

Two-Child Norm Victimising the Vulnerable?

Though the press has reported on the fallout of the implementation of the two-child norm in the six Indian states of Haryana, Himachal Pradesh, Rajasthan, Andhra Pradesh, Madhya Pradesh and Orissa, there is a dearth of studies on the subject. This paper undertakes an empirical study of the perceptions and views of the policy-makers, programme implementers and disqualified elected representatives in four of these states. Some have argued that adoption of the two-child norm by elected panchayat members would have a “demonstration” effect on the community. However, evidence suggests that even at the village level, caste, class and gender politics dominate and those who belong to the backward communities offer no role model to members of higher castes or their own kith and kin. The two-child norm impinges on basic human rights, is anti-women and anti-weaker segments.

LEELA VISARIA, AKASH ACHARYA, FRANCIS RAJ

I Genesis of Two-Child Norm

The virtual stagnation in India's population growth during the inter-censal periods between 1971-81 and 1981-91 (average annual growth rate hovering around 2.2 per cent) was perceived by many as a failure of India's family planning programme, urgently requiring stringent measures. However, the government of India acknowledged after the results of the 1991 Census were released that the problems were with quality of services and access. The centralised planning and target-oriented family planning approach had not worked partly because it allowed little innovation or flexibility (Planning Commission 1992). The approach pursued thus far did not stabilise population; quality of health care services suffered and health and contraceptive needs of couples remained unmet. Partly as a response, in 1992 the National Development Council set up a committee on population that proposed the formulation of a National Population Policy (NPP). The expert group under the chairmanship of M S Swaminathan was constituted to draft the population policy, which set the goal of India attaining replacement level of fertility by 2010. It also recommended that the states should prepare their own population policies taking into account the state-specific situation and issues.

The three states of Rajasthan, Andhra Pradesh and Madhya Pradesh, which recorded relatively high rates of population growth during 1971-91, drafted their population policies in the late 1990s with the assistance of Futures Group International before the NPP 2000 was approved by the National Development Council. They set goals to lower fertility to replacement level or to nearly half the prevailing level in the shortest span of 10 to 15 years. In order to do so, these states, along with Haryana and Orissa, passed laws to prospectively debar from holding office those elected representatives to panchayati raj institutions (PRI) or local

self government bodies, who do not adopt the two-child norm. It was realised that given the small number of elected representatives, imposing such a norm on them was most unlikely to bring a reduction in the fertility level of the state as a whole. However, the justification for this was sought in the underlying rationale that community members would perceive the elected representatives as “role models”. It has been argued that if an elected “representative accepts and advocates small family norm, it would have great impact on others and they are more likely to follow this norm”. Conversely, the elected representatives could be challenged: if they did not have the foresight to plan their families, could they be put in charge of planning for the community? [Bhat 2003]. Some non-governmental officials and scholars from Rajasthan hailed the measure as innovative [Chaturvedi et al 2002].

Interestingly, all state population policies have recognised that after the 1994 International Conference on Population and Development (ICPD) India approached the issue of population stabilisation from the perspective of reproductive rights and health and launched the Reproductive and Child Health (RCH) programme. The states have also explicitly acknowledged in their policy documents that a conducive environment for a small family norm can be created by ensuring gender equality, empowering women and improving their status through education. At the same time, as articulated in the Rajasthan's Population Policy, not all states of India would find it possible to implement all the components of the programme of action of ICPD [GoR 1999]. The population policies of Andhra Pradesh, Madhya Pradesh and Rajasthan have taken the position that in order to achieve certain demographic goals and population stabilisation, measures such as incentives and disincentives like making the two-child norm a precondition for elected representatives, observing minimum age at marriage for availing government facilities and services, linking health insurance benefits to sterilisation and even

proposing denial of food rations and free education to the third child would be necessary [Visaria 2002]. The old fear of galloping numbers, which was responsible for the zealous promotion of family planning in the mid-1970s, has resurfaced.

At the national level, however, as a signatory to the ICPD declaration, the Indian government in 1996 advocated a paradigm shift by removing contraceptive method-specific targets given to grassroot health workers.¹ This perspective also informed the NPP that the government adopted in 2000. The NPP 2000 affirmed that the government was committed to “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” [MoHFW 2000]. The current health minister also recently indicated in an interview that the centre did not support a two-child policy or any other coercive tactics, and would stand by the NPP, but since health is a state subject, it was not possible for the centre to play much of a role in influencing the states [Rai 2005].

Thus, there is clearly a tension/contradiction between what some of the states have been advocating and what the national commitment to Indian’s population is. Since the states are implementing the two-child norm through PRIs/State Panchayati Raj Acts, the centre cannot and is not able to directly intervene. It can only try to convince the state governments not to provide incentives or advocate disincentives for restricting family size. The panchayat raj ministry also expressed its inability to influence the states by saying that the two-child norm is a state subject and can only be or should be challenged at the state level [Sehgal 2004]. Alternatively, some NGO or individual would need to file a public interest litigation in the Supreme Court so that this whole issue could be looked at impartially.

In the six Indian states of Haryana, Himachal Pradesh, Rajasthan, Andhra Pradesh, Madhya Pradesh and Orissa, where people with more than two children are debarred from contesting elections for local self-government, the local and national press have reported on the fallout of making this an eligibility criterion for contesting panchayat elections.² Stories of how “sarpanchs” or “panchs” were disqualified or demoted from positions they were occupying and in some instances denied other benefits have been regularly making news [see Gurung 2004, Hariharan 2003, Murthy 2003, Rani 2004, Rao 2003]. Some of the affected representatives have sought justice in the court of law and the judgments passed by the courts, including Supreme Court, have also been in the news.

In fact, the decision of the Supreme Court in February 2005 to issue notices to the centre and six states to implement the two-child norm in order to curb the alarming population growth in the country upheld the disqualification of one Zile Singh as a municipality member under the Haryana Municipal Act, 1994. Further, it even went to the extent of upholding the judgment passed in 2003 by stating that “disqualification on the right to contest an election for having more than two living children does not contravene any fundamental right, nor does it cross limits of reasonability”. Close to 200 petitions challenging the constitutional validity of a provision in the Haryana Panchayati Raj Act, 1994, were filed in the court, but the bench dismissed them all. The apex courts said that the two-child norm “is in national interest to check the growth of population by casting disincentives even through legislation”.³ The Supreme Court order clearly goes against the spirit of the Cairo Programme of Action which states in no less terms that all couples and individuals have the basic

right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so.

The only known study to understand how the two-child norm was being implemented was undertaken during 2001-02 by a Madhya Pradesh based NGO – Mahila Chetna Manch – in five states of Haryana, Rajasthan, Madhya Pradesh, Andhra Pradesh and Orissa. From 21 districts, a total of 113 disqualified persons, ranging between three and six per district, were interviewed. Out of these, 40 respondents were chosen for in-depth study to examine the consequences of the imposition of the two-child norm. The respondents selected were those who (or whose wives) underwent abortion or sex selection tests, and whose wives were deserted. However, the limited analysis of the data collected suggests that majority of the disqualified were young, poor, from backward communities and illiterate, raising concerns about human and democratic rights, equity, social justice and gender [Buch 2005a, 2005b].

In view of the larger rights, justice and equity concerns and limited data, an empirical study of the perceptions and views of the policy-makers, programme implementers and some of the disqualified elected representatives in the states of Haryana, Rajasthan, Andhra Pradesh and Madhya Pradesh was carried out during 2004-05. In-depth interviews were conducted with 20 policy-makers and programme managers, 12 academicians and 12 representatives of the NGO sector. Also, 30 disqualified elected representatives from the four states were interviewed in depth.

Section II of this paper discusses the methodology followed to identify the disqualified representatives. The views on two-child norm and mechanisms used by the implementing officers to disqualify people are given in Section III. Section IV discusses the perceptions of the elected representatives who were disqualified from holding office for violating the two-child norm. Their views were sought on issues such as the level of awareness about the legislation, perceptions about how caste politics is played out at the village level, efforts and measures used to stay in the position and also the importance of having a son and how that is weighed against holding on to a position in the village panchayat.

II Background and Methodology

The demographic profile of the population of the four states is shown in Table 1. Except for Haryana, the other three states are rather large with population exceeding 55 million in 2001. Three of the four states (with the exception of Andhra Pradesh) reported higher than the national average population growth during the 1991-2001 decade. It is evident that except for Andhra Pradesh, all the states have set for themselves very ambitious targets for achieving replacement level fertility by 2011 or so implying a huge reduction from the present levels in a short span of around 10 years.⁴

As shown in Table 2, the fieldwork was carried out during November 2004-March 2005. The stakeholders were interviewed with interview guides after informing them that their identity would not be divulged and all the information provided by them would be treated as confidential. Informed consent was also taken and stakeholders were free not to participate in the interview.

In each state, the district was purposively selected after talking to the officials in the state capital as well as members of NGOs working on health and panchayati raj issues. The team tried to obtain the list of the disqualified elected representatives from the offices of the collectorate and departments of panchayati raj. However, the government offices could not provide a systematic or complete list of disqualified representatives to enable us to draw a representative sample. Since the universe was not available, we relied on the information provided by NGO workers and few research institutes working on population and health issues who had some knowledge of the villages where representatives were disqualified, and sought their views on implementation of the two-child norm in their respective states. The team went on its own to the villages selected from the information provided by the collectorate or the local NGOs about individuals who were disqualified for violating the two-child norm. In each district between six and 11 disqualified persons were interviewed – they were either sarpanch or deputy sarpanch and in some cases even panch members. In all 30 disqualified persons were interviewed in the four states. Information on the salient features of the implementation of the two-child norm in the four states is given in Table 3.

Admittedly, the number of individuals interviewed is quite small, but the purpose of the study was to capture and analyse the perceptions of those who have been adversely affected by the imposition of the two-child norm.

Section III discusses the perceptions of officials as to why the norm of two-child is necessary and should be implemented. Additionally, their views were also sought on a number of issues ranging from implementation and monitoring of the two-child norm, ambiguities in legislation, extent of spreading awareness about the norm among people, and their reactions to possible adverse impact. The views of the disqualified members are presented in Section IV.

III

Implementation and Monitoring by Officials

Although the state population policies mention the pre-condition of a two-child norm for contesting election of local bodies (except that of Andhra Pradesh), the implementation is through Panchayati Raj Act (see Table 2) in all the states. The provision of a two-child norm was introduced in the Panchayati

Table 1: Select Demographic Parameters of India and Four States

Indicators	India	Haryana	Rajasthan	Madhya Pradesh	Andhra Pradesh
Population in million (2001 Census)	1028.6	21.1	56.5	60.3	76.2
1991-2001 intercensal increase (in per cent)	21.5	28.4	28.4	24.3	14.6
Density (per sq km)	325	478	165	196	277
Total fertility rate from SRS (1999)	3.2	3.2	4.2	3.9	2.4
Percentage of women with unmet need for contraception (1998-99 NFHS Survey)	15.8	7.6	17.6	16.2	7.7
Infant mortality rate (2001)	66	66	80	86	66
Female literacy (6+ population for 2001)	53.7	55.7	43.9	50.3	50.4
Juvenile sex ratio (females per 1000 males for 2001)	933	861	921	919	978
State Population Policy (SPP)	2000	No official policy	1999	2000	1997
Replacement level fertility of 2.1 – Target year	2011	No official target announced	2016, now 2011	No target mentioned in SPP	2000

Table 2: Methodology Adopted in the Study

Selected District	Haryana Panchkula	Rajasthan Tonk	Madhya Pradesh Sehore	Andhra Pradesh Medak
Dates of field work	November-December 2004	January 2005	February 2005	March 2005
Sampling Procedure	Snowball sampling with the help of local NGOs	Snowball sampling with the help of local NGOs	Snowball sampling with the help of local NGOs	Snowball sampling with the help of local NGOs
Departments contacted	Panchayat, MoHFW, Punjab Univ	Panchayat, MoHFW, IIMHR	Panchayat, MoHFW, PRC	Not known
In-depth interviews	Policy-makers (5) Researchers (4) NGO rep (4) Disqualified representatives (6)	Policy-makers (7) Researchers (7) NGO rep (4) Disqualified representatives (7)	Policy-makers (5) Researcher (1) NGO rep (4) Disqualified representatives (6)	Policy and Programme managers (3) Disqualified representatives (11)

Table 3: Salient Features of Two-Child Norm in Four States of India

	Haryana	Rajasthan	Madhya Pradesh	Andhra Pradesh
Legislative provision	Section 175 (1)-(q) of Haryana Panchayati Raj Act, 1994	Section 19 (I) of Rajasthan Panchayati Raj Act, 1994	Section 36 (D) of MP Panchayati Raj Act, 1993	Section 19 (C) of AP Panchayati Raj Act, 1994
Cut-off date for implementation	April 25, 1995	November 27, 1995	January 26, 2001	June 1995
For whom	Elected representatives of panchayat and municipal bodies	PRIs, municipal bodies and government employees (for promotion)	Elected representatives of panchayat, local bodies, mandis and cooperatives	For panchayat, mandals, zilla parishads and municipalities
Implementing Agency	District and block devt panchayat offices	District and block devt panchayat offices	District collectorate	District collectorate and district panchayat offices
Involvement of stakeholders before introducing law	Nil among NGOs and civil society	High among government department, low among NGOs	NGOs not invited in discussion workshops	NGOs not involved in consultation

Raj Act by inserting a specific section and amending the act by introducing a cut off date for implementation. For example, section 19(I) of the Panchayat Act of Rajasthan debar and disqualifies a person to be a member of a panchayat if he/she has more than two living children, one of whom is born on or after November 27, 1995. The number of children produced before the cut-off date is immaterial and the law is not applicable to such a case.

However, the date of implementation differed from state to state due to the timing of panchayat elections. For example, in Haryana, when the two-child norm became effective in 1995, panchayat elections were already held and the term of the members was from 1995 to 2000. So in reality, the law became applicable only in the next panchayat elections in 2000 and no one was disqualified between 1995 and 2000. However in Madhya Pradesh, despite the fact that the two-child norm was introduced after the panchayat elections were over in 2000, the new government started disqualifying elected representatives.

Our team tried to collect information on the total number of PRI positions in all the four states and also the number of elected representatives who were either disqualified or faced disqualification for violating the norm at the time of the study (Table 4). The number of disqualified persons provided by the officials may not be very accurate due to the lack of systematic database. In fact, it was learnt that no government department maintains a systematic list of disqualified individuals disaggregated by caste, gender, region, etc. The reason given for not maintaining systematic information was that the two-child norm was not a programme and therefore did not require the generation and maintenance of records. Prima facie, it appears that the proportion of elected representatives who have been disqualified has been higher in Haryana compared to other states.

Also, in the three-tier panchayati raj system, more people have been disqualified at the gram or village panchayat level followed by the block panchayat and district panchayat levels. For example, in the case of Madhya Pradesh, not a single block and district panchayat president has been disqualified whereas 210 sarpanchs have been.

While talking with policy-makers, we got an impression that although NGOs and civil society were involved in workshops conducted before the formulation of state population policies, there was virtually no interaction with them before introducing the two-child norm. According to one official in Haryana's panchayati raj department, "there was no such need" as it was debated in the state assembly. However, the involvement of various government departments was emphasised for "intersectoral coordination". In Madhya Pradesh, the discussion with the officials on this issue centred on the absolute decline in population among certain tribal groups who should be excluded from the purview of this norm.⁵

It is indeed surprising that no monitoring mechanisms have been devised for implementation of the two-child norm. Disqualification takes place by filing a complaint (even by sending a post card informing authorities about someone who has had or is going to have a third child!), which is followed by an inquiry usually by the block development officer. If the officer confirms violation of the norm, a notice is sent to the concerned individual to appear for a hearing at the district headquarter. After the hearing, the appropriate authority takes a decision and sends the notification to the concerned party. Nonetheless, the option of appealing in court remains open. However, action leading to disqualification is usually not initiated in the absence of any complaint.

Policy-makers felt that it was not feasible or even possible for them to monitor adherence to the norm by PRI members. One official commented: "Do we have time to go and check who is producing how many children? Naturally, we will take action on the basis of filed complaints". It is also interesting to note that the disqualification authority differs from state to state. In Madhya Pradesh the authority to disqualify lies with the district collector, in Andhra Pradesh, on the other hand, the district panchayat officer is vested with the authority.

Ambiguities in Legislation

The term two-child norm, although it appears self-explanatory, contains some ambiguities about how to interpret events such as the birth of twins, stillbirth, or instances where parents decide to give away the child for adoption. In Rajasthan, policy document mentions that twins would be considered as one unit and stillbirth would not be counted as birth. However, in Madhya

Table 5: Profile of Disqualified Members Interviewed in Four States

Characteristics	Number
Number disqualified	30
Age range	23-50
Caste	
SC/ST/Other backward	28
Higher castes	2
Gender	
Men	22
Women	8
Education	
Illiterate	9
Some schooling	21
Occupation	
Labourer	8
Cultivator/other	22
Position	
Sarpanch	9
Deputy sarpanch	8
Panch members	13

Table 4: Elected PRI Members and Members Disqualified for Violating Two-Child Norm (2000-04)

State Elected Rep	Haryana		Rajasthan		Madhya Pradesh		Andhra Pradesh	
	No @	No Disqualified	No	No Disqualified	No	No Disqualified	No	No Disqualified*
Sarpanch	6035	249	9188	60	22931	210	21914	
Dy Sarpanch		—	9188	37	22931	28	21914	
Panch members	54764	1044	105227	421	364311	604	213242	
Panchayat samiti members	2426	49	5227	28	6842	20	14617	
Total	63225	1342	128907	548	417015	862	271687	94

Notes: @ The details about the number of elected representatives could not be obtained from the state machinery.

* The figures for Andhra Pradesh for the elected PRI member pertain to 15 of the 23 districts. The break-up of those who were disqualified was not available.

Pradesh the district collector has the discretionary powers to take a decision in the case of twins since there is no stated policy position on this. The Andhra Pradesh Panchayati Raj Act is also silent on stillbirths and twins/triplets. Even the Supreme Court in its judgment did not resolve the ambiguity and proclaimed that “such (twins/triplets, etc) are not normal cases and the validity of the law cannot be tested by applying it to abnormal situation”. All states, however, have the same stand on the child given away for adoption; such a child would be counted for disqualification.

Efforts to Spread Awareness

There seem to have been little efforts on the part of programme implementers to inform and educate people at large, including those contesting PRI elections, about the imposition of the two-child norm. However, policy-makers brushed aside the problem of the lack of awareness among grassroot functionaries about the norm by saying that ignorance of law was not an excuse. According to them, people can pretend ignorance or indulge in wrongdoing when faced with disqualification. In the words of one official:

Despite the fact that people know about this rule, they file wrong affidavit[s] stating that they have only two or less children when in fact they have more. Signing the nomination form requires a declaration that none of the provisions of the Panchayati Raj Act are being violated. If some person with more than two children files a nomination form by signing, that itself becomes a criminal offence.

The state government believes that aspiring candidates for the position of panch and sarpanch should be aware of the two-child norm and it is their responsibility to know various clauses of the Panchayati Raj Act. According to government officials, reasons like poverty and illiteracy cannot be cited as an “excuse” for not knowing the law.

Possible Adverse Impacts

Many activists and NGO workers have expressed concern about the possible adverse impact of the imposition of two-child norm on weaker and marginalised sections of society. When trying to elicit the views of policy-makers on the subject, some denied such a possibility. However, since systematic data are not maintained, it was difficult to refute or support the claim that the two-child norm has adversely affected the representatives belonging to scheduled castes or tribes or women.⁶ The official position taken by many was that the norm is “bias-free” as it is applicable to PRI aspirants of all castes, classes and genders. According to one official:

We have not drafted this law for the weaker sections of the society. The law is for all PRIs. If some people are illiterate and backward, what can we do about it? Existing social structures are beyond government’s control. Problems like son preference and sex-selective abortion were even there before and the two-child norm has not created them.

Some even opined that disqualification would bring the much-required awareness among poor communities who would start adopting the small family norm. Under the current law, a person with more than two children can become a member of parliament (MP) or of the legislative assembly (MLA) but not of a panchayat. When the discriminatory nature of this norm (not applicable to MPs and MLAs) was brought up, government officials

maintained that enacting such legislation (for MPs and MLAs) was not under the purview of the state government. Some felt that the PRI representatives are better connected with the local communities and they can have a better demonstration effect. Even the Supreme Court judgment voiced this viewpoint:

To make a beginning, the reforms may be introduced at the grassroots level so as to spiral up or may be introduced at the top so as to percolate down. Implementation in a phased manner is welcome for it receives gradual willing acceptance and invites lesser resistance.

Contrary to claims made by women’s groups, some policy-makers believed that the two-child norm would contribute to women’s empowerment because the law works towards restricting the number of pregnancies. It was opined that this norm would help break the vicious cycle of more pregnancies – powerlessness – poverty – more pregnancies. It was also argued that hard-core measures are required for population control and there is nothing wrong in using a “stick”. Possibilities like deserting the wife, giving away the child for adoption, etc, were brushed aside by terming them as “sporadic cases” rather than a “trend”. According to some officials, it was imperative to take a “holistic” perspective and not analyse the two-child norm in “isolation”.

Hardly any policy-maker felt that the norm could possibly have an adverse impact on the sex ratio at birth. One scholar of a research institute, who held strong views in favour of a small family norm, even argued that given the son preference in Indian society, even the promotion (as against disincentives like disqualification) of a small family would have an adverse impact on sex ratio. “Does this mean that we should not promote the concept of small family?” The point made was that one must endeavour to minimise adverse impact rather than eliminate the law.

Further, no single political party has initiated the two-child norm. Different parties were in power in these states at the time of introduction of the norm. Despite the change of political parties in power in some of the states, the norm has survived suggesting that there is an agreement cutting across political ideology. Overall, at the levels of policy-makers and programme implementers, there is an acknowledged acceptance of the need for the two-child norm. They also seem to be deriving support from some researchers and scholars although members of the NGO groups have been crying hoarse that imposition of such a norm violates basic human rights, is anti-women and anti-weaker segments of society.

IV Perspective from the Field

Most of the disqualified respondents whom we contacted in the four states had a low socio-economic status in terms of caste (also in terms of income, occupation, etc). Barring a few, the majority of them belonged to scheduled castes, tribes and other backward castes. The few women who were interviewed were elected on the seats reserved for women. Since they were young in age, a majority of them had some education (Table 5). Also, those younger in age faced disqualification because they were in their prime reproductive ages whereas those who were older generally had their children before the stipulated cut off date. The law does not apply to those members who have had all their children, regardless of the number, before the stipulated cut off date, which varied from state to state.

Level of Awareness

When we asked those who were disqualified whether they knew about the norm in advance, many indicated that they were unaware that there was such a law. In fact, the disqualification letter from the government came as a surprise to several of them. An ex-panch from Haryana informed us that she had four daughters at the time of election and had reported that in the nomination form. No objection was taken at the time of her filing the nomination papers. She lamented: "I did not know the law but when government knew, why did they not stop me then? What's the point in giving the post and then snatching [it] away?" Some people had incomplete information about the two-child norm. According to an ex-ward panch in Rajasthan:

I knew very well that only those who have two or less children could fight election[s] and I was eligible. But I never knew that even after becoming panch one can be removed from the position if s/he has the third child. This is what happened with me. She (daughter) arrived and I was removed.

Evidently, little effort is made to inform members of communities about the norm and its details. One may recollect that the official position has been that people should find out themselves about the norm and that it is not the responsibility of the policy-makers or programme managers to educate people.

Getting Elected and Undertaking Development Works

All disqualified people claimed that they fought the election for the development of their villages and contested the election with the help of family and community support. Family approval and support were critical in the case of most women candidates. Also, the reserved seats for women and backward communities, including for members of scheduled castes and tribes enabled many who could not afford to spend large amounts of money on election campaigning to participate in the political process. There often was a perception that elected members belonging to the higher castes hardly undertook any development work for the downtrodden or backward communities.

The disqualified elected PRIs from the backward communities including women reported having carried out development works such as getting roads built, school buildings constructed and hand pumps installed during their tenure. Most also claimed they would have done much more had they continued in their posts.

Perceptions about Role of Caste and Power Politics

Since a complaint is the only route to disqualification, the two-child norm appears to have become a political tool in the hands of some for settling personal scores and eliminating political opponents or competitors. Also, the two-child norm has apparently accentuated caste and party politics at the village level. Some admitted that members of upper caste were responsible for informing the police about the number of children they had and lodging complaints against them. Cases where the two-child norm was used as a tool to harass, threaten or blackmail the elected representatives were also reported. Some who resisted ended up spending substantial amounts of money fighting for their right. As one scheduled caste woman sarpanch facing disqualification reported, when she did not agree to give a few extra bags of wheat

to a high caste panchayat member meant for distribution during drought in the region:

I spend about 300 rupees every time I go for [a] hearing. Moreover my work on [the] farm suffers as well. If I do not go for [the] hearing, I will be disqualified. This is the price I am paying for not succumbing to the demand made by the panchayat member. Looking to the harassment I am facing, I think I should resign.

Some elected members from backward communities or women cannot easily be dislodged, but some powerful upper caste members can harass them and their family members for a long time. As a woman sarpanch from Madhya Pradesh reported during the interview:

Thakurs [one of the high castes] of my village were offended when I won the election and became the sarpanch. They think that how can people from our caste, who until recently didn't even dare to sit on [a] chair in front of them, become village leaders? When I went for flag hoisting on Independence Day, they created trouble and thrashed my husband who now lives under constant fear. They used to lock the panchayat office to prevent me from entering it and also pick up quarrels during gramsabha meetings. They brought [a] no-confidence motion twice but failed. Ultimately they filed a false complaint against me that I had three children.

According to the policy-makers if a scheduled caste member or a woman is disqualified, as per the rules, the vacant post is filled by others from the same social or gender category. Thus, the fear expressed by some that the upper caste members are trying to grab the seats of weaker sections is unfounded. However, we were informed of instances where complaints have been filed by powerful and well connected upper caste people against scheduled caste or women sarpanchs. Once they are disqualified, the non-scheduled caste deputy sarpanch can take over and act as sarpanch until elections are held.

Son Preference

In India's patriarchal society, son preference is strong and almost universal – a view clearly reflected not only among PRIs but also among the bureaucrats. A feeling was expressed that the government should take into account this social reality and not impose the norm on those who have had only daughters. As one ex-panch woman member from Rajasthan who was disqualified for giving birth to a child after the stipulated period said:

[The] government is neither allowing [a] third child nor giving permission for sonography. After all what does a person with two daughters do? Should she just pull on like that? If I had one son, I would not have faced social pressures from family members or elders of the village. I went for the third child hoping for a son, but ended with a third daughter and disqualification from my position of sarpanch.

Interestingly, many members and their families seemed to weigh the number and sex composition of children against the elected position in the village. Apparently, having a son outweighed the position in the village politics and so some willingly accepted their disqualification in favour of a son.

Strategies Adopted to Retain the Post

During our fieldwork a range of strategies to avoid disqualification and retain the elected position were reported. They included divorcing the wife, sending the pregnant wife to the natal home for a long time (so that no one in the village would

come to know about the pregnancy and delivery), undergoing abortion, giving away the child for adoption, disowning the third child or claiming that the child was of some relative and they were only care takers, tampering with birth certificates, changing the birth date, etc.

Some of these strategies seem to be used more when a “bigger position” like that of a sarpanch is at stake. According to our understanding the panch members apparently did not try to falsify reports or hide the arrival of the third child because they did not perceive their membership in the panch of much consequence or importance. A sarpanch from Madhya Pradesh reported to the team that:

Even before the birth in March 2001 of the last child, we had performed religious rites in front of the villagers to give away the yet-to-be born child for adoption. When we received a notice from [the] district collector, we also took the family that had adopted the daughter to the collector’s office. When the collector cross-examined them [to see] whether the child was adopted “before” or “after” the birth, that poor fellow stuttered and said “after”. On that ground I was disqualified although the girl is still with that family as the adoption was genuine. If it was false, we would have brought our daughter back.

Views and Perceptions of Disqualified Members

It was clear that the majority of those who were disqualified were not happy about it, but at the same time they felt such a law was required to control the population. One of the panch members from Rajasthan thought that since highly educated people make such laws, they cannot be wrong. Also, there was a passive acceptance of the norm because one cannot fight the government. Thus there was a mixed feeling of being at the receiving end as well as helplessness and inability to fight the system among the disqualified members of the PRIs. Very few have the wherewithal and courage to fight the system.

However, almost all opined that the law should also be applicable to MLAs and MPs and the members of the PRIs should not be singled out. Also, a feeling was expressed that the powerful and those who were politically connected managed to stay on in spite of violating the norm, whereas members of the weaker segments of society did not have the courage to fight the system.

Either the law should be for all, from village panch to prime minister or it should not be there at all. Can [the] population be controlled only by PRI members? In fact “big” [MPs/MLAs] people should adopt this norm first before forcing PRIs. There is no point in harassing small people like us.

Politically well-connected and powerful people always get away with almost anything. Even in the case of two-child norm, many powerful panchs and sarpanchs are holding on to their posts even after they have the third child. Nobody dares to complain against them.

V

Conclusion and Emerging Concerns

The study carried out in four states of India that have implemented the two-child norm for elected representatives at the grassroot level raises several issues that need to be probed and explored in a larger context.

The first issue we need to focus on is: whether the concern about the population explosion is substantiated by data or hard evidence. Would adoption of a two-child norm by a handful of

elected representatives at the lowest level restrict “explosion” even by demonstration for others to follow? Some have indeed argued that elected members are perceived as role models and any practice accepted by them is likely to be followed by other members of the community. However, the limited evidence that we have collected indicates that even at the village level, caste and class and also gender politics dominate. In the power game, those who belong to the backward communities offer no role model either to the members of the higher castes or to those who are their own kith and kin. We saw no evidence at all of anyone even mentioning that the elected members are their role models for practicing the small family norm.

The second context is that there is an urgent need to understand how population grows and stabilises. Since the 1970s, there has been a slow but steady decline in the total fertility rate in India, or the average number of children a woman has in her lifetime, from around six to almost half the number or three. This clearly indicates that a transition from a high fertility (and mortality) regime to low fertility is very much underway. However, the decline is recent and the history of high fertility has resulted in a young population or age structure that would lead to population growth for several decades to come. There is a built-in growth momentum due to the young age structure of the population. To put it graphically, even if every single woman in India decides to have no more than two children beginning with immediate effect (or has replacement level of fertility), the population will continue to grow in the coming four to five decades. India’s population of 1.2 billion in 2001 will reach 1.6 billion by 2050. Many, therefore, argue that if measures to reduce poverty, mortality at infancy and other ages, as well as improvements in education, health status and sanitation facilities, are implemented people would voluntarily opt for smaller families. When people decide on their own to have fewer children and are not coerced or forced in accepting a decision imposed from above, the chances of backfire are indeed low and decline is sustained. We cannot afford not to learn from an experience of a recent past. In such a scenario, is the imposition of a disincentive in the form of a two-child norm necessary?

The imposition of the two-child norm impinges on basic human rights. It affects adversely precisely those sections of society – women, members of scheduled castes and tribes, marginalised and the poor – who need to assert their right to political participation. They are the ones who contest elections to PRIs. The NHRC Declaration (2003) noted 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”. Thus, the imposition is also not just.

The imposition of a two-child norm in reality becomes anti-women in more than one way. With the passing of the 73rd constitutional amendment, 33 percent of all panchayat seats are reserved for women. Having fought for this representation in the political process at the local level for several decades, the two-child norm disqualifies those elected women members who give birth to a third or higher order child after a certain stipulated period. Women are affected because even those who are elected to local bodies have little or no say in when they marry and whether, when or how many children they have [Hariharan 2003]. In addition, women are also adversely affected because the elected husbands, in order to retain their seats, can resort to

measures such as abandoning the wife, denying having fathered the child, deserting the pregnant wife, asking the wife to undergo an abortion (especially if the foetus is of a girl). If the woman is the elected representative and becomes pregnant with a male foetus, then her position can be sacrificed in favour of a son; her having to step down is of little consequence to the family since she would produce a male heir. All these practices are anti-woman and therefore the imposition of the norm should also be examined from the perspective of how it would impact women.

The implications of how and in what circumstances the two-child norm is implemented and the larger concerns that have been spelt out cannot be ignored since more and more state governments are considering bringing in the bill through their legislative assemblies. Gujarat state has already given assent to the bill in the assembly. Maharashtra state is seriously considered passing the bill but protests from various stakeholders have not allowed it to be passed so far. Also, a legislation of this nature is being assented without any public dialogue or consultations – a process that some states and the Indian government followed during drafting of the population policies. The lack of debate on this issue is of grave concern to citizens of the country because the process verges on an authoritarian approach. A debate is very necessary even at this juncture since the violation of basic rights has not worked in the past and is unlikely to work now.

As articulated in the ICPD Programme of Action, in the long run informed choice will work and not incentives and disincentives.

Over the past century, many governments have experimented with schemes including specific incentives and disincentives, in order to lower the rate of fertility. Most such schemes have had only marginal impact on fertility and, in some cases, have been counter-productive. The principle of informed free choice is essential to the long-term success of the family planning programmes. Any form of coercion has no part to play.

– ICPD Programme of Action (POA 7.12), 1994.

Email: visaria@vsnl.com

Notes

[We would like to extend our gratitude to Gani Menon who helped us with the field work in three of the four states. The help of various NGOs like SWACH in Haryana, Bal Rashmi Society and Vishakha in Rajasthan and Mahila Chetna Manch in Madhya Pradesh in identifying individuals affected by the two-child norm is graciously acknowledged. Also, support received from PRI members, policy-makers, programme implementers, academicians as well as the affected individuals is gratefully acknowledged.]

- 1 The Cairo Declaration on population and development seeks a human-centred approach to population issues with a special emphasis on the reproductive health of women. Women's groups in the years preceding the ICPD in Cairo in 1994 attempted to reshape population agendas and advocated a shift from the demographic imperative language to one of women's rights, sexual and reproductive health and rights, to link population and consumption patterns as well as address the issue of male responsibility in reproduction and contraception.
- 2 Gujarat recently cleared the two-child norm bill in the legislative assembly and the health minister informed the house that over 1.42 lakh panchayat members and councillors must serve as role models for society (*The Indian Express*, March 18, 2005). In Maharashtra, the government tried to bring in a legislation banning access to irrigation facilities to all farmers with more than two children. Due to protests from women and rejection by the union agriculture minister (who hails from Maharashtra state),

the matter is still pending (see *The Hindu*, April 14, 2005).

- 3 There have been several cases brought before the courts in these states; in many the verdict is awaited but arguments put forward by the bench and the judgments passed are available from the proceedings of the high courts and the Supreme Court.
- 4 This target was recommended in the early 1990s by the Swaminathan committee, accepted by the National Population Policy, 2000 and also by almost all the states that have drafted their own population policies regardless of the existing level of total fertility levels.
- 5 In Gujarat also, while the issues to be included in the population policy document were extensively discussed with a range of stakeholders, no such need was felt before passing the two-child norm in the legislative assembly.
- 6 The results of one study undertaken to explore the implications and consequences of the two-child norm were disputed by some government officials on methodological grounds.

References

- Bhat, Mari P N (2003): 'Two-child Norm: In Defence of Supreme Court Judgment', *Economic and Political Weekly*, Vol 38, No 44, November 1, pp 4714-16.
- Buch, Nirmala (2005a): 'Law of Two-child Norm in Panchayats: Implications, Consequences and Experiences', *Economic and Political Weekly*, Vol 40, No 24, June 11, pp 2421-29.
- (2005b): 'Centre's Assertion That Two-child Norm Is Not Part of National Population Policy: Implications and Future Course', downloaded from website of ReportingPeople.org.
- Chaturvedi, Adesh, Anoop Khanna, Devendra Kothari (2002): 'Provision of Two-child Norm in Panchayat Raj Act of Rajasthan: A Critical Review of Impact and Perception', *Indian Journal of Social Development*, Vol 2 No 1 June, pp 111-23.
- Government of Andhra Pradesh (1997): *Andhra Pradesh State Population Policy*, Department of Family Welfare, Hyderabad.
- Government of Madhya Pradesh (2000): *Madhya Pradesh Population Policy*, Department of Health and Family Welfare, Bhopal.
- Government of Rajasthan (1999): *Population Policy of Rajasthan*, Department of Family Welfare, Jaipur.
- Gurung, Madhu (2004): 'The Two-child Norm Only Leads to Female Foeticide', InfoChange News and Features, November.
- Hariharan, Githa (2003): 'A New Emergency', *The Telegraph*, August 24.
- ICPD (1994): 'Programme of Action', UNFPA, *Report of the International Conference on Population and Development*, Cairo, September 5-13.
- MoHFW (2000): *National Population Policy, 2000*, Ministry of Health and Family Welfare, New Delhi.
- Murthy, Laxmi (2003): 'No Kidding: Apex Court Enforces Two-child Norm', InfoChange News and Features, August.
- NHRC (2003): *Declaration: National Colloquium on Population Policies*, National Human Rights Commission, New Delhi.
- Rani, Binamrata (2004): 'Breaking the Culture of Silence', *Combat India*, Vol 3, No 4, November-December.
- Rai, Usha (2005): 'Confusion on Two-child Norm', *People*, Press Institute of India, April.
- Rao, Mohan (2003): 'Two-child Norm and Panchayat: Some Steps Back', *Economic and Political Weekly*, Vol 38, No 33, August 16, pp 3452-53.
- Sehgal, Rashme (2004): 'Two-child Norm Puts Panchayat under Pressure', InfoChange News and Features, August.
- Visaria, Pravin (2002): 'Population Policy', *Seminar*, No 511, March.