rural households, reserving 30 percent of government jobs for women, and implementing population control programmes through Panchayats. Unfortunately, the policy also includes lures, threats, incentives, and disincentives in its effort to achieve population stabilisation. This is not only at odds with the International Conference on Population and Development (ICPD), but also negates the spirit of the National Population Policy (NPP) and the adoption of a Target Free Approach (TFA).

* Anuj Kapilashrami and Parul Saraswat work with Sama Resource Group for Women and Health.

The Madhya Pradesh (MP) Population Policy also specifically highlights Panchayat Raj Institutions (PRIs) and related bodies, which are considered role models for rest of the community. They have been identified as powerful and empowering mediums through which family planning programmes can be implemented. As such, Panchayat performance in family planning and RCH services are now linked to provisions in rural development and welfare schemes for women and the poor, particularly those that focus on income generation and poverty alleviation. Section 36 D (1) of the Panchayati Raj Act states that any individual with more than two children after 26 January 2001 will be removed from his/her Panchayat post, become ineligible to contest elections, and can no longer receive the benefits of development schemes. Disqualification is based on birth certificates and other valid documents. Those with more than two children are also barred from serving on other local bodies, mandis, and co-operatives. Individuals who marry before the legal age limit are now also ineligible for government posts.

Finally, we must also be aware of the role and influence of international agencies in formulating the state's population policy. United States Agency for International Development (USAID) provided financial assistance and technical support, through Futures Group International, to the Government of Madhya Pradesh to develop and disseminate the state's population policy.

Effects of the Two-Child Norm

Sama Resource Group for Women and Health conducted a study in 12 districts of Madhya Pradesh to discern the effects of the TCN on governance, women, children, and the marginalised. The study examined the cases of 126 Panchayat members (40 women and 86 men) who have been affected by the TCN including Panches, Sarpanches, and Ward members.

Eighty-two percent of those disqualified are members of Scheduled Castes (SCs), Scheduled Tribes (STs), or Other Backward Classes (OBCs) and 39 percent are women.

The study found that the basic conceptualisation and implementation of the TCN is erroneous and does not adequately address cases involving stillbirths or twins. In one case, a woman was disqualified after giving birth to twins because one twin was considered the third child. Furthermore, the law was enacted in May 2000, but came into force on 26 January 2001. Because there was less than nine months between the law's adoption and its entry into force, a woman who conceived before the law was adopted could be disqualified for violating it.

Who is really affected by the Two-Child Norm?

The study revealed that socio-economically disadvantaged sections of society are the most affected by the TCN, particularly women. Eighty-two percent of those disqualified are members of Scheduled Castes (SCs), Scheduled Tribes (STs), or Other Backward Classes (OBCs) and 39 percent are women. Women's participation in the socio-political sphere has been drastically reduced by the TCN, in contravention of the intent of the 73rd and 74th Constitutional Amendments. This is bound to have negative affects on the overall empowerment and development of women in Madhya Pradesh. Furthermore, women are being penalised for reproductive choices regarding family size and contraceptive use over which they may or may not have any decision-making power. Finally, there is limited access to safe contraceptive methods and family planning services in the state.

The government has taken no effective measures to create awareness or disseminate information regarding the TCN law. Some individuals disqualified for violating the TCN law were not even provided with an official notice. They only found out through word of mouth or because their bank accounts were closed. The TCN law is also increasingly used as a strategic tool to settle political scores and/or pre-empt political rivals, however, those with economic and political power are able to circumvent the law and escape disqualification. People have resorted to tampering with birth and hospital records, registering children in someone else's name, and/or bribing authorities. Some of these manipulations are easy enough given the high prevalence of home deliveries and the fact that most births continue to remain unregistered.

In the context of the TCN, there has been an increase in the number of people who resort to eliminating female fetuses in order to ensure they have a son.

The Two-Child Norm and Violence Against Women

There has been an appreciable increase in Violence Against Women (VAW) as a result of the TCN law. While the link between the TCN and VAW is complex and not always statistically quantifiable, it has been observed that abortions, desertion of wives, and divorces have all increased in direct relation to potential TCN disqualifications. In addition, false accusations of extra-marital affairs are being made against women by their husbands and forced abortions and sterilisations are becoming widespread. People are also giving second or third children up for adoption, especially if the child is a girl. In fact, there is a very high rate of son preference within Madhya Pradesh and many Panches and Sarpanches indicate that the TCN

is fine for people who already have two sons. In the context of the TCN, there has been an increase in the number of people who resort to eliminating female foetuses in order to ensure they have a son. This has made the already skewed sex ratio even more acute: the sex ratio in Madhya Pradesh is 922 females per 1000 males. However, in certain districts like Muraina, Gwalior, Shivpuri, and Bhind, the sex ratio has fallen far below the national average at 822, 847, 858, and 829, respectively.

The above narrative clearly identifies how the TCN law is anti-poor, anti-Dalit, anti-tribal, and anti-women by depriving these groups of their fundamental rights. The Madhya Pradesh Population Policy, with its guise of population stabilisation, is completely unacceptable. What is needed is a comprehensive development policy, not a population policy.

maharashtra

Audrey Fernandez and Jaya Velankar*

Maharashtra is one of the more developed states in India and has a high per capita income, but it is also has one of the highest Maternal Mortality Rates (MMRs) indicating that its health care system is failing women. Yet, rather than address this deficiency, the state has adopted a coercive population policy that undermines women's reproductive health in pursuit of population control through the imposition of a Two-Child Norm (TCN).

The TCN is linked to eligibility in more than 50 social security schemes.

Population Policy of Maharashtra

The Population Policy of Maharashtra came into effect on 8 March 2000, with the specific objective of reducing population growth as follows:

- Reduce the Total Fertility Rate (TFR) to 2.1 by 2004;
- Reduce the Child Birth Ratio to 18 by 2004;
- Reduce the Infant Mortality Rate (IMR) to 25 by 2004; and
- Reduce Neo-Natal Mortality to 2 by 2004.

Despite its adoption on International Women's Day, the policy emphasises a number of lures, threats, incentives, and disincentives that negatively affect women. It links the TCN to eligibility in more than 50 social security schemes related to agriculture and education, Panchayat membership, and government employment. Although the policy denies the persistence of a target-based or camp approach, field experience has established that both exist. There is also an undue emphasis on sterilisation as a contraceptive method. In addition, international organizations working with the Government of Maharashtra, or within the state, have strongly supported the TCN; however, there is no easily accessible evaluation of these organisations' activities.

The Population Policy of Maharashtra includes Gram Panchayats within its strategy of population control. Financial provisions for development projects such as roads and village health schemes are linked to the performance of Panchayats and villages in achieving sterilisation targets. Even programmes such as the Ghatge Maharaj

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Women are also denied maternal health services and are charged delivery fees in district hospitals during third pregnancies and beyond; however, delivery fees are reimbursed if a woman returns to the Primary Health Centre (PHC) for a tubectomy

Swachta are now dependent on the achievement of sterilisation targets. The policy also suggests that the TCN become a prerequisite for jobs within government and semi-government institutions, as well as for posts within co-operative housing societies. For example, the President of the Municipality in Wardha district was removed from his post after becoming a father for the third time.¹ Furthermore, it also expressly debar those with more than two living children from holding Panchayat posts or contesting Panchayat elections. As a result, there have been reports from remote areas of Maharashtra of Panchayat disqualifications for violations of the TCN: the majority of those disqualified

are women, Dalits, and Other Backward Classes (OBCs). For example, eleven Gram Panchayat members lost their seats in Jalgaon after they had a third child.²

Women are negatively affected by the TCN in many ways. Women are under heavy familial and societal pressure to produce male children. When this is coupled with government pressure to limit family size it leads to the successive sex-selective abortion of female foetuses, despite the ban on pre-natal sex-determination tests. Although the policy calls for the strict enforcement of the Child Marriage Restraint

Achieving sterilisation goals is the main focus of state health service facilities and approximately six and a half lakh women are sterilised every year.

Act 1929 (CMA), the average age of marriage for women is still 15.8 years, and is as low as 14 in some of the more undeveloped areas such as Banatwada in Sangli district; this area also exhibits the lowest sex ratio at 815. Women are also denied maternal health services and are charged delivery fees in district hospitals during third pregnancies and beyond; however, delivery fees are reimbursed if a woman returns to the Primary Health Centre (PHC) for a tubectomy. The deprivation extends to third children who have done nothing wrong, but are being punished for simply

being born: girls who are third or higher in the birth order within their families are denied a free education.

¹ Maharashtra Times, 25.10.2002

² Maharashtra Times 9.12.2003

³ Sakal, 21.08.02

⁴ Maharashtra Times, July 2004

Achieving sterilisation goals is the main focus of state health service facilities and approximately six and a half lakh women are sterilised every year: last year more than seven lakh women were sterilised. In order to achieve sterilisation targets, couples are offered benefits through a number of schemes, as well as cash incentives, for sterilisations after the birth of one or more girls. Incentives also extend to PHCs that are eligible for a one-lakh rupees prize if they fulfill sterilisation targets.³ The assessment of medical officers and health professionals is now also based on their performance in Reproductive Child Health (RCH) programmes. The pressure to meet sterilisation targets proved so great that it led one Auxiliary Nurse Midwife (ANM), who was unable to meet her target, to commit suicide.⁴

The health camps at which many sterilisations take place all lack basic amenities such as electricity, toilets and running water. Patients' rooms are inadequate to accommodate women after operations and many do not even have operation theatres. There is also an overall neglect in terms of cleanliness and hygiene where operation theatres do exist. Women are also not treated with dignity and respect at camps. Numbers are placed on their heads and they are taken into operation theatres with their saris/petticoats falling off in full view of the other women, and amidst lewd comments from male staff members. Women are also required to arrive at the camp early in the morning, and sometimes even the night before, the day of their scheduled operation, but then the operation does not take place until sometime after 2:30 PM.

Post-operative care for tubectomies is completely absent; there are approximately 35 officially recorded tubectomy-related deaths a year.

Post-operative care for tubectomies is completely absent; there are approximately 35 officially recorded tubectomy-related deaths a year. While women are often provided transport to health facilities in PHC jeeps, they are expected to find their own transport home following sterilisation operations when they may be experiencing pain and discomfort. The following case illustrates the level of neglect. A tubectomy was performed on a woman at the Nashik Dhargaon PHC. After the procedure, the PHC building was locked and all the staff went home leaving the woman alone inside with her newborn baby and no electricity. The woman escaped through a hole in the wall and had to walk back to her village with her newborn baby in her arms after just having undergone surgery.⁵

⁵ Reported at the Monitoring CEDAW Article 12 Workshop, Nashik

After sterilisation, many women develop complications such as backaches and bleeding, but have to go to private doctors for treatment because population camps will not provide them with post-operative or follow-up services. Private doctors are performing hysterectomies in the majority of these cases and we have found that hysterectomies are being performed on women as young as 22 and 23 years old, which can trigger early menopause. The true effects of this practice remain undocumented as it is not part of any large study.

Other norms, such as refraining from performing laparoscopic tubectomies for six weeks after a woman gives birth are routinely violated. We witnessed women undergoing operations who had children that were barely 15 days old. Some of these children looked so malnourished that their chances of survival seemed slim.

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Government regulations regarding the age at which a sterilisation can be performed have been reduced from 22 to 20 years old. However, discussions with doctors and women at population camps reveal that tubectomies are routinely performed on women who are only 17 or 18 years old: the norms for laparoscopic tubectomies indicate that women below the age of 20 should not be sterilised. Consent forms are not properly completed at any of the camps: we found that many women undergoing sterilisation operations were actually only 17 or 18 years old, although the age on their consent forms was recorded as 22 or 23.

While the emphasis has been on female sterilisation, efforts to sterilise men are also on the rise. Previously, only 2 percent of all sterilisations were performed on men, but the number of male sterilisations in Maharashtra has increased by over 143 percent. Today, 40,000 to 50,000 men are sterilised; the use of coercion is not unheard of and the majority of sterilised men are from poor tribal districts. For example, vasectomies were performed in Narayangaon PHC (Pune district) on five Dalit men who were promised a sum of Rs. 500 each if they underwent the operation. The men were completely intoxicated at the time of the operation.⁶

⁶ Discussion with ANM recorded during the population policy watch, JAA, 2002.

⁷ Reported in a women's self- help group meeting, Pune, August 2004.

Finally, sterilisation is a permanent procedure. Women who are sterilised often change their minds about having more children due to their changing life circumstances, such as the break-up of a marriage or the death of a child. In one case, a mother of two underwent a sterilisation operation, but soon afterwards left her in-laws home with her young son due to marital discord. Later her son became ill and died; now she is unable to remarry because she cannot have any more children.⁷

There is no reason to solely focus on sterilisation as the main contraceptive method. DKT India is one of the few organisations in the country actively promoting the use of injectible contraceptives. The three-month Depo Provera (DMPA) and the two-month Noristerat (NET-EN) are sold at subsidised prices to doctors and clinics. During 2003, DKT India (Mumbai) sold over 53 million condoms, over 7 million cycles of Oral Contraceptives (OCs), 31,000 Intra-Uterine Devices (IUDs), and 77,000 injectibles. Injectible contraceptives are marketed to private physicians with low-income clientele; however, no one is monitoring their use.

manipur

Nonibala Devi Yengkhom and B. P. Sharma*

Any population policy must keep in mind Manipur's specific contexts and priorities. Manipur is a very small state, with an estimated population of around 20 to 22 lakhs, which is decreasing rather than increasing due to three main factors: armed conflict, HIV/AIDS, and drug addiction. It would be very impractical to adopt a Two-Child Norm (TCN) law in Manipur given its decreasing population.

We conducted a study in three districts that have experienced insecurity due to ongoing-armed conflict between different local communities and between state and non-state actors: Imphal East, Imphal West, and Chandpur. Disappearances are frequent in these areas and people are often killed by indiscriminate gunfire. As is usually the case in conflict situations, women are further marginalised.

Manipur's population is actually decreasing due to armed conflict, HIV/AIDS and drug addiction.

Generally, people in Manipur feel they belong to a marginalised minority with no voice. More complicating is the fact that the population consists of thirty-two separate communities, with each community regarding itself as a separate minority, and each trying to increase its own population for political purposes. As a result, women, considered the torchbearers of culture and tradition, often find themselves caught between population policies promoting smaller families and pressure from within their communities to give birth to more children. During our study, we found that many women who have been sterilised felt very uncomfortable with their decision afterwards. This has been substantiated by reports from other Non-Government Organisations (NGOs) and voluntary organisations.

Manipur is also experiencing a rapid increase in HIV/AIDS cases, particularly among those within the reproductive age group of 20 to 45 year olds. While separate from the issue of drug addiction, the two also go hand in hand. The dangerous practice of sharing needles means that drug addicts are at high risk of becoming infected with the HIV virus. The spread of HIV/AIDS among drug users will not be contained within this sub-population, but inevitably spreads to the larger population. For example, intravenous drug users can infect their wives or partners, who may then give birth to HIV positive children.

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Finally, drug addiction is a major problem in and of itself, and it has taken many lives over the last three decades. There are only two national highways in Manipur (no. 53 and 39), both of which are part of a dangerous drug route known as Heroine No. 24 that stretches to other parts of the country, as well as neighboring Myanmar. The negative effects of drug trafficking has badly affected the state, particularly its young people, and it contributes to the decline of the state's reproductive population.

Women find themselves caught between population policies promoting smaller families and pressure from within their communities to give birth to more children.

Asking people in the state to have only two children is simply unfeasible and unnecessary given the number of deaths due to ongoing conflicts, the HIV/AIDS epidemic, and drug trafficking. A developmental or empowerment approach would be more appropriate. Although the government runs family planning programme centres, women do not receive detailed information on all the contraceptives available in the market. The lack of proper education regarding contraceptive options leaves women with little choice but to follow government orders, which may adversely affect their health and lives.

As is often the case, policies formulated at the national level neglect the specific issues and needs of northeastern states. As such, it is strongly felt that the population policy should be reframed following consultation with NGOs, voluntary organizations, and concerned individuals from Manipur and other northeastern states. Population policies should adopt an insightful approach to the issues, needs, and aspirations of the people of the region.



Gourang Mohapatra*

The state of Orissa is the tenth largest state in the country and is located on the east coast of India. Orissa's land mass area is 1,55,707 sq. km., which is 4.7 percent of the national land mass area. Orissa has a population of 3,68,04,660, which is 3.7 percent of the national population. It is estimated that the state population will reach 60 million in ten years. Within the Indian context, population density is low with 236 people per sq. km.: in certain districts, like Devgaur and Bodh, the population density is less than 80 people per sq. km. The population density for the country is 324 people per sq. km. (for more information see *Table 1*).

Table 1

Orissa State Ranking ^a	
Population	11
Population Density	26
Literacy	26
Urbanisation	16
Sex Ratio	8

^a All figures relevant for the period between 1991 and 2001.

According to the 2001 census, Orissa has the largest Scheduled Tribe (ST) and Scheduled Caste (SC) population with 77,38,065 households or 38.66 percent of the state's population falling within these categories, of which 22.13 percent are STs and 16.53 percent are SCs.

The Oriya fertility rate (2.9 percent) and birth rate (24.1 percent) are less than the national averages of 3.2 percent and 26.1 percent, respectively. Orissa's sex ratio is 972 females per 1000 males, which is higher than the national sex ratio of 933 females per 1000 males. However, Orissa has witnessed a sharp decline in its sex ratio over the past few decades, so the decline in Orissa is actually steeper than it has been nationwide. In 1951, Orissa's sex ratio was 1,022, whereas the national average was 945. The child sex ratio (0-6 years) has also declined by 17 points: it fell from 967 in 1991 to 950 in 2000. Out of a total of 30 districts, 20 have witnessed sharp declines in their child sex ratios. The one exception is Navrangpur where the sex ratio is 1,002 girls per 1000 boys. Tribal districts in general have better child sex ratios than urban areas. In Orissa, 32.2 percent of all women are married before they reach the age of 18, which is better than the national average of 36.8 percent. The birth order of three and above is 45.3 percent as compared to 45.8 percent at the national level.

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Poverty

Orissa is a resource rich state: almost 18.5 percent of all mineral deposits in the country are in Orissa. Yet, it has been unable to translate its wealth in natural resources into economic and social development that raises people's standard of living; thus, poverty continues to be a major problem. Figures show that almost half the population (47.15 percent) live below the poverty line. As a result, people are forced to migrate to other areas in search of work. Marginalised groups, which form 36 percent of the total population, are further disadvantaged as a result of inequities, discrimination, social barriers, and deprivation prevalent at the societal level. Dalits and women are the most disadvantaged groups within the state, great disparities continue to exist between the general public's and the Dalit community's access to public services, such as health care. Women are also affected by service discrepancies because of social problems at the grassroots level. Almost 81 percent of ST/SC groups consist of poor landless labourers with very limited access to health care facilities.

The absence of an adequate public health care infrastructure compels people to spend 45 to 50 percent of their total income on health care related expenses.

Poverty alleviation programmes in Orissa have had a history of failure. In a public hearing conducted last month, it was revealed that 70 percent of all poverty alleviation programmes fail at the grassroots level. One positive social indicator is progress in literacy: the literacy rate increased from 49.09 percent in 1991 to 63.61 percent in 2001. The male literacy rate is 75.95 percent and the female literacy rate is 50.97 percent.

Health Care System

Orissa's health care infrastructure is in deplorable condition, with people struggling to access even basic health care facilities and services. Urban public health delivery mechanisms are poorly defined and the situation in rural areas is no different. The poor state of the health care system is a result of low social investments in the health and education sectors, the lack of doctors and other qualified staff, poverty, and a general lack of awareness regarding government services. The majority must borrow from moneylenders to pay these costs. Please see *Text Box 1* for more information on Orissa's health care infrastructure.

Text Box 1

Health Care Indicators for Orissa*

Overall Doctor Population Ratio (1999) \Rightarrow 1 : 7,560

Bed Population Ratio (2000) \Rightarrow 1 : 2,662

ANM Population Ratio (1999) \Rightarrow 1 : 5200

Nurse Bed Ratio (1999) \Rightarrow 0.1 : 06

Population Served/Medical Institutions (2000) \Rightarrow 1 : 21580

Area Served/Medical Institutions (2000) \Rightarrow 1 : 92 sq. km.

Nurse Doctor Ratio (1999) \Rightarrow 1 : 02

Unfortunately, the need for a properly functioning health infrastructure in Orissa has never been greater. An increasing number of communicable diseases are affecting adults and children alike, further burdening the already crippled government health system. Infectious and parasitic diseases account for 20 percent of all deaths and 7 percent of all infant deaths in 1998. While only 25 percent of malaria cases nationwide are reported from Orissa, 45 to 50 percent of all malarial deaths in the country occur in Orissa. There continues to be a high prevalence of leprosy at 10.89/1,000, or 6.81 percent of all cases reported in India. Cases of neo-natal tetanus and measles outbreaks are also routinely reported. The prevalence of tuberculosis in Orissa is 2.12/1,000, which is also higher than the national average of 1.76/1,000. Diabetes Mellitus and malnutrition are common and communicable diseases such as diarrhea are widespread. Filaria cases are also prevalent and HIV/AIDS rates are increasing.

Basic health care for women and children is particularly lacking. In Orissa, 48 percent of women are undernourished and 63 percent are anaemic, of which 18 percent have severe anaemia. Around 54.4 percent of children below three years of age are underweight and 72 percent of children between 6 months and 35 months are anaemic.² Nearly two-thirds of all children below the age of five are underweight. The number of children receiving a full course of immunizations in Orissa is slightly better than the national average, at 57.8 percent and 53.3 percent, respectively.³ However a total of 9.4 percent of newborns are not receiving immunisations: only 68.4 percent of all newborns receive polio vaccines and 43.7 percent

² NFHS-2

³ RHS-RCH Survey 1998-99

of children between the ages of 6 and 35 months receive a full course of immunisations.

Reproductive health services are also in a lamentable state. The percentage of pregnant women accessing ANC is 79.7 percent, compared to the national average of 67.2 percent, but only 74.3 percent receive two doses of Tetanus Toxoid (TT) and 67.6 percent receive Iron Folic Acid (IFA). Only 32.7 percent of women have safe delivery options available to them with trained personnel: 23.3 percent have access to doctors, 22.5 percent are assisted by Traditional Birth Attendants (TBAs), and Auxiliary Nurse Midwives (ANMs)/midwives cater to another 8.5 percent. At the national level, 41.9 percent of all women have access to safe deliveries.⁴ As a result, Maternal Mortality Rate (MMR) is very high in Orissa, with around 10,257 maternal deaths recorded every year: 855 per month, 29 per day. Morbidity among married women is also very high. Twenty-eight percent of married women suffer from reproductive health problems including abnormal vaginal discharge, Urinary Tract Infections (UTIs), abdominal pain, and pain and bleeding associated with sexual intercourse. Seventy-five percent of these women do not seek medical advice for their conditions.

The Couple Protection Rate (CPR) is very low at 39.5 percent, in comparison to the national average of 48.1 percent. Female sterilisation is the most common form of contraception, particularly in rural areas, and is usually undertaken after achieving desired family size. Female sterilisation rates are 76 percent, whereas the male sterilisation rate is only 2 percent. Oral contraceptives, Intra-Uterine Devices (IUDs), and condoms only account for 10 percent of total contraceptive use. Contraceptive use among women also increases with age: 69 percent of women between the ages of 40 and 44 years use contraceptives, whereas only 47 percent of newly married women use contraceptives.⁵

Maternal Mortality Rate (MMR) is very high in Orissa, with around 10,257 maternal deaths recorded every year: 855 per month, 29 per day. Morbidity among married women is also very high. Twenty-eight percent of married women suffer from reproductive health problems including abnormal vaginal discharge, Urinary Tract Infections (UTIs), abdominal pain, and pain and bleeding associated with sexual intercourse. Seventy-five percent of these women do not seek medical advice for their conditions.

⁴ RHS-RCH Survey 1998-99

⁵ NFHS-2

Table 2

Mother and Child Health Indicators for Orissa		
	Orissa	India
Birth Rate	23.1	25
Death Rate	9.8	8.1
IMR	87	64
Child Mortality (<5)	29	22
Neo-Natal Mortality	60	45
Post-Neonatal Mortality	37	27
Still Birth Rate	17	9
Prenatal Mortality	61	42
Maternal Mortality^a	597	479

^aAs per Mari Bhat 1998-1999, but as per SRS 998 it is 367 and 404 respectively for Orissa and India.

In order to address these widespread problems within the health care system, the government is in the process of preparing a document called Orissa Vision 2010, which is to be a blueprint to guide state health programmes over the next ten years. The government plans to involve people at the community level in the health delivery system and enlist the help of various expert groups for programme implementation. *Text Box 2* lists the initiative's main components.

Text Box 2

Major Components of Orissa Vision 2010
<ul style="list-style-type: none"> • Substantial reduction in communicable diseases cases • Effective control of non - communicable diseases • Better distribution of public health services in terms of equity and geographic access • Partnerships with private service providers • Professional approach towards hospital management and greater autonomy • Address the government's failure to market health services to the public • Increase public awareness regarding the nature and type of services available • Provide for a mix of financing options (community financing, social health insurance, government financing, etc.) • Allied health and paramedical professionals to be inducted according to need • Policy to increase and develop health professionals within the state • Meaningful community involvement

The logo for 'punjab' features the word in a bold, lowercase, sans-serif font. Above the letters 'u' and 'j' is a horizontal grey bar.

Manmohan Sharma*

The declining sex ratio in Punjab has assumed dangerous dimensions, and the state has become notorious in regard to this issue with the Punjab; district of Fatehgarh Sahib recording the lowest sex ratio within the entire country. In 2001, the sex ratio was 874, far lower than the national average of 933. Similarly, the child sex ratio (0 – 6 years) has fallen to an abysmal 793: the national average is 927. While the Two-Child Norm (TCN) has been a factor in the decline of the sex ratio, it is far from the only contributing factor. The poor economy, lack of education, inadequate health care services, and increasing hospitalisation costs are among the multiple factors that have contributed to this phenomenon.

Vital Statistics

Punjab has a total population of 2,42,89,296 out of a national population of 1,02,70,15247. Punjab's rural population is 66.95 percent, which is lower than the national level of 72.22 percent. However, the percentage of Scheduled Castes (SCs) in Punjab is significantly higher at 28.31 percent of the population in 1991, compared to 16.48 percent of the national population.

The child sex ratio in Fatehgarh district of Punjab has fallen to an abysmal 793 girls per 1000 boys, while the national average is 927

Punjab's Decennial Growth Rate (DGR) from 1991-2001 at 19.76, is lower in comparison to the national level of 21.34. The birth rate in 2000 was 21.5 percent: 22.6 percent in rural areas and 18.5 percent in urban areas. In 2001, these numbers were 21.2 percent, 22.8 percent, and 18.7 percent, respectively. The death rate in 2000 was 7.3 percent: 7.8 percent in rural areas and 5.8 percent in urban areas. By 2001, these numbers changed to 7 percent, 7.2 percent, and 6.4 percent, respectively. In 1998, the Gender Fertility Rate (GFR) and Total Fertility Rate (TFR) was 85.7 and 3.6, respectively: rural GFR and TFR was 91.4 and 2.7 and urban GFR and TFR was 69.5 and 2.1.

The Infant Mortality Rate (IMR) is an important indicator of development and family welfare. Although the IMR for Punjab (57) is lower than the overall IMR for India (68), Punjab's IMR is still higher than 50 percent of the states in India. More than

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one out of every 18 children born in the five years prior to National Family Health Survey-2 (NFHS-2) died before its first birthday. It also comes as no surprise to learn that infant and child mortality rates are higher for girls than boys across the board. The IMR in rural areas was significantly higher than in urban areas in 2000 and 2001, although the overall IMR improved slightly from 2000 to 2001. The IMR was 57 deaths per 1,000 live births in children under the age of 1 and 16 deaths per 1,000 live births in children between the ages of 1 and 4. There were 72 deaths per 1,000 live births among 0 to 4 year olds. These rates are slightly higher in NFHS-2 than in NFHS-1.

Table 1

Demographic Statistics for Punjab				
	Punjab		India	
Life Expectancy at Birth	Male	Female	Male	Female
1991 - 1996	66.6	66.6	60.6	61.7
1996 - 2001	68.4	71.4	62.4	63.4
Birth Rate	21.1		25.2	
Death Rate	7		8.5	
IMR	51		66	
CPR	60.3		46.5	
TFR	2.6		3.2	
MMR	199		407	

Punjab's literacy rate of 69.95 percent is higher than the national rate of 65.38 percent. Male literacy is about the same as the national average at 75.63 and 75.83 percent, respectively, but female literacy at 63.55 percent is much higher than the national rate of 54.1 percent. The average age at which a woman gets married in Punjab is 21, which is also higher than the national average of 19.5.

Punjab is second only to Himachal Pradesh in its rate of contraceptive use. The use of contraceptives among the population is high, with 67 percent of currently married women using some method of contraception, an increase from 59 percent in NFHS-1. The national average is 48 percent. Female sterilisations account for 44 percent of current contraceptive use; another 23 percent use officially sponsored spacing methods. Less than 2 percent of currently married women report that their husbands are sterilised.

Knowledge regarding modern contraceptives is almost universal, with at least 99 percent of urban women and 95 percent of rural women informed about different contraceptive methods. In Punjab, women are also well versed in traditional contraceptive methods, with 78 percent of currently married women reporting knowledge of traditional methods: 73 percent are aware of the rhythm method and 63 percent are aware of the withdrawal method. Women in urban areas are more knowledgeable about traditional methods than rural women at 91 percent and 73 percent, respectively. Only 64 percent of women nationwide are informed about traditional contraceptive methods.

rajasthan

Pallavi Gupta*

The Government of India (GOI) has made population control a priority since Independence and high fertility rates continue to be a matter of great concern. Since 1952, when the official family welfare programme was launched, a significant amount of financial and human resources have been devoted to various population reduction strategies and schemes: the cafeteria approach, forced sterilisations, the Target-Free Approach (TFA), and other specific legislation. The National Population Policy (NPP) was a significant move towards a more humane and effective development policy that aimed to improve the overall quality of life by raising awareness and access to health care options, and focusing on of women's needs.

A new study has shown that TCN laws fail to change attitudes regarding family size or increase women's reproductive rights.

Instead, they disenfranchise women and other marginalised groups from local politics, exacerbate the decline in the sex ratio, and have numerous adverse health implications for women.

Despite these efforts, population control remains elusive, especially among the populous northern states including Rajasthan. While there has been an overall decline in the birth rate, it has not reached the level desired to achieve replacement fertility: no more than two children per couple. Many state governments and political parties believe that more direct action must be taken to halt population growth and have adopted coercive measures that are at variance with the principles of the NPP to achieve this goal. Currently, Andhra Pradesh, Haryana, Himachal Pradesh, Madhya Pradesh, and Rajasthan have all passed Two-Child Norm (TCN) legislation.

Rajasthan amended its Panchayati Raj Act to disqualify individuals with more than two children from contesting Panchayat elections, or from serving as Panchayat members. As of 2002, Rajasthan expanded the TCN to include government employees: individuals with more than two children are now ineligible for government jobs and those already employed by the government will be ineligible for promotion if they violate the TCN.

Supporters justify TCN laws on the grounds that locally elected officials and government employees should be reproductive role models for their communities.

* Pallavi Gupta is associated with PRAYAS in Rajasthan.

However, a new study has shown that TCN laws fail to change attitudes regarding family size or increase women's reproductive rights. Instead, they disenfranchise women and other marginalised groups from local politics, exacerbate the decline in the sex ratio, and have numerous adverse health implications for women.

Rajasthan's TCN legislation encroaches on national and international principles regarding reproductive rights and informed choice, and it is causing great concern among experts and women's organisations because of its coercive nature and inherent bias against women and marginalised groups.

The Two-Child Norm and Panchayati Raj Institutions

The TCN has proven more divisive than productive when applied to Panchayats. Over the past three years, 412 Panchayat members in Rajasthan have been removed from their posts for failure to comply with the TCN laws. An overwhelming majority of the men and women interviewed stated that they would not have contested elections if they had been aware of the TCN laws. Women, marginalised groups, and young people have been the most affected by the law.

The adoption of the 73rd and 74th Constitutional Amendments stipulated reservations for women (33 percent of all Panchayat seats) and other marginalised groups such as Dalits, Scheduled Castes (SCs), and Scheduled Tribes (STs), in direct proportion to their numbers in the area. The objective was to create a space for women and economically and socially marginalised groups to participate in the political process. The TCN law effectively neutralises this objective.

Many women find it difficult to defy marital, familial, and social expectations so they can participate in Panchayat politics. Few women have the power to make choices regarding contraception, and their access to contraceptives and family planning services is less than adequate. Women of low economic status, or that belong to marginalised groups, face even more obstacles.

The TCN law discourages women from contesting elections. Many women have been forced to step down from Panchayat posts for having more than two children, despite the fact that they often have little or no decision-making power in determining family size. A woman's family often has no problem with her removal from a Panchayat post if it means she can give birth to at least two or three sons, despite the woman's own personal desire to not have more children or to serve as a Panchayat

member. Many women find it difficult to defy marital, familial, and social expectations so they can participate in Panchayat politics. Few women have the power to make choices regarding contraception, and their access to contraceptives and family planning services is less than adequate. Women of low economic status, or that belong to marginalised groups, face even more obstacles.

Contraceptives and other family planning services are not always available at the village level. This makes it certain that a cast-iron rule like the TCN law will backfire.

While we often hear about the ‘rubber-stamp’ female Sarpanches or female Panchayat members, who are merely puppets for their husbands or male relatives, there have also been some remarkable female leaders emerging from Panchayats. Women have embraced the opportunity to participate in the political process, and in some cases have gone to great lengths to avoid disqualification. One female Sarpanch in Rajasthan smuggled her one-month old baby to her mother’s house (located 120 km away) in order to avoid disqualification from her post. “If I had not done so, the villagers around me would have complained to the local collector, and I would have been disqualified from my post,” says Sitara Devi who lives near Kotah. Her mother is now raising the child. Other women are disqualified just as they begin to find their political voice. Twenty-six year old Kalavati, from a Rajasthan village outside Bundi, states that “being an Other Backward Class (OBC), I was elected on a reserved seat. During the first term, I was too scared to open my mouth and remained a rubber stamp member. It was only during my second term that I began to speak out. The birth of my third child forced me to step down. The government only talks of helping us. If they had wanted to, they could have allowed me to continue since I was working to improve the lot of others in my village.”

Young people are also disproportionately affected by the TCN law. While the minimum age for contesting elections was reduced from 26 to 21 years, the TCN law will ensure that many young women and men in their reproductive years cannot serve on Panchayats. Men who are able to convince their mothers, or older women in their families, to contest elections and serve as the above mentioned ‘rubber stamp’ female Sarpanches and Panchayat members are also making it more difficult for young women to enter the political process.

Both the NPP and the Ministry of Health have criticized the TCN law. They argue that the entire thrust of the new Panchayat policy is to have more young people participating in politics. Ministry officials point to the fact that contraceptives and other family planning services are not always available at the village level, making it

certain that a cast-iron rule like the TCN law will backfire. In addition, the Government of Rajasthan is well aware of the high Infant Mortality Rate (IMR) at the village level.

Is the denial of political rights and discrimination against families with more than two children in the name of population control ethical? The answer is no, especially when there is no guarantee that children will not die prematurely from preventable causes such as chronic and acute malnutrition, the lack of potable water, or adequate medical care due to the ongoing negligence of the government to address these issues.

Women's Health and Welfare

Rajasthan's TCN law has very serious implications for women's health and welfare. The law not only violates women's reproductive rights and health, but it also exacerbates the effects of societal discrimination against women. The declining child sex ratio and an increase in Violence Against Women (VAW) are two examples. At the same time, the Government of Rajasthan has not made increasing or improving programmes and services for women and children a priority in an effort to decrease maternal mortality and increase child survival rates.

As discussed previously, family members routinely make important decisions relating to a woman's reproductive health and rights such as fertility, family planning, childbirth, and abortion. A woman's ability to make independent decisions in these areas is further constrained by restrictive population policies such as the TCN law, which aim to dictate the number of children she can and cannot have. There is an absence of specific legal guarantees and mechanisms to protect women's reproductive rights from state interference. The implications of the TCN's violation of women's rights in this manner remains unexplored and warrants a detailed study to examine its various dimensions and repercussions.

Family members routinely make important decisions relating to a woman's reproductive health and rights such as fertility, family planning, childbirth, and abortion. A woman's ability to make independent decisions in these areas is further constrained by restrictive population policies such as the TCN law, which aim to dictate the number of children she can and cannot have. There is an absence of specific legal guarantees and mechanisms to protect women's reproductive rights from state interference.

A study of Andhra Pradesh, Haryana, Madhya Pradesh, Orissa, and Rajasthan that was commissioned by the Ministry of Health and Family Welfare of the Government of India, and supported by the United Nations Fund for Women (UNFPA), uncovered one negative repercussion of the TCN law. There are a striking number of cases in which the third child is aborted after pre-natal diagnostic techniques indicate that the foetus is female; male foetuses, however, are delivered to term. Societal preference for sons clearly outweighs the loss of Panchayat posts. Thus, the TCN law is working to encourage the sex-selective abortion of female fetuses, rather than curtail fertility rates.

The scarcity of women, and the large number of unmarried men, will inevitably lead to an increase in sexual violence against women. Rape, trafficking, and other sexual crimes (which are already serious problems in India) will intensify in number and form. The importation of wives can become a serious problem, as it has in China which also has an adverse sex ratio.

Son preference is in fact one of the most glaring manifestations of societal discrimination against women, and it occurs regardless of class, caste, or ethnicity. The use of pre-natal sex-determination tests followed by the sex-selective abortion of female foetuses as described above, provides a striking example of how scientific advances and technology are misused to further oppress women. In fact, this practice has become so widespread that it is adversely impacting the child sex ratio (0 – 6 years) within states, and in the country as a whole.

While the overall sex ratio is often seen as an average figure, due to the fact that women live four to five years longer than men, current trends in the overall sex ratio and child sex ratio indicate that both will further decline by the next Census. If this proves true, it has potentially serious and latent consequences that will only express themselves a decade from now.

According to the 1991 Census, approximately 35 - 45 million women are missing in India. This number was determined by comparing Census figures with the sex ratio expected in any given population. These missing women are likely the result of a declining female birth rate, an increase in female mortality over the life cycle, Census errors, or a combination of any of these factors. It is anticipated that an additional five million women will be unaccounted for by the end of this decade.

Women are a vital part of the country's labour force, and the impact of five million missing women will have an effect on the national economy and productivity. Women

not only undertake household and farm work, but also make up important segments of the medical profession as nurses and deliver the majority of babies. They also make up a significant portion of other professions such as teaching.

While there is no historical model to which we can refer to, an adverse sex ratio has a number of obvious and negative consequences. There is no doubt that there will be a scarcity of women of marriageable age. This will most likely result in women marrying at younger ages and an increase in the number of child brides, which will further erode women's opportunities to complete school or gain job skills prior to marriage. Their health will also be compromised as early childbirth is associated with higher morbidity and mortality rates for women and children. Rajasthan already has one of the highest infant (under five years) and maternal mortality rates in the country; a result of nonexistent or inadequate preventive health care services and development programmes for women and children.

It is questionable whether fertility can be significantly reduced without a concurrent reduction in child mortality.

The scarcity of women, and the large number of unmarried men, will inevitably lead to an increase in sexual violence against women. Rape, trafficking, and other sexual crimes (which are already serious problems in India) will intensify in number and form. The importation of wives can become a serious problem, as it has in China which also has an adverse sex ratio. Finally, the practice of polyandry would be a logical social reaction to a low sex ratio. Polyandry, when a woman is married to two or more brothers, is a practice that has been historically prevalent when there is a scarcity of marriageable women. Since polygamy is illegal in India, a woman would legally be married to only one man, but act as the *de facto* wife to her brothers-in-law who live in the same household.

How to Achieve Demographic Transitions

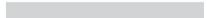
Recently, during a lecture in New Delhi, economist Amartya Sen pointed out that the southern Indian state of Kerala was more successful in reducing its birth rate than China, despite China's use of coercive policies including a One-Child Norm (OCN). What China's, coercive policies did succeed in achieving was a disturbing imbalance in the country's sex ratio.

It is questionable whether fertility can be significantly reduced without a concurrent reduction in child mortality. The analysis shows that populations that experience high infant or other premature mortality express high fertility behaviour. Such groups

normally belong to marginalised segments of society that are deprived of essential commodities for social, economic, ethnic, and gender reasons. Therefore, achieving a demographic transition is intrinsically connected to improvements in health care services for these very populations. According to the famous demographers Caldwell & Caldwell “for most of the last 130 years, real per capita income or indices, including both that measure and others of education and mortality have been fairly good predictors of the timing of the onset of fertility transition.”

An analysis of demographic transition trends in Europe and other industrialised countries reveal that the majority of these countries had fairly high fertility rates and population densities until the onset of the Industrial Revolution in the late 18th and early 19th Century. At that time, birth rates fell to such an extent that several countries were in danger of a negative growth rate. Keep in mind that this was at a time when modern contraceptives such as condoms, oral birth control pills, Intra Uterine Devices (IUDs), and sterilisation operations were not available. The conclusion is that social and economic development was responsible for the demographic transition.

Finally, many countries have been able to successfully achieve demographic transitions without the use of coercive policies. For instance, Brazil and India had the same birth rate in 1952. Yet, Brazil’s Total Fertility Rate (TFR) dropped from almost 6 in the 1940s and 1950s, to 3.3 by 1986. By 1994, it had dropped further to 2.44, just shy of the replacement level of 2.2. Brazil’s demographic transition was achieved in the absence of an official policy to control the birth rate, and without extra expenditures in the name of family welfare. In fact, the government was indifferent to the population level. While family planning was not actively promoted because of the influence of the Roman Catholic Church, the government did not interfere with the widespread use of contraception. Women’s initiatives and social change initiated from the bottom up were mainly responsible for Brazil’s remarkable demographic transition. India should take note.

The logo for Tamil Nadu, featuring the words "tamil nadu" in a bold, lowercase, sans-serif font. The word "tamil" is in a darker shade than "nadu". Above the text is a horizontal grey bar.

tamil nadu

Purnika Ilasam*

Last month, the State Chief Election Commissioner announced that he would recommend that the Government of Tamil Nadu adopt Two-Child Norm (TCN) legislation for Panchayat representatives. There was an immediate and tremendous opposition to his statement from civil society groups. The subject has been covered widely in the media, and several Gram Sabhas have announced that they will pass resolutions opposing the introduction of TCN legislation. While in other states, people are protesting against coercive population policies after they have already been implemented, in Tamil Nadu we are opposing TCN legislation before it is actually adopted.

Women in Tamil Nadu are empowered to voice their opinions and women's groups, who have taken up this issue, have become a force to contend with. After all, it is women's political participation in Panchayats that will be the most severely affected by TCN legislation. Of the 12,612 Panchayat Raj Institutions (PRIs) in Tamil Nadu, 4,603 seats have been reserved for women. Women have significantly contributed to political life in Panchayats and their continued contribution is at stake if TCN legislation becomes effective in the state. For example, Ms. J. Sumeri was elected President of her village Panchayat. She has won widespread recognition for her achievements in rainwater harvesting and water management, and she even received an award in the United States for her work. However, Ms. Sumeri is also a mother of three children. If the TCN becomes applicable to Panchayats, she will be removed from her post to the detriment of her community. Ms. Sumeri is perplexed by the Election Commission's decision to recommend the adoption of TCN legislation. She believes that imposing limits on the family size of Panchayat members will not make a significant impact on population growth, but will adversely affect the small percentage of women who are serving as members of Panchayats. While the Election Commission plans to request the adoption of a TCN law, efforts to raise the level of reservations to 33 percent have not been introduced in Parliament, the state legislature, or local government institutions.

Panchayat reservations for women work on rotation, with each woman allowed to serve for only one five-year term. However, many women are interested in continuing

* Ms. Purnika Ilasam is a Panchayat President and is also the President of the Federation of Women Panchayats

People are demanding that the government focus on economic and social development to achieve population goals.

to serve in their capacity as Panchayat members after their initial term is completed, so that they can continue their work. They have petitioned the former and current Chief Ministers to address this issue. The current Chief Minister, Jayaram Jayalalitha, promised to allow female Panchayat Presidents to serve two terms if she was elected, and she has kept this promise. I believe Tamil Nadu is the only state in India where female Panchayat Presidents can serve two consecutive terms.

The people in Tamil Nadu realise the importance of population control and small family size, and Panchayat members can assist in achieving these goals by creating awareness about family planning among the rural population. For example, they can explain to couples that it is essential to control family size because under the Public Distribution System (PDS) each family receives only 35 kilos of rice, regardless of the number of people in each family. There are many other ways in which we can carry family planning messages to the people.

The people oppose coercive and target-based approaches to population control. Instead, they are demanding that the government focus on economic and social development to achieve population goals. The government has ignored basic health care needs: Public Health Centres (PHCs) in villages are deteriorating; very few doctors are interested in serving in rural areas and small villages, and government health care efforts are mainly focused on controlling large epidemics, like polio, that affect huge numbers of people. There is very little government support for health issues that concern women and children, like Hepatitis B. The central government needs to extend its support to address these problems as well.

The Federation of Women Panchayats is planning to conduct a survey to reveal exactly how many female Panchayat members will be affected if a TCN law is adopted. We are also holding a conference to which we have invited central government officials including the Minister of Health. We plan to submit a memorandum opposing the introduction of the TCN in Tamil Nadu because of its adverse impact on women. We hope that the government will seriously consider this memorandum. We also urge all states to sign a petition calling for a ban on TCN legislation and other coercive population policies, which can be presented to the government, the President, and the Prime Minister.

uttar pradesh

Ramakant Rai*

The Link Between Population and Development

The Government of Uttar Pradesh (UP) has it all wrong when it comes to population control. Uttar Pradesh's social and economic indicators are among the poorest in the country. It has the largest migratory working population and it is the worst when it comes to the status of women. Yet, the government blames its low developmental status as a BIMARU state on population growth and its subsequent pressure on natural resources. The government argues that development plans to improve health services, access to medicines, literacy rates, and women's development are effectively negated by the population burden, which has made it impossible to improve people's quality of life. As a result, all state-initiated development activities are focused on population control.

Unfortunately, the Government of Uttar Pradesh misses the lessons learned about population control. It has been actually the opposite cause and effect sequence: development programmes have been the most effective in achieving population stabilisation. Investing in health care services, education, programmes for women, and other poverty-eradication programmes have been shown to reduce population growth.

In addition, the government's argument that population growth has been a burden on the state's natural resources is belied by the fact that food production within the state has always been high, in fact much higher than population growth rates: food grain production has been increasing at a rate of 3.1 percent while the population growth rate is 2.4 percent. The state has been able to maintain a surplus in food production despite high population growth rates.

The government argues that the population burden makes it impossible to improve people's quality of life; therefore, all state-initiated development activities are focused on population control. However, investing in health care services, education, programmes for women, and other poverty-eradication programmes have been shown to reduce population growth.

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Yet, politicians continue to harp on the theme that population growth leads to underdevelopment. The population rate is still seen as a burden and government investment in the social sectors (education, health, public welfare), which have always been very poor and very poorly administered, continue to be inadequate. In the last decade, the Government of Uttar Pradesh's social investments have further declined by 5 percent in each sector. Ironically, politicians see the large population as a political asset that enables Uttar Pradesh to corner a substantial number of seats in Parliament, allowing it to exert political influence on a national level.

Uttar Pradesh's Population Policy

In 2000, the Government of Uttar Pradesh formulated its population policy and its main objective is to stabilising population growth through the achievement of specific demographic targets as follows:

- Reduce Total Fertility Rates (TFR) from 4.3 in 1997, to 2.6 by the year 2011 to 2016;
- Increase the age at which women have their first baby;
- Reduce unmet contraceptive needs for spacing and terminal methods;
- Reduce the Maternal Mortality Rate (MMR) from 707/1000,000 live births in 1997, to 394 by 2010, and below 250 by 2016;
- Reduce the Infant Mortality Rate (IMR) from 85/1000 live births in 1997, to 67 by 2016;
- Reduce the incidence of Sexually Transmitted Diseases (STDs) and Reproductive Tract Infections (RTIs); and
- Increase awareness about HIV/AIDS and other STDs.

In order to achieve these goals, the policy adopts a target-based approach and coercive measures, which are in contravention of the National Population Policy (NPP) and the International Conference on Population and Development (ICPD) principles dictating a Target-Free Approach (TFA) and informed choice. Numerous population targets have been created, including the number of sterilisations to be performed, Intra Uterine Devices (IUDs) to be inserted, and even condoms to be distributed. Medical officers and health workers' performance assessments are now based on Reproductive Child Health (RCH) services. Contraceptive targets are enforced for health and non-health personnel, and failure to achieve these targets can result in adverse entries in Annual Confidential Reports (ACRs), the withholding of salaries, and even termination. Furthermore, Panchayat Raj Institutions (PRIs) are now entirely responsible for identifying local contraceptive needs, advocating

the use of contraceptives, and recording vital events. Ten percent of PRIs total financial disbursements are based on their performance in these tasks.

In addition to targets, incentives and disincentives have also been introduced. People who violate the legal age of marriage are now ineligible for government jobs, even though it is well known that women often have no control over what age they are married. If a boy gets married before the age of 21 or a girl gets married before the age of 18, they will not be allowed to apply for government jobs. While the government claims that it will remove this provision from the population policy, it has taken no action to do so to date. The policy also reintroduces the green card scheme of 1984, when ‘green cards’ were awarded to couples that opted for sterilisation after having two children. Those who obtained a ‘green card’ were given lottery tickets, as well as preference and fee exemptions for medical services. Under the new policy, couples sterilised after having two children receive a license that entitles them to preference in government accommodation and quotas, free school admission, and beds in government hospitals.

The policy also calls for active dialogue with the Central Government to increase the availability of injectible contraceptives and new family planning technologies through private, government, and commercial channels. For the first time, the Government of Uttar Pradesh has levied a user charge for health services, 50 percent of which will be taken in revenue to improve services. While the policy welcomes participation from the private sector, there is no significant role assigned to Non-Governmental Organisations (NGOs).

Uttar Pradesh’s Population Policy in Action

According to the district survey of State Innovations in Family Planning Services Agency (SIFPSA), Uttar Pradesh’s population policy, with its target-based and coercive methods, has not been effective in achieving its population goals.

Despite the policy’s focus on sterilisations, it has failed to emphasise improvements in health care services, and this has led to a large number of failed sterilisations and thousands of unwanted pregnancies. Shortsighted policies, together with corruption, have also led to medical negligence and deaths.

While the sterilisation target is 6,50,000, only 4,50,000 sterilisations were actually conducted. Of these, an astounding 5 percent (20,000) were failed operations.

The failure to emphasise improvements in health care services has led to a large number of failed sterilisations and thousands of unwanted pregnancies. An astounding 5 percent of sterilisation operations failed. According to the Indian Medical Association, the acceptable failure rate is 0.5 percent

This is ten times higher than the acceptable failure rate (0.5 percent) laid down by the Indian Medical Association (IMA). Of the 20,000 people who had failed sterilisations, 78 percent (12,000 – 15,000) conceived within one year from the date of their operation.

It is clear that women are the main targets of sterilisation campaigns. In the previous financial year, 99.5 percent of all sterilisation operations were performed on women. Women have also been the most affected by the decision to adopt coercive and target-based policies, rather than policies that prioritise improvements in the quality of health care and family planning services. MMR of Uttar Pradesh is 707, but in some places within the state it is as high as 1,500. Statistics show that approximately 40,000 women die every year due to the lack of adequate or affordable medical care, almost one-fourth of all maternal deaths in the country.

Pre-natal care is only available to 5 percent of the population and 78 percent of deliveries take place without any supervision. Only 7 percent of all women receive post-natal care and the IMR is 87 percent. Fifty percent of doctor posts in the state are vacant, and while Auxiliary Nurse Midwives (ANMs) are stationed for every few thousand people there is no substantial maternal health services or information available for needy women. There is also no monitoring mechanism to assess the quality of ANM services. ANMs are operating under a system of target-based performance that was introduced for health care personnel under the population policy. At least seventeen ANMs were terminated in Gorakhpur District for failing to meet sterilisation targets. Imposing and enforcing such targets on ANMs ensures that their focus shifts from saving women's lives, to encouraging women to undergo sterilisation.

In addition, the population policy does not provide any quality standards or guidelines for safe abortions, post-abortion services, and related reparative issues. While it aims to improve access to injectible contraceptives, it fails to address the quality of care provided for those who adopt this method. Moreover, the policy's commitment to charging user fees to improve the quality of services only creates one more obstacle for poor people to access health care.

Finally, the promotion of coercive measures and sterilisation targets has led to some disconcerting outcomes. At least three District Magistrates (DMs) are offering gun licenses to people who successfully persuade a specified number of people to undergo sterilisation. One young Indian Administrative Service (IAS) officer, Mr. Anurag Singh, made the following statement to justify the programme: “Yes, we do believe in this stand, because this illiterate society understands only the language of force.” This incentive programme has led to gross violations of people’s human and reproductive rights. In one recent case, a landlord in Lakhimpur Kheri district drugged five of his servants so that they could be sterilised: two of the men were unmarried and below the age of 21.

A Study of Sterilisation Camps in Uttar Pradesh

A survey of sterilisation camps in eleven districts of Uttar Pradesh found that conditions were universally appalling. Out of the eleven districts, seven camps lacked emergency life-saving equipment such as oxygen cylinders, that are required during sterilisation operations. Doctors were not wearing hygienic clothes in five camps, and the sterilisation gowns that doctors are required to wear during operations were nonexistent in all eleven camps. Only six camps had surgical gloves and none of the camps had toilet facilities for urine testing.

UP FACTS AND FIGURES^a

Contraceptive Targets \Rightarrow 650,000 individuals/couples
 Sterilisations Performed \Rightarrow 450,000/ year
 Failed Sterilisation Resulting in Pregnancies \Rightarrow 20,000 (approx. 5%)
 Children Born After Failed Sterilisation \Rightarrow 12,000 (approx.) 78% of
 % of All Sterilisations Performed on Women \Rightarrow 99.5%
 Complication Rate for Sterilisation Operations \Rightarrow up to 50% (225,000/year)
 Gap in Reported Contraceptive Disbursement and Actual Use \Rightarrow 15x higher than
 figure quoted
 MMR \Rightarrow 707 (40,000/year)
 Maternal Morbidity \Rightarrow - 800,000/year (20 times)
 IMR \Rightarrow 87 (400,000/year)
 Women Receiving Inadequate Prenatal Care \Rightarrow 95%
 Unsupervised Deliveries \Rightarrow 78% (4 million/year)
 Vacancies in Doctor’s Posts \Rightarrow 25 - 40%
 Women Receiving Postpartum Visits by Health Workers \Rightarrow 7%

^a Source: District Survey of SIFPSA, Census 2001 NFHS-2

In observing the pre-operative process, we witnessed 70 to 80 women lined up in a camp. The staff did not conduct any medical tests or pre-operative investigations, other than checking blood pressure, to confirm a woman's physical fitness or eligibility to undergo the procedure. To the best of our knowledge, none of the women were

In Saharanpur and other districts, we observed cycle pumps being used to inflate women's stomachs in the absence of insufflators. Two camps lacked autoclaving facilities for the proper sterilisation of surgical instruments. All the camps lacked the surgical scrubs that must be used between successive operations and we noticed that surgical gloves were being reused.

refused sterilisation on the basis of relative contrariety, clinical assessments, or laboratory examinations. Safeguards to ensure that women were making informed choices were completely absent. Staff did not try and obtain the women's consent and doctors did not provide pre-operative counseling, although both practices are considered mandatory.

In witnessing 300 operations, it is estimated that the average operation was completed in four minutes. Women were given anesthesia two or three hours prior to their operations; as a result, many women cried out in pain during their operations because the anesthesia had already worn off. Staff did not respond to their cries of pain, and in some cases they even slapped the women to silence them. In four camps,

doctors shouted at patients that were groaning in pain. In fact, doctors frequently shouted at patients when giving them directions, and surgeons rarely communicated with clients beyond asking them to loosen their abdominal muscles - "pet dhila karo."¹ In Saharanpur and other districts, we observed cycle pumps being used to inflate women's stomachs in the absence of insufflators. Two camps lacked autoclaving facilities for the proper sterilisation of surgical instruments. All the camps lacked the surgical scrubs that must be used between successive operations and we noticed that surgical gloves were being reused.

Post-operative monitoring and care was also absent in all eleven camps. Patients were routinely discharged less than four hours after their operations, in violation of established norms. Follow-up care was also non-existent. In following the cases of eighteen women who were sterilised at one of the camps, not one of them received a follow-up visit from a health care worker. Twelve women developed complications after their operations such as bleeding, infections, body aches, and weakness. However government doctors would not attend to their needs and they were forced to seek treatment from private clinics where they had to pay a fee.

Although the government has admitted that sterilisation camps do not provide quality services, they continue to place an emphasis on the camp approach and have done little to improve the conditions. Not one doctor or surgeon in the study was knowledgeable about government guidelines or norms regarding quality of care.

We reported the above facts to the government and brought the issue to the notice of the Director General of Health Services and the Principal Secretary of the Medical Health and Welfare Department. We have also raised the issue in the media and briefed Member of Parliament (MP) Margaret Alva, who in turn raised the issue in Parliament. While a high-powered committee was constituted to conduct an inquiry, it has not lead to any improvements on the ground; as a result, Healthwatch UP Bihar filed Public Interest Litigation (PIL) to address the quality of sterilisation camps, in collaboration with the Human Rights Law Network (HRLN). We are awaiting the Government of Uttar Pradesh's response and hope that there will be some qualitative improvements in the near future.

uttaranchal

Renu Singh*

Uttaranchal Health and Population Policy Overview

The Uttaranchal Health and Population Policy is theoretically an ideal policy. The state government organised a series of workshops that brought together representatives from all over India to share their experiences and problems in regards to health and population policies. The Uttaranchal Health and Population Policy was ultimately based on the learning experiences of other states in the country; therefore, it is an excellent written policy that touches on all the major issues and areas. While it contains absolutely no coercive provision, it does call for persuasion in some of its provisions. However, this does not mean that coercion is not taking place

While the Uttaranchal population policy contains no coercive provisions, this does not mean that coercion is not taking place.

The policy has five main objectives that include the eradication of polio by 2005, the control of various diseases, the control of Reproductive Tract Infections (RTIs), and controlling the spread of HIV/AIDS. It provides for a more human centric approach to health and contraception that involves an integrated public health care system and affordable health services. It includes provisions for critical child survival interventions and services at the grassroots level. The policy also encourages the participation of the private sector, Non-Government Organisations (NGOs), community groups, and self-help groups. It also integrates alternative systems of medicine and promotes Ayurveda. The policy also recommends the decentralisation of power and monitoring systems, evolving and streamlining systems for surveillance, and for upgrading health staff. It also calls for the generation of resources to meet these goals and their judicious use. Persuasion, and not coercion, is specifically mentioned as a method to achieve these various objectives.

The State Health and Population Policy Coordination (SHPPC) Committee has been tasked with ensuring implementation of the policy. It has already been established, and a monitoring mechanism has been put in place. The SHPPC has already recommended that implementation of the policy be decentralised.

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The People's Experience

According to the government, all of the Health and Population Policy's targets have been achieved; however, information that NGOs have gathered from the field differs from that provided by the government.

The monitoring of policy objectives is the main problem in Uttaranchal. The drafting of the Health and Population Policy was a political exercise that has had limited follow-up from the state government and the official machinery tasked to ensure 100 percent compliance of its provisions. The emphasis has been on fulfilling data requirements, at the expense of neglecting the realities on the ground. Coordination is lacking on a person-to-person basis and between government bodies and the NGO sector. The Integrated Child Development Services (ICDS) is the largest organisation working in the state, but very few people even know what its functions or activities are, and it does not reach the people who need it. It serves only a cluster of people and villages out of the 16,500 villages in Uttaranchal's 13 districts.

Samadhan is involved in a project entitled the United Network of Human Rights Collective. In its first phase, it is working in 16,500 villages. It is a people-oriented project that targets members of Panchayats, Gram Panchayats, Kshetra Panchayats, and Zilla Panchayats. The goal is to sensitise people, raise awareness, and provide non-formal training in human rights, democracy, and peace. The project is not funded by any government and is self-sustaining without the support of outside grants. Samadhan also has a 24-hour Help Line that receives real life cases illustrating the tragedies of the health and population policy. It is an independent help line and is not an initiative of the Social Welfare Advisory Board in Delhi. Many of the cases received involve sheer negligence, or normal situations that could have easily been treated at community health centres or addressed during pre-natal check ups. For example, women are given tetanus vaccines during pre-natal check ups when they are in their third and six months of pregnancy. Some women have become infected with HIV when receiving these vaccines. In addition women who visit community health centres or blocks for pre-natal check ups are often not even examined by doctors and there are Auxiliary Nurse Midwives (ANMs) who are rarely present, therefore, women end up waiting days before they are able to have a check up.

One case from the help line was highlighted in the media. It involved a woman from a village in Doiwala block. She had visited a community health center because she was in labour and experiencing pain. However, she was thrown out of the hospital and ended up giving birth on the road; the child died immediately. The woman and

her family did not know where to go to for help. An attempt made to contact the Chief Minister's Office (CMO) after journalists and NGO staff visited the area to learn more about the case. However, the CMO did not return any phone calls, and attempts to fax him proved futile since his fax machine was broken. No one was able to speak to the CMO over the phone or in person despite repeated efforts to contact him for two weeks. An attempt to contact the police and file an First Information Report (FIR) was also fruitless. With no progress on any front, this woman and her family are still waiting for some form of assistance from the government; there is no system for redressal or remedy in this case and others like it. Another case involved a child that was born healthy but, because of the hospital staff's neglect a wild animal was able to enter the hospital and eat the child's stomach and umbilical cord.

There is also the case of Saroj Bala, a 14-year old girl, who was forced into marriage but managed to run away from her husband and in-laws. She wanted to continue her studies, but needed to show her 8th Class Certificate which she had unfortunately left at her in-laws house. They refused to return it to her, she ultimately went to Zilla hospital in Dehradun where she met with a Dr. Bandhu. She explained her situation to him, but he told her to go away or to get a certificate or letter from the Additional Magistrate. He also told her that she should be prepared to spend some money if she was not successful with the Additional Magistrate. When she asked what kind of money, he said "chaar paanch hazaar rupaye ka kharcha to hoga."¹ Saroj is from a Below Poverty Line (BPL) family and does not have many resources, so she contacted the help line. Although attempts were made to contact Dr. Bandhu and the CMO, we received no response.

There is also an overall need for better infrastructure in remote areas. There are 400 Muslim families living in Lierabad village in Doiwala block. In this area, you find children that are seven years old and nothing more than skin and bones. Health care workers have never attended to the people in this area, and even though there is a community health centre, people do not know where it is located.

In Uttaranchal, winters are very harsh and most roads become blocked during this time of the year. There is no emergency or disaster management system at any level to assist people. If there is a natural disaster or the roads are blocked for some other reason, people have no idea where to go for help. In one family, there were three or four deaths in a single night due to dehydration and pneumonia. In Uttar

¹ English translation: You will have to spend some 4,000 – 5,000 rupees

Kashi in Mori, an entire family died from diarrhoea. No one seems to be aware of this problem and no steps have been taken to address it. While Uttarakhand has a good budget allocation for health, the health department does not have a single helicopter to transport seriously ill people from remote areas to Dehradun for treatment. Numerous lives could be saved if such a helicopter existed.

Finally, it is important to point out that the State Human Rights Commission (SHRC) in Uttarakhand is not staffed with qualified people with a background in human rights. This results in Commission's inability to properly carry out its function of protecting human rights. For example, a young girl named Mamta was burned on 20 July 2002, and subsequently rescued through the Help Line. Her case was highlighted nationally and appeared for three days in the *Rashtriya Sahara*. Mamta was married at the age of 14; however, the man had not actually married her, but sold her to other men. She was in this situation for over two years before she was able to run away. When we reported her case to the Women's Commission, we were told in a cynical way – “*isme kyaa ho gaya.*”² They dismissed the gravity of the case saying “now it is of no use. Now that she has attained the age of 19 years, there is no problem about that.” When the police were approached to intervene, the man was arrested along with her parents, yet, nothing has been done to help Mamta start a new life. The government does not run its own help line.

People in Uttarakhand need assistance from people all over the country with expertise in these issues, especially those who are willing to speak up and have powerful voices. The bureaucrats and Ministers need to realise that their actions are under scrutiny. The media has an important role to play in this endeavour.

NGOs also work with a lot of passion on this issue, and they should campaign in a way that infuses the government with this passion. The government and NGOs should not work in isolation, but should cooperate with one another.

The government and NGOs should not work in isolation, but should cooperate with one another.

² English Translation: So what if this happened?

chapter three

case studies



Political Disqualification and Procedural Infirmities
Failed Sterilisations and Post-Operative Complications
Inadequate and Corrupt Health Services
Incentives and Disincentives

political disqualification and procedural infirmities

name: Aangori Bai*

age: 30 children: 3 caste: SC

state: Madhya Pradesh (Hinotia Village, Vidihisa District)

Aangori is a 30-year-old Scheduled Caste (SC) woman from Hinotia village. She has three children: her youngest is five years old. In 2000, Aangori was appointed to the post of Sarpanch, which she held for over two years. Suddenly, Aangori found out through a newspaper article that she had been dismissed from her post for having more than two children. The Collector's office had never served her the legally mandatory notice that Two-Child Norm (TCN) proceedings had been initiated against her.

Aangori appealed to the Madhya Pradesh High Court in Gwalior in 2002 on the grounds that she had given birth to only two children. The eldest child actually belonged to her husband's first wife. Aangori, her husband, her father-in-law, and her brother-in-law all traveled to Gwalior to file the case. In order to pay the advocate's fees, she took a loan of Rs. 35,000 from a village moneylender. While Aangori received a stay order from the court, she incurred heavy debt. Aangori and her relatives had no money to buy food: they starved for three days until they returned to their village. In addition, she experienced physical and mental harassment in filing the case and traveling to and from the proceedings.

Aangori was willing to travel to New Delhi to present her case to the People's Tribunal, but her husband did not agree with this decision and prevented her from coming. Therefore, she requested that her case be presented on her behalf.

name: Bhagat Ram

children: 4

state: Himachal Pradesh

Bhagat entered local politics to fulfill his strong desire to serve the community. When he filed his nomination form, there was no clause indicating that his appointment

* Source: Champa Lal Kushwaha

would be terminated if he had more than two children. He was elected Ward Panch unopposed. At that time, he had only two daughters. His first child, a son, died five days after he was born. Bhagat wanted to practice family planning, but he ultimately succumbed to the customary urge to have a son who would carry on the family lineage. His wife became pregnant and gave birth to twins, a boy and a girl. After the birth of the twins, Bhagat was forced to resign from his post in compliance with the TCN law. He believes that the application of the TCN law to the Panchayati Raj Act of Himachal Pradesh has led to a rise in abortions, particularly of female foetuses.

name: Bila

age: 36 children: 3 caste: SC

state: Madhya Pradesh

Bila is a 36-year-old man who belongs to a SC. In 2000, he was appointed to the post of Sarpanch. When Bila's wife became pregnant with their third child, he took her to a clinic to get an abortion even though she was already in an advanced stage of pregnancy. An abortion at that stage could have been fatal and it was only the doctor's firm refusal to perform the abortion that Bila's wife was saved from undergoing the risky procedure. Bila's sole intention in aborting the pregnancy was to prevent his disqualification under the TCN. He ultimately lost his post.

name: Deep Chand

children: 3

state: Himachal Pradesh (Bharadighat Village, Solan District)

Deep is the father of three children, two boys and a girl. Before the birth of his second son, Deep was under constant pressure from his family to have another son. He gave in to this pressure and had a second son after the TCN law came into force. Deep was subsequently dismissed from his Panchayat post. He decided not to contest his dismissal or file a writ petition, despite his knowledge that the issue is pending before the Supreme Court.

Deep believes that TCN laws will not be effective in controlling population growth because there is a strong preference for male children in Indian society. As such, families with only daughters will continue to have children until they have at least one son, even if doing so could disqualify them from political participation at the grassroots level. This fact should not be overlooked when framing population policies.

name: Geeta Pondol*

children: 4

state: Madhya Pradesh (Walni Village, Betul District)

Geeta became the Sarpanch of Walni village on 28 January 2000. At the time, she had three daughters. However, her husband's family fervently wanted her to have at least one son. While Geeta did not want a large family, she gave in to their desire for a son and became pregnant. She gave birth to another girl.

On 9 June 2004, Geeta was served with a show cause notice. She responded that as of 26 January 2000, she had been eight months pregnant. The administration had provided a grace period of six months and Geeta argued that her pregnancy fell within that grace period; therefore, and she should be allowed to continue as Sarpanch. Despite the facts, she was still removed from her post. Geeta and the villagers that supported her were shocked. The villagers protested and filed a representation against her removal, but the District Collector remained firm in his decision. It was a big blow to Geeta's self-respect and the faith the villagers had placed in her. Geeta studied until the 8th Standard and had a vision for the village. With the help of other villagers, she had launched various development projects including the construction of roads, wells, lakes, and buildings. She also initiated a village Self-Help Group (SHG). In contrast, the Sarpanch who succeeded her is illiterate. Geeta requested that the government must be compelled to change the TCN law.

name: Harmesh Kumar

age: 37 children: 3 caste: SC

state: Himachal Pradesh (Nalka Village, Solan District)

Harmesh was elected to the Panchayat Samiti and was also was a member of two Block Samitis. In 2001, he was served notice that he had been disqualified from membership in the Panchayat for violating the TCN law. Harmesh was unable to complete his good work and plans for the development of the village.

name: Jagar Singh

state: Himachal Pradesh (Tatiyana Village, Sirmaur District)

Jagar, the Ward Panch of Sirmaur District, was removed from his post after the

* Source: The Hunger Project

Supreme Court upheld the TCN law. He had firmly believed that the Supreme Court would respond to the problems facing the poor, but now his faith in the Apex Court has been breached.

name: Janki Devi*

children: 4 + 3 = 7 caste: SC

state: Himachal Pradesh (Panta Village, Sirmour District)

Against her wishes, Janki was married to the husband of her elder sister. At the time, her husband was 65 years old and already had four daughters with her sister. He demanded that Janki be married to him because he wanted a son. Eventually, her parents gave in to his demand. Janki's elder sister died one year after Janki's wedding. After her sister's death, she gave birth to two children of her own.

Janki was elected to her village Panchayat unopposed. She wanted to have a sterilisation operation, but with an 80-year old husband and six children to look after it was impossible. The operation would have left her bedridden for three months with no one to take care of the household. Therefore, Janki urged her husband to have a sterilisation operation, but he refused. She gave birth to a third child and was subsequently removed from her post.

name: Khanu Ram Meena

children: 4

state: Rajasthan (Pratapgarh Panchayat Samiti, Chittorgarh District)

Khanu Ram was elected Ward Panch in 2000. At that time, he had two sons but he wished for a daughter. In 2001, he was blessed with the birth of a girl and later had another son. He is now the father of four children. Despite Khanu Ram's popularity with the people and his good work on behalf of the village, the opposition has been threatening to remove him from his post since the birth of his third child. While they have not taken action against him yet, the threat is constantly over him. Khanu Ram has also been deprived of his right to political participation because he is ineligible to contest the next elections.

* Source: Social Action for Rural Development of Hilly Areas (SARDHA)

name: Mangatram**children: 3****state: Madhya Pradesh (Morena District)**

Mangatram is the Sarpanch of a Gram Panchayat in Morena district. His wife gave birth to their third child in November 2001. In order to save his post, he declared that the child could not possibly be his since his wife had been staying at her parent's home. Mangatram requested that the Additional District Magistrate (ADM) take due cognizance of this fact when deciding his case. He has also instituted divorce proceedings against his wife on the grounds that she committed adultery.

name: Mangla Joshi**children: 5****state: Madhya Pradesh (Khirkia Tehsil, Harda District)**

Mangla is the mother of five children, four girls and a boy. In June 2000, Mangla was appointed as a Panch in the Khirkia tehsil village. Her youngest child was born after the January 2001 cut-off date. However, Mangla became pregnant again and the Collector served her notice for violating the TCN in February 2004. When Mangla and her family found out about the TCN, her husband took her to Khandwa hospital - which is 60 kms away from her village - so that she could have an abortion and save her post. After the doctor examined her, he realised that Mangla was five months pregnant; under the circumstances he advised her not to have an abortion. Four months later she gave birth and was subsequently removed from her post.

name: Nemala Appalaraju***age: 35 children: 5 caste: Fishing Community****state: Andhra Pradesh (Vyambalvar Village, East Godavari District)**

Nemala is a 35-year-old man from a fishing community and the father of five children. He was also the Ward Member of the Panchayat board. His wife had a sterilisation operation in a government hospital outside their village. As a result, she was denied incentives by the authorities on the grounds that her operation took place outside the jurisdictional area. Nemala's Panchayat implements all of Andhra Pradesh's schemes such Sukhibhava, Balika Samrakshana Padhakam, Arogyaraksha, National Maternity Benefit Scheme, and Indira Awas Yojna. However, apart from a housing scheme,

* Source: Centre for Education and Documentation (CED) and Sama Resource Group for Women and Health

Nemala was disqualified from receiving the benefits of these schemes because he has five children.

In addition, when he attempted to contest Panchayat elections against the local elders, they refused to nominate him. They claimed he was not a fit candidate because he has five children. Nemala eventually withdrew his candidature. Nemala narrated that there are many people ineligible to contest elections because they have more than two children. However, some people are able to side-step the law by making legal adjustments to have their children adopted by relatives. Those who do not have political connections or lack sufficient resources to take such measures are the ones who ultimately bear the brunt of the TCN.

name: Premwati Sailu and Sundar Sailu*

children: 3 caste: Korgu

state: Madhya Pradesh (Betul District)

Premvati is a woman from the Korgu community and the mother of four girls. She was elected Sarpanch under a post reserved for women. Her husband Sunder also served as a Panch in the village. They were both active members in the Panchayat and initiated many development projects in the three villages under their jurisdiction, including SGHs.

Sunder is the only son in his family; therefore, his family was anxious that Premvati have a son who could continue their lineage. When Premvati was pregnant with her fourth child, she was advised to abort the pregnancy but could not do so because she was already eight months pregnant. Premvati gave birth to a girl: in her family's pursuit of a son she is now pregnant again.

As the popularity of Premvati and Sunder grew because of their development initiatives, enmity also grew against them in direct proportion. Eventually, someone complained to the authorities and they were both terminated from their posts for violating the TCN. They received the 46-page judgment of the Haryana High Court in English and have requested the Collector to translate it into Hindi for them.

* Source: The Hunger Project

Prenvati and Sunder feel that population stabilisation cannot be achieved without improvements in maternal well-being and child survival, and that a couple's decision regarding optimal family size is largely influenced by their confidence in child survival.

name: Ram Kali*

children: 3 caste: Korku

state: Madhya Pradesh (Nahar Village, Betul District)

Ram was elected to the post of Sarpanch in Nahar village. She is from the Korku community, which has a custom of marrying within the family; as a result, the community is riddled with a number of genetic disorders and related diseases. Ram's village is located in the interiors of the Bhimpur region, which is a difficult area to access and where health facilities are non-existent.

A few years ago, Ram's nephew passed away at the age of eight. Her family fears that her only son might face a similar fate. In trying to have another son, Ram had two more children and was removed from her post on 19 November 2003; however, she was able to obtain a stay order against her disqualification.

Ram feels that the Panchayati Raj Act gives village women the opportunity to begin their journeys towards personal development, but the TCN places a large question mark on their dreams and aspirations.

name: Ram Singh

age: 43 children: 3 caste: OBC

state: Madhya Pradesh (Dhamanda Village, Sehore District)

Ram is a 43-year-old Other Backward Class (OBC) man with three children: two girls and a boy. His youngest child was born on 24 December 2000, which is prior to the cut-off date for the TCN in Madhya Pradesh. He was holding the post village Sarpanch; however some people in his village could not comprehend how someone from an OBC could occupy such an influential post. On February 2002, Ram was given written notice by the Collector's office that he was in violation of the TCN and that he would be removed from his post. He had been completely unaware of the TCN until he received this written notice.

* Source: The Hunger Project

Ram decided to contest his disqualification after discussing the situation with people in his village. He filed a case in Jabalpur before the Madhya Pradesh High Court and incurred Rs.10, 000 in lawyer's fees, transportation costs, and other case-related expenses. Ram managed to obtain a stay order because he was able to prove that the complaint against him was false by producing the birth certificate of his third child. Ram remains in his post while his case is pending.

name: Rama*

children: 6

state: Madhya Pradesh (Betul Village, Betul District)

Rama is a tribal Sarpanch from Betul village who has three wives and six children. His youngest child, a boy, was born in February 2001. Rama learned about the TCN from the Panchayat secretary. When he found out that he had been disqualified under the TCN, he stated that it was his son that would help him in old age, not the Sarpanch post.

name: Ramlal Meena

children: 3

state: Rajasthan (Gayada Village, Pandava Panchayat, Pratapgarh Panchayat Samiti, Chittorgarh District)

Ramlal contested for the post of Sarpanch of the Pandava Panchayat during the 1995 elections. Although the other candidates running against him spent Rs. 25,000 to Rs. 50,000 on the election, Ramlal only spent Rs. 500 and won with a margin of eight votes. The people voted in favor of a candidate that was qualified and deserving. At that time, he was the father of two daughters.

Ramlal's wife gave birth to a son shortly after he was elected Sarpanch. Two and a half years after he was elected, the opposition party accused Ramlal of violating the TCN. They misrepresented the facts to settle personal scores they had against him. The Up-Sarpanch ultimately joined the opposition, and Ramlal was unable to prevent his dismissal even though he appealed to the High Court. He was removed from his post in 1999.

* Source: The Hunger Project

name: Rati Ram Sharma

children: 3

state: Himachal Pradesh (Mahoa Village, Nalagarh Tehsil, Soaln District)

Rati Ram was elected Ward Panch of Nalagarh tehsil and Mahoa village. Prior to Rati Ram's election, the same person had been elected as Ward Member in Mahoa village for 45 years. As a result, people in the village began discussing the need for change. During a community gathering, the incumbent inquired if anyone wished to step forward and contest against him during the next election. When Rati Ram expressed his interest in challenging the incumbent, it led them to become bitter foes and divided the village. Many villagers openly supported Rati Ram's candidature and urged him to contest the elections.

Rati Ram won the election by 31 votes and served as Ward Member for two years. He was the father of two children at that time, a boy and a girl, and was blessed with the birth of another daughter during his tenure. Rati Ram was completely unaware that a TCN law existed. Following the birth of his daughter, the opposition filed a complaint against Rati Ram for violating the TCN and he was removed from his post. The opposition is now emboldened by Rati Ram's disqualification, while his own supporters harass and taunt him for losing his seat.

name: Satyawanti

children: 4

state: Haryana (Deeghla Village)

Although Satyawanti was the Sarpanch of Deeghal Village when the TCN law adopted, she was unaware that the law existed. Satyawanti subsequently contested elections unopposed and won. She submitted her nomination form with all the required documents at the time and clearly indicated that she was the mother of four children, three girls and one boy. Yet, she was not barred from contesting the election based on this information.

Satyawanti does not really have a say in the size of her family. While she wanted to have a tubectomy after the birth of her second child, her in-laws objected and insisted that she keep trying until she had a son. Her opponent filed a case against her in the District Development and Panchayat Office (DDPO); although Satyawanti spent two to three lakh rupees to save her Sarpanch post, she was unsuccessful. She believes she would have won her case except for the decision of the High Court.

name: Sumitra

children: 4

state: Haryana (Khurd Maisru Village)

Sumitra is the mother of four children. She was the Sarpanch of Khurd Maisru village when she delivered her fourth child. A former Sarpanch subsequently filed a charge against Sumitra for violating the TCN law. Sumitra fought the case in Chandigarh and incurred Rs. 3 lakhs in case-related charges; however, the District Court ruled against her and she was removed from her post.

name: Susheela

children: 3 caste: General

state: Himachal Pradesh (Shilla Village, Sirmour District)

Susheela was the mother of two children when she was elected Ward Panch of Shilla Village. Susheela wanted to have a sterilisation operation following the birth of her second child, but was prevented from doing so by economics and family pressure. In her area, women do both the household and agricultural work. She would have been unable to work for some time if she had a sterilisation operation; therefore, she tried to convince her husband to have a vasectomy, but he refused. Susheela ultimately became pregnant again and gave birth to her third child. She was subsequently removed from her post for violating the TCN law and was unable to fulfill the tasks she had envisioned for the Ward.

name: Telu Ram

state: Himachal Pradesh (Badwas Village, Sirmour District)

Telu did not know about the TCN law even though he was Deputy President of his Panchayat. He was also not given any information about the law when he filed his nomination papers. As a result, even though he had won the election, Telu was removed from his post after the birth of his third child.

name: Udai Ram

children: 3

state: Himachal Pradesh (Paonta Sahib Village, Sirmaur District)

Udai belongs to a community that practices polyandry. While his wife is officially registered as his brother's wife, all the children are registered under Udai's name even though he has only fathered two children.

Udai won the Panchayat Samiti election in 2000. In 2001, his brother fathered a child with their common wife who gave birth to a son. Udai's brother turned against him and filed a complaint accusing him of violating the TCN law: he claimed that the last child born to their common wife was in fact Udai's. Udai was served show cause notice and disqualified from his post. The TCN law does not address situations that fall outside the norm like Udai's.

name: Vijender Singh

children: 3 caste: SC

state: Haryana (Sisar Khas Village, Rohtak District)

Vijender is from the SC community and is the father of three children. His youngest child was born on 6 March 1995. The Sarpanch post in his village is reserved for an SC individual. Vijender was elected to this post in 2000, and at that time he had clearly indicated that he had three children on his nomination form.

After he was elected, Vijender's opponents filed a complaint with the Block Development Office (BDO) that he had violated the TCN and was therefore ineligible for the Sarpanch post. Vijender cooperated with the authorities and provided them with both a birth certificate and a certificate from the register of the midwife in order to prove that his third child was born before the cut-off date. However, the authorities ruled against Vijender even though he provided them with clear evidence that there had been no violation of the TCN law. He believes that there was pressure from the Member of the Legislative Assembly (MLA) to decide against him because he had been unable to receive him during his visit to Vijender's village. Vijender also noted that the midwife's certificate had been tampered with: it was clearly visible that someone had written over the information. When he brought this to the attention of the authorities, they did nothing to respond or investigate the matter.

Vijender was simply removed from his post. He has been exposed to the harsh realities of caste politics; although he clearly did not violate the TCN law, he was

victimised because of his caste. His case is a good example of how the TCN law is used to disenfranchise marginalised groups and violate their human rights.

name: Virulal Ahirwar

age: 37 children: 5 caste: Chamar (SC)

state: Madhya Pradesh (Manwada Village, Hoshangabad District)

Virulal is a 37-year-old man from Manwada village and the father of five children, two girls and three boys. His youngest child was born on 7 May 2001. He was completely unaware of the TCN law at the time he was elected to the post of Sarpanch in 2000.

Some of the upper caste individuals in his village could not accept the fact that Virulal, a lower caste man, was the Sarpanch of their village. As a result, they filed a complaint against him for violating the TCN law. Virulal received a written notice in March 2002 and was immediately removed from his post. In response, Virulal met with the Sub-Divisional Magistrate (SDM) of Hoshangabad, but no action was taken. He then filed a writ petition (Number 1765/2002) in the Madhya Pradesh High Court in Jabalpur. He was able to obtain a stay order on the grounds that his wife was pregnant before the cut-off date of 26 January 2001. In 2003, a final order was passed in the writ petition stating that a similar case from the Punjab and Haryana High Court was pending before the Supreme Court. As such, the Madhya Pradesh High Court cannot issue an order in the matter until the Supreme Court resolves the issue. During this time, Virulal remained the Sarpanch of the Manwada Gram Panchayat and continued his development work. On 18 March 2004, he received a notice from the Panchayat office of Hoshangabad district asking him to appear in person. Virulal appointed counsel and presented himself before the Judicial Magistrate of Hoshangabad. Virulal was then directed to contact the Panchayat branch of Hoshangabad as they had not received any reference from the said branch. When Virulal contacted them, he was informed that the person dealing with his case file had already left for the day. Virulal registered his presence in the office's registry as proof that he had visited the office. However, the District Collector removed him from his post on 19 March 2004 without hearing his case. Virulal filed an appeal in the office of appellate authority, which is still pending.

While Virulal was busy with this legal wrangling, the Janpad Panchyat Bawai acted ex parte and removed him from his Sarpanch post claiming that he had misused funds. Virulal protested this claim and appealed to the District Collector of

Hoshangabad to set the record straight by assessing his development work and asked that the amount he incurred, Rs. 31,45,370 be appropriated and a verification certificate issued. The authorities ignored his request and served Virulal with a notice to recover an amount of Rs. 5,000 on 16 September 2004. Before he could reply to this notice, he was served with a second notice from the Section Officer of Hoshangabad on 19 September 2004 for the recovery of Rs. 2,05,426. He submitted a reply on 5 October 2004.

Virulal is a landless person and his name is on the Below Poverty Line (BPL) list. How can he pay this huge sum? He has already taken a loan of Rs. 40,000 from friends and villagers to pay for the lawyer's fees and transportation costs related to his writ petition. Today, Virulal is a mentally and emotionally exhausted man. His wife almost went insane after she found out about the huge recovery amount that has been levied on him. The TCN has led Virulal to the brink: he is now contemplating suicide.

failed sterilisations and post-operative complications

name: Ambania Poi*

children: 2 education: Illiterate

state: Orissa

Ambania visited a Primary Health Centre (PHC) to have a sterilisation operation because she wanted a green card, but the doctor found a tumor in her stomach when he examined her. He proceeded to operate and remove the tumor without informing her of her condition. As a result, she was under the mistaken impression that she had been sterilised. Later, she was advised to approach the same doctor to perform a sterilisation operation. She does not have a lot of money and was forced to sell the doors of her house to pay for it.

name: Anonymous**

state: Maharashtra (Hingangaon, Sangli District)

A woman had a sterilisation operation on the advice of a nurse. Afterwards, she became pregnant and gave birth to a girl. She had another sterilisation operation on the advice of a doctor, but became pregnant again and gave birth to another girl. She asks: "How am I supposed to look after these children? How can I trust what the doctors say?"

name: Bhumani Shanthamma

age: 25 children: 3 caste: SC education: Illiterate

state: Andhra Pradesh (Motkupally Village, Rangareddy District)

Bhumani is a 25-year-old daily wage labourer from Muthupalli village in Rangareddy district. She was married at the age of 13, and gave birth to her first child when she was 14 years old. She gave birth to her second child when she was 17 years old.

At the age of 18, Bhumani was sterilised through a Double Puncture Laparoscopy (DPL) procedure and was given Rs. 600 under the government's Janani Scheme that encourages sterilisation. She was promised other benefits and incentives, but

* Source: This testimony was compiled by Bharat Gyan Vigyan Samiti (BGVS) and the People Health Assembly (PHA)

** Source: Presented on 4th June at Sangli, in a Jan Sunwai organised by Rugna Hakk Chalwal

never received them. In addition, her DPL procedure was not performed properly and Bhumani became pregnant again two years ago. She had another sterilisation procedure at the age of 23; however, this time Bhumani developed post-operative complications. She is sick most of the time and suffers from severe stomach pain. She can no longer do hard labour.

Although her husband and father inquired with various officials, Bhumani has still not received the sterilisation incentives she was promised or compensation for her failed sterilisation. In addition to the violation of her reproductive rights, her family members now victimise her, and her husband regularly beats and mistreats her: he blames her for the failed sterilisation and resulting pregnancy.

name: Charulata Sahu*

age: 30 children: 2 education: Illiterate

state: Orissa (Godida Village)

Charulata is a 30-year-old illiterate woman from Godida village. She has been married for 15 years and has two children. Charulata had a sterilisation operation after her second child; however, the sterilisation operation was not performed properly and she became pregnant again. The doctor who performed Charulata's tubectomy confirmed that she was pregnant, but refused to admit that he had operated on her. After an altercation, the doctor told her that she could have an abortion. He eventually admitted that he had only operated on one fallopian tube. Charulata decided not to terminate her pregnancy and since then she has been denied green card benefits because she has three children.

name: Geeta Kumari**

state: Bihar (Gaurichak Village, Patna District)

Geeta is a married woman from Patna. In December 2002, she had an abortion and a tubectomy at the Marie Stopes Clinic in Patna, after which she developed a septic infection and blood clotting in her uterus. She had an ultrasound and received medication to relieve her pain. On 15 May 2004, Geeta discovered that the sterilisation operation had not been successful because she was pregnant again. In August, she went to the Patna Medical College Hospital (PMCH) to have an abortion during her second term and another tubectomy.

*Source: This testimony was compiled by BGVS and the PHA

**Source: Janhit Kala

same: Geeta Rekhi*

state: Jharkhand

Geeta had laparoscopic surgery at Sadar Hospital; however, after the surgery Geeta became pregnant again and gave birth to a child on 30 November 2003.

name: Jayati Devi**

children: 4 education: Illiterate

state: Orissa

Jayati is a daily wage labourer and mother of four children. Jayati's first child passed away, leaving her with only one mentally challenged son; nevertheless, she went to a health camp with the Auxiliary Nurse Midwife (ANM) to have a sterilisation operation. She received a green card two months later; before she could avail of its benefits (including a house under the Indira Awas Yojana) Jayati began to miss her periods. She approached the ANM, who convinced her that there was no reason to worry because menstrual cycles sometimes stopped. Eventually, Jayati went to the district hospital where she found out that she was in fact pregnant. She was told that it would cost Rs. 500 to abort the pregnancy, but this fee was too much for her to pay so she carried to term and gave birth to a girl. She subsequently had two more children and never received any green card benefits.

name: Kumari Behera**

age: 35 children: 3 educational status: Illiterate

state: Orissa (Paschimadia Village)

Kumari is a 35-year-old woman from Paschimadia village. She studied until Class – II and has been married for 12 years. In November 2001, she had a sterilisation operation at a medical camp; however, her menstrual period stopped one month after the operation. The local ANM told her this was normal, but four months later she went to a doctor only to find out that she was five months pregnant. Kumari began using oral contraceptives after giving birth to her third child.

*Source: This testimony was collected by Prerana Bharati, Ranchi during a survey of sterilisation camps in villages.

**Source: This testimony was compiled by BGVS and the PHA.

name: Kusum Devi*

children: 5 caste: Brahmin

state: Bihar (Maarkundi Village, Jehanabad District)

Kusum is a married woman from Jehanabad. In 1995, she was the mother of three children and chose to have a laparoscopic tubectomy at Rajendra Medical College. She conceived twice after the operation and gave birth to two girls. Kusum had another tubectomy in 2000, which has caused her to experience severe health problems.

name: Lochana Behera **

age: 35 children: 5 education: Illiterate

state: Orissa (Paschimadia Village)

Lochana is a 35-year-old illiterate woman from Paschimadia village. She has been married for the past 19 years, and has four daughters and one son. She had a sterilisation operation in November 2001, but became pregnant afterwards. When Lochana approached the doctor, he demanded Rs. 1,000 to abort the pregnancy; however, she was unable to pay this fee. Lochana was told to return for another sterilisation operation after giving birth to her sixth child.

name: Mangi Bai

children: 4

state: Rajasthan (Manpura Village, Panchayat Kalakot, Panchayat Samiti Chhoti Sadri, Chittorgarh District)

Mangi is the wife of Ambelal Meena. She was married at the age of 15 and became pregnant for the first time when she was 16 years old. She conceived again and gave birth to her second child two years later. Mangi had a tubectomy operation at the Nimbaheda Community Health Centre in 1997, despite strong resistance from her in-laws. She had achieved her desired family size and wanted to avail of the monetary incentives offered to couples that opt for sterilisation after two children: the village Sachiv had informed Mangi about a government scheme in which couples that undergo sterilisation after two children would receive Rs. 21,000 at the time of their daughter's marriage.

* Source: Janhit Kala

** Source: This testimony was compiled by BGVS and the PHA

Mangi was assured that she could no longer have children after the tubectomy, even though she was never given a proper medical check-up following the operation; however, three years later she became pregnant again and gave birth to a girl. Mangi now has four children and is constantly taunted and tortured by her in-laws. The failure of the sterilisation operation has caused her immense physical, emotional, economic, and social distress.

name: Manti Devi*

age: 30 children: 3 caste: Yadav

state: Uttar Pradesh (Bhawanipur, Cunaar Village, Mirzapur District)

Manti is the mother of three boys. She decided to have a tubectomy operation at the PHC in Korawal, Chunar. Manti conceived after her tubectomy and when she complained to the doctor at the PHC, he demanded Rs. 500 for the safe delivery of her child. Manti and her husband arranged to pay this fee. One and a half years later, Manti conceived again and this time the doctor demanded Rs. 600 for the delivery of her child. Manti finally decided to have another sterilisation operation; however, this time she developed several complications that have not been attended to by the doctors at the PHC.

name: Rani Devi**

age: 36 children: 3 Sons caste: Brahmin

state: Jharkhand (Kharbani Village, Deoghar District)

Rani's wife became pregnant after having a sterilisation operation. Her pregnancy led to disagreements between Rani and his wife, and their marriage was saved only by the intervention of a Non-Governmental Organisation (NGO).

* Source: Shikhar Prashikshan Sansthan, Chunaar Case identified by Sadafal, 13th January 2004

** Source: This testimony was collected by the Prerana Bharati, Ranchi while conducting a survey of sterilisation camps in villages

name: Seeya Devi*

age: 35 children: 4 caste: SC

state: Jharkhand (Chetnari Village, Deoghar District)

Seeya is a Dalit woman who had a sterilisation operation at a government run referral hospital in Madhupur. She had two sons and one daughter at the time and did not want any more children. Seeya conceived after the operation. When she went to see the doctor he told her that she needed to have a urine test, but the hospital did not have a urine testing facility; therefore, Seeya was forced to pay to have a urine test at a private clinic. The test confirmed that Seeya was pregnant, and the doctor advised her to deliver the child. He promised her that after the delivery she could have another sterilisation operation; however, Seeya did not want another child so she went to a private hospital to terminate her pregnancy.

name: Somi Gupta**

age: 32 children: 6

state: Bihar (Bikram Village, Patna District)

Somi is a married woman from Patna. She had a tubectomy operation in 1989 at a government hospital after delivering a child; however, the child died before it was one-month old. Somi conceived again in both 1996 and 2001, but chose to abort the pregnancies and had a second tubectomy operation. Since then, she has been experiencing abdominal pain and headaches on a continuous basis. She is now in menopause.

* Source: This testimony was collected by Prerana Bharati, Ranchi while conducting a survey of sterilisation camps in villages

** Source: Janhit Kala

inadequate health services and corruption

name: Anonymous*

place: PHC Haveli

state: Western Maharashtra (Pune District)

Several women experienced extreme physical pain, mental agony, and humiliation when they visited a haveli Primary Health Centre (PHC) for tubectomy operations. They were given anesthesia several hours before the operating surgeon arrived at the PHC. By the time the doctor began performing the operations, the anesthesia had begun to wear off and the women were screaming in pain. The doctor physically hit a patient who was screaming, and loud music was played so that the women's screams would not be heard outside the PHC.

name: Anonymous**

age: 32

state: Gujarat

A woman was advised by her doctor to undergo a sex-determination test because her first child was a girl, but the woman refused. The same doctor gave her an incorrect due date, and was indifferent to her medical condition when she went into labour. She experienced severe complications during her delivery and was given 28 units of blood in one day. The doctor performed a hysterectomy on her, and she suffered from additional complications that may require the amputation of her leg. This doctor continues to practice medicine and takes her sonography machine with her during field visits to rural areas. Is anyone monitoring her activities?

name: Dhanya Paraja Pawara*

state: Maharashtra

Dhanya Paraja had a vasectomy along with 15 other men in September 2003 in Dhadgaon rural hospital. He has experienced acute pain in his lower abdomen, swelling in his lower limbs, and bleeding in the area of the operation. He has gone to

* Source: Audrey Fernandez and Jaya Velankar cited this testimony during their state overview of Maharashtra.

** Source: Sahiyar

the hospital many times for treatment of his condition, but the doctors have repeatedly told him that there is nothing to worry about and that he is experiencing common symptoms following a vasectomy. Each time, he is given tablets and assured that his condition will improve after taking them; however, his condition has shown no improvement even though he has followed the doctors' instructions.

Dhanya Paraja no longer visits the rural hospital. The doctors have become irritated by his frequent visits and use insulting language when speaking to him. His condition has left him unable to work and his family is now starving.

name: Heerawati Devi*

age: 35 children: 7

state: Uttar Pradesh (Shobhol, Cunaar Village, Mirzapur District)

date: 2003

Heerawati hails from a mountainous area where rainfall and agricultural productivity is low. Her husband forced her to undergo a tubectomy operation against her wishes: he was lured by the village zamindar's promises of incentives, such as money and land on lease. However, Heerawati did not receive any monetary benefits or land after her tubectomy. In addition, the medical staff that performed her operation failed to remove her stitches. After waiting for seven days, Heerawati was forced to visit a private doctor to have them removed. Heerawati had seven children at the time of her operation. Her health has deteriorated since the operation and she is no longer able to work and fend for her family because she did not receive any monetary incentives or post-operative care. She has sold all her livestock to meet the expenses of her medical treatment.

name: Mania Bhoi**

age: 24 children: 2 education: Illiterate

state: Orissa (Garama Village)

Mania is a 24-year-old illiterate woman from Garama village. She has been married for eight years and has two daughters. Mania wanted to have a sterilisation operation, but the health care staff demanded money from her to perform the operation. They claimed that she had an internal disorder in her body, which would make the operation

*Source: Shikhar Prashikshan Sansthan, Chunaar

**Source: This testimony was compiled by Bharat Gyan Vigyan Samiti (BGVS) and the People Health Assembly (PHA)

risky. Mania was unable to pay this bribe, and so the medical staff refused to perform the operation. Subsequently, Mania conceived and gave birth to her third child. She is now denied the benefits under the green card scheme.

name: Pratima Bhoi*

age: 24 children: 2 education: Literate

state: Orissa (Garama Village)

Pratima is a 24-year-old literate woman from Garama village. She has been in a bad marriage for the past five years and has two children: one son and one daughter. Pratima has repeatedly tried to have a sterilisation operation to no avail. She has approached doctors four different times for a tubectomy operation, but each time they refused claiming that the hospital did not have the necessary equipment to conduct the operation. The doctors insist that Pratima provide the necessary equipment before they can operate on her. As a result, Pratima has not had a tubectomy.

name: Saraswati Devi**

age: 40 children: 7 caste: SC

state: Jharkhand (Nawadih Village, Deoghar District)

Saraswati developed several complications after her sterilisation operation, including a severe Urinary Tract Infection (UTI); however, the hospital staff ignored her deteriorating condition. Despite spending Rs. 1,000 on medicines, there has been no improvement in her condition. Saraswati must now go to Ranchi for a medical examination.

* Source: This testimony was compiled by BGVS and the PHA

** This testimony was collected by Prerana Bharati, Ranchi while conducting a survey of sterilisation camps in villages.

name: Shimla Devi*

age: 35 children: 5 caste: Lohar

State: Uttar Pradesh (Aidilpur Village, Azamgarh District)

Date: 12 February 2004

Shimla's case took place at a time when the Block District Officers (BDOs) and Sub-Divisional Magistrate (SDMs) were under pressure to encourage sterilisations: they were each given a target of at least five sterilisations. As a result of this pressure, the SDM cancelled the ration quota and closed a fair price shop in Shimla's village and he demanded that five people have sterilisation operations before he would restore the fair price shop. Shimla, who is from a Below Poverty Line (BPL) family, was cajoled by the local Auxiliary Nurse Midwife (ANM) to have a sterilisation operation at the Community Health Centre (CHC), Atraulia. On 12 February 2004, the ANM's husband came to Shimla's house and arranged for her transport to the CHC. The ANM was nowhere to be found when she arrived at the CHC.

Shimla was told that the doctor does not perform post-operative medical examinations. She was given an injection, and after waiting for a half hour she was summoned to the operating theatre. The surgeon became very annoyed because it took him a half hour to find Shimla's vein, which was necessary to begin the operation. Shimla began vomiting after the operation and was sick four or five times, but not one of the health workers offered her assistance or care.

Shimla spoke to the ANM when she returned home, and the ANM prescribed her some medication. After eight days, her stitches were removed but she still experienced acute pain and swelling. She visited the CHC, Atraulia again where a different surgeon examined her. He advised Shimla to have another operation because he claimed that her internal stitches were damaged. Shimla was forced to pay Rs. 500 for this operation, but her condition only deteriorated further afterwards. Finally, Shimla's parents took her to Shahganj Jaunpur for a proper medical examination (because her in-laws were too poor to afford the treatment). An ultrasound revealed that she had a hernia. She sought a second opinion, which confirmed the hernia diagnosis. Shimla had an operation on 26 June 2004 for which she paid Rs. 5,000 and received 14 stitches. Shimla has gone through a great ordeal over the last five months and has faced acute mental, physical, and economic harassment. She has incurred Rs. 14,000-15,000 in medical bills, but she has still not fully recovered from her post-operative complications. She continues to wait for compensation from the health department.

* Source: This case was identified by Grameen Punarnirman Sansthan, Bellari, Azamgarh

name: Sudha Singh*

age: 27 children: 2

state: Uttar Pradesh (Kanpur)

date: 8 June 2003

On 28 May 2003, Sudha went to the government hospital for a check up because she was pregnant with her third child, but the doctor advised her to come back the next day. The doctor carried out the necessary medical examination the following day and told Sudha that the growth of her foetus was abnormal, which could lead to complications for both mother and child. The doctor advised her to terminate the pregnancy. Sudha consulted her family members who persuaded her to follow the doctor's advice; however, when she returned to the hospital the doctor told her that he would only perform the abortion if she would agree to a simultaneous tubectomy.

Sudha's operation took place on 29 May 2003. With no senior doctors in sight, a junior doctor performed the operation in a very callous manner. The following day, Sudha developed complications in her stomach. When she reported this to the doctors she was told that it was merely gas formation. After three days, Sudha had yet to see any improvement in her condition. At midnight on the third day, the doctor advised Sudha to have another operation. Her husband reported: "In the night at 3.00 AM, I was asked to arrange for three units of blood. I was surprised to see for the next six days, no senior doctor was present to oversee the crisis. Ultimately, we approached the Principal of the hospital. He pulled up the senior doctors and surgeon and directed them to attend to the case personally. However, on the eighth day, Sudha passed away. I wrote to the Governor, the Chief Minister, and the DM, but none of them responded. When I requested the hospital to provide me a photocopy of the papers relating to the line of treatment provided by them they refused, as I would have exposed them. I submit, that in such cases when an inquiry is set up, the officials of the hospital become members of the inquiry team, and they invent every possible way to protect their staff. Hence, I fervently appeal that whenever an inquiry is instituted, NGOs and outside experts should form part of the inquiry team instead of people from their own staff. In such cases, there should also be proper compensation. I appeal to the Government of India that apart from defense and production of food grains, education of the girl child should be given top priority. The day we are able to achieve 100 percent literacy for the girl child, the problems ailing our country will be resolved automatically." A post-mortem was never

* Source: This case was identified in a local newspaper by Savita Misra of Healthwatch UP Bihar. Her grandfather, Shri L.B. Singh, represented the case of the late Sudha Singh.

performed on Sudha and her grandfather, Shri. L.B. Singh, was never provided with her hospital report.

name: Suran Pulamma

age: 20 children: 1 caste: SC education: Illiterate

state: Andhra Pradesh (Motkupally Village, Rangareddy District)

Suran was married at the age of 13 and had her first child when she was 14 years old. Her daughter is now six years old. When she was 18, Suran had a Double Puncture Laparoscopy (DPL) because she wanted to focus her attention on the care of her only daughter; however, she has suffered many complications from the (DPL), and continues to suffer from acute stomach and joints pain.

While she was given Rs. 600 under the government's Janani Scheme for sterilisation, she was unaware at that time that she qualified for additional incentives because she had a DPL. Suran's father was also promised incentives, but neither one of them received anything else from the government. Suran is a daily wage labourer and she lost her husband two years ago because of his heavy drinking. The denial of the promised incentives has only added to her woes.

incentives and disincentives

name: Dosada Pentaiah

age: 36 children: 2 caste: SC education: Illiterate

state: Andhra Pradesh (Gangyada Village, Rangareddy District)

Dosada is 36-year-old farmer from Gangyada village and the father of two children. His wife was 17 years old when they were married and she gave birth to their first child at the age of 18. Dosada's wife was unable to have a tubectomy because she had low blood pressure after the birth of their second child. Although they waited one and a half years, her blood pressure never normalised. As a result, Dosada consulted with a doctor and decided that he would undergo a vasectomy.

On the day of the vasectomy, Dosada was given Rs. 1,000 and a medium sized steel basin. Later, he received a house from the state housing corporation and a Rs. 5,000 fixed deposit in his daughter's name under the Balika Samraskshna programme: his daughter will receive Rs. 28,000 on maturity of the fixed deposit. Dosada has also twice received Rs. 1,000 from the bank as a bonus. To the best of his knowledge, no other man in his village or mandal has had a vasectomy, even through the government is advertising the Two-Child Norm (TCN) through hospitals, the popular media, and the four Development of Women and Children in Rural Areas (DWACRA) groups in each village. Dosada believes that more people are deciding to have sterilisation operations after two children so that they can receive government incentives. Dosada has also heard that the government is providing Rs 20,000 worth of health insurance coverage for a period of five years to four-member families that have opted for sterilisation. His wife had a hysterectomy three years ago.

name: Gyagerla Bandemma

age: 20 children: 5 caste: SC education: Illiterate

state: Andhra Pradesh (Motkupally Village, Rangareddy District)

Gyagerla was married at the age of 13 and gave birth to her only daughter when she was 14 years old. Even though she was married, she lived with her parents because her husband is mentally retarded, and her parents would not allow her to live alone with her husband.

When she was 18, Gyagerla had a sterilisation operation, Double Puncture Laparoscopy (DPL), upon her father's urging so that the family could avail of the resulting benefits. She was given Rs. 600 under the government's Janani Scheme to encourage sterilisation. She was also promised other incentives such as a house and a fixed deposit of Rs. 5,000 in the name of her daughter under the Balika Samrakshana programme. However, Gyagerla only received a house from the government after her sterilisation, which is now used by her parents; she has not received any of the other promised incentives. Gyagerla believes her case reveals how women's reproductive rights are violated by government incentives that encourage sterilisation.

name: Kare Jyothi*

age: 25 children: 3 caste: Fishing Community

state: Andhra Pradesh (East Godavari District)

Kare is a 25-year-old woman from the fishing community. After her third child was born, she had a sterilisation operation at the government health centre for which she received a Rs.500 incentive. When she inquired about other benefits, she was informed that she was ineligible for welfare schemes such as Public Distribution System (PDS) and DWACRA because she has more than two children.

name: Kuramdasu Lakshmi*

age: 28 children: 3 caste: Shepherd Caste

state: Andhra Pradesh (Nakpili Village, Vizag District)

Kuramdasu is a 28-year-old woman from the shepherd caste. She had a sterilisation operation at a Primary Health Centre (PHC) after the birth of her third child. In the context of welfare programmes and policies, Kuramdasu was only eligible for essential commodities through the PDS and DWACRA membership. The authorities specified that she was ineligible for other welfare schemes such as Sukhibhava, Balika Samrakshana Padhakam, Arogyaraksha, National Maternity Benefit Scheme, and Indira Awas Yojna on the grounds that she has three children.

* Source: Centre for Education and Documentation (CED) and Sama Resource Group for Women and Health

name: Merugu Peddakondamma*

age: 35 children: 4 caste: Fishing Community

state: Andhra Pradesh (Perumalpalam Village, East Godavari District)

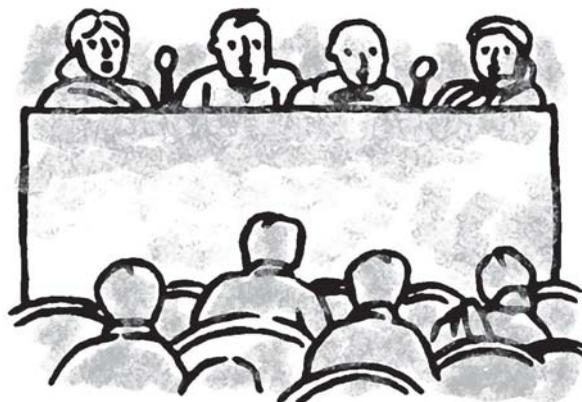
Merugu is a 35-year-old woman from the fishing community. After the birth of her fourth child, Merugu had a sterilisation operation at the government health centre for which she was given a Rs. 500 incentive.

After inquiring with the authorities about other benefits, she was informed that with regard to the policies and programmes of the government of Andhra Pradesh she was eligible for a house under the housing scheme; but was ineligible for all other schemes because she has four children. Merugu is only entitled to take essential commodities through fair price shops (PDS) and has DWACRA membership.

* Source: CED and Sama Resource Group for Women and Health

chapter four

**tribunal
observations
and
government
viewpoint**



sandeep dikshit*

I have worked for many years on health issues in the states, so the terrible testimonies that I have heard during the People's Tribunal are not new to me. In fact, I have heard similar stories for the last ten years.

Many believe that the issue of population control should not be viewed only from an emotional angle, but should also be examined from a scientific and technical angle. The fact is that there is no conclusive scientific data indicating the carrying capacity of the country, let alone the planet. Statements indicating that a population of 100 crores is not sustainable are subjective and without any real basis in scientific fact. The term 'carrying capacity' is a technological function used in the context of plastics or global warming. Despite this lack of scientific evidence, people continue to wonder if we are exceeding our 'carrying capacity' in areas such as industrialisation and urbanisation. We could define the carrying capacity if there was a shortage of food in the country, but this is not the case. There is no scientific reason why a population of 500 crores or 5 crores would not be acceptable.

Statements indicating that a population of 100 crores is not sustainable are subjective and without any real basis in scientific fact.

During the People's Tribunal, many people related the poor conditions prevalent in Primary Health Centres (PHCs) and Community Health Centres (CHCs). It was a mistake to opt for selective health centres in the 1970s and 1980s, rather than PHCs under centrally-sponsored schemes. As a result, centrally-sponsored schemes focus on eradicating the six or seven diseases attributed to low life expectancies. However, these schemes are not formulated with a rights-based perspective; and doctors, nurses, and medical attendants continue to believe that health centres affiliated with centrally sponsored schemes are more important.

Today, only 15 to 20 percent of the population has access to health facilities equipped with modern technologies. Operation theatres are dilapidated, and X-ray machines are non-existent. There is also an acute shortage of qualified medical staff: in many centres there are no doctors on the staff, let alone gynecologists. A survey of Madhya Pradesh revealed that while over 300 gynecologists are needed to meet rural health needs, there are only 27 gynecologists actually servicing this population. Finally,

* Sandeep Dikshit is a sitting Member of Parliament and has been vocal on human rights and women's rights issues.

cleanliness and sanitation at health centres is appalling. Bedding is sometimes not cleaned for up to a year, and this contributes to infections.

These conditions exist because programme and policy implementation is lacking, not because there is a shortage of funds. During the People's Tribunal, we were informed that the health sector in Rajasthan incurs negligible expenses, and that this small amount is mainly used to pay for medications. Community health services need to have a separate budget in order to ensure that existing funds are utilised to improve conditions. States should also conduct needs assessments to ensure that medical staff levels are adequate and take steps to eliminate staff shortages. For example, some states now require doctors to work in rural areas for at least three or four years before they receive their Bachelor of Medicine and Bachelor of Surgery (MBBS) degree.

There would be no need to impose targets if there was an improvement in primary health care. Bangladesh provides an example of how sensitive policies, rather than coercive measures, have been successful in balancing population growth. Coercive measures are never successful, and they are especially unfeasible in a democratic country. Population policies will succeed only when a socialist, secular, and democratic approach is adopted.

syeda hameed *

We need to expose the myths about population in our country and start treating people as a national resource.

I have witnessed campaigns and protests against coercive population policies in Uttar Pradesh and Rajasthan, and I agree with the other panel members in their calls to abolish coercive population measures. We need to expose the myths about population in our country and start treating our people as a national resource.

I am fortunate to be interposed between civil society and government because it enables me to take the concerns of civil society to decision-making forums deciding the course of the nation. The Planning Commission is currently in the process of conducting a five-year mid-term appraisal of the National Plan (2002-2007), during

* Syeda Hameed is a member of the Planning Commission of the Government of India.

which mid-course corrections are made; during this process, we are in constant touch with activists and members of civil society. It is clear that we need to address grassroots concerns regarding the health sector and depositions from this People's Tribunal can be considered in our appraisal.

shabana azmi *

Whenever the issue of coercive population policies and the Two-Child Norm (TCN) is raised with the government, the response has always been that the matter is subjudice and pending before the Supreme Court of India. This People's Tribunal was essential because it pointed out the deficiencies of TCN laws.

During my interactions with Members of Parliament (MPs), I was surprised to note that not even 5 percent were knowledgeable about the International Conference on Population and Development (ICPD), and other international covenants, to which India is a signatory. Furthermore, even though our own National Population Policy (NPP) focuses on developmental schemes and policies and contains no coercive provisions, many states have molded the NPP to suit their own ends.

We do not have any issue with the proposition that the country's population needs to be reduced, but we definitely take strong issue with coercive laws and policies that cannot, in any case, reduce the population. Coercive population policies are not only a violation of human rights, they have also proven to be unsuccessful in other developing countries. We need to examine the reasons behind this failure. While we want to reduce the Total Fertility Rate (TFR), with the hope that it will be a panacea for poverty, can we remove poverty in one stroke? Despite reducing its fertility rate by 50 percent, Bangladesh remains one of the poorest countries in the world. Likewise, China's progress against poverty is a result of simultaneous investments in the education and health sectors.

Incentives and disincentives are mostly linked to the Public Distribution System, which is only accessed by people with low incomes.

Coercive population policies must be rejected because of their inherent class and gender biases. Incentives and disincentives are mostly linked to the Public Distribution

*Shabana Azmi is a Member of Parliament and the National Population Commission. She is also a noted film actress and activist.

System (PDS), which is only accessed by people with low incomes. People have been denied ration cards because they have more than two children. Our interactions with village women have taught us that they do not want more children, but continue to have more children for societal reasons. It is husbands and mothers-in-law that make decisions about family size. While there is a lot of rhetoric about bringing women into the political process, we continue to punish them for reproductive decisions that may be out of their control. Despite the fact that we call our country a social democracy, these biases continue.

Our goals are not really different from the government. We all want people to make informed choices about contraception. However, this is an impossible goal given the absence of proper health care services. Women are not utilising PHCs because information about office hours is not available; as a result, women hesitate to travel to centres given the chance that will find them closed or with no Auxiliary Nurse Midwife (ANM) on site. Likewise, ANMs are expected to take on the virtually impossible task of covering 14 villages without a vehicle. As a result, the number of pregnancy-related deaths in India during a *one-week* period is more than the combined number of pregnancy-related deaths for all of Europe during a *one-year* period. Experts believe that 70 percent of all pregnancy-related deaths in India are entirely preventable; all that is needed is proper pre-natal and post-natal care, as well as access to medicines. We need to empower women and provide them with appropriate medical health services.

ruth manorama *

This People's Tribunal has been a learning experience for me. When asked what the single biggest problem facing India is, the first thing that comes to mind is population control. We have been socialised to believe that the country's population is increasing and that everyone should be concerned about this issue. This People's Tribunal has shattered that assumption.

We have heard depositions from many people and listened to experts dispell the myth of the population explosion. According to analysts, in a few years India will achieve a population balance; yet, the government does not recognize this fact, or is too impatient to allow this balance to be achieved over the natural course of time.

*Ruth Manorama is the Chairperson of the National Alliance of Women's Organisations (NAWO) and is a noted women's activist and writer.

While the government is spending huge sums on the health care system, and individual doctor's salaries, the medical establishment has not been accountable for its failures; deficiencies in service and corruption within the system continue with impunity. Women have been traumatised by poor health services. We have heard depositions before the People's Tribunal of botched sterilisation operations that have resulted in long-term health problems and of crude methods used during sterilisation operations at medical camps, such as the use of a cycle pump instead of an insufflator. The poor conditions and quality of health services underscore the total disrespect for women and their bodies. The government only needs to examine its own data to recognize that it needs to provide better health services to women and ensure their access to delivery centres.

The poor conditions and quality of health services underscore the total disrespect for women and their bodies.

Despite signing various international agreements, and making other political commitments to the contrary, the government's investment in the education and health sectors is declining. At the ICPD, India agreed to adopt a Target-Free Approach (TFA) in its population policies and to enable informed reproductive choices. However, many states are openly violating these commitments. Rather than coercive policies, people-centred health policies in letter and spirit must be adopted and implemented.

Coercive population policies affect democratic participation, gender equality and human rights. While the devolution of political power has allowed people at the grassroots level to participate in governance, marginalised groups' (particularly women and Dalits) access to the political process is undermined by coercive population policies that are framed to further strengthen class and caste hierarchy. While India is the largest democracy in the world, and the first in which more than one million women participate in local government units known as Panchayati Raj Institutions, imposing TCN laws on Panchayat membership has led women in Haryana and Madhya Pradesh to deliver children in hiding to avoid these births from being officially recorded. Data from Haryana also shows that the majority of people disqualified from Panchayat posts on the basis of TCN laws are women and Dalits. Women's, Dalits', and human rights organizations must demand that court cases be reopened and judgments revised to reject coercive policies. We must all rise and demand our rights.

mira shiva*

This Tribunal has uncovered the selective blindness of laws that contain incentives and disincentives. The people most affected by a target-based approach are women and young people. The data clearly shows that more women than men are undergoing

We should not think in terms of 'sharply focused population control' and TCN laws, but instead focus on health services, educational services, and livelihoods.

sterilisation operations, reflecting the deeply rooted attitudes of a patriarchal society that places the whole burden and blame of population control on women. In Kangra district, data indicates that TCN targets are met through the practice of infanticide or foeticide. Furthermore, why does the discussion on population control revolve solely around sterilisation? Terminal methods are not the only way

to prevent pregnancy; there are many other safe and non-permanent contraceptive choices available. TCN laws have also become a political tool used against elected officials. As such, men and women are disqualified from Panchayat posts for violating the TCN, but most of them do not even understand why they were disqualified; they are uninformed about the law.

We should not think in terms of sharply-focused population control and TCN laws, but instead should focus on health services, educational services, and livelihoods. We need adequate medical facilities to improve women's health and lower maternal mortality rates. Health officials often do not know what medicines and vaccines are appropriate or recommended for pregnant and lactating mothers. Education and literacy levels also need improvement; in fact, literacy has a direct link to infant and maternal mortality rates. In Kerala, where education and literacy rates are high, people voluntarily opt for small families.

The NPP does not contain any provision for incentives or disincentives, and it certainly does not promote coercive measures to achieve population targets. In fact, there are many positive measures under the NPP that have not been implemented simply because political will is lacking. However, there seems to be an over abundance of political will when it comes to adopting sharply-targeted population control policies.

* Mira Shiva is a renowned health activist associated with the Voluntary Health Association of India.

vasanthi devi *

This People's Tribunal is significant because it is the first time that the issues and problems with coercive population policies have been presented at an organised platform. Many myths about population policies have been uncovered, and evidence has been provided to show that these policies are not based on scientific facts. Unfortunately, these myths are still the building blocks of our current population policy.

Coercive population policies have led to political discrimination and human rights violations, particularly for women. These issues were systematically presented during this public hearing. We heard testimonies from victims about the violations they have experienced, or witnessed, including the violation of women's bodies, the deprivation of political rights and the targeting of the poor. We also heard from several experts, who brought their extensive experience and knowledge to the discussion, and helped to tease out the multi-dimensional aspects of the issue.

Coercive policies cannot be justified on any grounds; they violate human rights, gender justice, equity, and human dignity.

Two major sets of issues have come to light as a result of the People's Tribunal. First, coercive policies cannot be justified on any grounds because they violate human rights, gender justice, equity, and human dignity. They are anti-women, anti-Dalit, anti-advasi, and anti-youth. They are also in conflict with the NPP, the Constitution, and India's international commitments. Second, the alarming decline in the juvenile sex ratio cannot be divorced from discussions about coercive population policies. The 2001 Census provides clear evidence of a decline in the juvenile sex ratio in many areas and this violation against the girl child must be addressed. Data presented at the People's Tribunal revealed that Muslims, Dalits, and advasis have always had higher sex ratios than the majority of the population. A number of questions were also raised:

1. Is India truly over populated? Do we know the carrying capacity of the country? Is it not determined by technological advancements?
2. Is there truly a need for population control measures at a time when the TFR has been significantly declining?

* Vasanthi Devi is the Chairperson of the State Women's Commission of Tamil Nadu.

3. Can coercive population control measures succeed in the face of historical evidence to the contrary? Are they feasible?
4. Is there a place for coercive population policies in a democratic polity?
5. Are coercive population policies violating human rights and political rights, particularly of marginalised groups such as women, adivasis, Dalits, and young people?
6. What has been the State's record on development? Can the State justify its attempt to control the population through coercive means if it has a record of failure when it comes to development?
7. In states that have adopted coercive population measures, why do people violate them?

While the government is setting off demographic alarm bells, sane discourse or criticism of the issue has become almost impossible.

There is a belief that human fertility is a criminal act; that those who have more than two children should be penalised by denying them services or entitlements. This is highly undemocratic. Unfortunately, these beliefs have become the cardinal principles of our population policy and an unquestioned national faith;

so much so that the Supreme Court has accepted it, as evidenced by their recent verdicts upholding coercive population policies in Haryana. Sane discourse or criticism of the issue has become almost impossible, while the government is setting off demographic alarm bells.

We are emulating the Chinese model of the One-Child Norm (OCN). Yet, China's coercive population policies actually went against its own pre-1997 history. China's developmental status today is a result of enormous investments in equitable socio-economic development that revolutionised the country and yielded rich dividends. If we seek to emulate China, then it is this policy that we should emulate, not its subsequent coercive population policies.

Development is the best contraceptive and we should increase investments in development and focus on empowering people. As one speaker pointed out, we should stop counting people and start counting on the people.

jashodhara bagchi *

After hearing the depositions and expert testimonies on population policies and TCN laws, I would like to express my anguish at the overwhelming evidence of gross violations of civil, political, cultural, economic, social, and reproductive rights that have been brought forward by those deposing before the People's Tribunal.

We recognize the Constitution of India and the rights it guarantees to all citizens, which include the right to equality, the right to life, the right to political participation, the right to education, and the right to protection under the law. We also recognize that India is a developmental state that is responsible for the health and well being of its citizens. India has ratified international treaties such as the International Convention on Civil and Political Rights (ICCPR), International Convention on Economic, Social, and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and is a signatory to United Nations (UN) conferences that include the ICPD and the Beijing Conference. India also adopted a NPP in 2000 that reaffirmed the government's commitment to voluntary and informed choice with regards to reproductive rights.

Coercive population policies are anti-democratic. Therefore, it is unfortunate that the Common Minimum Programme (CMP) has given space to such an ill-defined and poorly conceptualised notion of population control that mainly targets backward districts. By imposing coercive population polices, states are abdicating their responsibility to provide health care and food security for women and other

Through the imposition of coercive population polices, states are abdicating their responsibilities to provide health care and food security for women and other deprived sections of the population.

deprived sections of the population. It is truly unfortunate that the CMP includes a sharply targeted population control programme for 209 high fertility districts. This goes against the spirit of the Constitution and is a violation of citizens' civil, political, social, cultural, economic, and reproductive rights. High fertility rates in these 209 districts are caused by a number of factors that should be studied and addressed, rather than imposing harsh penalties. Several states also continue to violate citizens' right to political participation in the name of population control, and this has led to the desertion of wives, forced abortions, sex selection, and political disenfranchisement.

* Jashodhara Bagchi is the Chairperson of the State Women's Commission of West Bengal.

The NPP has set up immediate objectives to address contraceptive needs, improve health care infrastructure, and address deficiencies in health personnel. Not one of these objectives has been implemented, and primary health care remains poor in many states. In addition, public primary health care is floundering under the threat of globalisation; it may soon disappear if the government does not take steps to reverse privatisation.

The Government of India (GOI) has not directed state governments to revoke laws and policies that are at variance with the NPP. There is no monitoring of compliance with national guidelines issued by the Ministry of Health to ensure quality of care during sterilisation operations. Currently, service providers are flouting these guidelines with impunity which results in death, disability, and mental anguish. It is the responsibility of the government to stop coercive practices and take steps to protect its citizens.

poornima advani*

Two main issues have emerged from this People's Tribunal. The first relates to infringements on the right to health. The second relates to political rights and the right to development.

There are several reports indicating that couples with more than three children sought family planning operations at health centres, but failed to receive them. In addition, people are excluded from Panchayats and social security schemes for violating population policies. It is mainly women, Dalits, and the poor that are punished in this fashion.

Two main issues have emerged from this Tribunal. The first relates to infringements on the right to health, and the second relates to political rights and the right to development.

These injustices cannot be tolerated in the name of population control. We need to mobilise public opinion at the grassroots and create a people's movement that will monitor this issue. We need to approach political figures and force them to address this important issue. We need to liaise with lawyer's networks, devise legal strategies, and file a petition in the Apex Court. The Department

* Poornima Advani is the former Chairperson of the National Commission for Women.

of Health and Family Welfare should launch a public awareness campaign to dispel population myths, including the notion that development is impossible with a large population. We also need to work with the media to expose population myths. It will be difficult to change people's opinions and eliminate support for coercive population policies, no matter what our policies or programmes profess, until population myths are shattered. We need to work on this issue collectively.

imrana qadeer*

It is not enough to discuss the negative implications of coercive population policies; we also need to devise viable alternatives for population reduction.

We have mentioned that the term 'sharply targeted population programmes' should not be used when discussing the 209 identified high fertility districts. We should also oppose terms like 'fertility indicator,' and support the use of terms like 'poverty indicators' or 'development indicators.'

The government needs a focused approach to tackle poverty and development issues. Instead of a 'Population Control Policy', we should have 'Policies for People' or 'Policies for Population' to link this issue in order to the development sector.

Instead of 'Population Control Policy' we should use the terms 'Policies for People' or 'Policies for Population' to link this issue to the development sector.

Primary health care remains poor, particularly in addressing contraceptive needs. The concept of spacing, which was prevalent in previous policies, is almost non-existent today. Although making contraception available is part of the NPP, programmes to this effect have not been implemented. There should be a contraceptive strategy, rather than a sterilisation strategy, and it should be seen as a service and not as a means to control the population. Basic health service needs and support structures must be defined at the village level in order to enable us to strengthen secondary and tertiary health services: education and awareness programmes are necessary for the success of such programmes.

* Imrana Qadeer is a Professor at Jawaharlal Nehru University, New Delhi

viewpoint of the government

Prasanna K. Hota*

I have learned about the kind of experience women are facing. I can assure you that I will see to it that there is no impetus or support to coercion. I am willing to state that any form of coercion against women is out.

I came to the People's Tribunal with the objective to learn, and I have been successful in this endeavour. I learned that bureaucrats are not always right, and I realised today that we are overlooking some important issues. I assure you that I will carry each of your concerns to the right bureaucratic forums for the coordination of policy at the national level. I will be very careful to introduce these issues in the way you have described them.

Development has to be based on laws. These laws must be manifest in the consciousness of the people through quality services, and not through coercion, targets, or other bureaucratic quick fixes. I have personally visited states in India and find the data and statistics to be very demoralising. To a large extent, it is a result of the loopholes in state policies. I would like to hear more from the Panelists about the shortcomings of these policies, and possible remedies to ensure that resources are utilised to empower women and children in a systematic manner. We need to empower communities so their concerns are better addressed.

Although I am a disciplined bureaucrat, I will take the liberty of saying to my peer group that words like 'sharply targeted population control' take away from the spirit of the National Population Policy (NPP). What we need are better services in the 209 districts with so-called 'high fertility rates'. People in these areas are suffering because they lack the basic minimum of required services.

India is too democratic; not a single Indian can be coerced. We have to sit together and look at the details of policies because laws and policies are not merely words, but a means to provide services. Our priority should be to ensure that goods and services reach the people that need them. The information garnered from the People's Tribunal has been very useful, and I would like to use it to further educate the government about these issues.

* Shri Prasanna K. Hota is the Secretary for the Ministry of Health and Family Welfare of the Government of India.

I very humbly submit that we are focusing on providing care during deliveries, immunisations, and contraceptive and family planning products. We are also looking at all health issues, including Reproductive Tract Infection (RTIs) and Sexually Transmitted Infections (STIs). I reaffirm a woman's right to a safe delivery and her right to choose her own medical institution for her delivery, even when the government is paying the related medical expenses. I also reaffirm a woman's right to quality health services. We are currently trying to demystify pediatric care so that it is available at the grassroots level. The paucity of resources and technical competence means that we can only undertake rural health initiatives in 17 states at this time. Our aim is to empower communities and women in villages draft their own village health plans.

The government and civil society groups concerned about this issue need to collaborate and devise a cohesive set of services for women and children. We do not need to reinvent the wheel because the NPP already addresses all of these concerns: all we have to do is implement the policies that are already in place. We should conduct impact assessments before discarding programmes and complaining that they do not work because of incentives and disincentives. Impact assessments are extremely important in helping us to understand why Kerala is a success story, while Uttar Pradesh and Madhya Pradesh are not. If we simply discard these programmes, then we may be discarding policies that are gender sensitive and that have been formulated with a lot of thought. Instead, we should take up the beneficial provisions of the NPP and carry them forward from this point.

chapter five

tribunal recommendations



tribunal recommendations

- The Government of India (GOI), civil society groups, and the media must act to dispel population explosion theories and other population myths.
- The GOI, civil society groups, and the media must raise awareness about the links between population and development and discard the demographic approach to population growth.
- The GOI should adopt a Target-Free Approach (TFA), and discard all existing targets, incentives, and disincentives in all states without exception.
- All State Governments must repeal policies and laws that violate or contradict the spirit and/or intent of the National Population Policy (NPP).
- The GOI should adopt and enforce its international commitments on population and development in their true letter and spirit.
- The Supreme Court must be approached by the GOI and civil society to reconsider its verdict on the Two-Child Norm (TCN).
- The GOI must prove the TCN's illegality to the Supreme Court in freshly filed writ petitions seeking its implementation, and order its forthwith dismissal without delay.
- The Central and State Governments must expand and ensure real and universal access to quality and affordable health services, especially in the areas of family planning and maternal and child health at the primary health care level.
- The GOI must immediately take special steps to empower women in the areas of education, information, political participation, health and reproductive decision-making, and remove all forms of gender discrimination.
- The GOI must promote and enable community empowerment and the people's ability to make informed family planning or contraceptive choices, as well as enable their political participation and representation.
- The GOI must hold public debates and consult with relevant civil society groups to conduct community needs assessments on reproductive health-related matters on a regular basis, with a view towards formulating and implementing population policies.

- All phraseology and language in state policies and laws on population issues that in any way support or reinforce coercion, targets, punitive action, or blame must be removed by the GOI forthwith.
- The GOI must take steps on an urgent basis to check and reverse the declining sex ratio and the practice of eliminating female foetuses, and promote the value of women in society.
- The GOI must take measures to put an immediate end to forced sterilisations and ensure that sterilisations carried out with informed consent are in accordance with prescribed guidelines for safety.
- The GOI must provide redressal, restoration, and compensation for individuals who have been negatively affected by unjust population policies: those who have been disqualified from political posts; subject to forced, unsafe, and/or failed sterilisation operations; or deprived of jobs and/or benefit schemes.
- The GOI must ensure that the sexual and reproductive rights of young people are duly protected and provided for in all laws and policies.
- The GOI must protect and preserve the spirit and intent of the 73rd and 74th Constitutional Amendments and strike down any attempt to subvert them.
- The GOI must strictly disallow all attempts to victimize or disenfranchise persons belonging to Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs), religious minorities, as well as women, the poor, or any other marginalised section of the population.
- The GOI must recognise the interdependency and indivisibility of all rights, including economic, social, cultural, civil, and political rights.
- The GOI must undertake an immediate and thorough review of all policies and laws in the context of the Tribunal's Recommendations.

**postscript**

Abhijit Das*

Since the People's Tribunal, there have been both positive and negative developments with regard to population policies in India.

While the National Democratic Alliance (NDA) Government's intention of instituting a law that would impose the Two-Child Norm (TCN) nationwide was thwarted by its defeat in the April 2004 elections, it is disappointing to note that the Common Minimum Programme (CMP) of the new United Progressive Alliance (UPA) Government includes provisions for sharply targeted family planning programmes in 209 districts around the country, that remains in effect today. In addition, there has been no progress within the judiciary: the Supreme Court's July 2003 decision to uphold the legality of the TCN was reiterated in October 2004.

Immediately following the People's Tribunal, Dr. Ambumani Ramadoss, the Union Minister for Health and Family Welfare, stated that the TCN would not be imposed and that population stabilisation would be achieved voluntarily. Unfortunately, in the same speech, Dr. Ramadoss continued to express his strong concern about the size of the country's population. However, in July 2005, the Indian Prime Minister, Dr. Manmohan Singh, categorically stated during his address at the first meeting of the newly created National Population Commission that not only did coercive family planning programmes have no place in population programmes, but also that incentives were a form of coercion. This was the very first time an Indian Prime Minister made an explicit comment against the use of coercion in population programmes. For many of us who have been struggling to eliminate coercive population policies, this signaled a fundamental change in the government's population discourse.

The findings of the People's Tribunal were also shared at two subsequent meetings on women's health in New Delhi: Violence Against Women and Public Health (co-organised by the National Commission of Women and the Department of Family Welfare) and the All India Workshop of Health Secretaries on Gender and Health (organised by the Department of Family Welfare). Many of the public health experts

* Abhijit Das, a medical doctor by training, has been prominently associated with the public health movement in India. He is presently the Director of the Centre for Health and Social Justice (CHSJ), which he set up in New Delhi. He is also a Clinical Assistant Professor at the School of Public Health and Community Medicine, University of Washington, Seattle, USA.

that attended these meetings also attended a National Consultation on the National Rural Health Mission (NRHM) a few weeks later, during which a proposed draft of the NRHM was circulated that included population control in its agenda. These public health experts, armed with the findings of the People's Tribunal, strongly opposed any inclusion of population control in the document. When the Prime Minister launched the NRHM in April 2005, the subject of population control and targeted family planning had been removed from the final document.

The print and electronic media covered the People's Tribunal extensively, and one of the greatest successes of the Tribunal has been its role in changing public discourse on population issues.

Another major success of the People's Tribunal is that it provided the impetus to create a Coalition Against Coercive Population Policies, which has taken up advocacy against coercive population policies at both the state and national levels.

In Himachal Pradesh, a state level campaign against the TCN was formed that utilised data from the People's Tribunal in its advocacy efforts. As a result, the Cabinet of Himachal Pradesh approved the removal of TCN provisions from its Panchayat Raj Act in 2005. In Madhya Pradesh, two studies published by co-organisers of the People's Tribunal (Sama Resource Group for Women and Mahila Chetna Manch) highlighting the impact of the TCN eventually led to a state level campaign for its repeal. On 15 August 2005, Madhya Pradesh's then Chief Minister, Babulal Gaur, announced that the TCN would be repealed. While the law still remains in effect, the campaign continues to apply pressure on the government to repeal it. In Uttar Pradesh, Tribunal co-organiser Healthwatch UP Bihar launched protests when the State Election Commissioner, Shri Aparamita Pratap, argued for the introduction of a TCN provision for Panchayat elections in mid-2005. As a result, the State Election Commissioner's recommendation was not adopted, and Uttar Pradesh continues to remain a TCN-free state. Healthwatch UP Bihar, in partnership with the Population Foundation of India, also organised briefings prior to Panchayat elections on the TCN and the declining child sex ratio for state legislators. Healthwatch UP Bihar was also instrumental in blocking the adoption of a Uttar Pradesh Population Control Bill.

Unfortunately, even though all of these positive developments have taken place since the People's Tribunal; several new states are now on the verge of adopting TCN legislation, thus indicating that it is as important as ever to keep the focus on this issue and maintain advocacy efforts. For example, the Maharashtra government has

proposed a TCN criterion for receiving irrigation for sugar cane cultivation. This bill has been introduced and passed by the Upper House, but is still awaiting the approval of the Lower House before it is presented to the Governor, and officially becomes part of state law. Centre for Enquiry into Health and Allied Themes (CEHAT) and other civil society groups are working to prevent the adoption of this law. Similarly, the Government of Gujarat has proposed a TCN law for election to urban bodies, but has faced strong opposition from local women's and health groups. It remains to be seen if these efforts will be successful.

Over ten years after the International Conference on Population and Development (ICPD), and five years after the National Population Policy (NPP), it finally appears that we have been able to create some fissures in the firm and widespread belief that coercion is an effective way to control population growth; that it is the only answer to India's development problems. The People's Tribunal made a significant contribution in creating these fissures and in instigating a debate based on the facts and realities on the ground. It is hoped that the discourse launched at the People's Tribunal and this report will continue to make contributions to the final elimination of the TCN and all other coercive population policies in India.

May 2006



annexures

ANNEXURE 1

Schedule of the Tribunal Hearings*		
Day One: 9th October 2004		
9.00 - 9.15	Introduction to the Tribunal	Abhijit Das
9.15 - 9.30	Film: Seeds of Well Being	
9.30 - 9.45	Population Policies: An Overview	A.R.Nanda
9.45 - 10.00	Supreme Court Decision on the Two-Child Norm	Colin Gonsalves
10.00 - 10.15	Discussion	
10.15 - 10.30	State Overview: Madhya Pradesh	Anuj/Parul
10.30 - 11.00	Testimonies from Madhya Pradesh	SAMA/MP, BGVS/ Hunger Project
11.00 - 11.15	Discussion	
11.15 - 11.30	Two-Child Norm: Sex Ratio	J.K Banthia
11.30 - 11.45	State Overview: Uttar Pradesh	Jashodhara/Ramakant Rai
11.45 - 12.15	Testimonies from Uttar Pradesh	Healthwatch UP, Bihar
12.15 - 12.30	Discussion	
12.30 - 12.45	Declining Juvenile Sex Ratio, Two Child Norm and Women's Status	Manisha Gupte
12.45 - 1.00	Song	Kaushil
1.00 - 1.15	State Overview: Rajasthan	Narendra Gupta & Pallavi
1.15 - 1.45	Testimonies from Rajasthan	PRAYAS
1.45 - 2.00	Discussion	
2.00 - 2.15	Remarks by Tribunal Members	

* As printed and distributed. There were minor modifications on the final days of the Tribunal.

2.15 - 3.00	Lunch / Press Conference	
3.00 - 3.15	State Overview: Orissa	Gourang Mohapatra
3.15 - 3.45	Testimonies from Orissa	Bharat Gyan Vigyan Samiti (BGVS)
3.45 - 4.00	Discussion	
4.00 - 4.15	Two-Child Norm and Political Participation of Women and Marginal Communities	Rita Sarin
4.15 - 4.30	Two-Child Norm: Experiences in Panchayats	Nirmala Buch
4.30 - 4.45	State Overview: Jharkhand	Dr. Kalyani K. Meena / Kiran Kumari
4.45 - 5.15	Testimonies from Jharkhand	Preranabharti
5.15 - 5.30	Discussion	
5.30 - 5.45	State Overview: Himachal Pradesh	Subhash
5.45 - 6.15	Testimonies from Himachal Pradesh	Mindhapurkar/Sandhya Gautam SUTRA
6.15 - 6.30	Discussion	
6.30 - 6.45	State Overview: Andhra Pradesh	Dr. G. Francis Raj
6.45 - 7.15	Testimonies from Andhra Pradesh	Voices
7.15 - 7.30	Discussion	
7.30 - 8.15	Remarks by Tribunal Members	
8.15 - 9.10	A film by SAHAYOG	
9.10	Dinner	

Day Two: 10th October 2004		
9.00 - 9.15	Remarks by Tribunal Members	
9.15 - 10.00	Film: Legacy of Malthus	
10.00 - 10.15	Legal Perspective on the Two-Child Norm	Shruti Pandey
10.15 - 10.30	National Population Policy and Women's Health	Mira Shiva
10.30 - 10.45	State Overview - Bihar	Sapan Majumdar
10.45 - 11.15	Testimonies from Bihar	Bihar Voluntary Health Association
11.15 - 11.30	Discussion	
11.30 - 11.45	Songs	Kaushik
11.45 - 12.00	State Overview: Punjab	Manmohan Sharma
12.00 - 12.30	Testimonies from Punjab	Voluntary Health Association of Punjab
12.30 - 12.45	Discussion	
12.45 - 1.00	State Overview: Haryana	Dr. B. S. Dahiya/ Shailander Diwedi
1.00 - 1.30	Testimonies from Haryana	PRIA/Jan Swasthya Abhiyan
1.30 - 1.45	Discussion	
1.45 - 2.00	Remarks by Tribunal Members	
2.00 - 2.45	Lunch/Press Conference	
2.45 - 3.00	Census and Population*	Charu Gupta*
3.00 - 3.15	State Overview: Maharashtra	Audrey/Jaya Velankar

* To be confirmed

3.15 - 3.45	Film: Footage of a Tubectomy Camp	Tathapi
3.45 - 4.00	Discussion	
4.00 - 4.15	Population: Facts and Myths	Dr. Almas Ali
4.15 - 4.30	State Overview: Gujrat	Subhalakshmi
4.30 - 5.00	Testimonies from Gujrat	Anandi
5.00 - 5.15	Discussion	
5.15 - 5.30	State Overview: Manipur*	Binota*
5.30 - 6.00	Testimonies from Manipur*	Family Planning Association of India*
6.00 - 6.15	Discussion	
6.15 - 6.30	State Overview: Uttaranchal*	Renu Gupta*
6.30 - 7.00	Testimonies from Uttaranchal*	
7.00 - 7.15	Discussion	
7.15 - 7.30	Remarks by NHRC*	
7.30 - 7.45	View Point of the Central Government*	
7.45 - 8.15	Fact findings and Recommendations of the People's Tribunal	Abhijit Das
8.30	Dinner	

* To be confirmed

ANNEXURE 2

Declaration Adopted at the Colloquium on ‘Population Policy - Development and Human Rights’

*Organised by Department of Family Welfare, Ministry of Health &
Family Welfare, NHRC & UNFPA
9-10 January 2003, New Delhi*

The Department of Family Welfare, Ministry of Health and Family Welfare; the National Human Rights Commission (NHRC) and the United Nations Population Fund (UNFPA) jointly organized a two-day Colloquium on “Population Policy – Development and Human Rights”, on 9th and 10th of January 2003 at the India Habitat Centre, New Delhi. The participants of the Colloquium appreciated the efforts made by the State Governments /Union Territories and the Union Government to frame and implement population policies, and, after having deliberated on these population policies and the related human rights issues, agreed to:

- Recognise the importance of having a population policy framed by the Central and State Governments to achieve population stabilisation goals of the country.
- Further, recognise that the population policies ought to be a part of the overall sustainable development goals, which promote an enabling environment for attainment of human rights of all concerned. Therefore, a rights-based approach is imperative in the framing of the population policies. Further, it is important that framing of such a policy and its implementation require a constant and effective dialogue among diverse stakeholders and forging of partnerships involving all levels of Government and civil society.
- Appreciate the efforts of the Government of India in framing the National Population Policy, 2000 of India which affirms the commitment of the Government to its overriding objective of economic and social development, improving the quality of lives of people through education and economic empowerment, particularly of women, providing quality health care services, thus enhancing their well being, and providing them with opportunities and choices to become productive assets in society, as a necessary concomitant to population stabilisation and reduction in fertility rates.
- Notewith concern that population policies framed by some State Governments reflect in certain respects a coercive approach through use of

incentives and disincentives, which in some cases are violative of human rights. This is not consistent with the spirit of the National Population Policy. The violation of human rights affects, in particular the marginalised and vulnerable sections of society, including women.

- Note further that the propagation of a two-child norm and coercion or manipulation of individual fertility decisions through the use of incentives and disincentives violate the principle of voluntary informed choice and the human rights of the people, particularly the rights of the child. Similarly, the use of contraceptive targets results in undue pressure being put by service providers on clients.
- Call upon the Governments of States / UTs to exclude discriminatory / coercive measures from the population policies that have been framed, or are proposed. States in which such measures do not form part of the policy, but are nonetheless implemented, also need to exclude these discriminatory measures.
- Emphasise that in a situation where the status of women is low and son preference is prevalent, coercive measures further undermine the status of women and result in harmful practices such as female foeticide and infanticide.
- Affirm that reproductive rights cannot be seen in isolation, as they are intrinsic to women's empowerment and empowerment of marginalized sections of society. Therefore, giving priority to health, education, and livelihood of women is essential for exercising these rights, as also for reduction in fertility rates and stabilisation of population.
- Acknowledge that reproductive rights set on the foundation of dignity and integrity of an individual encompasses several aspects such as:
 - The right to informed decision-making, free from fear of discrimination;
 - The right to regular accessible, affordable, good quality and reliable healthcare;
 - The right to medical assistance and counseling for the choice of birth control methods appropriate for the individual couple;
 - The right to sexual and reproductive security, free from gender-based violence.
- Emphasise that capacity-building initiatives at all levels should mainstream rights-based perspective into various programmes.
- Further, emphasise that for a successful implementation of any programme for population stabilisation, a rights-based approach is far more effective

than a coercive approach based on disincentives.

- Recognise that monitoring the human rights impact of policies and their implementation by governments is critical for ensuring that the policy processes conform to the rights framework as enshrined in the Constitution of India, national laws and in international human rights instruments.
- Call upon the Central and State Governments to ensure that domestic laws on the subject promote proper exercise of reproductive rights, prevent harmful practices that derogate from a proper exercise of such rights, and protect every individual's right to a life with dignity while aiming at population stabilisation and ensure allocation of adequate financial resources for the implementation of a population policy founded in human rights and development.

Recommendations Made and Adopted at the Colloquium

- State specific population policies to be formulated keeping in view the conceptual framework of NPP.
- In the light of the Constitutional mandate, a right-based dialogue needs to inform the population policy processes.
- Policy should enable equal opportunity environment.
- Re-visioning population policy with a fundamental shift in the approach where people in general and women in particular are not viewed as mere resources but as human agents with freedom of choice and capability.
- The means adopted for population stabilisation should ensure that equity implications are not violated.
- Demystifying the understanding of reproductive rights at the level of community, policy makers, and programme managers.
- All the population policies should be examined for ensuring protection and promotion of human rights.
- There should be clarity and consistency in the population policy and legislative framework. e.g. legal age of marriage.
- Making registration of marriages and births compulsory.
- Population can be stabilized by creating an enabling environment, supportive development, and inter-sectoral coordination.
- Behavioural changes not only for the community but also for those responsible for policy making, implementation, and enforcement.
- Women's empowerment is not to be treated as a means to population stabilisation but as an end in itself.

- Involvement of civil society and social group in policy formulation within a rights perspective.
- Translating human rights in programme realities is critical, e.g. access to quality health care, improving access to service and availability for information, transparent legal framework will help in this process. An example at the international level is that of Iran where investment in health sector has led to a quantum leap in health services and population stabilisation.
- Engage in meaningful dialogue with the State governments, in an objective assessment of disincentives in a human rights framework. Initiate correctional steps for those coercive policies that are already in place.
- The two-child norm, which disempowers women both directly and indirectly, must be examined critically since it is a violation of human rights.
- Radical changes in resource allocation for ensuring the rights of the under-privileged and marginalized for equity and equal opportunity.
- Policies need to recognize that young people are sexually active and have reproductive health needs as well as rights.
- Policies need to be guided by human rights perspective bringing accountability in mainstream decision making.

ANNEXURE 3

STRATEGY IN 209 CMP DISTRICTS FOR FAMILY PLANNING

Government Of India
Ministry of Health and Family Welfare
Department of Family Welfare

CMP Mandate

The Common Minimum Programme (CMP) of the United Progressive Alliance (UPA) Government states that “the UPA Government is committed to replicating all over the country the success that some Southern and other States have had in family planning. A sharply targeted Population Control Programme will be launched in the 209 odd high fertility districts”. The Department of Family Welfare is initiating a CMP Programme accordingly in the identified 209 high fertility districts of the country. The strategy of the Department for the CMP Programme is as follows:

Selection of Districts

The Districts were arranged in descending order to Total Fertility Rate (TFR) as per the Census 2001 data. By excluding better performing States with one or two districts from the list, like Haryana (Gurgaon), Uttaranchal (Hardwar), West Bengal (Uttar Dinajpur, Maldah), Gujarat (Dohad, Banas Kantha), Chhattisgarh (Sarguja) and Assam (Dhubri, Goalpara, Marigaon), a list of 209 districts has been arrived at. These districts belonging to the better off States will be taken care of by improved attention of the concerned States. These 209 districts are concentrated in the 5 EAG States of Bihar (36), U.P. (58), M.P. (24), Rajasthan (20) and Jharkhand (12).

The Vision

The National Population Policy aims at achieving a National Total Fertility Rate (TFR) of 2.01 by 2010. It would still take another 35 years for the population to stabilize by 2045 at the expected level of 160 crore. However, the present trends indicate that if the present pace of reduction in growth rate continues, the TFR of 2.01 may at best; be attained by 2016. The population may touch 180 crore before stabilizing. It is, therefore, important to adopt strategy for addressing the high order births (above two children per family) in the identified high fertility districts, at a

scale which will prevent at least 40 crore additional births by 2045 permitting the country's population to stabilize after peaking at about 135 crores. The plans arrived through Community Needs Assessment Approach (CNAA) in these districts also reflect a high level of unmet needs, basically due to weak service delivery mechanisms. Of the total 48 lakh sterilisations being reported in country, only around 13 lakhs are being reported in the CMP States where as their high order births in these States are in the range of 93 lakhs per annum (of the total 170 lakh high order births in the country). It is hoped to raise the level of sterilisations in these CMP States to 50 lakh per annum within the next four years. In fact, we should thereafter increase the scope of our programme and add another 150 high fertility districts to really tackle the unwanted births all across the country. It is also a fact that against the average annual growth rate of population of 1.7% in rural India, the same is 2.7% for urban India and 4% for urban slums. The high growth rate in urban slums is also largely due to the factor of immigration of BPL labour and families from high fertility and poor districts to urban areas, especially the metros. It would therefore be necessary to cover the urban slum pockets in the CMP strategy. Then only the systematic prevention of 40 crore unwanted births will actually happen.

Lessons from Southern States

Over the last 5 decades, the performance of the Family Welfare Programme has been distinctly better in the Southern States like Kerala, Tamil Nadu, and Karnataka as against the CMP States. Higher levels of literacy and women empowerment in these States contributed to the success of the programme. However, improved performance levels in these States also owe largely to the political will, administrative commitment and good governance in these States. A major lesson to be learnt from the Southern States is their success in involving the private sector in service delivery. In the State of Tamil Nadu, of the total 4 lakh sterilisation being reported per annum, 1.5 lakh procedures are being reported through the private sector. In the State of Andhra Pradesh, the spectacular success in bringing down the growth rate of population in the last decade has been possible, despite the low level of literacy, due to the involvement of private sector and self help groups, provision of insurance cover to family planning acceptors, and a higher Compensation package for sterilisation in the State. Strong monitoring and the supervisory mechanisms in the Southern States have ensured better accountability of the service providers. Under the CMP Strategy, the lessons from the Southern States would be replicated in select States of U.P., M.P., Bihar, Rajasthan and Jharkhand.

Strategy in CMP Districts

The thrust Areas in these districts would be family planning, immunization and safe delivery. Letters have been sent to Chief Ministers, Chief Secretaries and Secretaries (FW) of the selected States, and also to District Collectors of 150 CMP districts. Copies of the letters are enclosed at Annexures II, III & IV. The strategy aims at bringing back the District Administration into the Family Planning Programme. Detailed CMP Manual is being prepared for the District Collectors of the CMP districts, to provide them with a roadmap and suggested strategy. National/Regional Consultations with State Governments and District Magistrates of 150 CMP districts shall be held.

Emphasis on Family Planning Services

The emphasis would be on targeting unmet need for family planning services in these districts. Additional funds would be provided for improved services for sterilisation and IUD insertion. The Compensation package for sterilisation is being revised, to adequately cover the transaction costs of the procedures in public and private health facilities. Additionally, an imprest fund of Rs. 10 lakhs would be provided to District Administration as a revolving fund for family planning. Professional Indemnity Insurance cover shall be extended to doctors conducting sterilisation operations in both public sector and accredited private health facilities, so as to cover them against legal and financial costs of possible consumer cases. Detailed assessment of the requirement of drugs, equipments, contraceptives and laparoscopes is being done for CMP districts, and a strategy shall be formalized for timely procurement and appropriate logistics arrangements.

Partnership with Private Sector

Partnerships with the private sector through accreditation, indemnity insurance coverage and suitable higher payment nearer to basic market cost are the major hope for attainment of the goals in the CMP districts. A revised Compensation package is being extended to accredited private/NGO health facilities for conducting sterilisation/IUD insertion. A package of around Rs. 1200 for sterilisation in a private nursing home and Rs. 600 in public health facility, inclusive of transactional cost to the Trained Birth Attendant (TBA), and the client to cover the expenses on travel, food, and access to the public/private hospitals for sterilisation will energize the demand and supply chain in family planning. Availability of family planning services is thus hoped to increase through social marketing and social franchise of such services. It is aimed to provide quality assurance among such accredited facilities and to provide them with a logo so as to generate publicity of the availability of such

family planning services in the private sector. Accrediting 15 to 20 private providers per district is an attainable task. Banks are being approached to announce a special package of loan of Rs. 5 lakhs to Rs. 10 lakhs to these accredited doctors in CMP districts to improve their infrastructure, space equipment, Operation Theater etc. These loans will be viable as an accredited clinic is expected to earn at least Rs. 25,000 to Rs. 30,000 extra per month and so repayment of the loan will be possible. This itself is likely to help achieve 25.35% extra family planning procedure. In Tamil Nadu, an average of 30 to 40 private facilities have been accredited per district. In spite of a well functioning governmental system and low levels of fertility, 35% of all sterilisation in the State are at accredited private clinics.

Promotion of Maternal Healthcare

The National Maternity Benefit Scheme is being revised as the proposed Janani Suraksha Yojana (JSY) with the aim of promotion of institutional delivery to bring down the high Maternal Mortality Rate (MMR) in these districts (Annexure V). It is hoped that the JSY would prevent female foeticide through raising consciousness for the girl child. It is aimed to provide an amount of Rs. 1000/girl child and Rs. 400/male child, if delivered in a health institution, by a BPL mother. Additionally, transport assistance up to Rs. 150, and incentive to Dais @ Rs. 200/150 for female/male child is also envisaged in lieu of appropriate antenatal and postnatal care and referral for institutional delivery. The scheme also aims at adoption of tubectomy by the pregnant women after the delivery. It is aimed to operationalize First Referral Units (FRUs) at district levels to ensure 24 hours service delivery for improved healthcare. Emphasis is also being laid on provision of health infrastructure in urban slums.

Engagement of TBAs

It is proposed to engage around 2.6 lakh Trained Birth Attendants (TBAs) at the rate of one per 500-1500 population aiming at one TBA for village under one AWW in the CMP States as the grass root level worker for the FW programme. The TBA would be the key to social mobilization in these districts. She would be recruited by the AWW, in consultation with the Women Self Help Group of the village, on payment of an honorarium of Rs. 100/- per month only. The ANM will countersign and confirm this appointment. The TBA will get ICE material and other support from District Health administration through the ANM.

She will counsel the village women for adopting contraception, safe delivery and institutional delivery. She would also escort the client to the hospital, whether to a public or an accredited private facility, for family planning and institutional deliveries and be paid a transaction cost for each such procedure. She will also mobilize the children and expectant mothers on immunization days. She is expected to earn Rs. 7500 to Rs. 8000 per annum from her work. Additionally, she will be given products such as basic medicines, contraceptives and ORS etc. for social marketing in the village. She will also counsel for newborn care, breast feeding and adolescent hygiene and age of marriage. She will assist in registration of births. All these, she will do under the supervision of AWW and ANM among the women/girls of the community where she normally resides.

Strengthening Immunisation Programme

Efforts shall also be made in these districts for improved immunization, including strengthening of cold-chain, induction of Auto Disposable syringes and holding of Immunization Sessions on fixed days at village/habitation level, in convergence with the ICDS workers. A major strategy is to make the vaccine reach the immunization site on Vaccination Day so that the ANM can carry out longer sessions. It is proposed to bring in legislation to make it mandatory for all medical establishments, whether public or private, to render immunization services. Medium-term Plan for strengthening of Immunisation has been moved to World Bank through Department of Expenditure. Copy of the same is enclosed in Annexure VI.

Management Strengthening

The work in the CMP districts is proposed to be undertaken in a Mission mode. This would necessitate organizational restructuring of the Department of Family Welfare at the GoI level, and setting up of a National Resource Centre for providing Technical Assistance under different components of the Reproductive & Child Health Programme. It is also proposed to upgrade the management capacities at State and district levels for consolidation of the Programme Management Units through induction of key skilled professionals like MBAs, CAs, Inter Costs, MIS Specialties etc. under the leadership of an additional IAS officer as executive Director, SCOVA at State level, and ex-service men at district levels, to steer the programme. The strengthening of the financial and programme management would be a key input of the envisaged programme. Improvement of financial flows, improvement in accountability through better maintenance of accounts by induction of professional

financial personnel, and use of e-technology to handle the huge number of transactions and sites efficiently is the management key to the CMP strategy.

Improved convergence, publicity and programme monitoring

A programme-specific IEC campaign shall be launched for the CMP districts, including wall writings, hoardings, posters, brochures, CDs and briefing kit for various stakeholders, informing the key players of the new initiatives and the public-private institutions partnering in this activity. Intersectoral convergence with related Departments would be strengthened and involvement of members of Panchayati Raj Institutions and Self Help Groups stressed to make the programme a people's programme. The monitoring of the Family Welfare Programme shall be improved through e-linking with video-conferencing in CMP districts and with the 5 EAG States' Secretaries. We also proposed to use e-technology for social auditing. Consumer suggestion/grievance monitoring, handling fund flow and other related issues. A concept note on the subject is enclosed in Annexure VII.

Financial Implications

Detailed costing has been done of all the additional activities proposed above. The Department of Family Welfare is of the view that it should be possible to undertake the additional activities in the current year by regrouping funds available under different Budget Heads of the Department. It should also be possible to accommodate the additional financial requirements for the remaining period of the 10th plan within the Budget of the Department, if the officially indicated Outlays for the 10th Plan are fully funded. This would, however, require some intersectoral adjustments within the Budget Heads of this Department, for which orders of competent authorities would be obtained. It is possible to continue funding these new initiatives not only in these 150 CMP districts, but also in additional 100 to 150 districts in the 11th Plan with only a normal increase in the Budget, by 50%. The Common Minimum Programme already states that over a period, the Health Budget would be doubled. Also, from 9th Plan to 10th Plan, our Budget increased by 80%. We are thus looking at a very practical financial plan. The savings to the country, by way of avoiding 40 crore unwanted births, would be far more.

ANNEXURE 4

List of Parliamentary Bills and Population Policies with Coercive Population Control Provisions				
Bill No. and Year	Short Title of Bill	Type of Bill	Member/Ministry In Charge	Status
5 2005	The Population Control Bill, 2005	Private	Shri Bachi Singh Rawat/ Health And Family Welfare	Pending in Lok Sabha
67 2004	The Population Control Bill, 2004	Private	Shri Sambasiva Rayapati Rao/ Health And Family Welfare	Pending in Lok Sabha
XXVII 2002	The Population Control Bill, 2002	Private	Shri Sultan Singh/ Health And Family Welfare	Pending in Rajya Sabha
XVII 2001	The Population Control Bill, 2001	Private	Shri Rumandla Ramachandraiah/ Health And Family Welfare	Pending in Rajya Sabha
XII 2001	The Family Welfare and Control of Population Bill 2001	Private	Shri K. B. Krishna Murthy/ Health And Family Planning	Pending in Rajya Sabha
143 2000	The Population Policy Bill, 2000	Private	Shri Uttamrao Nathuji Dhikle/ Health And Family Welfare	Pending in Lok Sabha
36 2000	The Population Control Bill, 2000	Private	Shri Y. Eswara Reddy/ Health And Family Welfa	Pending in Lok Sabha
131 1999	The Population Control and Family Welfare Bill 1999	Private	Shri Sushil Kumar Shinde/ Health And Family Welfare	Pending in Lok Sabha
124 1999	The Population Stabilisation Bill, 1999	Private	Dr.(Smt.) V. Saroja/ Health And Family Welfare	Pending in Lok Sabha
11 1998	The Population Control Bill, 1998	Private	Dr. T. Subbarami Reddy/ Health And Family Welfare	Pending in Lok Sabha
18 1998	The National Population Policy Bill, 1998	Private	Shri Amar Pal Singh/ Health And Family Welfare	Pending in Lok Sabha
2000	The Bachelors Allowance Bill, 2000	Private	Shri Chandrakant Bhaurao Khaire/ Health And Family Welfare	Pending in Lok Sabha

ANNEXURE 5

Reported as (2003) 2 SCC 628

IN THE SUPREME COURT OF INDIA
Civil Appeal No. 8599 of 2002 [Arising out of S.L.P. (C) No. 2990 of 2002]

Decided On: 19.12.2002

Sunil Kumar Rana

Vs.

State of Haryana and Ors.

Qorum: Doraiswamy Raju and Shivaraj V. Patil, JJ.

JUDGMENT

D. Raju, J.

1. Special leave granted.
2. The appellant filed his nomination on 7.3.2000 for contesting the election to the Municipal Council, Karnal, as a member from Ward No. 31. After overruling the objections of another candidate (5th respondent) the Returning Officer accepted the same. The 5th respondent filed a revision challenging the acceptance of the nomination before the Deputy Commissioner, Karnal, and by an order dated 11.3.2000, the revision was allowed and the nomination paper of the appellant was ordered to be rejected. The appellant filed C.W.P. No. 3141 of 2000 before the High Court of Punjab and Haryana on 14.3.2000. While the said Writ Petition was pending, the elections were held on 2.4.2000 and the 5th respondent was elected as the member of the Municipal Council from Ward No. 31. As a result of the same, on 7.4.2000 the Haryana State Election Commission notified the results. In view of the said subsequent development, the relief prayed for in the Writ Petition was also sought to be modified. Finally, by an order dated 31.10.2001, the

Division Bench of the High Court dismissed the Writ Petition holding that the nomination paper of the appellant was rightly ordered to be rejected.

3. The factual basis, which provided the ground for his disqualification and consequent rejection of the nomination, is that at the time of filing his nomination, the respondent had four children and that of the said four children, two were born after the coming into force of the Haryana Municipal (Amendment) Act, 1994 (Haryana Act No. 15 of 1994) the actual date of birth of them, twins being 11.5.1995, as per the municipal records. The stand of the appellant was and even now before us is that the relevant date for determining the disqualification is the coming into force of the Haryana Municipal (Amendment) Act, 1994 - (Haryana Act No. 15 of 1994) viz., 4.10.1994, the date of publication of the Amendment Act in the Government Gazette and not 5.4.1994, the date of coming into force of the Haryana Municipal (Amendment) Act, 1994 (Haryana Act No. 3 of 1994). The High Court was of the view that into disqualification will operate after 5.4.1995 - on the expiry of the period of one year from 5.4.94, the date of coming into force of the Amendment Act No. 3 of 1994. Per contra, the claim of the appellant was that the disqualification will be attracted only after 4.10.95 the expiry of one year from the date of coming into force of the Amendment Act No. 15 of 1994.
4. Heard the learned counsel appearing on either side. To have a proper appreciation of the respective contentions of the parties on either side, it becomes necessary to refer to the relevant provisions of the Act. The Haryana Municipal Act, 1973 (Haryana Act 24 of 1973) as it originally stood prior to the amendment in question did not provide for any such disqualification. It is only for the first time by the Haryana Act, 3 of 1994, Section 13A came to be inserted, which so far as is relevant for this case, reads as follows:
“13A. Disqualification for membership. (1) A person shall be disqualified for being chosen as and for being a member of a municipality-
 - (a)
 - (b)
 - (c) If he has more than two living children:

Provided (SIC) person having more than two children on or after the expiry of one year of the commencement of this Act shall not be deemed to be disqualified.”

5. Thereafter, or Haryana Act No. 15 of 1994 Clause (C) of Sub-section (1) of Section 13A was amended, as mentioned below:
 - “2. Amendment of Section 13A of Haryana Act 24 of 1973-in the Proviso to Clause (c) of Sub-section (1) of Section 13A of the Haryana Municipal Act, 1973, (hereinafter called the Principal Act), for the word “after”, the word “upto” shall be substituted.”
6. It is the effect of this amendment that really calls for consideration, in this appeal.
7. On a careful consideration of the relevant statutory provisions and the submissions of the learned counsel on either side, we are of the view that the High Court could not be said to have erred in the construction adopted, which not only accord with the intention of the legislature but avoid uncertainty and friction as well repugnance, which otherwise would result in accepting the stand of the appellant. The main part of Clause (c) of Sub-section (1) of Section 13A in unmistakable terms introduced a disqualification for being chosen as and for being a member of the Municipality of a person who has more than two living children. The mandate of the legislature is clear and specific and purports to be in public interest. At the same time, in order to protect, apparently cases where child could have by then conceived a reasonable period to relax from the rigour of the disqualification seem to have been thought of and keeping in view perhaps the normal gestation period, a proviso in the form of a deeming clause also appear to have been enacted enjoining at the same time that “a person having more than two children on or after the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified”. [Emphasis supplied]
8. The legislative intent thus to compute the period of one year from the “commencement of this Act” meaning thereby Haryana Act No. 3 of 1994 is equally explicit and clear. There is, therefore, no rhyme or reason or justification in the claim on behalf of the appellant that the one year period has to be calculated from the date of coming into force of the Haryana Act No. 15 of 1994, which merely substituted the word “after” by the word “upto”. The result of substitution, as we could see, was to read the provision as amended by the word, ordered to be substituted. The legislature seem to have realized the need for substitution on becoming aware of the anomalies and absurdities to which the provision without such substitution may lead to, even resulting, at times, in repugnancy with the main provision and virtually defeating the intention of the legislature. The modification of the provision, as carried out by the substitution ordered, when found to be need and

necessitated to implement effectively the legislative intention and to prevent a social mischief against which the provision is directed, a purposive construction is a must and the only inevitable solution. The right to contest to an office of member of a municipal body is the creature of statute and not a constitutional or fundamental right. Viewed, thus also, we are convinced that the interpretation placed by the High Court on the provisions concerned is neither arbitrary, nor unreasonable or unjust to call for our interference.

9. The appeal consequently fails and shall stand dismissed. No costs.

Reported as (2003) 8 SCC 369

IN THE SUPREME COURT OF INDIA
Decided On: 30.07.2003

Javed and Ors.
Vs.
State of Haryana and Ors.

Qorum: R.C. Lahoti, Ashok Bhan and Arun Kumar, JJ.

JUDGMENT

R.C. Lahoti, J.

1. Leave granted in all the Special Leave Petitions.
2. In this batch of writ petitions and appeals the core issues is the vires of the provisions of Section 175(1)(q) and 177(1) of the Haryana Panchayati Raj Act, 1994 (Act No. 11 of 1994) (hereinafter referred to as the Act, for short). The relevant provisions are extracted and reproduced hereunder:-

175. (1) No person shall be a Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who -

xxx xxx xxx
xxx xxx xxx

(q) has more than two living children :

Provided that a person having more than two children on or upto the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified;

“177(1) If any member of a Gram Panchayat, Panchayat Samiti or Zila Parishad -

- (a) who is elected, as such, was subject to any of the disqualifications mentioned in Section 175 at time of his election;
 - (b) during the term for which he had been elected, incurs any of the disqualifications mentioned in Section 175, shall be disqualified from continuing to be a member and his office shall become vacant.
- (2) In every case, the question whether a vacancy has arisen shall be

decided by the Director. The Director may give its decision either on an application made to it by any person, or on its own motion. Until the Director decides that the vacancy, has arisen, the members shall not be disqualified under Sub-section (1) for continuing to be a member. Any person aggrieved by the decision of the Director may, within a period of fifteen days from the date of such decision, appeal to the Government and the orders passed by Government in such appeal shall be final :

- (a) Provided that no order shall be passed under this sub-section by the
- (b) Director against any member without giving him a reasonable opportunity of being heard.”

3. Act No. 11 of 1994 was enacted with various objectives based on past experience and in view of the shortcomings noticed in the implementation of preceding laws and also to bring the legislation in conformity with Part IX of the Constitution of India relating to “The Panchayats’ added by the Seventy-third Amendment. One of the objectives set out in the Statement of Objects and Reasons is to disqualify person for election of Panchayats at each level, having more than 2 children after one year of the date of commencement of this Act, to popularize Family Welfare/Family Planning Programme (Vide Clause (m) of Para 4 of SOR).
4. Placed in plain words the provision disqualifies a person having more than two living children from holding the specified offices in Panchayats. The enforcement of disqualification is postponed for a period of one year from the date of the commencement of the Act. A person having more than two children upto the expiry of one year of the commencement of the Act is not disqualified. This postponement for one year takes care of any conception on or around the commencement of the Act, the normal period of gestation being nine months. If a woman has conceived at the commencement of the Act then any one of such couples would not be disqualified. Though not disqualified on the date of election if any person holding any of the said offices incurs a disqualification by giving birth to a child one year after the commencement of the Act he becomes subject to disqualification and is disabled from continuing to hold the office. The disability is incurred by the birth of a child which results in increasing the number of living children, including the additional child born one year after the commencement of the Act, to a figure more than two. If the factum is disputed the Director is entrusted with the duty of holding an enquiry and declaring the office vacant. The decision of the Director is subject to appeal to the Government. The Director has to afford a reasonable opportunity of being heard to the holder

of office sought to be disqualified. These safeguards satisfy the requirements of natural justice.

5. Several persons (who are the writ petitioners or appellants in this batch of matters) have been disqualified or proceeded against for disqualifying either from contesting the elections for, or from continuing in, the office of Panchas/ Sarpanchas in view of their having incurred the disqualification as provided by Section 175(1)(q) or Section 177(1) read with Section 175(1)(q) of the Act. The grounds for challenging the constitutional validity of the abovesaid provision are very many, couched differently in different writ petitions. We have heard all the learned counsel representing the different petitioners/ appellants. As agreed to at the Bar, the grounds of challenge can be categorized into five :- (i) that the provision is arbitrary and hence violative of Article 14 of the Constitution; (ii) that the disqualification does not serve the purpose sought to be achieved by the legislation; (iii) that the provision is discriminatory; (iv) that the provision adversely affects the liberty of leading personal life in all its freedom and having as many children as one chooses to have and hence is violative of Article 21 of the Constitution; and (v) that the provision interferes with freedom of religion and hence violates Article 25 of the Constitution.
6. The State of Haryana has defended its legislation on all counts. We have also heard the learned Standing Counsel for the State. On notice, Sh. Soll J. Sorabji, the learned Attorney General for India, has appeared to assist the Court and he too has addressed the Court. We would deal with each of the submissions made.

Submission (i), (ii) & (iii)

7. The first three submissions are based on Article 14 of the Constitution and, therefore, are taken up together for consideration.

Is the classification arbitrary?

8. It is well-settled that Article 14 forbids class legislation; it does not forbid reasonable classification for the purpose of legislation. To satisfy the constitutional test of permissibility, two conditions must be satisfied, namely (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that such (sic) has a rational relation to the object

sought to be (sic) by the Statute in question. The basis for classification may rest on conditions which may be geographical or according to objects or occupation or the like. [See : Constitution Bench decision in Budhan Choudhry and Ors. v. The State of Bihar, 1955 (1) SCR 1045; 1955 AIR (SC) 191; 1955 SCJ 163; 1955 CrLJ 371. The classification is well-defined and well-perceptible. Persons having more than two living children are clearly distinguishable from persons having not more than two living children. The two constitute two different classes and the classification is founded on an intelligible differentia clearly distinguishing one from the other. One of the objects sought to be achieved by the legislation is popularizing the family welfare/family planning programme. The disqualification enacted by the provision seeks to achieve the objective by creating a disincentive. The classification does not suffer from any arbitrariness. The number of children, viz., two is based on legislative wisdom. It could have been more or less. The number is a matter of policy decision which is not open to judicial scrutiny.

The legislation does not serve its object?

9. It was submitted that the number of children which one has, whether two or three or more, does not affect the capacity, competence and quality of a person to serve on any office of a Panchayat and, therefore, the impugned disqualification has no nexus with the purpose sought to be achieved by the Act. There is no merit in the submission. We have already stated that one of the objects of the enactment is to popularize Family Welfare/Family Planning Programme. This is consistent with the National Population Policy.
10. Under Article 243G of the Constitution the Legislature of a State has been vested with the authority to make law endowing the Panchayats with such powers and authority which may be necessary to enable the Gram Panchayat to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein. Clause (b) of Article 243G provides that Gram Panchayats may be entrusted the powers to implement the schemes for economic development and social justice including those in relation to matters listed in the Eleventh Schedule. Entries 24 and 25 of the Eleventh Schedule read:
 24. Family Welfare.
 25. Women and child development.

In pursuance to the powers given to the State Legislature to enact laws the Haryana Legislature enacted the Haryana Panchayati Raj Act, 1994 (Haryana Act No. 11 of 1994). Section 21 enumerates the functions and duties of Gram Panchayat. Clause XIX (1) of Section 21 reads:

“XIX. Public Health and Family Welfare-

(1) Implementation of family welfare programme.”

The family welfare would include family planning as well. To carry out the purpose of the Act as well as the mandate of the Constitution the Legislature has made a provision for making a person ineligible to either contest for the post of Panch or Sarpanch having more than two living children. Such a provision would serve the purpose of the Act as mandated by the Constitution. It cannot be said that such a provision would not serve the purpose of the Act.

11. In our opinion, the impugned disqualification does have a nexus with the purpose sought to be achieved by the Act. Hence it is valid

The provision is discriminatory?

12. It was submitted that though the State of Haryana has introduced such a provision of disqualification by reference to elective offices in panchayats, a similar provision is not found to have been enacted for disqualifying aspirants or holders of elective or public offices in other institutions of local self-governance and also not in State Legislatures and Parliament. So also all the States, i.e., other than Haryana have not enacted similar laws, and therefore, it appears that people aspiring to participate in Panchayati Raj governance in the State of Haryana have been singled out and meted out hostile discrimination. The submission has been stated only to be rejected. Under the constitutional scheme there is a well-defined distribution of legislative powers contained in Part XI of the Constitution. The Parliament and every State Legislature has power to make laws with respect to any of the matters which fall within its field of legislation under Article 246 read with Seventh Schedule of the Constitution. A legislation by one of the States cannot be held to be discriminatory or suffering from the vice of hostile discrimination as against its citizens simply because the Parliament or the Legislatures of other States have not chosen to enact similar laws. Such a submission if accepted would be violative of the autonomy given to the Centre and the States within their respective fields under the constitutional scheme.

13. Similarly, legislations referable to different organs of local self-government, that is, Panchayats, Municipalities and so on may be, rather are, different. Many a time they are referable to different entries of Lists I, II and III of the Seventh Schedule. All such laws need not necessarily be identical. So is the case with the laws governing legislators and parliamentarians.
14. It is not permissible to compare a piece of legislation enacted by a State in exercise of its own legislative power with the provisions of another law, though *pari materia* it may be, but enacted by Parliament or by another State legislature within its own power to legislate. The sources of power are different and so do differ those who exercise the power. The Constitution Bench in *The State of Madhya Pradesh v. G.C. Mandawar*, 1955 (1) SCR 599; 1955 AIR 9 (SC) 493; 1954 SCJ 503; 1954 (2) LLJ 673, held that the power of the Court to declare a law void under Article 13 has to be exercised with reference to the specific legislation which is impugned. Two laws enacted by two different Governments and by two different legislatures can be read neither in conjunction nor by comparison for the purpose of finding out if they are discriminatory. Article 14 does not authorize the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject, its provisions are discriminatory. When the source of authority for the two statutes are different, Article 14 can have no application. So is the view taken in *The Bar Council of Uttar Pradesh v. The State of U.P. and Anr.* 1973 (2) SCR 1073; 1973 (1) SCC 261; 1973 AIR SC 231, *State of Tamil Nadu and Ors. v. Ananthi Ammal and Ors.* (1995) 1 SCC 519; AIR 1995 SC 2114; 1994 (4) SCALE 1106 and *Prabhakaran Nair and Ors. v. State of Tamil Nadu and Ors.* (1987) 4 SCC 238; 1988 (1) SCR 1; 1987 AIR (SC) 2117.
15. Incidentally it may be noted that so far as the State of Haryana is concerned, in the Haryana Municipal Act, 1973 (Act No. 24 of 1973) Section 13A has been inserted to make a provision for similar disqualification for a person from being chosen or holding the office of a member of municipality.
16. A uniform policy may be devised by the Centre or by a State. However, there is no constitutional requirement that any such policy must be implemented in one-go. Policies are capable of being implemented in a phased manner. More so, when the policies have far-reaching implications and are dynamic in nature, their implementation in a phased manner is welcome for it receives gradual willing acceptance and invites lesser resistance.

17. The implementation of policy decision in a phased manner is suggestive neither of arbitrariness nor of discrimination. In *Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna etc., v. State of Bihar and Ors.*, (1988) 2 SCC 433; 1988 (3) SCR 311; 1988 AIR (SC) 1136, the policy of nationalizing educational institutes was sought to be implemented in a phased manner. This Court held that all the institutions cannot be taken over at a time and merely because the beginning was made with one institute, it could not complain that it was singled out and, therefore, Article 14 was violated. Observations of this Court in *Pannalal Bansilal Pitti and Ors. v. State of A.P. and Anr.* (1996) 2 SCC 498; 1996 AIR (SC) 1023; 1996 (1) JT 516, are apposite. In a pluralist society like India, people having faiths in different religions, different beliefs and tenets, have peculiar problems of their own. “A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages.”
18. To make a beginning, the reforms may be introduced at the grass-root level so as to spiral up or may be introduced at the top so as to percolate down. Panchayats are grass-root level institutions of local self-governance. They have a wider base. There is nothing wrong in the State of Haryana having chosen to subscribe to the national movement of population control by enacting a legislation which would go a long way in ameliorating health, social and economic conditions of rural population, and thereby contribute to the development of the nation which in its turn would benefit the entire citizenry. We may quote from the National Population Policy 2000 (Government of India Publication, page 35):-
- “Demonstration of support by elected leaders, opinion makers, and religious leaders with close involvement in the reproductive and child health programme greatly influences the behaviour and response patterns of individuals and communities. This serves to enthuse communities to be attentive towards the quality and converge of maternal and child health services including referral care.”.....“The involvement and enthusiastic participation of elected leaders will ensure

dedicated involvement of administrators at district and sub-district levels. Demonstration of strong support to the small family norm, as well as personal example, by political, community, business, professional, and religious leaders, media and film stars, sports personalities and opinion makers, will enhance its acceptance throughout society.”

19. No fault can be found with the State of Haryana having enacted the legislation. It is for others to emulate.
20. We are clearly of the opinion that the impugned provision is neither arbitrary nor unreasonable nor discriminatory. The disqualification contained in Section 175(1)(q) of Haryana Act No. 11 of 1994 seeks to achieve a laudable purpose - socio-economic welfare and health care of the masses and is consistent with the national population policy. It is not violative of Article 14 of the Constitution.

Submission (iv) & (v): the provision if it violates Article 21 or 25?

21. Before testing the validity of the impugned legislation from the viewpoint of Articles 21 and 25, in the light of the submissions made, we take up first the more basic issue - Whether it is at all permissible to test the validity of a law which enacts a disqualification operating in the field of elections on the touchstone of violation of fundamental rights?
22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a Statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right — a right originating in Constitution and given shape by statute. But even so it cannot be equated with a fundamental right. There is nothing wrong in the same Statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.
23. Reiterating the law laid down in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* (1952) SCR 218, and *Jagan Nath v. Jaswant Singh and Ors.*, 1954 SCR 892, this Court held in *Jyoti Basu and Ors. v. Debi Ghosal and Ors.*, (1982) 1 SCC 691; 1982 (3) SCR 318, - “A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a

fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation.”

24. In *Jumuna Prasad Mukhariva and Ors. v. Lachhi Ram and Ors.*, (1955) 1 SCR 608; 1954 AIR (SC) 666; 1954 SCJ 835, a candidate at the election made a systematic appeal to voters of a particular caste to vote for him on the basis of his caste through publishing and circulating leaflets. Sections 123(5) and 124(5) of the Representation of the People Act, 1951, were challenged as ultra vires of Article 19(1)(a) of the Constitution, submitting that the provisions of Representation of the People Act interfered with a citizen’s fundamental right to freedom of speech. Repelling the contention, the Constitution Bench held that these laws do not stop a man from speaking. They merely provide conditions which must be observed if he wants to enter Parliament. The right to stand as a candidate and contest an election is not a common law right; it is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected and if they want to be elected they must observe the rules. If they prefer to exercise their right of free speech outside these rules, the impugned sections do not stop them. In *Sakhawat Ali v. The State of Orissa*, (1955) 1 SCR 1004; 1955 AIR (SC) 166, the appellant’s nomination paper for election as a councillor of the Municipality was rejected on the ground that he was employed as a legal practitioner against the Municipality which was a disqualification under the relevant Municipality Act. It was contended that the disqualification prescribed violated the appellant’s fundamental rights guaranteed under Article 14 and 19(1)(g) of the Constitution. The Constitution Bench held that the impugned provision has a public purpose behind it, i.e., the purity of public life which would be thwarted where there was a conflict between interest and duty. The Constitution Bench further held that the right of the appellant to practise the profession of law guaranteed by Article 19(1)(g) cannot be said to have been violated because in laying down the disqualification the Municipal Act does not prevent him from practising his profession of law; it only lays down that if he wants to stand as a candidate for election he shall not either be employed as a paid legal practitioner on behalf of the Municipality or act as a legal practitioner against the Municipality. There is no fundamental right in

any person to stand as a candidate for election to the Municipality. The only fundamental right which is guaranteed is that of practising any profession or carrying on any occupation, trade or business. The impugned disqualification does not violate the latter right. Primarily no fundamental right is violated and even assuming that it be taken as a restriction on his right to practise his profession of law, such restriction would be liable to be upheld being reasonable and imposed in the interest of general public for the preservation of purity in public life.

25. In our view, disqualification on the right to contest an election by having more than two living children does not contravene any fundamental right nor does it cross the limits of reasonability. Rather it is a disqualification conceptually devised in national interest.
26. With this general statement of law which has application to Articles 21 and 25 both, we now proceed to test the sustainability of attack on constitutional validity of impugned legislation separated by reference to Article 21 and 25.

The disqualification if violates Article 21?

27. Placing strong reliance on *Mrs. Maneka Gandhi v. Union of India and Anr.* - (1978) 2 SCR 621; 1978 (1) SCC 248; 1978 AIR (SC) 597, and *Kasturu Lal Lakshmi Reddy and Ors. v. State of Jammy and Kashmir and Anr.* - (1980) 3 SCR 1338; 1980 (4) SCC 1; 1980 AIR (SC) 1992, it was forcefully urged that the fundamental right to life and personal liberty emanating from Article 21 of the Constitution should be allowed to stretch its span to its optimum so as to include in the compendious term of the Article all the varieties of rights which go to make up the personal liberty of man including the right to enjoy all the materialistic pleasures and to procreate as many children as one pleases.
28. At the very outset we are constrained to observe that the law laid down by this Court in the decisions relied on is either being misread or red divorced of the context. The test of reasonableness is not a wholly subjective test and its contours are fairly indicated by the Constitution. The requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights. The lofty ideals of social and economic justice, the advancement of the nation as a whole and the philosophy of distributive justice - economic, social and political - cannot be given a go-by in the name of run due stress on fundamental rights and individual liberty. Reasonableness and rationality, legally as well as philosophically, provide

colour to the meaning of fundamental rights and these principles are deducible from those very decisions which have been relied on by the learned counsel for the petitioners.

29. It is necessary to have a look at the population scenario, of the world and of our own country.
30. India has the (dis)credit of being second only to China at the top in the list of the 10 most-populous countries of the world. As on 1.2.2000 the population of China was 1,277.6 million while the population of India as on 1.3.2001 was 1,027.0 million (Census of India, 2001, Series I, India - Paper I of 2001, page 29).
31. The torrential increase in the population of the country is one of the major hindrances in the pace of India's socio-economic progress. Everyday, about 50,000 persons are added to the already large base of its population. The Karunakaran Population Committee (1992-93) had proposed certain disincentives for those who do not follow the norms of the Development Model adopted by National Public Policy so as to bring down the fertility rate. It is a matter of regret that though the Constitution of India is committed to social and economic justice for all, yet India has entered the new millennium with the largest number of illiterates in the world and the largest number of people below the poverty line. The laudable goals spelt out in the Directive Principles of State Policy in the Constitution of India can best be achieved if the population explosion is checked effectively. Therefore, the population control assumes a central importance for providing social and economic justice to the people of India (Usha Tandon, Reader, Faculty of Law, Delhi University, - Research Paper on Population Stabilisation, Delhi Law Review, Vol. XXIII 2001, pp. 125-131).
32. In the words of Bertand Russell, "Population explosion is more dangerous than Hydrogen Bomb." This explosive population over-growth is not confined to a particular country but it is a global phenomenon. India being the largest secular democracy has the population problem going side by side and directly impacting on its per capita income, and resulting in shortfall of food grains in spite of the green revolution, and has hampered improvement on the educational front and has caused swelling of unemployment numbers, creating a new class of pavement and slum-dwellers and leading to congestion in urban areas due to the migration of rural poor. (Paper by B.K. Raina in Population Policy and the Law, 1992, edited by B.P. Singh Sehgal, page 52).

33. In the beginning of this century, the world population crossed six billion, of which India alone accounts for one billion (17 per cent) in a land area of 2.5 per cent of the world area. The global annual increase of population is 80 millions. Out of this, India's growth share is over 18 millions (23 per cent), equivalent to the total population of Australia, which has two and a half times the land space of India. In other words, India is growing at the alarming rate of one Australia every year and will be the most densely populous country in the world, outbeating China, which ranks first, with a land area thrice this country's. China can withstand the growth for a few years more, but not India, with a constricted land space. Here, the per capita crop land is the lowest in the world, which is also shrinking fast. If this falls below the minimum sustained level, people can no longer feed themselves and shall become dependent on imported food, provided there are nations with exportable surpluses. Perhaps, this may lead to famine and abnormal conditions in some parts of the country. (Source - Population Challenge, Arcot Easwaran, The Hindu, dated 8.8.2003). It is emphasized that as the population grows rapidly there is a corresponding decrease in per capita water and food. Women in many places trek long distances in search of water which distances would increase every next year on account of excessive ground water withdrawals catering to the need of the increasing population, resulting in lowering the levels of water tables.
34. Arcot Easwaran has quoted the China example. China, the most populous country in the world, has been able to control its growth rate by adopting the 'carrot and stick' rule. Attractive incentives in the field of education and employment were provided to the couples following the 'one-child norm'. At the same time drastic disincentives were cast on the couples breaching 'one-child norm' which even included penal action. India being a democratic country has so far not chosen to go beyond casting minimal disincentives and has not embarked upon penalizing procreation of children beyond a particular limit. However, it has to be remembered that complacency in controlling population in the name of democracy is too heavy a price to pay, allowing the nation to drift towards disaster.
35. The growing population of India had alarmed the Indian leadership even before India achieved independence. In 1940 the sub-Committee on Population, appointed by the National Planning Committee set up by the President of the Indian National Congress (Pandit Jawaharlal Nehru), considered 'family planning and a limitation of children' essential for the interests of social economy, family happiness and national planning. The

committee recommended the establishment of birth control clinics and other necessary measures such as raising the age at marriage and a eugenic sterilization programme. A committee on population set up by the National Development Council in 1991, in the wake of the census result, also proposed the formulation of a national policy. (Source - Seminar, March 2002, page 25)

36. Every successive Five Year Plan has given prominence to a population policy. In the first draft of the First Five Year Plan (1951-56) the Planning Commission recognized that population policy was essential to planning and that family planning was a step forward for improvement in health, particularly that of mothers and children. The Second Five Year Plan (1956-61) emphasized the method of sterilization. A central Family Planning Board was also constituted in 1956 for the purpose. The Fourth Five Year Plan (1969-74) placed the family planning programme, "as one amongst items of the highest national priority." The Seventh Five Year Plan (1985-86 to 1990-91) has underlined "the importance of population control for the success of the plan programme...." But, despite all such exhortations, "the fact remains that the rate of population growth has not moved one bit from the level of 33 per thousand reached in 1979. And in many cases, even the reduced targets set since then have not been realised. (Population Policy and the Law, *ibid*, pages 44-46).
37. The above facts and excerpts highlight the problem of population explosion as a national and global issue and provide justification for priority in policy-oriented legislations wherever needed.
38. None of the petitioners has disputed the legislative competence of the State of Haryana to enact the legislation. Incidentally, it may be stated that Seventh Schedule, List II - State List, Entry 5 speaks of 'Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.' Entry 6 speaks of 'Public health and sanitation' *inter alia*. In List III - Concurrent List, Entry 20A was added which reads 'Population control and family planning.' The legislation is within the permitted field of State subjects. Article 243C makes provision for the Legislature of a State enacting laws with respect to Constitution of Panchayats. Article 243F in Part IX of the Constitution itself provides that a person shall be disqualified for being chosen as, and for being, a member of Panchayat if he is so disqualified by or under any law

made by the Legislature of the State. Article 243G casts one of the responsibilities of Panchayats as preparation of plans and implementation of schemes for economic development and social justice. Some of the schemes that can be entrusted to Panchayats, as spelt out by Article 243G read with Eleventh Schedule is - Scheme for economic development and social justice in relation to health and sanitation, family welfare. Family planning is essentially a scheme referable to health, family welfare, women and child development and social welfare. Nothing more needs to be said to demonstrate that the Constitution contemplates Panchayat as a potent instrument of family welfare and social welfare schemes coming true for the betterment of people's health especially women's health and family welfare coupled with social welfare. Under Section 21 of the Act, the functions and duties entrusted to Gram Panchayats include 'Public Health and Family Welfare', 'Women and Child Development' and 'Social Welfare'. Family planning falls therein. Who can better enable the discharge of functions and duties and such constitutional goals being achieved than the leaders of Panchayats themselves taking a lead and setting an example.

39. Fundamental rights are not to be read in isolation. They have to be read along with the Chapter on Directive Principles of State Policy and the Fundamental Duties enshrined in Article 51A. Under Article 38 the State shall strive to promote the welfare of the people and developing a social order empowered at distributive justice - social, economic and political. Under Article 47 the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular the constitutionally down-trodden. Under Article 47 the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. None of these lofty ideals can be achieved without controlling the population inasmuch as our materialistic resources are limited and the claimants are many. The concept of sustainable development which emerges as a fundamental duty from the several clauses of Article 51A too dictates the expansion of population being kept within reasonable bounds.
40. The menace of growing population was judicially noticed and constitutional validity of legislative means to check the population was upheld in *Air India v. Nergesh Meerza and Ors.* (1981) 4 SCC 335; 1982 (1) SCR 438; 1981 AIR (SC) 1829. The Court found no fault with the rule which would terminate the services of air hostesses on the third pregnancy with two existing children, and held the rule both salutary and reasonable for two reasons - "In the first

place, the provision preventing a third pregnancy with two existing children would be in the larger interest of the health of the air hostess concerned as also for the good upbringing of the children. Secondly,when the entire world is faced with the problem of population explosion it will not only be desirable but absolutely essential for every country to see that the family planning programme is not only whipped up but maintained at sufficient levels so as to meet the danger of over-population which, if not controlled, may lead to serious social and economic problems throughout the world.”

41. To say the least it is futile to assume or urge that the impugned legislation violates right to life and liberty guaranteed under Article 21 in any of the meanings, howsoever expanded the meanings may be.

The provisions if it violates Article 25?

42. It was then submitted that the personal law of Muslims permits performance of marriages with 4 women, obviously for the purpose of procreating children and any restriction thereon would be violative of right to freedom of religion enshrined in article 25 of the Constitution. The relevant part of Article 25 reads as under:-

25. Freedom of conscience and free profession, practice and propagation of religion. - (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -

- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

43. A bare reading of this Article deprives the submission of all its force, vigour and charm. The freedom is subject to public order, morality and health. So the Article itself permits a legislation in the interest of social welfare and reform which are obviously part and parcel of public order, national morality and the collective health of the nation's people.

44. The Muslim Law permits marrying four women. The personal law nowhere mandates or dictates it as a duty to perform four marriages. No religious scripture or authority has been brought to our notice which provides that marrying less than four women or abstaining from procreating a child from each and every wife in case of permitted bigamy or polygamy would be irreligious or offensive to the dictates of the religion. In our view, the question of the impugned provision of Haryana Act being violative of Article 25 does not arise. We may have a reference to a few decided cases.
45. The meaning of religion - the term as employed in Article 25 and the nature of protection conferred by Article 25 stands settled by the pronouncement of the Constitution Bench decision in *Dr. M. Ismail Faruqui and Ors. v. Union of India and Ors.*, AIR 1995 (SC) 605; JT 1994 (6) SC 632. The protection under Articles 25 and 26 of the Constitution is with respect to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. The latter is not protected by Article 25.
46. In *Sarla Mudgal (Smt.), President, Kalyani and Ors. v. Union of India and Ors.* (1995) 3 SCC 635; 1995 AIR (SC) 1531, this Court has judicially noticed it being acclaimed in the United States of America that the practice of polygamy is injurious to 'public morals', even though some religions may make it obligatory or desirable for its followers. The Court held that polygamy can be superseded by the State just as it can prohibit human sacrifice or the practice of Sati in the interest of public order. The Personal Law operates under the authority of the legislation and not under the religion and, therefore, the Personal Law can always be superseded or supplemented by legislation.
47. In *Mohd. Ahmed Khan v. Shah Bano Begum and Ors.*, (1985) 2 SCC 556; AIR 1985 SC 945; 1985 CrLJ 875, the Constitution Bench was confronted with a canvassed conflict between the provisions of Section 125 of Cr.P.C. and Muslim Personal Law. The question was: when the Personal Law makes a provision for maintenance to a divorced wife, the provision for maintenance under Section 125 of Cr.P.C. would run in conflict with the Personal Law. The Constitution Bench laid down two principles; firstly, the two provisions operate in different fields and, therefore, there is no conflict and; secondly, even if there is a conflict it should be set at rest by holding that the statutory law will prevail over the Personal Law of the parties, in cases where they are in conflict.

48. In *Mohd. Hanif Quareshi and Ors. v. The State of Bihar*, (1959) SCR 629; 1958 AIR SC 731, the State Legislation placing a total ban on cow slaughter was under challenge. One of the submissions made was that such a ban offended Article 25 of the Constitution because such ban came in the way of the sacrifice of a cow on a particular day where it was considered to be religious by Muslims. Having made a review of various religious books, the Court concluded that it did not appear to be obligatory that a person must sacrifice a cow. It was optional for a Muslim to do so. The fact of an option seems to run counter to the notion of an obligatory duty. Many Muslims do not sacrifice a cow on the Id day. As it was not proved that the sacrifice of a cow on a particular day was an obligatory overt act for a Mussalman for the performance of his religious beliefs and ideas, it could not be held that a total ban on the slaughter of cows ran counter to Article 25 of the Constitution.
49. In *The State of Bombay v. Narasu Appa Mali*, AIR 1952 (Bom) 841, the constitutional validity of the Bombay Prevention of Hindu Bigamous Marriages Act (XXV (25) of 1946) was challenged on the ground of violation of Article 14, 15 and 25 of the Constitution. A Division Bench, consisting of Chief Justice Chagla and Justice Gajendragadkar (as His Lordship then was), held-
- “A sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole.”
50. Their Lordships quoted from American decisions that the laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Their Lordships found it difficult to accept the proposition that polygamy is an integral part of Hindu religion though Hindu religions recognizes the necessity of a son for religious efficacy and spiritual salvation. However, proceeding on an assumption that polygamy is recognized institution according to Hindu religious practice, their Lordships stated in no uncertain terms-
- “The right of the State of legislate on questions relating to marriage cannot be disputed. Marriage is undoubtedly a social institution an institution in which the State is vitally interested. Although there may not be universal recognition of the fact, still a very large volume of opinion in the world today admits that monogamy is a very desirable and praiseworthy institution. If,

therefore, the State of Bombay compels Hindus to become monogamists, it is a measure of social reform, and if it is a measure of social reform then the State is empowered to legislate with regard to social reform under Article 25(2)(b) notwithstanding the fact that it may interfere with the right of a citizen freely to profess, practise and propagate religion.”

51. What constitutes social reform? Is it for the legislature to decide the same? Their Lordships held in *Narasu Appa Mali's case* (supra) that the will expressed by the legislature, constituted by the chosen representatives of the people in a democracy who are supposed to be responsible for the welfare of the State, is the will of the people and if they lay down the policy which a State should pursue such as when the legislature in its wisdom has come to the conclusion that monogamy tends to the welfare of the State, then it is not for the Courts of Law to sit in judgment upon that decision. Such legislation does not contravene Article 25(1) of the Constitution.
52. We find ourselves in entire agreement, with the view so taken by the learned Judges whose eminence as jurists concerned with social welfare and social justice is recognized without any demur. Divorce unknown to ancient Hindu Law, rather considered abominable to Hindu religious belief, has been statutorily provided for Hindus and the Hindu marriage which was considered indissoluble is now capable of being dissolved or annulled by a decree of divorce or annulment. The reasoning adopted by the High Court of Bombay, in our opinion, applies fully to repel the contention of the petitioners even when we are examining the case from the point of view of Muslim Personal Law.
53. The Division Bench of the Bombay High Court in *Narasu Appa Mali* (supra) also had an occasion to examine the validity of the legislation when it was sought to be implemented not in one go but gradually. Their Lordships held - “Article 14 does not lay down that any legislation that the State may embark upon must necessarily be of an all-embracing character. The State may rightly decide to bring about social reform by stages and the stages may be territorial or they may be community-wise.”
54. Rule 21 of the Central Civil Services (Conduct) Rules, 1964 restrains any government servant having a living spouse from entering into or contracting a marriage with any person. A similar provision is to be found in several service rules framed by the States governing the conduct of their civil servants. No decided case of this court has been brought to our notice wherein the constitutional validity of such provisions may have been put in issue on the ground of violating the freedom of religion under Article 25 or the freedom

of personal life and liberty under Article 21. Such a challenge was never laid before this Court apparently because of its futility. However, a few decisions by the High Courts may be noticed.

55. In *Badrudin v. Aisha Begam*, (1957) ALJ 300, the Allahabad High Court ruled that though the personal law of Muslims permitted having as many as four wives but it could not be said that having more than one wife is a part of religion. Neither is it made obligatory by religion nor is it a matter of freedom of conscience. Any law in favour of monogamy does not interfere with the right to profess, practise and propagate religion and does not involve any violation of Article 25 of the Constitution.
56. In *Smt. R.A. Pathan v. Director of Technical Education and Ors.* - 1981 (22) GLR 289, having analysed in depth the tenets of Muslim personal law and its base in religion, a Division Bench of Gujarat High Court held that a religious practice ordinarily connotes a mandate which a faithful must carry out. What is permissive under the scripture cannot be equated with a mandate which may amount to a religious practice. Therefore, there is nothing in the extract of the Quaranic text (cited before the Court) that contracting plural marriages is a matter of religious practice amongst Muslims. Bigamy amongst Muslims is neither a religious practice nor a religious belief and certainly not a religious injunction or mandate. The question of attracting Articles 15(1), 25(2) or 26(b) to protect a bigamous marriage and in the name of religion does not arise.
57. In *Ram Prasad Seth v. State of Uttar Pradesh and Ors.* AIR 1961 All. 334; (1961) 11 LLJ 247 All a learned single Judge held that the act of performing a second marriage during the lifetime of one's wife cannot be regarded as an integral part of Hindu religion nor could it be regarded as practising or professing or propagating Hindu religion. Even if bigamy be regarded as an integral part of Hindu religion, the Rule 27 of the Government Servants' Conduct Rules requiring permission of the Government before contracting such marriage must be held to come under the protection of Article 25(2)(b) of the Constitution.
58. The law has been correctly stated by the High Court of Allahabad, Bombay and Gujarat, in the cases cited hereinabove and we record our respectful approval thereof. The principles stated therein are applicable to all religions practised by whichever religious groups and sects in India.
59. In our view, a statutory provision casting disqualification on contesting for, or holding, an elective office is not violative of Article 25 of the Constitution.

60. Looked at from any angle, the challenge to the constitutional validity of Section 175(1)(q) and Section 177(1) must fail. The right to contest an election for any office in Panchayat is neither fundamental nor a common law right. It is the creature of a statute and is obviously subject to qualifications and disqualifications enacted by legislation. It may be permissible for Muslims to enter into four marriages with four women and for anyone whether a Muslim or belonging to any other community or religion to procreate as many children as he likes but no religion in India dictates or mandates as an obligation to enter into bigamy or polygamy or to have children more than one. What is permitted or not prohibited by a religion does not become a religious practise or a positive tenet of a religion. A practice does not acquire the sanction of religion simply because it is permitted. Assuming the practice of having more wives than one or procreating more children than one is a practice followed by any community or group of people the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does.
61. If anyone chooses to have more living children than two, he is free to do so under the law as it stands now but then he should pay a little price and that is of depriving himself from holding an office in Panchayat in the State of Haryana. There is nothing illegal about it and certainly no unconstitutionality attaches to it.

Some incidental questions

62. It was submitted that the enactment has created serious problems in the rural population as couples desirous of contesting an election but having living children more than two, are feeling compelled to give them in adoption. Subject to what has already been stated hereinabove, we may add that disqualification is attracted no sooner a third child is born and is living after two living children. Merely because the couple has parted with one child by giving the child away in adoption, the disqualification does not come to an end. While interpreting the scope of disqualification we shall have to keep in view the evil sought to be cured and purpose sought to be achieved by the enactment. If the person sought to be disqualified is responsible for or has given birth to children more than two who are living then merely because one or more of them are given in adoption the disqualification is not wiped out.

63. It was also submitted that the impugned disqualification would hit the women worst, inasmuch as in the Indian society they have no independence and they almost helplessly bear a third child if their husbands want them to do so. This contention need not detain us any longer. A male who compels his wife to bear a third child would disqualify not only his wife but himself as well. We do not think that with the awareness which is arising in Indian women folk, they are so helpless as to be compelled to bear a third child even though they do not wish to do so. At the end, suffice it to say that if the legislature chooses to carve out an exception in favour of females it is free to do so but merely because women are not excepted from the operation of the disqualification it does not render it unconstitutional.
64. Hypothetical examples were tried to be floated across the bar by submitting that there may be cases where triplets are born or twins are born on the second pregnancy and consequently both of the parents would incur disqualification for reasons beyond their control or just by freak of divinity. Such are not normal cases and the validity of the law cannot be tested by applying it to abnormal situations. Exceptions do not make the rule nor render the rule irrelevant. One swallow does not make a summer; a single instance or indicator of something is not necessarily significant.

Conclusion

65. The challenge to the constitutional validity of Section 175(1)(q) and 177(1) fails on all the counts. Both the provisions are held, *intra vires* the Constitution. The provisions are salutary and in public interest. All the petitions which challenge the constitutional validity of the abovesaid provisions are held liable to be dismissed.
66. Certain consequential orders would be needed. The matters in this batch of hundreds of petitions can broadly be divided into a few categories. There are writ petitions under Article 32 of the Constitution directly filed in this Court wherein the only question arising for decision is the constitutional validity of the impugned provisions of the Haryana Act. There were many a writ petitions filed in the High Court of Punjab & Haryana under Articles 226/227 of the Constitution which have been dismissed and appeals by special leave have been filed in this Court against the decisions of the High Court. The writ petitions, whether in this Court or in the High Court, were filed at different stages of the proceedings. In some of the matters the High Court had refused to stay by interim order the disqualification or the proceedings

relating to disqualification pending before the Director under Section 177(2) of the Act. With the decision in these writ petitions and the appeals arising out of SLPs the proceedings shall stand revived at the stage at which they were, excepting in those matters where they stand already concluded. The proceedings under Section 177(2) of the Act before the Director or the hearing in the appeals as the case may be shall now be concluded. In such of the cases where the persons proceeded against have not filed their replies or have not appealed against the decision of the Director in view of the interim order of this Court or the High Court having been secured by them they would be entitled to file reply or appeal, as the case may be, within 15 days from the date of this judgment if the time had not already expired before their initiating proceedings in the High Court or this Court. Such of the cases where defence in the proceedings under Section 177(2) of the Act was raised on the ground that the disqualification was not attracted on account of a child or more having been given in adoption, need not be re-opened as we have held that such a defence is not available.

67. Subject to the abovesaid directions all the writ petitions and civil appeals arising out of SLPs are dismissed.

Reported as 2004 8 SSC 1

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 6638 of 2004 (Arising out of S.L.P. (C) No. 459/2004)

Decided On: 07.10.2004

Zile Singh

Vs.

State of Haryana and Ors.

Qorum: R.C. Lahoti, C.J., G.P. Mathur and P.K. Balasubramanyan, JJ.

JUDGMENT

R.C. Lahoti, C.J.

1. Leave granted.
2. Haryana Municipal Act, 1973 (hereinafter, the Principal Act, for short) is a State enactment dealing with local self-government through the municipalities. Chapter III of the said Act deals with composition of municipalities. The Haryana Municipal (Amendment) Act, 1994 (Act No. 3 of 1994) inserted Section 13A in Chapter III of the Principal Act which provision reads as under :-

“13A. Disqualification for membership. (1) A person shall be disqualified for being chosen as and for being a member of a municipality —

XXX XXX XXX

(c) if he has more than two living children :

Provided that a person having more than two children on or after the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified”.

xxx xxx xxx”

3. The Amendment Act received the assent of the Governor of Haryana on the 1st April, 1994 which was published in the Haryana Gazette, (Extraordinary),

Legislative Supplement, Part I, dated April 5, 1994 and on that date the Amendment Act came into force. The amendment spelled out a disqualification effective from 5.4.1994 on a person for being a member of municipality either by election or by continuing to hold the office even if elected prior to the date of coming into force of the Amendment Act. The substantive provision contained in Clause (c) abovesaid spelling out the disqualification is explicit and specific. However, the proviso appended to Clause (c) turned out to be a trouble-maker on account of its faulty drafting. Anomalous consequences verging on absurdity flew from the proviso. While a person having more than two living children on 5th April, 1994 became disqualified for being a member of municipality on that day and the disqualification continued to operate for a period of one year calculated from 5th April, 1994 yet on the expiry of the period of one year the disqualification ceased to operate. Meaning thereby that the legislative embargo imposed on a person from procreating and giving birth to a third child in the context of holding the office of a member of municipality remained in operation for a period of one year only and thereafter it was lifted. Even those who became disqualified on 5.4.1994, the disqualification ceased to operate and they became qualified once again to contest the election and hold the office of member of a municipality on the expiry of one year from 5.4.1994. Obviously, this is not what the Legislature intended.

4. It took more than six months for the State Legislature to realize its error. The Haryana Municipal (Second Amendment) Act, 1994 (Act No. 15 of 1994) was enacted by the Legislature which received the assent of the Governor of Haryana on 3rd October, 1994 published in Haryana Gazette (Extraordinary) dated 4th October, 1994. Section 2 of the Second Amendment reads as under :-

“2. In the proviso to Clause (c) of Sub-section (1) of Section 13A of the Haryana Municipal Act, 1973 (hereinafter called the principal Act), for the word “after”, the word “upto” shall be substituted.”
5. The Second Amendment brought the text of the relevant part of Section 13A in conformity with the legislative intent which prevailed behind the preceding amendment, that is, the First Amendment.
6. Zile Singh, the appellant was married with one Om Pati in April 1970. The couple had three living children when Om Pati died in April 1991. The appellant then married one Sunita on 20.7.1991. Out of the latter marriage, two children were born to the appellant — a daughter, Puja born in April

1992 and a son Gaurav born on 13.8.1995. The appellant was holding the office of member of Municipality. One Nafe Singh filed a complaint against the appellant bringing it to the notice of the State Government that on a child having been born after 5th April, 1995, i.e., one year after the commencement of the First Amendment Act, the appellant had incurred disqualification for holding the office of member. Clause (f) of Sub-section (1) of Section 14 of the Principal Act confers power on the State Government to remove by notification any member of a committee if he has, since his election or nomination become subject to any disqualification which, if it had existed at the time of his election or nomination, would have rendered him ineligible under any law for the time being in force relating to the qualifications of candidates for election or domination or if it appears that he was, at the time of his election or nomination subject to any such disqualification. The factum of the birth of Gaurav on 13.8.1995 is not disputed though the appellant contended that Gaurav was given away in adoption on 10.9.1995. The State Election Commission, Haryana which is the competent authority found the appellant having incurred the disqualification within the meaning of Section 13A(1)(c). The disqualification was notified.

7. Feeling aggrieved the appellant filed a writ petition in the High Court which has been dismissed. This is an appeal by special leave.
8. At the very outset we may state that the retrospectivity in operation of the text as amended by the Second Amendment came up for the consideration of a two-Judges Bench of this Court in *Sunil Kumar Rana v. State of Haryana and Ors.*-(2003) 2 SCC 628. This court held that the legislative intent to compute the period of one year under the proviso is from the “commencement of this Act” meaning thereby from the date of coming into force of Haryana Act 3 of 1994 and not Haryana Act 15 of 1994 which merely substituted the word “after” by the word “upto”. The result of the substitution was to read the provision as amended by the word ordered to be substituted. The Court held — “The legislature seems to have realized, the need for substitution on becoming aware of the anomalies and absurdities to which the provision without such substitution may lead to, even resulting, at times, in repugnancy with the main provision and virtually defeating the intention of the legislature. The modification of the provision, as carried out by the substitution ordered, when found to be needed and necessitated to implement effectively the legislative intention and to prevent a social mischief against which the provision is directed, a purposive construction is a must and the only inevitable solution. The right to contest to an office of a member of a

municipal body is the creature of statute and not a constitutional or fundamental right.”

9. In spite of the issue posed for decision before us being squarely covered by the abovesaid decisions, the learned counsel for the appellant does not feel satisfied. In his humble submission *Sunil Kumar Rana's case* (supra), which is a two-judges Bench decision, was not correctly decided and hence needs a reconsideration and an over-ruling thereafter. In view of the submission so made and forcefully pressed, we proceed to examine and deal with the pleas raised before us independently of the holding in *Sunil Kumar Rana's case* (supra).
10. The constitutional validity of ‘two child norm’ as legislatively prescribed, and a departure therefrom resulting in attracting applicability of disqualification for holding an elective office, has been upheld by this Court as intra vires the Constitution repelling all possible objections founded on very many grounds in *Javed and Ors. v. State of Haryana and Ors.* - (2003) 8 SCC 369; AIR 2003 SC 3057. This Court has also held that the disqualification is attracted no sooner a third child is born and is living after two living children and merely because the couple has parted with one child by giving it away in adoption, the disqualification does not come to an end. However, the present case poses a different issue.
11. According to the appellant, the disqualification imposed by Section 13A (1)(c) of the First Amendment remained in operation only for a period of one year and would have in ordinary course ceased to operate on the expiry of the period of one year from April 5, 1994. The citizens were justified in arranging their affairs including the enlargement of their families keeping in view the provision of law as it stood. However, the Second Amendment Act effective from 14.10.1994 made a difference. On that day, the Legislature specifically provided that a person having more than two children on or after the expiry of one year shall stand disqualified. This period of one year, in the submission of the appellant, should be calculated from 4.10.1994 and not 5.4.1994 and if that be done the birth of the child on 13.8.1995 would not attract the disqualification.
12. This plea of the appellant raises a few interesting questions, such as, the nature of amendment, i.e., whether it is at all retrospective in operation, and if not, whether the provision as amended by the Second Amendment applies to the appellant.

13. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only '*nova constitutio futuris formam imponere debet non praeteritis*' — a new law ought to regulate what is to follow, not the past. (See : Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004 at p.438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole. (ibid, p.440)
14. The presumption against retrospective operation is not applicable to declaratory statutes.....In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.....An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect. (ibid, pp.468-469).
15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of , the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated

- (p.388). The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right (p.392).
16. Where a Statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. The classic illustration is the case of *Att. Gen. v. Pougett* ([1816] 2 Price 381, 392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s. 4d., but the Act omitted to state that it was to be 9s. 4d. per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s. 4d. per cwt., but Thomson C.B., in giving judgment for the Attorney-General, said: "The duty in this instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act." (p.395).
 17. Maxwell states in his work on Interpretation of Statutes, (Twelfth Edition) that the rule against retrospective operation is a presumption only, and as such it "may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it." (p.225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the "inhibition of the rule" is a matter of degree which would "vary *secundum materiam*" (p.226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p.231).
 18. In a recent decision of this Court in *National Agricultural Cooperative Marketing Federation of India Ltd. And Anr. v. Union of India and Ors.*, (2003) 5 SCC 23; 2003 (3) SCALE 414; AIR 2003 (SC) 1329, it has been held that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as : (i) the words used must expressly provide or clearly imply retrospective

operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.

19. The Constitution Bench in *Shyam Sunder and Ors. v. Ram Kumar and Anr.*, (2001) 8 SCC 24; AIR 2001 (SC) 2472; JT 2001 (6) SC 94, has held — “Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or explain previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed invariably it has been held to be retrospective. Mere absence of use of word ‘declaration’ in an Act explaining what was the law before may not appear to be a declaratory Act but if the Court finds an Act as declaratory or explanatory it has to be construed as retrospective.” (p. 2487).
20. In *The Bengal Immunity Company Ltd. v. The State of Bihar and Ors.*, (1955) 2 SCR 603; 1955 AIR (SC) 661; 1955 SCJ 672, *Heydon’s case* (3 Co. Rep.7a; 76 E.R.637) was cited with approval. Their Lordships have said —

“It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon’s case* was decided that —”.....for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:-

 - 1st. What was the common law before the making of the Act.
 - 2nd. What was the mischief and defect for which the common law did not provide.,
 - 3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*”.”

21. In *Allied Motors (P) Ltd. v. Commissioner of Income-tax, Delhi*, (1997) 3 SCC 472; AIR 1997 (SC) 1361, certain unintended consequences flew from a provision enacted by the Parliament. There was an obvious omission. In order to cure the defect, a proviso was sought to be introduced through an amendment. The Court held that literal construction was liable to be avoided if it defeated the manifest object and purpose of the Act. The rule of reasonable interpretation should apply. “A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.”
22. The State Legislature of Haryana intended to impose a disqualification with effect from 5.4.1994 and that was done. Any person having more than two living children was disqualified on and from that day for being a member of municipality. However, while enacting a proviso by way of an exception carving out a fact-situation from the operation of the newly introduced disqualification, the draftsman’s folly caused the creation of trouble. A simplistic reading of the text of the proviso spelled out a consequence which the Legislature had never intended and could not have intended. It is true that the Second Amendment does not expressly give the amendment a retrospective operation. The absence of a provision expressly giving a retrospective operation to the legislation is not determinative of its prospectivity or retrospectivity. Intrinsic evidence may be available to show that the amendment was necessarily intended to have the retrospective effect and if the Court can unhesitatingly conclude in favour of retrospectivity, the Court would not hesitate in giving the Act that operation unless prevented from doing so by any mandate contained in law or an established principle of interpretation of statutes.
23. The text of Section 2 of the Second Amendment Act provides for the word “upto” being substituted for the word “after”. What is the meaning and effect of the expression employed therein - “shall be substituted”.

24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision.
25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (See Principles of Statutory Interpretation, *ibid*, p.565). If any authority is needed in support of the proposition, it is to be found in *West U.P. Sugar Mills Assn. and Ors. v. State of U.P. and Ors.* -2002 (2) SCALE 59; AIR 2002 (SC) 948, *State of Rajasthan v. Mangilal Pindwal* - 1996 AIR (SC) 2181; 5 SCC 60; 1996 (6) JT 162, *Koteswar Vittal Kamath v. K. Rangappa Baliga and Co.* -(1969) 3 SCR 40; 1969 AIR (SC) 504; and *A.L.V.R.S.T. Veerappa Chettiar v. S. Michael and Ors.* - 1963 Supp. (2) SCR 244; 1963 AIR (SC) 933. In *West U.P. Sugar Mills Association and Ors.'s case* (supra) a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In *Mangilal Pindwal's case* (supra) this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In *Koteswar's case* (supra) a three-Judges Bench of this Court emphasized the distinction between 'supersession' of a rule and 'substitution' of a rule and held that the process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place.
26. In *Javed* (supra) it was held that the right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. The statute which confers the right to contest an election can also provide for the necessary qualifications and disqualifications for holding an elective office. The bar by way of disqualification created against holding the office of a member of a municipality by Clause (c) of Sub-section (1) of Section 13A was absolute. Merely because a disqualification is imposed by reference to certain facts which are referable to a date prior to the enactment of disqualification, the Act does not become retrospective in operation. No vested right was taken away. The First Amendment was not a piece of legislation having any retrospectivity. However, the legislature thought that it

would be more reasonable if the disqualification was not applied by reference to a child born within a period of one year from the date of commencement of the Act. The period of one year was appointed keeping in view the period of gestation which is two hundred and eighty days as incorporated in Section 112 of the Indian Evidence Act of 1872 and added to it a little more margin of eighty five days. The proviso spells out this meaning but for the error in drafting. Even if there would have been no amendment (as introduced by the Second Amendment Act) the proviso as it originally stood, if subjected to judicial scrutiny, would have been so interpreted and the word 'after' would have been read as 'upto' or assigned that meaning so as to carry out the legislative intent and not to make a capital out of the draftsman's folly. Or, the proviso - if not read down - would have been declared void and struck down as being arbitrary and discriminatory inasmuch as the persons having more than two living children on the date of enactment of the Act and within one year thereafter and the persons having more than two living children after the date of one year could not have formed two classes capable of being distinguished on a well defined criterion so as to fulfill the purpose sought to be achieved by the legislature. However, the legislature got wiser by realizing its draftsman's mistake and stepped in by substituting the mistaken word 'after' by the correct word 'upto' which should have been there since very beginning. In our opinion the Second Amendment is declaratory in nature. It alters the text of the First Amendment in such manner as to remove the obvious absurdity therefrom and brings it in conformity with what the Legislature had really intended to provide. It explains and removes the obvious error and clarifies what the law always was and shall remain to be. The Second Amendment would operate retrospectively from the date of the First Amendment and in giving such operation no mandate of any law or principle is violated. Else, the evil sought to be curbed continues to exist for some period contrary to legislative intent. The application of rule against retrospectivity stands excepted from Second Amendment Act.

27. In *Javed* (supra) the Court has been at pains to point out how the growth of population of India was alarming and posed a menace to be checked. It was in national interest to check the growth of population by casting disincentives even through legislation. The First Amendment Act targets the evil and seeks to cure it. The legislative competence of the State is not disputed. Thus, keeping in view the general scope and purview of the statute, the remedy sought to be applied, the former state of law, the legislative intent and the employment of the expression - "for the word 'after' the word 'upto' shall

be substituted” in the text of the Second Amendment, we have no doubt in our mind that the Second Amendment has the effect of amending the text of First Amendment ever since the date of commencement of the First Amendment, i.e., April 5, 1994.

28. We hold that *Sunil Kumar Rana’s case* has been correctly decided. It does not call for any reconsideration. The appeal is wholly devoid of any merit and the same is dismissed. The decision by the High Court is maintained.

Order dated 1 March 2005 in Writ Petition No.209/2003

SUPREME COURT OF INDIA
Writ Petition (Civil) No. 209/ 2003

Ramakant Rai & Anr.

Vs.

Union of India & Ors.

Date: 01.03.2005: This Petition was called on for hearing today.

CORUM:

HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE ARIJIT PASAYAT
HON'BLE MR. JUSTICE C.K. THAKKER

UPON hearing counsel the Court made the following
ORDER

Several states have filed affidavits setting out the steps taken by them to regulate sterilization procedures with regard to the male and female patients in their respective states. However, it is apparent that there is no uniformity with regard to the procedures nor the norms followed for ensuring that the guidelines laid down by the Union of India in this regard are being followed. Taking the best of what is being followed by some states, we direct that the States shall:

- (1) Introduce a system of having an approved panel of doctors and limiting the persons entitled to carry on sterilization procedures in the State to those doctors whose names appear on the panel. The panel may be prepared either state-wise, District-wise or Region-wise basis. The criteria for including the names of the doctors on such panel must be laid down by the Union of India as indicated subsequently. Until the Union of India lays down uniform

qualification criterion for the empanelment of doctors, for the time being no doctor without gynecological training for at least 5 years post degree experience should be permitted to carry out the sterilization programmes.

- (2) The State Government shall also prepare and circulate a checklist which every doctor will be required to fill in before carrying out sterilization procedure in respect of each proposed patient. The checklist must contain items relating to (a) the age of the patient, (b) the health of the patient, (c) the number of children and (d) any further details that the State Government may require on the basis of the guidelines circulated by the Union of India. The doctors should be strictly informed that they should not perform any operation without filling in this check list
- (3) The State Governments shall also circulate uniform copies of the proforma of consent. Until the Union Government certifies such proforma, for the time being, the proforma as utilized in the State of U.P., shall be followed by all the States; and
- (4) Each state shall set up a Quality Assurance Committee which should, as being followed by the State of Goa, consist of the Director of Health Services, the Health Secretary and the Chief Medical officer, for the purpose of not only ensuring that the guidelines are followed in respect of pre-operative measures (for example, by way of pathological tests, etc.), operational facilities (for example, sufficient number of necessary equipment and aseptic conditions) and post-operative follow ups. It shall be the duty of the Quality Assurance Committee to collect and publish six monthly reports of the number of persons sterilized as well as the number of deaths or complications arising out of the sterilization.
- (5) Each State shall also maintain overall statistics giving a break up of the number of the sterilizations carried out, particulars of the procedure followed (since we are given to understand that there are different methods of sterilization), the age of the patients sterilized, the number of children of the persons sterilized, the number of deaths of the persons sterilized either during the operation or thereafter which is relatable to the sterilization, and the number of persons incapacitated by reason of the sterilization programmes.
- (6) The State Government shall not only hold an enquiry into every case of breach of the Union of India guidelines by any doctor or organization but also take punitive action against them. As far as the doctors are concerned, their names shall, pending enquiry, be removed from the list of empanelled doctors.

- (7) The state shall also bring into effect an insurance policy according to the format followed by the state of Tamil Nadu until such time the Union of India prescribes a standard format.
- (8) The Union of India shall lay down within a period of four weeks from date, uniform standards to be followed by the State Governments with regard to the health of the proposed patients, the age, the norms for compensation, the format of the statistics, check list and consent proforma and insurance.
- (9) The Union of India shall also lay down the norms of compensation which should be followed uniformly by all the states. For the time being until the Union Government formulates the norms of compensation, the States shall follow the practice of the State of Andhra Pradesh and shall pay Rs. 1 lakh in case of the death of the patient sterilized, Rs. 30,000/- in case of incapacity and in the case of post-operative complications, the actual cost of treatment being limited to a sum of Rs. 20,000/-.

All the States have responded except the State of Jammu and Kashmir. Needless to say that the State of Jammu and Kashmir will also follow this order.

Let the matter be placed eight weeks later by which time the Union Government and State Governments should indicate the steps taken by them in compliance of this order.

USHA BHADWAJ

MADHU SAXENA
COURT MASTER

P.S. TO REGISTRAR

ANNEXURE 6

Javed and Ors. vs State of Haryana (2003) 8 SCC 369

A review of the Supreme Court Judgement

Abhijit Das

The following review of the judgment of the Supreme Court on Two–Child Norm is being made according to principles of Population and Development as laid down in the Programme of Action of ICPD, the National Population Policy 2000, and the results of the studies conducted by Mahila Chetna Manch (Reported in the Economic and Political Weekly) and SAMA (press release on the occasion of World Population Day 2005).

The argument in this case was built on five core areas:

- The provision of disqualification is violative of Article 14 (Right to equality) of the Constitution;
 - The disqualification does not serve the purpose sought;
 - The provision is discriminatory;
 - The provision is violative of Article 21 of the constitution because it adversely affects the personal life and liberty of the individual; and
 - The provision interferes with freedom of religion;
1. The judgment notes that the classification of persons into those who have two or more children and those who do not is a reasonable and intelligible classification because it is easy to distinguish one group from the other. It does not specify how this can be done. Also, those who had more than two children and when children did not survive, would be classified according to this criteria (onus for having more children parents) where the reason could very well be absence of health care services (onus on the state).
 2. The judgement notes that the objective of the legislation is to popularize the family planning programme, which is consistent with the National Population policy. The judgement also quotes from National Population Policy to support this contention. However, in no place in this quotation is it mentioned that the two-child norm is supported by the policy. According to the quote, elected representatives are supposed to provide strong support to the small family norm along with persons from business, professionals, religious leaders, film stars, sports personalities etc. It is expected that they will support rather than they will be punished!

3. The judgment has asserted that the implementation of the norm will lead to ‘ameliorating health, social and economic conditions of rural population’. There is no evidence provided that this has actually happened anywhere. On the contrary, evidence from national surveys and studies show that the lack of health care facilities, economic opportunities and social inequality directly relate to increases in fertility.
4. The judgement mentions that the ‘lofty ideals of social and economic justice ... the philosophy of distributive justice – economic, social and political cannot be given a go by...’ The results of the implementation of the two child norm in various states shows that the norm is leading to many forms of injustice some which are listed below.
 - It is preventing young people and women from aspiring to political leadership
 - It is preventing younger Dalit persons from aspiring to political leadership
 - It is maintaining the older political status quo
 - It is leading to infringement of children’s needs and rights – they are being given away in adoption, children’s birth is suppressed leading to non-immunisation of children and so on.
 - It is leading to women’s facing sex-preselection tests (a crime) and abortions
 - It has led to women being abandoned, accused of committing adultery and so on

At a larger societal level the implementation of such a norm can also be related to the decline in juvenile sex ratio. The Himachal Pradesh Government has responded to the rapid decline in juvenile sex ratio in the state by amending its Panchayat Act in April and removing the two-child norm.

5. The judgement makes reference to ‘ the torrential increase in the population of the country’ and ‘population explosion is more dangerous than hydrogen bomb’, ‘ the menace of growing population’ and asserts that in India:
 - It is impacting per capita income
 - Leading to shortfall of food grains despite the green revolution
 - Hampering improvement in the educational front
 - Giving rise to a new class of pavement and slum dwellers

The court has obviously been misinformed. It was not informed that the per capita income in India has increase 9 fold between 1951 and 2001, food grain production has increased 4 fold in the same period while population grew less than 3 times in the same period. India has made a transition from a food deficit state to a food surplus state in

these years. The growth of the new class of pavement and slum dwellers has no relationship with birth rates (which have constantly declined) but are related to rural – urban migration and lack of economic opportunities in rural areas and housing facilities in urban areas. The educational attainment, even among women, has consistently shown an upward increase.

6. The judgement makes glowing mention of the ‘carrot and stick’ rule of China and of the one-child norm in place there. However, the Court has not been informed that the sharpest decline in the population growth rates of China took place before the one-child norm was implemented. The one-child norm has led to a serious decline in sex ratio and in the number of girls available for marriage. There is evidence of increased trafficking from countries like Laos, Cambodia, Vietnam and Myanmar to supply for the demand in women. The Court was also not informed that Kerala brought down its population growth rate and fertility rate at a quicker rate than China without adopting any such policy.
7. The few population related references, which have been noted in the judgement, include those from Usha Tandon, Reader, Faculty of Law Delhi University, Arcot Easwaran, who has been quoted from and in *The Hindu* and B.K.Raina. None of these persons are either demographers or academics with a record in economics, women’s studies or related fields. Reference could easily have been made to Amartya Sen’s writings, who is undoubtedly one of the foremost scholar-philosophers in the world today, and who has unequivocally rejected the theories that have been quoted. A simple perusal of Usha Tandon’s book reveals that she has based most of her population and demography related judgments on the opinion pieces published in a newspaper, rather than refer to more academic sources. As the judgment itself quotes another newspaper article, it can be safely assumed that newspaper articles had the most important theoretical influence on the judgement rather than rigorous academic articles.
8. In the latter part of the judgement (Para 59 some incidental questions) – the judgement notes that simply because a child is given away in adoption (forced adoption for the child) then the disqualification will stand. Also in Para 60 it notes that ‘We do not think that with the awareness which is arising in Indian women folk, they are so helpless as to be compelled to bear a third child even though they do not wish to do so.’ Here again the court appears to have been misinformed about the impact of forced adoption on the rights of the *child* and there has been some serious miscommunication

about the status of women in India and how much they can negotiate or participate in making decisions regarding the number and spacing of their children.

In summary

- A. The population related arguments and evidence noted in the judgement are inaccurate and do not reflect the current understanding on the subject
- B. The Court was not informed about the position India is occupying in the demographic transition cycle – the fact that growth rates have declined, fertility rates have declined and that growth rates will appear to be relatively high due to the momentum effect.
- C. The Court was not informed about the impact of the one child norm in China, especially on the overall sex ratio and the increasing evidence of violence against women.
- D. The references on population issues provided to the Court were journalistic and opinion based rather than academic and evidence based.
- E. The results of the two child norm which have now become evident from field level studies clearly show that the principles that the court exhorts should be protected and promoted are exactly those which are being abused by the implementation of this norm. Unfortunately the decision predates the publication of the reports from the field studies.
- F. The court has been misinformed about the autonomy that women have in reproductive and sexual decision making today. Evidence exists that women's participation in reproductive health decision making however is very low, however these were not provided to the court.
- G. The court was not informed about the impact of the norm on different disadvantaged groups like women, Dalit and children because the studies had not yet been published.
- H. The Court upheld the two-child norm because it is concerned about social, economic and political justice and distributive justice and surmised that the norm leads to it. However it was not provided with accurate information and theoretical insights on population related issues, there was no evidence provided about women's social status with respect to reproductive functions and there was inadequate evidence available about the impact of the two-child norm. These three factors taken together led to the judgement supporting the two-child norm instead of dismissing it.

ANNEXURE 7

Findings of The Hunger Project Study

CASE STUDY-1

Sarpanch: Tarawati **Village: Doraha**
Panchayat: Doraha **Block: Sihor**
District: Sihor, Madhya Pradesh

“No! No! No! We don’t want such a law. Why is it that it is always the woman who is afflicted?” This is being said by 30-year old Tarawati, the Sarpanch of Doraha village Panchayat.

She contested from a seat reserved for women. There were six women candidates against her. Being educated and well behaved helped her in getting elected to the post of Sarpanch. Having won by a margin of 160 votes, she started cherishing a dream of seeing her village as a shining star on the firmament of the Panchayat Raj. When a woman who has been keeping an eye on the problems of her village for last several years gets an opportunity to participate in the development process, she adapts to her new role soon and comparatively easily. Tarawati was such a woman. She got an old road, drainage system and a pond of her Panchayat reconstructed; hand pumps installed, and a well cleared of silt. Apart from doing all these things, she also tried to strengthen the women organization of her area. Stressing the strength of women, Tarawati says exploitation can only be stopped when women are organized.

Tarawati says it was with this spirit of working for her Panchayat that she met the President of India to apprise him of the problems of her Panchayat. The meeting was made possible with the help of an organization ‘Samarthan’.

Tarawati was accused of giving birth to a third child after having been elected the Panchayat Sarpanch. But she terms it as a conspiracy against her and says she had her second child in 2001. Tarawati was not aware that good work can also invite jealousy or wrath of someone. She is trying her best to prove that the allegation against her is baseless and false; but she does fear the harassment caused by frequenting the court in this regard. ‘What will happen in court?’ – The very thought keeps her anxious and is a detraction in her work. She thinks if the current trend continues, women will be gradually thrown out of power. ‘Had I known it before 1999, I’d have never opted for contesting the election.’

CASE STUDY – 2

Sarpanch: Mrs. Kaushalya Bai Village: Bhatadand
Panchayat: Bhatadand Block: Kotma
District: Anoopur, Madhaya Pradesh

Bhatadand is a poor and predominantly a tribal village with a population of about 1500. The Panchayat is inhabited by Gaund, Panika and Paw scheduled tribes. 28 years old Kaushalya Bai, the Sarpanch of this village, belongs to the Panika tribal community. Known for her active and efficient leadership, she has been elected Sarpanch for two consecutive terms and during her tenure made some basic amenities available to her fellow villagers. She got the building of the primary school constructed from the funds allotted for the Sure Employment Scheme and organized the women of her Panchayat for constituting a Self Help Group. She is making unceasing efforts for solving the drinking water problem of her village and has even approached the higher officers for seeking their help in this regard. She is aware of her rights. She didn't know about the third child provision introduced in M.P. for Panchayat representatives when she gave birth to her third child.

She is very angry about the provision of dismissal in the event of the third child. She feels this is a conspiracy for obstructing the advances women have been making in the Panchayat Raj system. She is ready to oppose this legislation in every way possible.

Kaushalya Bai is of the opinion that the Government should have informed the Panchayats about it in time or should have left the decision to the Gram Sabha whether the villagers wanted to have a woman with three children as their Sarpanch or not.

A Panch Rambai Baiga has also been removed from her post because of this provision. When the issue was discussed with the Women Self Help Group, the women members disapproved of the Government orders and said, "It'd confine women within the four walls of their houses. The dream of development of her Panchayat throbs in the mind and heart of Kaushalya Bai day and night and she wants to fulfill it by becoming a member of the Tehsil Panchayat. But, now it seems her dream will remain unfulfilled."

CASE STUDY – 3

Sarpanch: Mrs. Bhagvania Bai Village: Kilminia
Panchayat: Kilminia District: Shahdol, Madhya Pradesh

Mrs. Bhagvania Bai Kol is 32 years old and illiterate. The name of her husband is Sh. Suresh Kol. She was elected to the post of Sarpanch in the 1999 Panchayat elections against a seat reserved for women and since then, she has been working in this capacity for the last four years. Prior to this, she used to do domestic chores and help her husband in agricultural work along with her two children. In 1999, she was persuaded by her *mohalla* and the village to contest for the post of Sarpanch and was elected. While talking about her Panchayat work, she said that her husband had been the driver of the CEO of the Tehsil Panchayat. He consulted the CEO after she became the Sarpanch and they together formed a working plan keeping in mind the advice of the CEO. Later, she herself came to learn gradually about the procedure of Panchayat work.

Thus far, Bahagvania has by now gotten two new ponds and stairs in one of them constructed. She has also had three old ponds renovated. She also had constructed a *pulia* on one of the ponds, three boring platforms and two hand pump *haudis*, and three platforms at worshipping places apart from compost fertilizer storage tanks in 11 houses of the village. It was because of her efforts that 23 people could become the beneficiaries of Old Age Pension Scheme under the National Assistance Scheme. She got main roads constructed under the Jawahar Rojgar Yojna.

When she was asked about her reaction to the news of her dismissal after the arrival of her third child, Bagvania Bai says, “This information was just a rumor for when this information came in 2000 after the birth of my third child, I went to the CEO of the Tehsil Panchayat and he said there was no information.” Currently, she is still busy in her Panchayat work. When she was asked about her major future plan in the Panchayat, she answered, “I want to solve electricity problem of my Panchayat in the remaining tenure and I’ve applied for installing electricity poles, but no action has been taken in this matter so far. Without electricity, the village remains enveloped in darkness during nights and it causes lots of problems for the villagers. So, I’m determined to bring electricity to my Panchayat during my tenure. I’m very confident about it.”

CASE STUDY – 4

Panch: Munni Bai Yadav**Village: Urtaan, Kotma****Panchayat: Urtaan, Kotma****District: Anoopur, Madhya Pradesh**

Urtaan village Panchayat is a predominantly tribal inhabited Panchayat with a population of 1500-1600. The Woman Sarpanch works in accordance to the wishes of her community. Education, health, lack of an approach road and electricity are the major problems in this village.

Munni Bai is one of the Panches in this Panchayat. She is 32 years old, illiterate and is basically a traditional housewife devoted to her home. Her husband Sh. Jagdish Yadav is very active in the Panchayat and they have got a Panchayat Bhavan constructed in their ward, got two ponds renovated and have constituted Self Help Groups.

Munni Bai's third child was a son, who will be one year old in January 2004. She did not know anything about the Government's orders regarding the rule under which a Panchayat representative is to be dismissed from his/her post in the event of the arrival of the third child. She also does not know that she is about to get a court order to this effect any day in the future.

When the topic was broached with her fellow villagers, they said that the Government officials had given them no such information; while the officials claimed that they had read the Government's orders in this regard aloud in a meeting of the Gram Sabha.

Munni Bai Yadav says, "There should be no such laws for women as these will deprive them of opportunities for coming ahead and participate in decision making process. If the Government has to decide things in its own way, why does it talk of the importance and supremacy of the Gram Sabha so much? Let the Gram Sabha decide about the rules and laws." Anyway, Munni Bai still holds her post, but her husband has started having apprehensions that she might lose it. He has resolved that he'll support Munni Bai in this fight.

Munni Bai is the Panch only officially. She neither goes to the meetings of the Gram Sabha nor monitors the work in her ward. When she was asked the question why didn't she participate in the Panchayat work, she replied, "I'm trying to understand it."

CASE STUDY – 5

Panch: Mrs. Pushplata Sahu
Panchayat: Umarda, Kotma

Village: Umarda, Kotma
District: Anoopur, Madhya Pradesh

Umarda is a village Panchayat predominantly inhabited by tribals with a population of 700-800. The major tribal communities in the Panchayat are the Pavs, Kols, Panikas, Gaunds and Kanwars. Apart from having a woman as Sarpanch, the Panchayat also has three women Panches.

The major problems in the village are education, health, electricity and water. The Sarpanch has got the village pond deepened and has constituted a Self Help Group. Pushplata says, “The participation of women is gradually increasing in this Panchayat, but laws such as this will deter them from coming out of their homes. There is so much talk about this in the village that at times one starts feeling ashamed.”

23 years old Pushplata is the Panch of Ward 2 of Umarda village. She has received education up to the seventh standard. The name of her husband is Sh. Mohan Sahu, who in addition to Panchayat work, also spends time earning wages. When she was elected the Panch, she had just one child. Later, she gave birth to twins. But was there a way for her to know that it would happen to her? Would the axe of the Government’s orders fall on her too? Twins are a gift of the God. Would the Government understand and amend its law accordingly?

When the villagers were talked to about the law of dismissal from Panchayat post in the event of a third child being born to any of the Panchayat representatives, they said they were totally unaware of the existence of such a law. They perceive it as something having dangerous implications for women. They said the provision would hinder the progress of women. They were also of the view that the Government should have provided adequate information about it and at the proper time.

CASE STUDY – 6

Sarpanch: Mrs. Gendia Bai
Development Block: Kotma

Village Panchayat: Bahera Bandh, Kotma
District: Anoopur, Madhya Pradesh

Bahera Bandh village Panchayat is situated at a distance of 25 kilometers from the Headquarters of the Kotma Development Block. It has a coal mine in its immediate vicinity. The Panchayat has a population of about 2200 and apart from the Gaund tribals, it is inhabited by the people of Sahu and Yadav communities.

Mrs. Gendia Bai, a tribal, is the Sarpanch and her husband dons the post of Vice

President of the Tehsil Panchayat. It was her husband who made her contest for the post of the Sarpanch when the seat was declared to be reserved for women.

After giving birth to her third child, she too is going to be affected by the orders of the Government. Gediabai is 35 years and has received education up to the eleventh standard. But, despite being educated, she is not able to participate actively in the functioning of the Panchayat as most of the work is done by her husband only. She doesn't have any say in Panchayat matters and it seems will never have because of the dominance of her husband.

Her husband is well aware of the orders of the Government regarding dismissal of elected Panchayat representatives; but the woman Sarpanch doesn't know any thing about it. Those in the village, who know about these orders, use them for settling personal scores. However, most of the villagers do not have any information about such orders. Gendiabai gave birth to her third child in 2002 and prior to it both, the husband and wife didn't know about the decision of the Government. Her husband has taken a stay from the court in her name and she still remains the Sarpanch.

The officials say that if these orders are to be implemented, the instructions should come from above. These orders hamper the onward progress of Panchayat representatives. If these orders are enforced, Dinesh Singh will have to give up his Vice Presidency and Gendia Bai her post of Sarpanch.

CASE STUDY – 7

Sarpanch: Geeta Bai Village: Dongarwada
Panchayat: Dongarwada District: Hoshangabad, Madhya Pradesh

Village Dongarwada is situated at a distance of 5 kilometers from the District Headquarters. Mrs. Geeta Bai Daima is the Sarpanch of this village. She is illiterate; hence she faces immense problems while performing her responsibilities as the Sarpanch.

The population of the village is 1050 and people of various castes inhabit it. Prominent among them are: Deswadis, Dhimars, Keers, Thakurs, Harijans, Kotwars, Tribals and Pandits. 50 percent of the population belongs to the Keer community.

9 women candidates contested for the post of the Sarpanch reserved for women in 1998 and Mrs. Geeta Bai won the election. She belongs to the backward community

and had contested any election for the first time. Prior to that she didn't have any experience of public life. Her getting elected to the post of the Sarpanch enhanced her confidence.

During these four years, she has undertaken several development works in her Panchayat. She got cemented roads constructed in the whole village. The cemented road from the national highway 69 to the village has been constructed under the Prime Minister's Road Scheme. Her other works include Panchayat Bhawan and WBM Road.

With reference to the third child controversy, she said, "I have only two children, a boy and a girl. Someone has made a false complaint and an enquiry is being held on its basis. We have not received any orders of dismissal. We have only been informed by the Deputy convener that they have received a complaint against me and are making an enquiry in this regard. Later on, the DC himself conducted an enquiry, but we've not been informed about its findings. We should have been told the result, if an enquiry was conducted against us. Nor we have received any orders of dismissal and yet I'd have to give up my post.

When the issue was discussed with her fellow villagers, it was found that different people said different thing. One version was that she had only two children. Another was that she has three. The eldest girl has been living with her maternal uncles since her childhood. She was given in adoption; hence it should be assumed that she has only two children. Most of the villagers hold the second version to be true. Moreover, the villagers were of the opinion that the Government's orders of dismissal of Panches/ Sarpanches because of third child are wrong. If a law has been made, it should apply on MLAs & MPs as well.

CASE STUDY – 8

Sarpanch: Meena Bai Village : Chandamau
Panchayat: Chandamau District: Sagar, Madhya Pradesh

Meena Bai, the Sarpanch of Chandamau Panchayat of Sagar district is an educated woman. She has now been the Sarpanch for several years. No Sarpanch prior to her undertook any development work in the Panchayat. It was then that they first voted Meena Ahirwar as their Sarpanch in 1999. During her tenure she got *kharanja* roads laid, got a high school constructed, the first high school of the village and her efforts for providing the BPL families with ration cards also proved to be successful.

These achievements invoked a sense of jealousy among the ex-Sarpanchs and they made a complaint against her in the district Collectorate under the orders of the Government regarding the third child and subsequent dismissal from the Panchayat post. She gave birth to her fourth child in 2002. She was issued a notice of dismissal from the Collectorate against which Meena Bai obtained a stay from the court. But, she can, of course, be dismissed any time in view of the Government orders.

Meena Bai says she neither had any information regarding the Government orders nor had her dismissal been approved in the Gram Sabha.

CASE STUDY – 9

Sarpanch: Phularai
Panchayat: Narguda

Village: Narguda
District : Tikamgarh, Madhya Pradesh

Mrs. Phularai, the woman Sarpanch of Narguda Panchayat in Tikamgarh district, is aged 27 and has received education up to the Fifth standard.

During her tenure as Sarpanch, she got an Education Guarantee School opened and a Panchayat Bhawan constructed. She also got *kharanja* roads and drains built, in the village.

Suddenly, one day the District Collector in a camp informed her that he had received a complaint against her that she should be removed from her post as she had given birth to her third child. He also told her that she would have to give up her post in view of the complaint. Coming back home, she told her husband Sh. Kailash Rai (the ex- Sarpanch) about the conversation with the District Collector. Both of them went to their lawyer and filed an appeal in the High Court at Jabalpur.

The appeal came for hearing on 16th December 2002 and Phularai pleaded that when MLAs & MPs had been kept out of the purview of the Government orders, why only Panchayat representatives were being made its victims. The Chief Justice heard her and immediately ordered the District Collector for reinstating her on her post. It was after two disturbing months that she could again feel herself to be an elected Panchayat representative. She says, “The case is still in the Court, but because of the Government’s orders, I won’t be able to contest the next Panchayat election. Still, since presently I’ve been reinstated on my post, I’m trying to work for my Panchayat with full commitment.”

CASE STUDY – 10

Up-Sarpanch : Rekha Mandai**Village: Shivpur****Panchayat: Shivpur****Block: Siwani, Malwa****District: Hashangabad, Madhya Pradesh**

Rekha Mandai's case poses a very important question – Are women in a position to decide how many children they'd bear?

Rekha says, "Reservation for women in the Panchayat bodies has enabled women to come out of the four walls of their houses. These orders of the Government for dismissing Panchayat representatives from their post in the event of having a third child would again imprison them within those four walls."

Shivpuri Panchayat is situated at a distance of 20 kilometers from Siwani-Malwa Block of Hoshangabad district. Its 30-year old Up-Sarpanch Rekha has received education up to the twelfth standard. Her getting elected to a Panchayat post because of women's reservation had given her a sense of courage and confidence. While cherishing the dreams of development of her village, she wanted to see it shining like a star. She had contested against 8 women candidates and had got elected to the post of Up-Sarpanch.

She took active interest in Panchayat development work and got cemented and *kharanja* roads constructed in her village. She took personal interest in launching education and health schemes for women. She got hand pumps installed for solving the water problem of the village. Suddenly, one day, a government employee gave a knock at her door in 2001 and handed her the information of her dismissal from the Panchayat post because of her third child. She was just aghast. When she enquired who else from her Panchayat was being dismissed from his/her post on the similar grounds, she found that her Sarpanch, Mrs. Uma Mittal was also going to meet the same fate. The action of the Government was so brisk and sudden, they were neither given time for pleading their case, nor was the decision approved in the Gram Sabha.

After a period of six months, she was informed that the stay order against the Government's decision has her name as well and she had been reinstated on her post. Since then, she has started taking keener interest in her work. She goes daily to Panchayat Bhawan for performing her Panchayat responsibilities. When she is asked the question what does she feel regarding the Government's orders, she says, "This rule and this decision of the Government is absolutely wrong. These will affect us, the women, adversely. Earlier, women couldn't go out of their houses and

remained hidden behind their veils. Reservation of women in Panchayat gave them an opportunity and the courage for coming out and participating in the public sphere. But this rule is going to send us back to our earlier prisons. It'll take from us everything provided by reservations and accord us the old status of being just housewives. What if this rule is not reverted? Women will not be able to contest Panchayat elections. Panchayats will again be dominated by the patriarchal, feudal elements and even our families would support that.”

CASE STUDY – 11

Sarpanch: Munia Bai **Village: Bhargada**
Panchayat: Bhargada **Block: Kesla**
District: Hashangabad, Madhya Pradesh

If Munia Bai perceives the Government's orders of dismissing a Panchayat representative from his/her elected post as a rule that favors the upper classes at the cost of the weaker and deprived sections of the society, her perception might well contain at least some partial truth.

Owing to illiteracy and lack of access to information, it is mostly the Panchayat representatives coming from the weaker sections who have fallen victims to the above decision of the M. P. Government.

Munia Bai, a tribal woman of Hoshangabad district, had never even imagined that one day she would become the Sarpanch of her village Panchayat. But women's reservation in the Panchayat bodies provided her this unheard-of opportunity. Bhargada Panchayat is at a distance of 20 kilometers from Kesla Block and 35-year old tribal woman Mrs. Munia Bai is the Sarpanch of this Panchayat. She has received education up to the fourth standard and has four children. She became the Sarpanch by winning 1999 village Panchayat elections. During her tenure, she had been active and got roads, a school, bridges etc constructed in her Panchayat.

And then suddenly, the orders of the Government came dismissing her from her post because of having more than two children. It was a bolt from the blue that weakened her confidence. Munia Bai, who has the full cooperation of her husband in her Panchayat work, says, “What sort of decision is this? I was neither given any prior information, nor was the decision put before the Gram Sabha for its approval. We came to know about this rule only from newspapers.” Munia Bai first performs her domestic responsibilities and then her Panchayat work.

After the initial shock, she doesn't seem to be perturbed by this decision of the Government. She considers it another unjust rule like so many others and is of the view that their voice will not be heard as usual even in this matter. She has a firm belief in her labor and wants to devote herself to farming now, so that she is able at least to bring up her family without much economic constraints.

It seems to be true that the politics and manipulations of the Government will alienate women like Munia Bai from the decision making processes and thus strengthen the dominance of the upper classes of the society in Panchayat institutions.

CASE STUDY – 12

Sarpanch: Gulab Bai **Village: Barkheda**
Panchayat: Barkheda **Block: Ashta**
District: Sihor, Madhya Pradesh

Gulab Bai is a woman belonging to a scheduled caste and had been confined for a long time to the realm of her home, family and farming. She had no relation whatever with the functioning of her village Panchayat. It was the provision of women's reservation in the Panchayat Raj system that dragged her into the domain of power. Her husband, Sh. Babulal, does all of the Panchayat work in the name of the Sarpanch Gulab Bai.

Gulab Bai still does not know any thing about the functioning of the Panchayat. Her husband has assumed all her Panchayat responsibilities. It can be easily made out that she did not know about the Government's orders removing Panchayat representatives from their post in case they have more than two children.

Gulab Bai, who was elected to the post of the Sarpanch, has neither confidence nor any ambitions in public life. She is a traditional woman who thinks it her prime duty to bear children for expanding her family. She keeps silent when the topic of her removal from the Panchayat post is broached upon. Her silence makes it amply clear that family comes first in her list of priorities, and that the Panchayat has just a vague presence somewhere on the peripheries of her consciousness. But she does say one thing— that there was no information regarding this rule in her village and the decision of the Government was not placed in the Gram Sabha for approval.

CASE STUDY – 13

Sarpanch: Sadhna Gupta**Village: Kajlaas****Panchayat: Kajlaas****Block: Ashta****District: Sihor, Madhya Pradesh**

The young Sarpanch of Kajlaas Panchayat was elected to this post for the first time by defeating four women candidates by a margin of 9 votes. Being a woman of the upper class, it is not possible for her to go to the Panchayat Bhawan. Educated up to the 12th standard, she could have understood and performed her responsibilities as a Sarpanch in a better way than any illiterate woman; but because of the patriarchal social structure, it is her husband and brother in law who attend to the Panchayat work.

Sadhna and her family say that she has not given birth to any child after 2001. She says publicly that the alleged third child was actually born in the house of her husband's younger brother. A certificate to this effect was submitted in the office of the District Magistrate. But, when we talked confidentially, Sadhna Gupta tells the truth to the surveyor saying that the third child was in fact hers, but a fake certificate was submitted to the DM for keeping her on her post.

The husband wanted a male child for continuing the family name and consequently, the third child came. Her husband and brother in law got upset when they came to know about the rule of dismissal of Panchayat representatives in the event of having a third child and first tried to plead with the DM for making the rule null and void. Her husband is angry at this rule and is of the view that it would oust the women belonging to the affluent sections out of the public life. While Sadhna thinks that such rules are necessary for population control.

When asked about the development works she had undertaken in her Panchayat, the Sarpanch said, "I just put my signatures on papers and that's all. But my husband and brother in law have spent more than 20-22 lakhs of rupees on development works. These include construction of cemented roads, three ponds, deepening of one pond, laying down *kharanjas* on village streets, construction of a water tank, installation of hand pumps and construction of drains in the village. 20 villagers were provided with the benefits of the Indira Awas Yojna. A tube well was also bored under the Tube Well Scheme."

When asked why she doesn't actively participate in the Panchayat work, she says, "The people of this village are not good." Be it the domain of power or home and

family, a woman relegates herself to background and contributes in village development by placing her husband or some other man of the family at the helm of affairs.

CASE STUDY – 14

Sarpanch: Devendra Yadav **Village: Samon**
Panchayat: Samon **Block: Babai**
District: Hoshangabad, Madhya Pradesh

The rule was introduced when the third child was in his wife's womb. Devendra Yadav had already formally given up his second child (a girl) for adoption, and hence this third child would be deemed to be the second only.

Who can tell the Government that one cannot presage about a rule which does not even have the slightest hint of coming in to existence?

Simon Panchayat, situated at a distance of 15 kilometers from Babai Block of Hoshangabad district in Madhya Pradesh, has a population of about 4500. Its Sarpanch, Devendra Yadav, is 35 years old, and has received education up to the 10th standard. He contested for the first time for the post of Sarpanch in 1999 on a seat reserved for backward class candidates. His Panchayat has 10% backward class voters; it is the voters of the general category who are in majority. In spite of this fact, Devendra Yadav was elected to the post of Sarpanch by a margin of 20 votes. During his tenure as Sarpanch, he undertook many development works in his Panchayat. He got several construction works completed, including construction of the RCC road, the Panchayat Bhawan, the main *pucca* road and drains. He also had hand pumps installed, and because of his efforts 32 villagers were able to get the benefits of the Indira Awas Yojna. Nine people benefited under the National Family Assistance Programme. His Panchayat has a middle school. The villagers think of him as a person who is very sensitive to them and their needs. When he was elected to the post of the Sarpanch in May 1999, he had just two children, a boy and a girl. It is said that he gave his daughter in adoption before the elections. While contesting the election in 1999, Devendra Yadav had not the slightest knowledge of the existence of a rule that calls for dismissal of an elected Panchayat representative if she/he has a third child. No white paper was issued on the subject.

The rule was introduced after 26th January 2001 and the third child was born in his home on 17th August 2001. It was after some time of the coming of the third child that Devendra Yadav saw his name in a local newspaper in the list of Panchayat

representatives who had been removed from their posts under this rule. After it, he got a notice from the Collector's office regarding his removal from the post of the Sarpanch for six months. He was neither given any prior information, nor was the order of his dismissal brought in the Gram Sabha meeting for approval.

Within the period of six months, Devendra Yadav filed an appeal in the High Court against his dismissal. He spent more than 30,000 rupees for getting a stay against his dismissal and after six months he again got himself engaged in Panchayat activities as the Sarpanch. When he was asked of his opinion about this rule of dismissal, he said, "I'm completely against it. Had I known about it in 1999, I'd have never contested the election. But, now that I've been elected by the people for five years, I've to fulfill their expectations. It is for this reason that I've spent 30,000 rupees for getting a stay order for completing my term. It is under this stay order that I'm doing development work for my village."

He further adds, "The Government has devised a proper rule, but it should first be enforced on MLAs & MPs and then only we'll accept it." When asked how he felt after being dismissed, he replied, "My name appeared in the list for one Sandeep Dubey, a person belonging to the Brahmin community, had made a complaint against me." In response to the question how his fellow villagers reacted towards these orders, he said, "They too came to know about it from a news paper but they stood by me. The complaint was made by a member of the general category." "Would you contest the 2004 Panchayat elections?", he was asked. He said that if the rule remained in force, he would not be able to contest the coming Panchayat elections.

CASE STUDY – 15

Sarpanch: Mohanlal Uike Village: Pathrota

Panchayat: Pathrota Block: Kesla

District: Hoshangabad, Madhya Pradesh

Hoshangabad district of Madhya Pradesh is spread along the coast of Narmada and the Earth yields plentiful of harvests in this region. The Sarpanch of village Pathrota, situated at a distance of 30 kilometers from Hoshangabad district, Mohanlal Uike is a tribal. He is of 30 years of age and has received education up to the 12th standard. Panchayat politics has been in his family and he donned the mantle of Sarpanch after his grand father and father.

In 1999, he contested the Panchayat election for the post of Sarpanch on a seat reserved for tribals and won by 11 votes. During his tenure, he got concrete roads,

drains and Panchayat Bhawan constructed. Hand pumps were also installed. 50 people became the beneficiaries of the Indira Awas Yojna. He was busy doing his job as the Sarpanch and then came this halt in the form of the information about the rule that stipulated dismissal of Panchayat representatives in the event of a third child being born in their family. He came to know about it in April, 2001 from the District Collector and he was just benumbed by this information. Earlier, he didn't know anything about this rule.

He was served a notice by the office of the District Collector regarding his dismissal and the decision was not put in the meeting of the Gram Sabha for approval. The decision to dismiss him was made merely on the basis of a complaint filed by his opponents. He doesn't consider this rule to be fair for it is not being implemented on all the elected representatives like MPS & MLAs and other government officials. In the same breath, he holds it to be necessary for population control.

His grand father and father had done considerable development work during their tenures. He is not unhappy about his dismissal from the post of the Sarpanch under this rule.

CASE STUDY – 16

Panch: Kamal Singh Dudia

Village: Gwarli

Panchayat: Gwarli

Block: Ashta

District: Sihor, Madhya Pradesh

Gwarli village is situated at a distance of 25 kilometers from Ashta Block of Sihor district. Kamal Singh Dudia is the Ward Panch of Ward no. 2 in this village. Kamal Sing Dudia is young and has passed the twelfth standard. He was elected to the post of the Ward Panch in the 1999 Panchayat elections; but he couldn't get development work done in his ward as he wished for he belonged to a scheduled caste. It has now become common knowledge that if the Sarpanch in a Panchayat happens to belong to an upper caste, most of the development work will be done in his area only.

It pains Kamal Singh very much that power is distributed along caste lines from the top to the bottom. After getting elected and despite knowing the ground realities of caste politics, he applied for installation of a hand pump and construction of roads in his block; but his applications were still under process and nothing had been done

till the time of this survey.

Owing to caste prejudice, the Sarpanch (who belonged to an upper caste) was seeking an opportunity for removing Kamal Singh from his post. The opportunity was provided by the rule of dismissal of a Panchayat representative with three children. On 7th January, the chaukidar of the village handed him the orders of dismissal from the SDM's office. The order was not put in the Gram Sabha for approval. It'll be difficult for Kamal Singh to save his post in the future, for the Sarpanch and the Treasurer do not want any Ward Panch from scheduled caste category. Kamal is not economically well off for getting a stay order from the court against his dismissal. He was not allowed to attend Panchayat meetings since he received the order of his dismissal, and the Sarpanch has appointed a Panch without a bye-election to the post.

In this tug of war at the village level, neither the village is getting developed, nor is the society able to opt for a healthy social change.

CASE STUDY – 17

Sarpanch: Balwant Singh Rajput

Village: Chatri

Panchayat: Chatri

Block: Sihor

District: Sihor, Madhya Pradesh

Thirty-year old Balwant Singh Rajput is the Sarpanch of Chatri village. After passing the tenth standard, he began farming. In 1999 Panchayat elections, he contested for the post of Sarpanch and won the election by 101 votes. In Chatri village, the total number of the voters is 1050 of which 400 belong to the Rajput community.

Most of the members of his community reside in the village; hence he faced no problems in getting elected to the post of Sarpanch. During his tenure he got roads, a pond and an alternative school building constructed. 15 people became the beneficiaries of the Indira Awas Yojna and 3 of the National Family Help Scheme.

Balwant Singh says that he has only two children and someone from the opposite group has made a false complaint against him. On 7th April 2003, his opponents took back their complaint by submitting an affidavit and Balwant Singh was reinstated. But his name still figures in the District Panchayat in the list of those representatives who have more than two children.

CASE STUDY – 18

Sarpanch: Mahesh Dubey
Block: Sihor

Village: Rampur
District: Sihor, Madhya Pradesh

A candidate of the predominant caste or community does not face any problems in getting elected if his village happens to be polarized along caste lines. But Mahesh Kumar Dubey reversed this current political formula by becoming the Sarpanch of Rampur village. Rampur Panchayat is at a distance of 15 kilometers from Sihor district with 827 voters of which 700 belong to the Mewara community. Despite the Dubey votes being less in number, Mahesh contested for the post of the Sarpanch on a general seat and won the election. Dubeyji and his supporters explain his victory in these terms –“He always readily comes to the help of the poor and the development of the village occupies the foremost position in his mind. As a Sarpanch, he has always tried that the quorum of the Gram Sabha meetings should be complete. He has expedited the process of development and has got ponds, wells and canals constructed. Water Conservation Campaign was launched in the village. 6 people got the benefits of the Indira Awas Yojna and 2 of the National Family Help Scheme.”

He got the information about the rule regarding third child from the Village Self Governance Act, 2001. Thereafter, the Collector also provided this information. He was surprised when he was dismissed from his post under this rule. He says emphatically, “I don’t have any third child and the whole thing has come as a surprise to me. Once I’d gone with a pregnant woman to Hospital for getting her admitted and my opponents thought that she was my wife. They made a complaint. She was not my wife.”

“They got a copy of the birth certificate from the hospital and made a false complaint. I was served a notice.” When the surveyor tried to probe the matter with the villagers, it came out that he did have a third child, but he gave her in adoption to his elder brother. Now he has taken a stay order against his dismissal from the High Court, Jabalpur.

Dubey vehemently calls this rule wrong and says, “Is there any other law that is applied selectively on certain people only! Why MPs & MLAs have been excluded from the purview of this rule?”

CASE STUDY – 19

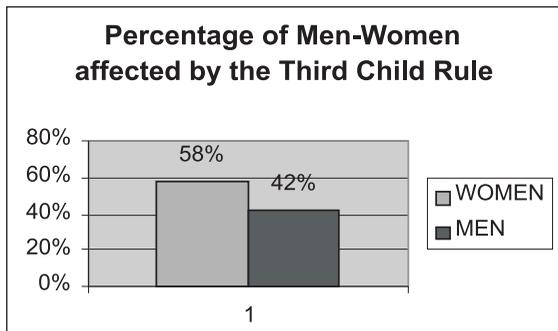
Sarpanch: Narain Singh Verma **Village: Ramnagar**
Block: Ichchavar **District: Sihor, Madhya Pradesh**

Ramnagar Panchayat is situated at a distance of 35 kilometers from Ichchawar Block of Sihor district in Madhya Pradesh. Its Sarpanch Narain Singh Verma is 30 years of age and has three children. He became the Sarpanch for the first time after winning the Panchayat elections held in 1999. As the Sarpanch, he has got roads and a Panchayat Bhawan constructed and has also got hand pumps installed.

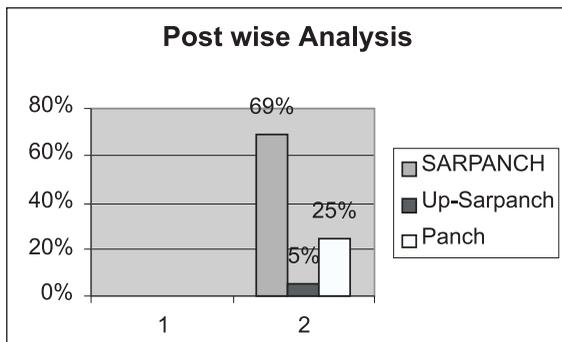
On 15th February 2001, he was served a notice from the Collector's office dismissing him from his post because he had three children. On 22nd February, the news also got published in a local newspaper. The decision of the Collector was not placed in the Gram Sabha for its approval. According to him, Balwant Singh and Sumer Singh belonging to the opposite group had made a false complaint against him.

After he was informed of his dismissal from the post of Sarpanch, he along with 10 other dismissed Sarpanches went to Jabalpur and tried to prove in the High Court that his third child was born in 2000, while the rule regarding the third child was introduced from 26th January, 2001; hence he doesn't come within the purview of this rule.

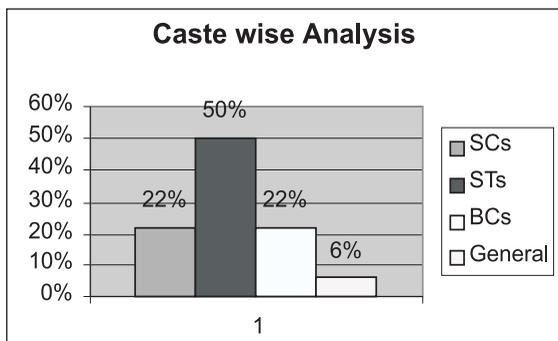
He spent fifteen days getting a stay order from the High Court and presently he is functioning as the Sarpanch of his Panchayat. He is still called for hearings at the Collector's office but he does not go. Narain Singh Verma thinks that the decision under the present rule is wrong. He adds that if a rule is to be introduced or implemented, it should be done only after getting adequate information and not on the basis of a false complaint. He says, "If the rule is implemented in my case without sufficient and correct information, I can file a defamation suit against my opponents and the Collector."



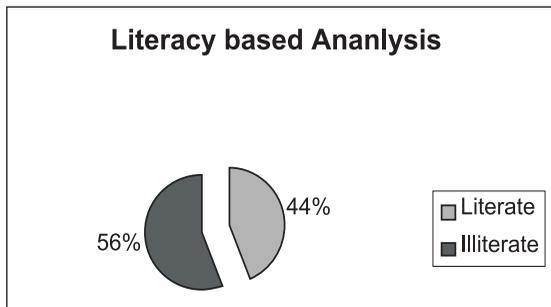
The graph clearly shows that 58% of those that were affected by the two-child norm were women



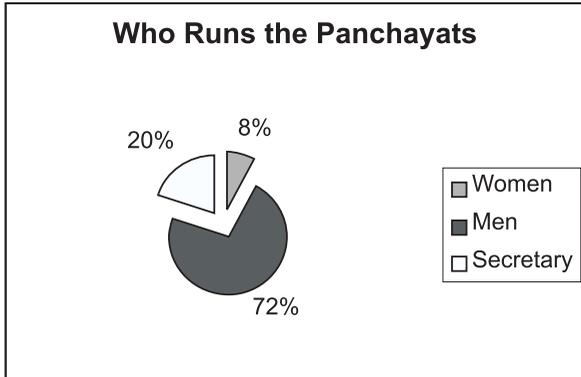
The above analysis makes it evident that of the affected representatives, 69% are Sarpanches, 25% Panches and 5 % are Up-sarpanches.



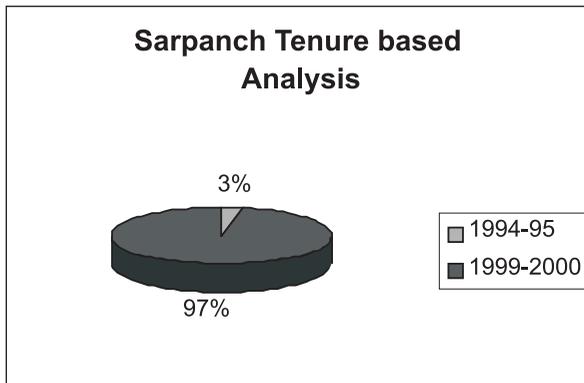
The above graph reveals that of the affected representatives 50% belong to the Scheduled Tribes, 22% to the Scheduled Castes, 22% to the Backward Classes and only 6% to the General Category.



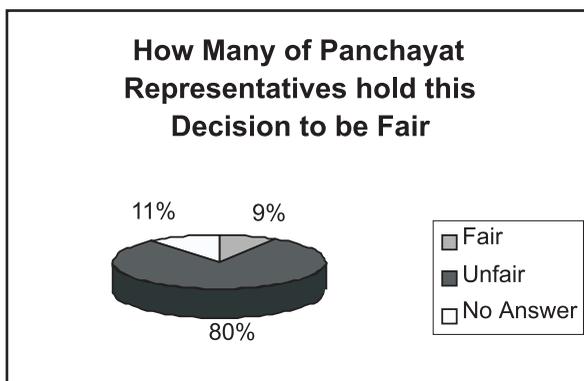
The above graph makes it clear that of the affected representatives, 56% are illiterate and 44% have received primary education.



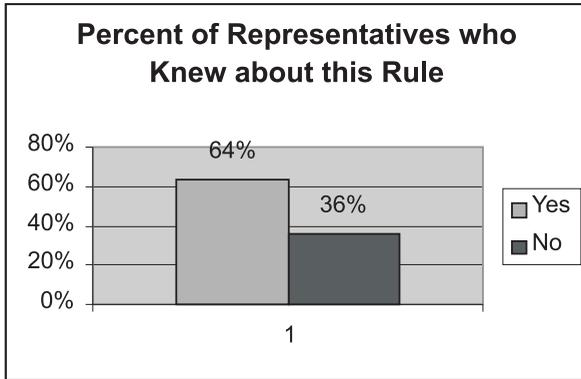
As discussed above, 58% of the affected representatives are women, and of these, only 8% of the women representatives actively run their Panchayats. 72% of the male Sarpanches control the activities in their Panchayats, and 20% of secretaries hold complete sway over the Panchayats they work for.



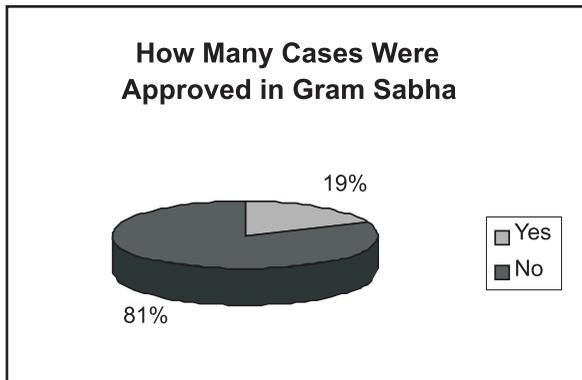
The above graph shows that 97% of the elected Panchayat representatives affected by this rule are new entrants in the Panchayat Raj system; while only 3% of the experienced Sarpanches have come under the purview of this rule.



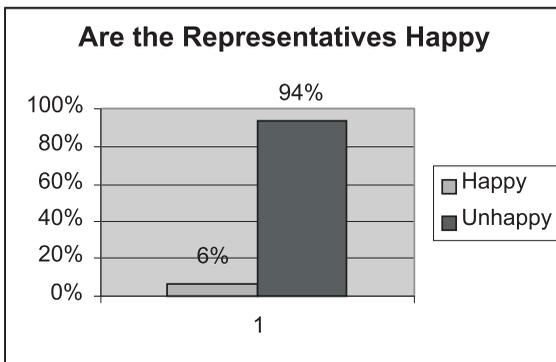
The above graph shows that only 9% Panchayat representatives regard dismissal under the norm as fair for they think it might help in population control. But 80% of them hold it to be unfair and are of the view that the Government cannot interfere in family matters. Eleven percent are yet to understand the nature and implications of this rule.



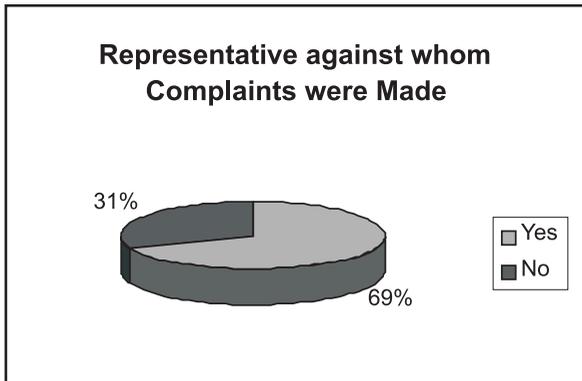
In 1991, the Right to Information Act was put in place in Madhya Pradesh; but in the case of dismissal of Panchayat representatives because of the third child, the information was given neither by the Government, nor by the Tehsil Panchayat. 64% of the Panchayat representatives, who say they knew about this rule, came to know about it from other sources. Thirty-six percent of the affected representatives say they didn't know anything about it and are still to get any information regarding their dismissal from the District Collector's office.



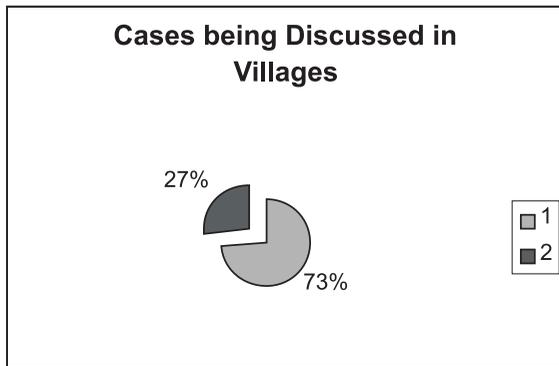
In the Village Self Governance system, Gram Sabha is considered to be the supreme Panchayat body. But 81% of the decisions to dismiss Panchayat representatives were not placed in Gram Sabha for people's approval. In 19% of the cases, the decision was brought before the Gram Sabha, but the allegation could not be established beyond doubt.



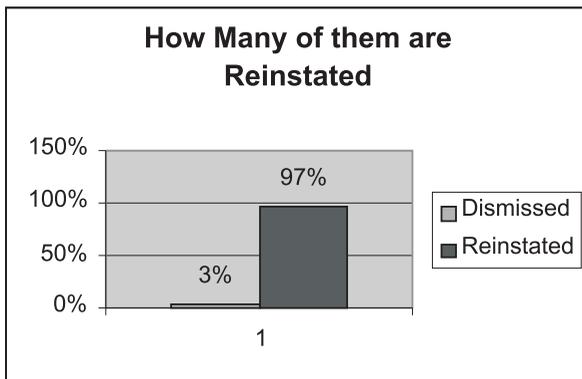
The above graph shows that 94% of the elected Panchayat representatives hold this rule to be against their self-respect and dignity, it seems to challenge their social identity as well. Only 6% of them expressed their happiness about it and thought that it will help in controlling the population.



It is clear from the above graph that notices of dismissal were issued against 69% of the representatives merely on the basis of a complaint. One could not find a systematic and substantiated list of representatives having more than two children in any of these districts. Proper enquiries were not made in to the cases before serving notices to them.



The above chart makes it clear that in 73% of villages, people are aware of the action taken against their Panchayat representatives and are discussing the provision of dismissal on the grounds of its merits and demerits; while in 27% of villages, people are not aware of this rule and the subsequent action against Panchayat representatives.



The above graph makes it clear that in Madhya Pradesh, 97% of the dismissed elected Panchayat representatives were able to get stay orders against their dismissal. As per the provisions of the Panchayat Act, there should be a bye- election with in six months of dismissal of a Panchayat representative, but in no Panchayat have bi-elections been held after the dismissals.

Following are the main findings of the Survey:

- Most of the Sarpanches whose names are included in the list prepared by the District Collector's office have been elected to the post of Sarpanch for the first time in 1999.
- No Sarpanch had any prior knowledge of this provision before contesting the elections.
- The list prepared by the District Collector's office is based merely on complaints received by it.
- The Collector has not enquired about these complaints for confirming the allegation.
- No Gram Sabha has approved any decision of dismissal of a Panchayat representative. However, in several locations, proposals were placed before Gram Sabhas.
- Those dismissed representatives who have gotten a stay order against the decision have been reinstated. But those who could not bear the expenses of the legal redressal have been removed from their posts. These are mostly economically poor representatives.
- Where Sarpanch-patis are running the affairs of Panchayats, women Sarpanches are not aware of the provision of dismissal.
- Most of the male Sarpanches have managed to get fake certificates that show they have only two children. They have either given their third child in adoption or have sent her/him somewhere else from their village.
- This provision is being used for harassing the Panchayat representatives by making false complaints against them.

ANNEXURE 8

Fear of the poor

*By Mohan Rao**

The Hindu

Wednesday, 23 May 2001

In February last year, the Government of India adopted the National Population Policy 2000. This policy is weak on many counts: population is not integrated with health; it has population stabilisation rather than the health and well-being of the population as a goal and so on. Yet one aspect on which the policy is to be hailed is that it resolutely affirms the “commitment of the Government towards voluntary and informed choice and consent of citizens while availing of reproductive health care services, and continuation of the target free approach in administering family planning services”. It is thus surprising that several State Governments have announced population policies, which, in very significant manners, violate the letter and the spirit of the National Population Policy. Equally distressing is that several private members bills are pending in Parliament that seek to reinforce a punitive and anti-democratic approach to issues of population.

Before considering why these measures are anti-democratic, it might be pertinent to recall some of the measures proposed by the States. The Uttar Pradesh policy, for instance, disqualifies persons married before the legal age of marriage from Government jobs, as if children are responsible for child marriages. Further, 10 per cent of financial assistance to Panchayats is to be based on family planning performance. Indeed, frightfully recalling the Emergency, the assessment of the performance of medical officers and other health workers is linked to performance in the Reproductive and Child Health programme, the new avatar of the family welfare programme. The policy also recommends User Fees for Government health services when it is widely accepted that these are inaccessible to the poor. And in a daring departure from other States, the policy recommends the induction of contraceptives such as injectibles and implants which are both unsafe and dangerous to the health of women.

Madhya Pradesh, besides debarring persons married before the legal age from Government jobs, also forbids them from contesting Panchayat elections. As in the

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case of Uttar Pradesh, disbursement of resources to Panchayati Raj Institutions is linked to family planning performance. In a piquant twist, the provision of rural development schemes, income-generating schemes for women, and indeed poverty alleviation programmes as a whole, are all linked to performance in family planning.

Rajasthan, besides debarring persons with more than two children from Panchayat elections, also bars them from other elected bodies such as cooperative institutions. It makes adherence to the “two-child norm” a service condition for State Government employees.

In addition to many of the above, the Maharashtra Government in an order announced the two-child norm as an eligibility criterion for a range of schemes for the weaker sections, including access to the public distribution system and education in Government schools. The Andhra Pradesh Government’s fervour is exhibited by the fact that performance in the Reproductive and Child Health Programme and the Couple Protection Rate will determine construction of school buildings, public works, and funding for rural development. Performance in the Reproductive and Child Health programme is also a criterion for coverage under programmes such as TRYSEM, Weaker Section Housing Scheme, Low Cost Sanitation Scheme and DWCRA. Allotment of surplus agricultural land and housing sites, and benefits under IRDP, the Scheduled Castes Action Plan and the Backward Castes Action Plan are to be given in preference to acceptors of family planning. Further, educational concessions, subsidies, promotions and Government jobs are to be restricted to those accepting the small family norm.

In a macabre metaphor of the lottery that is the life of the poor in the country, awards of Rs. 10,000 each are to be given to three couples per district chosen by lottery. Eligible couples comprise those with two girl children with the mother sterilised, those with one girl child with the mother sterilised and couples with two children or less with the father sterilised.

These State policies are thus in complete disjunction with the National policy and indeed with commitments made by the Government of India at the International Conference on Population and Development in Cairo. Policy makers so anxious to control numbers need to be reminded that such policies are unnecessary as a significant demographic transition is under way in large parts of the country. Areas where this transition has lagged behind need assistance towards strengthening their health and anti- poverty programmes and not measures that punish the poor. As the National Population Policy itself points out, there is a large unmet need for health

and family planning services. In such a situation, without meeting this unmet need, to propose punitive measures is both irrational and absurd.

The disincentives proposed are particularly anti-poor, anti-Dalit, and anti-Adivasis, as these weaker sections have to bear the brunt of the withdrawal of a range of subsidies and measures to mitigate poverty and deprivation. The National Family Health Survey for 1998-99 shows that the Total Fertility Rate (TFR) is 3.15 for Scheduled Castes, 3.06 for Scheduled Tribes, 2.66 among Other Backward Castes and 3.47 among illiterate women as a whole. In contrast, it is 1.99 among women educated beyond Class X. Significant sections among these already deprived populations will thus bear the brunt of these policies of disincentives. In addition to privatisation that de facto deprives Scheduled Castes and Scheduled Tribes of jobs in the organised sector, these explicit policy measures will further curtail the meager employment opportunities available to them. Indeed this measure is pregnant with pro-natalist possibilities.

The disincentives are also anti-women since women in India seldom decide the number of children they wish to bear, when to bear them and indeed have no control over how many will survive. Debarring such women from contesting elections makes a mockery of policies to empower women. Further, they will provide an impetus to some women to resort to sex selective abortions and female foeticide, worsening an already terrible sex ratio in the country.

Finally, the proposals are deeply anti-democratic and violate several provisions of the Constitution (the right to livelihood, the right to life, the right to privacy, among others) and several International Covenants that India is signatory to, including the Rights of the Child.

The fact that structural adjustment policies have led to the collapse of a weak and under-funded public health care system, and that these same policies have also led to an increase of infant mortality rates in 10 of the 15 major States of the country, do not seem to concern our policy-makers. So single-minded are they in their short-sighted policies that they do not realise the appalling fact that it is the fearsome pursuit of family planning programmes that has led to the distrust of the health system among the poor. The fact too is that it was these same people who brought down Government for the “excesses” of family planning not too long back. Is the fear of the poor so strong among our legislators and policy-makers that their memories are so short?

The Two-Child norm is plainly unfair: It is anti-women, anti-poor, anti-rural folk, and anti-minority

by V Mohini Giri

The Indian Express

Monday, 4 August 2003

It was just the other day that an eminent journalist, P. Sainath, wrote about how children were being deprived of going to school as the result of the two-child norm. The sarpanchs had to hide their children to avoid being debarred from office on account of having more than two children. Apart from being anti-women, anti-poor and anti-minority, this law will discourage women from taking part in grassroots democracy. Early child bearing is the norm in rural India, and fertility levels are also high.

Ironically, India is one of the signatories to the Cairo Declaration on population and development that seeks a human-centred approach to population issues with special emphasis on the role of women.

The two-child norm as a criterion for contesting elections has come into force in the states of Haryana, Madhya Pradesh, Rajasthan, Himachal Pradesh, and Andhra Pradesh. In *Mukesh Kumar Ajmera vs State of Rajasthan*, 12 elected panchs challenged the orders of the chief executive officers of their respective Panchayats, disqualifying them on the basis of the birth of a child beyond the second. The Court struck down the order of disqualification but only on procedural grounds!

According to a study conducted by Bhopal-based Chetna Mahila Manch, more than 50 per cent of those disqualified under the provisions of the “two-child” norm were either illiterate or had education only up to the primary level. Clearly, economically and socially vulnerable sections were affected the most by this law, 75 percent of those disqualified belonged to SC/ST and backward castes.

The complaints of violation of the two-child norm were filed by those who wanted either to attack the leadership or settle scores. Further, the law is not clear on stillbirths as well as the birth of twins. There are also cases of abortion, desertion, divorce and the giving away of children in adoption to evade the law.

The two-child norm has also led to an increase in the number of female foeticides. In the case of male foetuses, it was found that mothers usually went ahead with the pregnancy at the risk of losing her/or her husband’s post. Moreover, Muslim men

are permitted to be polygamous legally. The law is ambiguous on its stand with regard to the Muslim men and women.

I would like to quote the report of the working group on Decentralised Planning and Panchayat Raj Institutions for the Tenth Five Year Plan, submitted in 2001: “Madhya Pradesh, Himachal Pradesh Maharashtra and Rajasthan have opted for two-child norm Panchayat elections. Clearly, the mandatory two-child norm has failed as a population control measure.”

No place for coercion in population policy

Times News Network (Section: India, TOI)

Friday, January 10, 2003

NEW DELHI: Union health minister Shatrughan Sinha on Thursday reiterated that coercion has no place in the National Population Policy.

“The validity and sanction of any policy or legislation has to be rooted in the gamut of human rights it seeks to protect or promote. The family welfare programme in India is voluntary and promotive in nature,” he said while inaugurating a two-day colloquium on population policy.

Sinha, who kept everyone waiting for half an hour, came down heavily on states having a coercive population policy. Sinha said the national policy does not provide for any individual incentives or disincentives since these tend to hit the poor the hardest.

He also called for upholding the right to privacy and confidentiality of the woman, the right of a woman to decide when and how many children she will have, right to information and prior consent for the treatment proposed and the right to be medically examined in a dignified and responsible manner.

Sinha also criticised medical practitioners for misusing technology for sex determination tests. It is also wrong that this practice is clothed by an argument that a woman has the right to choose the sex of a child. “No woman, given a choice, would want to abort a female foetus willingly,” Sinha said.

NHRC chairperson Justice J S Verma called for a rights based dialogue on the implementation of the National Population Policy without any delay. Verma said that a linkage between human development and human rights has been established. The population policy must be consistent with and must promote both. He called for a review of the population policies of Uttar Pradesh, Madhya Pradesh, Rajasthan, Maharashtra and Haryana.

Many faces of gender inequality

By Amartya Sen*

The Frontline, Volume 18-Issue 22, Oct. 27-Nov. 09, 2001, Section: Cover Story,

Nobel Laureate Amartya Sen's work on gender inequality is of seminal importance. His work on the theory of the household represents the household not as an undifferentiated unit, but as a unit of cooperation as well as of inequality and internal discrimination. He has worked on problems of discrimination against women in the development process, on survivorship differentials between men and women under conditions of social discrimination against women, and on women's agency in the process of social development. Along with his academic collaborator Jean Dreze, Professor Sen proposed and popularised the concept of "missing women" - estimated to exceed 100 million round the world - which has given us a new way of understanding and mapping the problem.

In this Cover Story essay, which is based on the text of his inauguration lecture for the Radcliffe Institute at Harvard University, Professor Sen takes a comprehensive and deeply concerned look at the "many faces of gender inequality." Focusing on South Asia, he discovers in the data thrown up by the Census of 2001 an interesting phenomenon - a split India, "something of a social and cultural divide across India, splitting the country into two nearly contiguous halves, in the extent of anti-female bias in natality and post-natality mortality." He concludes by identifying the principal issues, emphasizing the need to "take a plural view of gender inequality," and calling for a new agenda of action to combat and put an end to gender inequality.

Frontline featured this important essay by Amartya Sen as its Cover Story.

Seven Types of Inequality

It was more than a century ago, in 1870, that Queen Victoria wrote to Sir Theodore Martin complaining about "this mad, wicked folly of 'Woman's Rights'." The formidable empress certainly did not herself need any protection that the acknowledgment of women's rights might offer. Even at the age of eighty, in 1899, she could write to A.J. Balfour, "We are not interested in the possibilities of defeat; they do not exist." That, however, is not the way most people's lives go - reduced and defeated as they frequently are by adversities. And within each community, nationality and class, the burden of hardship often falls disproportionately on women.

The afflicted world in which we live is characterised by deeply unequal sharing of the burden of adversities between women and men. Gender inequality exists in most parts of the world, from Japan to Morocco, from Uzbekistan to the United States of America. However, inequality between women and men can take very many different forms. Indeed, gender inequality is not one homogeneous phenomenon, but a collection of disparate and interlinked problems. Let me illustrate with examples of different kinds of disparity.

(1) Mortality inequality:

In some regions in the world, inequality between women and men directly involves matters of life and death, and takes the brutal form of unusually high mortality rates of women and a consequent preponderance of men in the total population, as opposed to the preponderance of women found in societies with little or no gender bias in health care and nutrition. Mortality inequality has been observed extensively in North Africa and in Asia, including China and South Asia.

(2) Natalty inequality:

Given a preference for boys over girls that many male-dominated societies have, gender inequality can manifest itself in the form of the parents wanting the newborn to be a boy rather than a girl. There was a time when this could be no more than a wish (a daydream or a nightmare, depending on one's perspective), but with the availability of modern techniques to determine the gender of the foetus, sex-selective abortion has become common in many countries. It is particularly prevalent in East Asia, in China and South Korea in particular, but also in Singapore and Taiwan, and it is beginning to emerge as a statistically significant phenomenon in India and South Asia as well. This is high-tech sexism.

(3) Basic facility inequality:

Even when demographic characteristics do not show much or any anti-female bias, there are other ways in which women can have less than a square deal. Afghanistan may be the only country in the world the government of which is keen on actively excluding girls from schooling (it combines this with other features of massive gender inequality), but there are many countries in Asia and Africa, and also in Latin America, where girls have far less opportunity of schooling than boys do. There are other deficiencies in basic facilities available to women, varying from encouragement to cultivate one's natural talents to fair participation in rewarding social functions of the community.

(4) Special opportunity inequality:

Even when there is relatively little difference in basic facilities including schooling, the opportunities of higher education may be far fewer for young women than for young men. Indeed, gender bias in higher education and professional training can be observed even in some of the richest countries in the world, in Europe and North America.

Sometimes this type of division has been based on the superficially innocuous idea that the respective “provinces” of men and women are just different. This thesis has been championed in different forms over the centuries, and has had much implicit as well as explicit following. It was presented with particular directness more than a hundred years before Queen Victoria’s complaint about “woman’s rights” by the Revd James Fordyce in his *Sermons to Young Women* (1766), a book which, as Mary Wollstonecraft noted in her *A Vindication of the Rights of Women* (1792), had been “long made a part of woman’s library.” Fordyce warned the young women, to whom his sermons were addressed, against “those masculine women that would plead for your sharing any part of their province with us,” identifying the province of men as including not only “war,” but also “commerce, politics, exercises of strength and dexterity, abstract philosophy and all the abstruser sciences.”¹ Even though such clear-cut beliefs about the provinces of men and women are now rather rare, nevertheless the presence of extensive gender asymmetry can be seen in many areas of education, training and professional work even in Europe and North America.

(5) Professional inequality:

In terms of employment as well as promotion in work and occupation, women often face greater handicap than men do. A country like Japan may be quite egalitarian in matters of demography or basic facilities, and even, to a great extent, in higher education, and yet progress to elevated levels of employment and occupation seems to be much more problematic for women than for men.

In the English television series called “Yes, Minister,” there is an episode where the Minister, full of reforming zeal, is trying to find out from the immovable permanent secretary, Sir Humphrey, how many women are in really senior positions in the British civil service. Sir Humphrey says that it is very difficult to give an exact number; it would require a lot of investigation. The Minister is still insistent, and wants to know approximately how many women are there in these senior positions. To which Sir Humphrey finally replies, “Approximately, none.”

(6) Ownership inequality:

In many societies the ownership of property can also be very unequal. Even basic assets such as homes and land may be very asymmetrically shared. The absence of claims to property can not only reduce the voice of women, but also make it harder for women to enter and flourish in commercial, economic and even some social activities.² This type of inequality has existed in most parts of the world, though there are also local variations. For example, even though traditional property rights have favoured men in the bulk of India, in what is now the State of Kerala, there has been, for a long time, matrilineal inheritance for an influential part of the community, namely the Nairs.

(7) Household inequality:

There are, often enough, basic inequalities in gender relations within the family or the household, which can take many different forms. Even in cases in which there are no overt signs of anti-female bias in, say, survival or son-preference or education, or even in promotion to higher executive positions, the family arrangements can be quite unequal in terms of sharing the burden of housework and child care. It is, for example, quite common in many societies to take it for granted that while men will naturally work outside the home, women could do it if and only if they could combine it with various inescapable and unequally shared household duties. This is sometimes called “division of labour,” though women could be forgiven for seeing it as “accumulation of labour.” The reach of this inequality includes not only unequal relations within the family, but also derivative inequalities in employment and recognition in the outside world. Also, the established fixity of this type of “division” or “accumulation” of labour can also have far-reaching effects on the knowledge and understanding of different types of work in professional circles. When I first started working on gender inequality, in the 1970s, I remember being struck by the fact that the Handbook of Human Nutrition Requirement of the World Health Organisation (WHO), in presenting “calorie requirements” for different categories of people, chose to classify household work as “sedentary activity,” requiring very little deployment of energy.³ I was, however, not able to determine precisely how this remarkable bit of information had been collected by the patrician leaders of society.

Focusing on South Asia

It is important to take note of the variety of forms that gender inequality can take. First, inequality between women and men cannot be confronted and overcome by any one set of all-purpose remedy. Second, over time the same country can move

from one type of gender inequality to harbouring other forms of that inequity. I shall presently argue that there is new evidence that India is undergoing just such a transformation right at this time. Third, the different forms of gender inequality can impose diverse adversities on the lives of men and boys, in addition to those of women and girls. In understanding the different aspects of the evil of gender inequality, we have to look beyond the predicament of women and examine the problems created for men as well by the asymmetric treatment of women. These causal connections, which (as I shall presently illustrate) can be very significant, can vary with the form of gender inequality. Finally, inequalities of different kinds can also, frequently enough, feed each other, and we have to be aware of their interlinkages.

Even though part of the object of this paper is to discuss the variety of different types of gender inequality, a substantial part of my empirical focus will, in fact, be on two of the most elementary kinds of gender inequality, namely, mortality inequality and natality inequality. I shall be concerned, in particular, with gender inequality in South Asia, or the Indian subcontinent. While I shall separate out the subcontinent for special attention, I must also warn against the smugness of thinking that the United States or Western Europe is free from gender bias simply because some of the empirical generalisations that can be made about the subcontinent would not hold in the West. Given the many faces of gender inequality, much would depend on which face we look at.

For example, India, along with Bangladesh, Pakistan and Sri Lanka, has had female heads of governments, which the United States or Japan has not yet had (and does not seem very likely to have in the immediate future, if I am any judge). Indeed, in the case of Bangladesh, where both the Prime Minister and the Leader of the Opposition are women, one might begin to wonder whether any man could possibly rise to a leadership position there in the near future. To take another example, I had a vastly larger proportion of tenured women colleagues when I was a Professor at Delhi University - as early as the 1960s - than I had at Harvard University in the 1990s, or presently have at Trinity College, Cambridge. To take another type of example (of a rather personal kind), in preparing my last book, *Development as Freedom*,⁴ when I was looking for a suitably early formulation of the contrast between the instrumental importance of income and wealth, on the one hand, and the intrinsic value of human life, on the other (a point of departure for my book), I found it in the words of Maitreyee, a woman intellectual depicted in the Upanishads (from the eighth century B.C.). The classic formulation of this distinction would, of course, come about four centuries later, from Aristotle, in *Nicomachean Ethics*, but it is

interesting that the first sharp formulation of the value of living for men and women should have come from a woman thinker in a society that has not yet - three thousand years later - been able to overcome the mortality differential between women and men.

Indeed, in the scale of mortality inequality, India - as well as Pakistan and Bangladesh - is close to the bottom of the league in gender disparity. And, as I shall presently argue, natality inequality is also beginning to rear its ugly head very firmly and very fast right at this time in the subcontinent.

Exceptions and Trends

In the bulk of the subcontinent, with only a few exceptions (such as Sri Lanka and the State of Kerala in India), female mortality rates are very significantly higher than what could be expected given the mortality patterns of men (in the respective age groups). This type of gender inequality need not entail any conscious homicide, and it would be a mistake to try to explain this large phenomenon by invoking the occasional cases of female infanticide that are reported from China or India. These are truly dreadful events when they occur, but they are relatively rare. Rather, the mortality disadvantage of women works mainly through a widespread neglect of health, nutrition and other interests of women that influence survival.

It is sometimes presumed that there are more women than men in the world, since that is well-known to be the case in Europe and North America, which have a female to male ratio of 1.05 or so, on the average (that is, about 105 women per 100 men). But women do not outnumber men in the world as a whole; indeed there are only about 98 women per 100 men on the globe. This "shortfall" of women is most acute in Asia and North Africa. For example, the number of females per 100 males in the total population is 97 in Egypt and Iran, 95 in Bangladesh and Turkey, 94 in China, 93 in India and Pakistan, and 84 in Saudi Arabia (though the last ratio is considerably reduced by the presence of male migrant workers from elsewhere who come to Saudi Arabia).

It has been widely observed that given similar health care and nutrition, women tend typically to have lower age-specific mortality rates than men do. Indeed, even female foetuses tend to have a lower probability of miscarriage than male foetuses have. Everywhere in the world, more male babies are born than female babies (and an even higher proportion of male foetuses are conceived compared with female foetuses), but throughout their respective lives the proportion of males goes on

falling as we move to higher and higher age groups, due to typically greater male mortality rates. The excess of females over males in the population of Europe and North America comes about as a result of this greater survival chance of females in different age groups.

However, in many parts of the world, women receive less attention and health care than men do, and particularly girls often receive very much less support than boys. As a result of this gender bias, the mortality rates of females often exceed those of males in these countries. The concept of “missing women” was devised to give some idea of the enormity of the phenomenon of women’s adversity in mortality by focusing on the women who are simply not there, due to unusually high mortality compared with male mortality rates. The basic idea is to find some rough and ready way to understand the quantitative difference between (1) the actual number of women in these countries, and (2) the number we could expect to see if the gender pattern of mortality were similar in these countries as in other regions of the world that do not have a significant bias against women in terms of health care and other attentions relevant for survival.

For example, if we take the ratio of women to men in sub-Saharan Africa as the standard (there is relatively little bias against women in terms of health care, social status and mortality rates in sub-Saharan Africa, even though the absolute numbers are quite dreadful for both men and women), then its female-male ratio of 1.022 can be used to calculate the number of missing women in women-short countries.⁵ For example, with India’s female-male ratio of 0.93, there is a total difference of 9 per cent (of the male population) between that ratio and the standard used for comparison, namely, the sub-Saharan African ratio of 1.022. This yielded a figure of 37 million missing women already in 1986 (when I first did the estimation). Using the same sub-Saharan standard, China had 44 million missing women, and it was evident that for the world as a whole the magnitude of shortfall easily exceeded 100 million.⁶ Other standards and different procedures can also be used, as has been done by Ansley Coale and Stephan Klasen, getting somewhat different numbers, but invariably very large ones (Klasen’s total number is about 80 million missing women).⁷ Gender bias in mortality does take an astonishingly heavy toll.

How can this be reversed? Some economic models have tended to relate the neglect of women to the lack of economic empowerment of women. While Ester Boserup, an early feminist economist, discussed how the status and standing of women are enhanced by economic independence (such as gainful employment), others have tried to link the neglect of girls to the higher economic returns for the family from

boys compared with girls.⁸ I believe the former line of reasoning, which takes fuller note of social considerations that take us beyond any hard-headed calculation of relative returns from rearing girls vis-a-vis boys, is both appropriately broader and more promising, but no matter which interpretation is taken, women's gainful employment, especially in more rewarding occupations, clearly does play a role in improving the deal that women and girls get. And so does women's literacy, and other factors that can be seen as adding to the status, standing and voice of women in family decisions.⁹

An example that has been discussed in this context is the experience of the State of Kerala in India, which provides a sharp contrast with many other parts of the country in having little or no gender bias in mortality. Indeed, not only is the life expectancy of Kerala women at birth above 76 (compared with 70 for men), the female-male ratio of Kerala's population is 1.06 according to the 2001 Census (possibly somewhat raised by greater migration for work by men, but certainly no lower than the West European or North American ratios, which are around 1.05 or so). With its 30 million population, Kerala's example also involves a fair number of people. The causal variables related to women's empowerment can be seen as playing a role here, since Kerala has a very high level of women's literacy (nearly universal for the younger age groups), and also much more access for women to well paid and well respected jobs. One of the other influences of women's empowerment, namely a fertility decline, is also observed in Kerala, where the fertility rate has fallen very fast (much faster, incidentally, than China, despite the rigours of Chinese coercive measures in birth control), and Kerala's present fertility rate around 1.7 or 1.8 (roughly interpretable as an average of 1.7 or 1.8 children per couple) is one of the lowest in the developing world (about the same as in Britain and France, and much lower than in the United States). All of these observations link with each other very well in a harmonious causal story.

However, there is further need for causal discrimination in interpreting Kerala's experience. There are other special features of Kerala which may also be relevant, such as female ownership of property for an influential part of the Hindu population (the Nairs), openness to and interaction with the outside world (with the presence of Christians - about a fifth of the population - who have been much longer in Kerala - since around the fourth century - than they have been in, say, Britain, not to mention Jews who came to Kerala shortly after the fall of Jerusalem), and activist left-wing politics with a particularly egalitarian commitment, which has tended to focus strongly on issues of equity (not only between classes and castes, but also between women and men).¹⁰

Issues that Need Investigation

I now move away from the old - and by now much discussed - problems of gender bias in life and death (illustrated by the enormity of the size of “missing women”) to other issues that are in need of greater investigation at this time. We begin by noting four substantial phenomena that happen to be quite widely observed in South Asia.

(1) Undernourishment of girls over boys:

At the time of birth, girls are obviously no more nutritionally deprived than boys are, but this situation changes as society’s unequal treatment takes over from nature’s non-discrimination. There has, in fact, been plenty of aggregative evidence on this for quite some time now.¹¹ But this has been accompanied by some anthropological skepticism of the appropriateness of using aggregate statistics with pooled data from different regions to interpret the behaviour of individual families. However, there have also been some detailed and concretely local studies on this subject, which confirm the picture that emerges on the basis of aggregate statistics.¹² One case study from India, which I myself undertook in 1983, along with Sunil Sengupta, involved the weighing of every child in two large villages. The time pattern that emerged from this micro study, which concentrated particularly on weight-for-age as the chosen indicator of nutritional level for children under five, brings out clearly how an initial condition of broad nutritional symmetry turns gradually into a situation of significant female disadvantage.¹³ The detailed local studies tend to confirm rather than contradict the picture that emerges from aggregate statistics.

In interpreting the causal process, it is important to emphasise that the lower level of nourishment of girls may not relate directly to their being underfed vis-a-vis boys. Often enough, the differences may particularly arise from the neglect of health care of girls compared with what boys get. There is, in fact, some direct information of comparative medical neglect of girls vis-a-vis boys in South Asia. Indeed, when I studied, with Jocelyn Kynch, admissions data from two large public hospitals in Bombay (Mumbai), it was very striking to find clear evidence that the admitted girls were typically more ill than boys, suggesting the inference that a girl has to be more stricken before she is taken to the hospital.¹⁴ Undernourishment may well result from greater morbidity, which can adversely affect both the absorption of nutrients and the performance of bodily functions.

(2) High incidence of maternal undernourishment:

In South Asia maternal malnourishment is more common than in most other regions of the world.¹⁵ Comparisons of Body Mass Index (BMI), which is essentially a

measure of weight for height, bring this out clearly enough, as do statistics of such consequential characteristics as the incidence of anaemia.¹⁶

(3) Prevalence of low birth weight:

In South Asia, as many as 21 per cent of children are born clinically underweight (in accepted medical standards) - more than in any other substantial region in the world.¹⁷ The predicament of being low in weight in childhood seems often enough to begin at birth in the case of South Asian children. In terms of weight for age, South Asia has around 40 to 60 per cent children undernourished compared with 20 to 40 per cent undernourishment even in sub-Saharan Africa. The children start deprived and stay deprived.

(4) High incidence of cardiovascular diseases:

South Asia stands out as having more cardiovascular diseases than any other part of the third world. Even when other countries, such as China, have greater prevalence of the standard predisposing conditions, the Indian population seems to have more heart problems than these other countries have.

It is not difficult to see that the first three observations are very likely causally connected. The neglect of the care of girls and of women in general and the underlying gender bias that they reflect would tend to yield more maternal undernourishment, and through that, more foetal deprivation and distress, underweight babies, and child undernourishment. But what about the last observation - the higher incidence of cardiovascular diseases among South Asian adults? In interpreting it, we can, I would argue, draw on some pioneering work of a British medical team, led by Professor D.J.P. Barker.¹⁸

Based on English data, Barker has shown that low birth weight is closely associated with higher incidence, many decades later, of several adult diseases, including hypertension, glucose intolerance, and other cardiovascular hazards. The robustness of the statistical connections as well as the causal mechanisms involved in intrauterine growth retardation can, of course, be further investigated, but as matters stand these medical findings offer a possibility of causally interconnecting the different empirical observations related to South Asia, as I have tried to discuss in a joint paper with Siddiq Osmani.¹⁹ The application of this medical understanding to the phenomenon of high incidence of cardiovascular diseases in South Asia strongly suggests a causal pattern that goes from the nutritional neglect of women to maternal undernourishment, from there to foetal growth retardation and underweight babies, and thence to greater incidence of cardiovascular afflictions much later in adult life

(along with the phenomenon of undernourished children in the shorter run). What begins as a neglect of the interests of women ends up causing adversities in the health and survival of all - even at an advanced age.

Given the uniquely critical role of women in the reproductive process, it would be hard to imagine that the deprivation to which women are subjected would not have some adverse impact on the lives of all - men as well as women and adults as well as children - who are “born of a woman” (as the Book of Job describes every person, not particularly daringly). Indeed, since men suffer disproportionately more from cardiovascular diseases, the suffering of women hit men even harder, in this respect. The extensive penalties of neglecting women’s interests rebounds, it appears, on men with a vengeance.

What Women’s Agency Can Achieve

These biological connections illustrate a more general point, to wit, gender inequality can hurt the interests of men as well as women. There are other - non-biological - connections that operate through women’s conscious agency. The expansion of women’s capabilities not only enhances women’s own freedom and well-being, but also has many other effects on the lives of all.²⁰ An enhancement of women’s active agency can, in many circumstances, contribute substantially to the lives of all people - men as well as women, children as well as adults. As many studies have brought out, the greater empowerment of women tends to reduce child neglect and mortality, cut down fertility and overcrowding, and more generally, broaden social concern and care.

These illustrations can be supplemented by considering the functioning of women in other areas, including in economic and political fields.²¹ Substantial linkages between women’s agency and social achievements have been noted in many different countries. There is, for example, plenty of evidence that whenever social and economic arrangements depart from the standard practice of male ownership, women can seize business and economic initiative with much success. It is also clear that the result of women’s participation is not merely to generate income for women, but also to provide many other social benefits that come from women’s enhanced status and independence. The remarkable success of organisations like the Grameen Bank and the Bangladesh Rural Advancement Committee (BRAC) in Bangladesh is a good example of this, and there is some evidence that the high profile presence of women in social and political life in that country has drawn substantial support from women’s economic involvement and from a changed image of the role of women.

While the Revd James Fordyce might disapprove of “those masculine women,” as he called them, straying into men’s “province,” the nature of modern Bangladesh reflects in many different ways the increasing agency of women. The precipitate fall of the total fertility rate in Bangladesh from 6.1 to 3.0 in the course of two decades (perhaps the fastest such fall in the world) is clearly related to the changed economic and social roles of women, along with increases in family planning facilities. There have also been cultural influences and developments in that direction.²² Similar changes can be observed also in parts of India where women’s empowerment has expanded, with more literacy and greater economic and social involvements outside the home.²³

Behind a Split India

While there is something to cheer in the developments I have just been discussing, and there is considerable evidence of a weakened hold of gender disparity in several fields in the subcontinent, there is also, alas, some evidence of a movement in the contrary direction, at least in one aspect of gender inequality, namely, natality inequality. This has been brought out particularly sharply by the early results of the 2001 decennial national Census of India, which are now available. Early results indicate that even though the overall female to male ratio has improved slightly for the country as a whole (with a corresponding reduction of the proportion of “missing women”), the female-male ratio for children has had a substantial decline. For India as a whole, the female-male ratio of the population under age 6 has fallen from 94.5 girls for hundred boys in 1991 to 92.7 girls per hundred boys in 2001. While there has been no such decline in some parts of the country (most notably Kerala), it has fallen very sharply in others, such as Punjab, Haryana, Gujarat and Maharashtra, which are among the richer Indian States.

Taking together all the evidence that exists, it is clear that this change reflects not a rise in female child mortality, but a fall in female births vis-a-vis male births, and is almost certainly connected with increased availability and use of gender determination of foetuses. Fearing that sex-selective abortion might occur in India, the Indian Parliament banned some years ago the use of sex determination techniques for foetuses, except when it is a by-product of other necessary medical investigation. But it appears that the enforcement of this law has been comprehensively neglected, and when questioned by Celia Dugger, the energetic correspondent of *The New York Times*, the police often cited difficulties in achieving successful prosecution thanks to the reluctance of mothers to give evidence of use of such techniques.

I do not believe that this need be an insurmountable difficulty (other types of evidence can in fact be used for prosecution), but the reluctance of the mothers to give evidence brings out perhaps the most disturbing aspect of this natality inequality, to wit, the “son preference” that many Indian mothers themselves seem to have. This face of gender inequality cannot, therefore, be removed, at least in the short run, by the enhancement of women’s empowerment and agency, since that agency is itself an integral part of the cause of natality inequality. Policy initiatives have to take adequate note of the fact that the pattern of gender inequality seems to be shifting in India, right at this time, from mortality inequality (the female life expectancy at birth is by now two years higher than male life expectancy in India) to natality inequality.

Indeed, there is clear evidence that traditional routes of changing gender inequality, through using public policy to influence female education and female economic participation, may not serve as a path to the removal of natality inequality. A sharp pointer in that direction comes from countries in East Asia, which all have high levels of female education and economic participation. Despite these achievements, compared with the biologically common ratio across the world of 95 girls being born per hundred boys, Singapore and Taiwan have 92 girls, South Korea only 88, and China a mere 86. In fact, South Korea’s overall female-male ratio for children is also a meager 88 girls for 100 boys and China’s 85 girls for 100 boys. In comparison, the Indian ratio of 92.7 girls for 100 boys (though lower than its previous figure of 94.5) still looks far less unfavourable.²⁴

However, there are more grounds for concern than may be suggested by the current all-India average. First, there are substantial variations within India, and the all-India average hides the fact that there are States in India where the female-male ratio for children is very much lower than the Indian average. Second, it has to be asked whether with the spread of sex-selective abortion, India may catch up with - and perhaps even go beyond - Korea and China. There is, in fact, strong evidence that this is happening in a big way in parts of the country.

There is, however, something of a social and cultural divide across India, splitting the country into two nearly contiguous halves, in the extent of anti-female bias in natality and post-natality mortality. Since more boys are born than girls everywhere in the world, even without sex-specific abortion, we can use as a classificatory benchmark the female-male ratio among children in advanced industrial countries. The female-male ratio for the 0-5 age group is 94.8 in Germany, 95.0 in the U.K., and 95.7 in the U.S., and perhaps we can sensibly pick the German

ratio of 94.8 as the cut-off point below which we should suspect anti-female intervention.

The use of this dividing line produces a remarkable geographical split of India. There are the States in the north and the west where the female-male ratio of children is consistently below the benchmark figure, led by Punjab, Haryana, Delhi and Gujarat (with ratios between 79.3 and 87.8), and also including, among others, Himachal Pradesh, Madhya Pradesh, Rajasthan, Uttar Pradesh, Maharashtra, Jammu and Kashmir, and Bihar (a tiny exception is Dadra and Nagar Haveli, with less than a quarter million people altogether). On the other side of the divide, the States in the east and the south tend to have female-male ratios that are above the benchmark line of 94.8 girls per 100 boys: with Kerala, Andhra Pradesh, West Bengal and Assam (each between 96.3 and 96.6), and also, among others, Orissa, Karnataka and the northeastern States to the east of Bangladesh (Meghalaya, Mizoram, Manipur, Nagaland, Arunachal Pradesh).

One significant exception to this neat pattern of adjoining division is, however, provided by Tamil Nadu, where the female-male ratio is just below 94, which is higher than the ratio of any State in the deficit list, but still just below the cut-off line used for the partitioning (94.8). The astonishing finding is not that one particular State seems to provide a marginal misfit, but how the vast majority of the Indian States fall firmly into two contiguous halves, classified broadly into the north and the west, on one side, and the south and the east, on the other. Indeed, every State in the north and the west (with the slight exception of the tiny Union Territory of Dadra and Nagar Haveli) has strictly lower female-male ratio of children than every State in the east and the south (even Tamil Nadu fits into this classification), and this indeed is quite remarkable.

The pattern of female-male ratio of children produces a much sharper regional classification than does the female-male ratio of mortality of children, even though the two are also fairly strongly correlated. The female-male ratio in child mortality varies between 0.91 in West Bengal and 0.93 in Kerala, on one side, in the southern and eastern group, to 1.30 in Punjab, Haryana and Uttar Pradesh, with high ratios also in Gujarat, Bihar and Rajasthan, in the northern and western group.

The north and the west have clear characteristics of anti-female bias in a way that is not present - or at least not yet visible - in most of the east and the south. This contrast does not have any immediate economic explanation. The States with anti-

female bias include rich ones (Punjab and Haryana) as well as poor States (Madhya Pradesh and Uttar Pradesh), and fast-growing States (Gujarat and Maharashtra) as well as growth failures (Bihar and Uttar Pradesh). Also, the incidence of sex-specific abortions cannot be explained by the availability of medical resources for determining the sex of the foetus: Kerala and West Bengal in the non-deficit list, both with the ratio of 96.3 girls to 100 boys (comfortably higher than the benchmark cut-off of 94.8), have at least as much medical facilities as in such deficit States as Madhya Pradesh or Rajasthan. If commercial facilities for sex-selected abortion are infrequent in Kerala or West Bengal, it is because of a low demand for those specific services, rather than any great supply side barrier.

This suggests that we have to look beyond economic resources or material prosperity or GNP growth into broadly cultural and social influences. There are a variety of potential connections to be considered here, and the linking of these demographic features with the rich subject matter of social anthropology and cultural studies would certainly be important to pursue.²⁵ There is perhaps a common link with politics as well. Indeed, it has been noted, in other contexts, that the States in the north and the west have, by and large, given much more room to religion-based sectarian politics than have the east or the south, where religion-centred parties have had very little success. For example, of the 197 members of Parliament from the Bharatiya Janata Party (BJP) and the Shiv Sena elected in 1999, as many 169 won from States in the north and the west. Even if we take out the BJP members who, though elected from Bihar or Madhya Pradesh, come from the recently formed relatively “eastern” States of Jharkhand and Chhatisgarh (which, incidentally, do have “eastern” female-male ratios above the benchmark line), the predominance of the north and the west in the representation of the Sangh Parivar remains strong. It is not easy to settle, without further scrutiny, how significant these regional, cultural or political associations are, and how (and even in which direction) the causal influences operate. But the remarkable geographical division of India into two largely contiguous parts in terms of female-male ratio among children (reflecting the combined influence of inequality in natality and post-natal mortality) does call for acknowledgement and further analysis. It would also be important to keep a close watch on whether the incidence of sex-specific abortions will significantly increase in States in which they are at this time quite uncommon.

Summing up

I may end by trying briefly to identify some of the principal issues I have tried to discuss. First, I have argued for the need to take a plural view of gender inequality,

which can have many different faces. The prominent faces of gender injustice can vary from one region to another, and also from one period to the next.

Second, the effects of gender inequality, which can impoverish the lives of men as well as women, can be more fully understood by taking detailed empirical note of specific forms of inequality that can be found in particular regions. Gender inequality hurts the interests not only of girls and grown-up women, but also of boys and men, through biological connections (such as childhood undernourishment and cardiovascular diseases at later ages) and also through societal connections (including in politics and in economic and social life).

To have an adequate appreciation of the far-reaching effects of disparities between women and men, we have to recognise the basic fact that gender inequality is not one affliction, but many, with varying reach on the lives of women and men, and of girls and boys. There is also the need to reexamine and closely scrutinise some lessons that we have tended to draw from past empirical works. There are no good reasons to abandon the understanding that the impact of women's empowerment in enhancing the voice and influence of women does help to reduce gender inequality of many different kinds, and can also reduce the indirect penalties that men suffer from the subjugation of women. However, the growing phenomenon of natality inequality raises questions that are basically much more complex. When women in some regions themselves strongly prefer having boys to girls, the remedying of the consequent natality inequality calls at least for broader demands on women's agency, in addition to examining other possible influences.

Indeed, in dealing with the new - "high tech" - face of gender disparity, in the form of natality inequality, there is a need to go beyond just the agency of women, but to look also for more critical assessment of received values. When anti-female bias in action (such as sex-specific abortion) reflects the hold of traditional masculinist values from which mothers themselves may not be immune, what is needed is not just freedom of action but also freedom of thought - in women's ability and willingness to question received values. Informed and critical agency is important in combating inequality of every kind. Gender inequality, including its many faces, is no exception.

(Based on the text of an inauguration lecture for the new Radcliffe Institute at Harvard University, on April 24, 2001. A shortened version of this paper was published in *The New Republic* on September 17, 2001; this is the full text)

ENDNOTES

1. See William St. Clair, *The Godwins and the Shelleys* (New York: Norton, 1989), pp. 504-8.
2. Bina Agarwal, among others, has investigated the far-reaching effects of landlessness of women in many agricultural economies; see particularly her *A Field of One's Own* (Cambridge: Cambridge University Press, 1994).
3. World Health Organisation, *Handbook of Human Nutrition Requirement* (Geneva: WHO, 1974); this was based on the report of a high-level Expert Committee jointly appointed by the WHO and FAO - the Food and Agriculture Organisation.
4. *Development as Freedom* (New York: Knopf, and Oxford: Oxford University Press, 1999), Chapter 1.
5. Presented in my "More Than a Hundred Million Women Are Missing," *The New York Review of Books*, Christmas Number, December 20, 1990, and in "Missing Women," *British Medical Journal*, 304 (March 1992).
6. The fact that I had used the sub-Saharan African ratio as the standard, rather than the European or North American ratio, was missed by some of my critics, who assumed (wrongly as it happens) that I was comparing the developing countries with advanced Western ones; see for example Ansley Coale, "Excess Female Mortality and the Balances of the Sexes in the Population: An Estimate of the Number of 'Missing Females'," *Population and Development Review*, 17 (1991). In fact, the estimation of "missing women" was based on the contrasts within the so-called third world, in particular between sub-Saharan Africa, on the one hand, and Asia and North Africa, on the other. The exact methods used were more elaborately discussed in my "Africa and India: What Do We Have to Learn from Each Other?," in Kenneth J. Arrow, ed., *The Balance between Industry and Agriculture in Economic Development* (London: Macmillan, 1988); and (with Jean Drze), *Hunger and Public Action* (Oxford: Clarendon Press, 1989).
7. Stephan Klasen, "'Missing Women' Reconsidered," *World Development*, 22 (1994).
8. See Ester Boserup, *Women's Role in Economic Development* (London: Allen & Unwin, 1970); M.R. Rosenzweig and T.P. Schultz, "Market Opportunities, Genetic Endowments, and Intrafamily Resource Distribution," *American Economic Review*, 72 (1982).
9. On this see my "Women and Cooperative Conflict," in Irene Tinker, *Persistent Inequalities* (New York: Oxford University Press, 1990). See also J.C. Caldwell, "Routes to Low Mortality in Poor Countries," *Population and Development Review*, 12 (1986); Jere Behrman and B.L. Wolfe, "How Does Mother's Schooling Affect Family Health, Nutrition, Medical Care Usage and Household Sanitation," *Journal of Econometrics*, 36 (1987); Jean Dreze and Amartya Sen, *Hunger and Public Action* (Oxford: Clarendon Press, 1989).
10. I have discussed these factors in my "More Than a Hundred Million Women Are Missing" (1990). See also Jean Dreze and Amartya Sen, *India: Economic Development and Social Opportunity* (Delhi: Oxford University Press, 1995), and particularly V.K. Ramachandran, "Kerala's Development Achievements," in Jean Dreze and Amartya Sen, eds., *Indian Development: Selected Regional Perspectives* (Delhi: Oxford University Press, 1996).
11. See the literature on this cited in *Development as Freedom* (1999).
12. One of the earliest and pioneering studies was by Lincoln Chen, E. Huq and S. D'Souza, "Sex Bias in the Family Allocation of Food and Health Care in Rural Bangladesh," *Population and Development Review*, 7 (1981).
13. See my joint paper with Sunil Sengupta, "Malnutrition of Rural Indian Children and the Sex Bias," *Economic and Political Weekly*, 19 (1983).

14. See my joint paper with Jocelyn Kynch, "Indian Women: Well-being and Survival," *Cambridge Journal of Economics*, 7 (1983), and also *Resources, Values and Development* (Cambridge, MA: Harvard University Press, 1984).
15. See Peter Svedberg, *Poverty and Undernutrition: Theory and Measurement* (Oxford: Clarendon Press, 2000), for an illuminating and thorough analysis of comparative nutrition in South Asia and sub-Saharan Africa.
16. See S.R. Osmani, "Poverty and Nutrition in South Asia," in ACC/SCN, *Nutrition and Poverty* (1997), and also Nutrition Policy Paper No. 16 (Geneva: WHO, 1997). This is the First Abraham Horowitz Lecture of the United Nations. See also the references to the literature cited by Osmani.
17. On this see Osmani, "Poverty and Nutrition in South Asia" (1997), and also the references cited there.
18. See D.J.P. Barker, "Intrauterine Growth Retardation and Adult Disease," *Current Obstetrics and Gynaecology*, 3 (1993); "Foetal Origins of Coronary Heart Disease," *British Medical Journal*, 311 (1995); *Mothers, Babies and Diseases in Later Life* (London: Churchill Livingstone, 1998). See also P.D. Gluckman, K.M. Godfrey, J.E. Harding, J.A. Owens, and J.S. Robinson, "Fetal Nutrition and Cardiovascular Disease in Adult Life," *Lancet*, 341 (1995).
19. Siddiq Osmani and Amartya Sen, "The Hidden Penalties of Gender Inequality: Fetal Origins of Ill-Health," mimeographed, Trinity College, Cambridge, 2001.
20. On the extensive role and reach of capabilities of women, see particularly Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000).
21. UNDP's Human Development Report 1995 (New York: United Nations, forthcoming: 1995) presents an inter-country investigation of gender differences in social, political and business leadership, in addition to reporting on gender inequality in terms of more conventional indicators. See also Sudhir Anand and Amartya Sen, "Gender Inequality in Human Development: Theories and Measurement," in UNDP, *Background Papers: Human Development Report 1995* (New York: United Nations, 1996).
22. The complex influences that operate in fertility decline, including cultural adaptations, have been discussed by Alaka Basu and Sajeda Amin in "Conditioning Factors for Fertility Decline in Bengal: History, Language Identity, and Openness to Innovations," *Population and Development Review*, 26 (2000).
23. A recent study of local governmental decisions in India brings out the substantial nature of this change, as a consequence of women coming to occupy leadership positions in the "Panchayats" (local administrative bodies); see Raghavendra Chattopadhyay and Esther Duflo, "Women's Leadership and Policy Decisions: Evidence from a Nationwide Randomised Experiment in India," mimeographed, Department of Economics, MIT, 2001.
24. Note, however, that the Chinese and Korean figures cover children between 0 and 4, whereas the Indian figures relate to children between 0 and 6. However, even with appropriate age adjustment, the general comparison of female-male ratios holds in much the same way.
25. See, among other contributions, Irawati Karve, *Kinship Organization in India* (Bombay: Asia Publishing House, 1965); Pranab Bardhan, "On Life and Death Questions," *Economic and Political Weekly*, Special Number, 9 (1974); David Sopher, ed., *An Exploration of India: Geographical, Perspectives on Society and Culture* (Ithaca, NY: Cornell University Press,

1980); Barbara Miller, *The Endangered Sex* (Ithaca, NY: Cornell University Press, 1981); Tim Dyson and Mick Moore, "On Kinship Structure, Female Autonomy, and Demographic Behaviour in India," *Population and Development Review*, 9 (1983); Monica Das Gupta, "Selective Discrimination against Female Children in Rural Punjab," *Population and Development Review*, 13 (1987); Alaka M. Basu, *Culture, the Status of Women and Demographic Behaviour* (Oxford: Clarendon Press, 1992); Satish Balram Agnihotri, *Sex Ratio Patterns in the Indian Population* (New Delhi: Sage, 2000).

Workers sterilised in return for guns: Vasectomy is the price of a shotgun license as Indian state tries to reduce population

By Randeep Ramesh (in Lakhimpur)

The Guardian

Monday, 1 November 2004

On the fringe of north India, five sweating men expertly scythe their way through a golden-green field of paddy. The air is thick with the whoosh of sharpened blades. Nearby, bullocks loll and veiled women walk carrying cowpats on their heads for use as fuel. Beneath the rural idyll, however, lies a village in torment because of a radical new population control measure: guns for sterilisation.

Three months ago, officials in three districts of Uttar Pradesh, India's largest and most populous state announced that to obtain a single-barrel shotgun, two people would need to be sterilised; for a revolver licence, the price would be five. What happened to the quintet of farm workers perspiring in the fields around the village of Shashitanda appears to be the unhappy result of the radical policy. In late July, a rich farmer seeking a gun licence is said to have had all five forcibly sterilised at a nearby clinic.

Jagdish Singh, 20, shifting nervously in front of assembled villagers, claimed he went along with the farmer because he was offered work cutting grass at 50 rupees (60p) a day. "[Instead] I was taken to hospital and given a green pill which I was told was to protect against malaria. I don't remember anything else until I woke up the next day in pain." Jagdish, an unmarried labourer, was held hostage after the operation in the farmer's house, and released only when the rest of the villagers turned up to rescue the five men. "My life is over," he said. "I have no children. How can I become a man again, everyone knows I have had this done to me?"

All five men, four of whom have children, complained to police and registered a case with a local lawyer but said little had happened as a result. "My wife is very angry with me; she scolds me day and night. What can I do? I have been cheated for a gun," said Preetam Singh, who also claimed he was operated upon without his consent.

Avatar Singh, the farmer accused by the five, agreed he had wanted a gun but denied he had forced anybody to undergo the operations. "I did not do anything wrong. The matter is now closed," he said.

Population remains a pivotal issue for India, the world's largest democracy, where there is an increase of 20 million people each year. India expects to overtake China as the world's most populous nation by the middle of the century.

Uttar Pradesh, of all the nation's states, sits on top of the demographic explosion. It crams 170 million people - more than Russia - into a space the size of Britain. The state, largely rural, contains a 10th of the world's poor and half of its female adult workforce cannot read or write.

Sharp divide

India's latest census revealed a sharp divide between economically advanced southern states and poorer northern ones. Whereas the former revealed a sharp decrease in the rate of population growth in the last decade, the hugely populous states in the north registered rises.

The spectre of coercive sterilisation evokes dark memories for India. In the mid-1970s, the country's then Prime Minister, Indira Gandhi, suspended democracy imposing press censorship and imprisoning political opponents for 21 months. During this time, her ambitious son, Sanjay, organised a nationwide compulsory sterilisation campaign aimed at lowering the birthrate. The campaign, which mandated vasectomies for men with families of two or more children, met with widespread fear and resistance. Thousands were forcibly sterilised.

Uttar Pradesh's population policy calls for 930,000 sterilisations this year. It has been backed by \$360m of aid money from USAid, the American government's donor agency. Campaigners say the money would be better spent raising educational standards, encouraging the use of contraception and setting up an efficient public health system. "Sterilisation is an extremely invasive procedure, especially for women," said Jashodhara Dasgupta of Healthwatch, which campaigns on public health issues in Uttar Pradesh. "It is carried out here in unhygienic conditions often under poor medical supervision. Yet it is being promoted while contraceptives like the diaphragm are being withdrawn. The whole thrust of the policy is that we have to stop poor people from reproducing."

However, officials said they only managed to meet half the annual sterilisation target and the state must reduce fertility with further incentives. With half a million pending applications for firearm licences in Uttar Pradesh, the upshot is the new "guns for sterilisation" population policy. The new directive has been condemned by critics as

encouraging gun culture in a state that already accounts for half of India's firearm murders. It is fairly common in Uttar Pradesh to see men strolling around with rifles slung over their shoulders or revolvers hung from their waists.

In the northern town of Lakhimpur, rows of gun shops sell pistols and double-barreled shotguns for a few hundred pounds. Shop owners said there were two main reasons for the gun culture: the emergence of weapons as a status symbol and deteriorating law and order. Gurpreet Singh, a 35-year-old businessman, carries a revolver to "protect oneself and one's family." "I decided to get a gun after my neighbour and his family was killed by robbers a while ago," he said. "If you have money you are a target around here."

Administrators remain unapologetic, saying a carrot-and-stick approach has long been practised in Uttar Pradesh. For years, poor people who are sterilised receive priority for houses, small loans, and extra rations of essential items such as sugar. "We have to meet our [sterilisation] goals. The target in this area alone is 18,000 and so far we only have 3,000 sterilisations," said Iqbal Hussain, chief medical officer of Lakhimpur district. "This is a healthy incentive scheme no different to when we offer extra bags of sugar or cash to people to have operations."

ANNEXURE 9

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The Human Rights Law Network (HRLN) is a nationwide collective of lawyers and social activists dedicated to using the legal system to advance human rights. It has an active presence in many states throughout India and also collaborates with social movements, human rights organizations, and grass-roots development groups to enforce the rights of women, children, dalits, people with disabilities, farmers, HIV positive people, the homeless, indigenous people, prisoners, refugees, religious and sexual minorities, and workers, among others.

HRLN provide pro bono legal services to those with little or no access to the justice system, files public interest litigation, conducts advocacy and legal awareness programmes, investigates human rights violations, participates in human rights campaigns, and publishes a variety of materials on human rights issues. HRLN is a division of the Socio-Legal Information Centre.

Coercion versus Empowerment is a book that aims at a rollback on coercion, targets, incentives and disincentives as the basis of India's population policies. It brings out the gross violations of the entire range of human rights that result from such approach: the right to choice/ self-determination, democratic participation, privacy, dignity, safety, security, to right to life itself. It argues that such policies have been found to be anti-poor, anti-women, anti-dalits/ tribals/ other backward castes, anti-youth, anti-girl child, apart from being generally, anti-people and anti-democracy. The cost that the population pays for such policies in terms of concomitantly reduced emphasis on health, education and other development indices is the other aspect of the matter that has been highlighted. Throughout the book also exposes the myth of a population explosion in India and therefore the very needlessness as well as ineffectiveness of coercive policies in addressing the country's population growth.

In October 2004, a national-level People's Tribunal on Coercive Population Policies and the Two-Child Norm (TCN) was held in New Delhi to create public dialogue on these very issues. The perspectives of experts and civil society groups working in 15 states, as well as over 50 individual testimonies, presented during the People's Tribunal form the core of this book. Also included are the recommendations issued by the eminent Members of the Tribunal to repeal all coercive population policies and TCN legislation within the country. These recommendations are a call to action for the government, civil society, and the general population to take a stand against population policies, especially the TCN.

This book is essential reading for anyone interested in human rights, reproductive rights as also all those who are concerned for an even-handed development paradigm.

