



Making welfare conditional is a stamp of coercion

A simple reading of U.P.'s draft population control law is that it will grossly impinge on the right to reproductive freedom.

Population Policy

The government of Uttar Pradesh released a "Population Policy" in which it stated its intention to bring the gross fertility rate in the State down from the existing 2.7 to 2.1 by 2026. To achieve this, the government says it will consider the enactment of a new piece of legislation.

Draft law

1. This draft law, titled the Uttar Pradesh Population (Control, Stabilisation and Welfare) Bill, 2021, seeks to provide not only a series of incentives to families that adhere to a two-child norm, but also intends on disintitling families that breach the norm from benefits and subsidies.
2. These recommendations are rooted in a culture of coercion. Experiences from across the world demonstrate that laws of this kind simply do not work. They invariably instil an attitude of discrimination, with a burden imposed disparately on the most vulnerable groups in society.
3. The draft Bill echoes the U.P. government's new policy in claiming that the State's ecological and economic resources are limited. According to it, unless population growth is regulated, the State will be unable to guarantee the provision of basic rights to all citizens.
4. It also invokes some of the now-usual buzzwords: sustainable development, it says, cannot be achieved without government-imposed birth control.

Incentives and punishments:

1. To these ends, the draft postulates an array of measures. It promises public servants who undergo sterilisation and adopt a two-child norm several benefits.
2. These include two increments during their service, subsidy towards the purchase of a house, maternity, or paternity leave, with full salary and allowances, as the case may be, for up to 12 months, and free health care and insurance coverage for the spouse.



3. The draft Bill also contains a list of punishments. It terms these euphemistically as “disincentives”. A person who breaches the two-child norm will be debarred from securing the benefit of any government-sponsored welfare scheme and will be disqualified from applying to any State government job.
4. Existing government employees who infringe the rule will be denied the benefit of promotion. And last, transgressing individuals will be prohibited from contesting elections to local authorities and bodies.

Necessary or Unnecessary:

1. It is worth pondering over whether regulation of population is necessary at all. But assuming such regulation is a legitimate governmental aim, the first question that we must ask if the new proposal is: why.
2. After all, experiences from other States in India show us that there are more efficacious and alternative measures available to control the growth of the population, including processes aimed at improving public health and access to education.
3. Indeed, the Union Ministry of Health and Family Welfare conceded as much before the Supreme Court last year. Through an affidavit filed in court, the central government argued that “international experience shows that any coercion to have a certain number of children is counter-productive and leads to demographic distortions”.
4. The Government further confirmed that India was committed to its obligations under international law, including the principles contained in the International Conference on Population and Development Programme of Action, 1994.

Pledge on right

1. Foremost in those principles was a pledge from nations that they would look beyond demographic targets and focus instead on guaranteeing a right to reproductive freedom. Since then, in India, the Supreme Court of India has recognised this right as an inalienable promise.
2. In *Suchita Srivastava & Anr vs Chandigarh Administration* (2009), the Court found that a woman’s freedom to make reproductive decisions is an integral facet of the right to personal liberty guaranteed by Article 21.



3. "It is important," the Court wrote, "to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating".
4. This ruling was endorsed by the Supreme Court's nine-judge Bench verdict in K.S. Puttaswamy vs Union of India (2017). A reading of the plurality of opinions there shows us that the Constitution sees a person's autonomy over her body as an extension of the right to privacy.
5. In his judgment, Justice D.Y. Chandrachud held that privacy partakes different connotations. These include decisional autonomy, which comprehends, among other things, liberty over "intimate personal choices such as those governing reproduction".
6. Justice S.K. Kaul similarly declared in his separate judgment that the right to procreation was an important constituent of "the privacy of the home".

The doctrine of proportionality:

Like all other fundamental rights, the right to privacy is not boundless. But, as Puttaswamy clarifies, any restriction placed on the right must conform to a doctrine of proportionality. This requires first, that the limitation be rooted in statute; second, that the state shows us that the objective of its law is founded on a legitimate governmental aim; third that there are no alternative and less intrusive measures available to achieve the same objective; and fourth, that there exists a rational connection between the limitation imposed and the aims of the statute.

Draft law fails the test of proportionality

1. The logic here is simple: in pursuing public interest, it is essential that governments ensure that individual liberties are encroached upon to the lowest degree possible.
2. A simple reading of U.P.'s draft law will show us that, if enacted, it will grossly impinge on the right to reproductive freedom.
3. The government will likely argue that there is no violation of privacy here because any decision on sterilisation would be voluntary. But, as we ought to by now know, making welfare conditional is a hallmark of coercion.
4. If we want the idea of India as a welfare state to mean something, the right to access basic goods cannot be made provisional on a person sacrificing her bodily autonomy.

15.07.2021

Thursday



<http://www.sriramsias.com>

5. By all accounts, therefore, the proposed law will fall foul of a proportionality analysis. If nothing else, the Union government's concession in the Supreme Court demonstrates that there are several alternatives, less-intrusive means available to regulate the population.

Negative consequences

1. But the new proposal is also worrying because it is likely to bring with it a host of other deleterious consequences.
2. For instance, an already skewed sex ratio may be compounded by families aborting a daughter in the hope of having a son with a view to conforming to the two-child norm.
3. The law could also lead to a proliferation in sterilisation camps, a practice that the Supreme Court has previously deprecated. In *Devika Biswas vs Union of India* (2016), the Court pointed to how these camps invariably have a disparate impact on minorities and other vulnerable groups.

For one thing, its reasoning flies in the face of *Puttaswamy*. But as rousing as the nine-judge Bench verdict is, its legacy depends on how its findings are applied. For the judgment to have tangible value and meaning, any law of this kind, which invades upon our most personal and ethical choices, must be seen as repugnant to the Constitution.