



VOLUME 1 ISSUE 1

## “Is a two-child policy an absolute necessity in current India?”

**Manan Daga**

*West Bengal National University of Juridical Sciences (WBNUJS), Kolkata.*

*manan218041@nujs.edu*

-----  
\*\*\*  
-----

### ABSTRACT

The two-child policy is currently being debated in India. Some states have used this policy partially, which makes people with more than two children ineligible government jobs. The aim of this policy is to control the population growth, which is indeed a desirable aim. However, the problem with such a policy is that there is not just one reason for a rise in the population. Therefore, before implementing such a policy, the other reasons that result in population growth need to be addressed. Moreover, there persists a debate on whether the right to choose the number of children falls under the right to life and liberty. After that, some measures should be incorporated to overcome the hurdles in those reasons. Lastly, the debate on the right to life needs to be satisfied. Even after all these measures if the population growth does not slow down, then as a ‘last resort’ we should go for such a policy. If we have some other options to curtail population growth, then what is the harm in trying those first and delaying such a policy?

**Keywords:** *Two-Child Policy, Overpopulation, Right to Life and Liberty, Contraceptives, Three-Prong Scheme and Education.*

### 1. INTRODUCTION

The population has been a vital issue for India since its early days. The concept of joint families persisted in India with multiple siblings who lived together and raised their own families. Such a trend over the years led India to become one of the most populated countries. Even though it

is known that a high population is not preferable for the overall growth of a country, a statute limiting the number of children is concerning in a democracy. The inherent flaw in enacting such a law is the belief that this huge population of India is only a result of voluntary child-planning and nothing else. There are other reasons for such an overpopulation, and limiting the number of children is not a solution for that. Moreover, it is debatable from the legal point of view to prohibit someone from raising as many children as they want in a democracy. In this paper, primarily the background of the two-child policy is discussed. Further, the other reasons for population growth are addressed along with legal and non-legal obstacles for such a policy. Furthermore, some possible measures are suggested to overcome the said obstacles. Lastly, a critical analysis of this policy is made with respect to the One-Child Policy in China.

## 2. BACKGROUND OF TWO-CHILD POLICY

The issue of overpopulation has been haunting India since independence. In 1952, a newly independent India had a national program which aimed at family planning.<sup>1</sup> With this policy, India became the first country all around the world to launch such a program.<sup>2</sup> It was marked with a slogan called “*Hum do, Humare do*” which can be understood as the basis of the two-child policy.<sup>3</sup> One of the early steps towards it was taken during the period of Emergency from 1975 to 1977. The government emphasised a lot on the family planning issues and undertook a big step of sterilising the males to control the population.<sup>4</sup> This can be construed as a take-off point for policies for regulating the population. Soon after this in 1983, the National Health Policy made a reference to the total fertility rate (TFR), which means the total number of children born to a woman.<sup>5</sup> It aimed at a small-family practice which would help stabilise the population in the long term and said that the TFR should be favourable by 2000s.<sup>6</sup>

However, there was a change in the position of the government in 1994. International Conference on Population and Development (ICPD) took place at Cairo in 1994 to which India

---

<sup>1</sup> Population Matters, India’s Population and Family Planning Policy, (Mar. 8, 2013), <<http://population-hs6110.blogspot.com/2013/03/small-family-happy-family.html>>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Carolyn Henning Brown, The Forced Sterilization Program under the Indian Emergency: Results in One Settlement, *Human Organization*, Vol. 43, No. 1. 49, 50 (Spring 1984).

<sup>5</sup> National Health Policy, 1983.

<sup>6</sup> *Id.*

became a signatory.<sup>7</sup> This conference was essentially targeting at the rights of the couples in planning their families.<sup>8</sup> When India became a signatory to this declaration, it essentially allowed the couples to decide the number of children they want to have and the gap between each child.<sup>9</sup> This declaration prohibits the Indian government from limiting the number of children to two for every couple. This is a significant obstacle for the two-child policy in India. Thereafter, the TFR in 2000 was at 3.2 children per woman, but it reduced to 2.3 children per woman in 2016.<sup>10</sup> This means that the TFR is very close to the target the two-child policy seeks to achieve and this TFR is of 2016. Then in 2017, Assam passed the two-child policy which prohibits any person from being eligible to get a government job who has more than two children from January 2021.<sup>11</sup> This came too strongly, and along with this, efforts were made by Prahlad Patel in the Sixteenth Lok Sabha to extend such a policy of two-children to the whole country.<sup>12</sup> However, this bill was dissolved before it could be voted upon.<sup>13</sup> This issue has resurfaced in 2020 due to the increasing population growth.

### 3. REASONS FOR OVERPOPULATION IN INDIA

India has had a growing population for a long time. This issue existed even before the technological era when it was challenging to raise awareness about the same. The primary reason for such a high population is lack of awareness about the use of contraceptives of any kind. Many people in the rural parts of India are still unaware about the use of contraception or do not have sufficient access to contraceptives. As per certain statistics, only fifty-four percent of couples use contraceptives.<sup>14</sup> Moreover, in a village or small town, everyone knows each other, so if a young person wants to buy a contraceptive, then there is a possibility that the seller might know him/her. This will make the encounter awkward and will discourage the person from buying the contraceptive because of the possible judgement of the seller and other

---

<sup>7</sup> Prabhash K Dutta, India Today, Is two-child policy a realistic goal in India? (Oct. 23, 2019, 6:41 PM), <<https://www.indiatoday.in/news-analysis/story/is-two-child-policy-a-realistic-goal-in-india-1612148-2019-10-23>>.

<sup>8</sup> C. Alison McIntosh & Jason L. Finkle, The Cairo Conference on Population and Development: A New Paradigm?, *Popul. Dev. Rev.*, Vol. 21, No. 2, 223 (June 1995).

<sup>9</sup> *Id.*

<sup>10</sup> Vanessa Page, Investopedia, Child Policy in India (Feb. 6, 2020), <<https://www.investopedia.com/articles/personal-finance/051415/indias-twochild-policy.asp>>.

<sup>11</sup> *Supra* 7.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Swati Gupta, CNN, A two-child policy in overpopulated India? It won't work, say experts (Jan, 22, 2019, 5:50 AM), <<https://edition.cnn.com/2019/01/21/health/india-two-child-policy-debate/index.html>>.

people of the society. Sexual intercourse is still a very private thing in India. Therefore, due to lack of awareness or accessibility of contraceptives, it will become very inconvenient and problematic to bring in a limit on the number of children.

Additionally, poor families in India look at children as a means of income, so more children for them means more sources of income. In such a scenario, the birth of more than two children is not a choice made from the point of view of family planning, but from the monetary point of view. This is one of the prominent reasons for the rise in population. It has certain solutions or measures which is discussed in the subsequent part of the paper.

India's youth population (15-24 years) has been predicted to be thirty-four percent by 2020, which is a significant part of the population.<sup>15</sup> This means that the forecasted rise in population will be done by this group of people when they get married and raise kids. Therefore, a large number of people are already constituting a marriable group and will do so in the near future too.<sup>16</sup> Hence, the rise in population can also be caused by this reason because more pregnant women mean more children, but it does not mean that there are more than two children per woman. This forces us to look at the TFR to evaluate the genuine number of children per woman. In 2020. The TFR has fallen from 2.3 to 2.2 and is closer to our goal of 2.1.<sup>17</sup> Therefore, the need for such a limit is uncalled for at least during these times.

There is one more reason which is closely related to family planning but has its distinctness too. Sometimes, people give birth to more than two or three kids in the hope of getting a son. This may seem improbable, but it is still prevalent in both rural and urban areas. It is distinct from the regular family planning because in this, the third or fourth child is conceived in the hope of getting a son. So, if a son would have been born earlier, then a third or fourth child would not be conceived. However, in the case of family planning, the third or fourth child is conceived irrespective of the gender of the children. Therefore, these are some of the other reasons for a rising population as well as having more than two kids. Hence, these considerations need to be taken into account too when you are drafting a law regarding the same.

---

<sup>15</sup> Central Statistics Office, Ministry of Statistics and Programme Implementation, Youth in India (Notified on March 2017).

<sup>16</sup> Jatin Verma, JV's, Two-Child Policy: Is 'Two Child Policy' Required For India (Oct. 25, 2019), <<https://www.jatinverma.org/two-child-policy-is-two-child-policy-required-for-india>>.

<sup>17</sup> Worldometer, India Demographics, <https://www.worldometers.info/demographics/india-demographics/> [NOTE- The Date of publication is not given].

#### 4. SHORTCOMINGS OF TWO-CHILD POLICY

The pivotal issue of this two-child policy is that it will lead to a rise in abortion cases. If abortion occurs then an unborn child who has developed some sense organs might have to face the brunt of such a policy. What is the fault of the unborn child who did not even know about this scheme? Further, abortions in rural areas are risky too due to lack of advanced technology and knowledge. This increases the risk for the mother, and even for the unborn child, who might not be successfully aborted. Furthermore, many females are not even aware of the legal duration within which abortion can be performed. This leads to a delicate situation since abortion is a highly debated issue in itself.

The two-child policy mandates that any couple should have two living children. There is a little ambiguity around here in cases of divorces and remarriages. If a couple has two living children and they get divorced. Then the husband remarries, and even the wife remarries to someone else. Now, can the husband have two children with his new wife and can the wife also have two children with her new husband? If yes, then what about the two existing kids, as it will lead to a total of six kids between two couples. If no, then how will you decide who can have kids again since both of them remarried. Hence, there are some significant ambiguities persisting in this policy.

India is still a signatory to ICPD which they signed in 1994. Hence, this declaration cannot be disregarded while forming such a policy. This declaration mandates that the couples can decide the number of children they want to have and the gap between each child.<sup>18</sup> So, this declaration prevents the implementation of such a policy. Moreover, in 1978, the Constitution of India had expanded its horizons when it incorporated the right to live with human dignity within the ambit of Article 21<sup>19</sup> of the Indian Constitution.<sup>20</sup> This leads us to a question whether the right to choose the number of children is a part of the right to life and liberty, and the right to live with human dignity. Moreover, it can possibly be argued that the child who could have been born is being denied the fundamental right to education under Article 21A<sup>21</sup> of the Indian Constitution.<sup>22</sup> Although this is far-fetched, it is still valid.

---

<sup>18</sup> *Supra* 8.

<sup>19</sup> Ind. Const. art. 21.

<sup>20</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>21</sup> Ind. Const. art. 21A.

<sup>22</sup> *Supra* 16.

There will be a rise in the cases of bigamy, desertion and divorces. People will find loopholes or technicalities to get out of this limit for their reasons. A possibility to have more children seems lucrative when the same is limited and may act as an incentive for couples who are on the brink of bigamy or even desertion. These are some of the hindrances on the face of it that will occur if such a policy is implemented. Once it comes into existence, more shortcomings may unfold, or some of it may be cured too.

## **5. SUGGESTIONS AND MEASURES TO OVERCOME THE OBSTACLES**

The primary measure is to raise awareness about the two-child policy, but advisably it cannot be made mandatory through a legislation. A major chunk of our population is not aware of the issues of overpopulation and the possibility of a two-child policy. They might understand the implications of overpopulation after an extensive awareness drive, and we might not even need a legislation for such a policy. I am not refuting that such awareness drives have not taken place, but these awareness drives need to be supplemented with some additional measures. This requires a three-prong additional measures scheme. Firstly, in many parts of India, people are not aware of the use of contraceptives, so when they indulge in sexual acts, then they do not use them. Hence, the first measure would be to make them aware of the use of such contraceptives and ensure the easy accessibility of the same too. Secondly, another reason mentioned above for high population is because low-income families look at children as a source of income, so they reproduce more. Hence, the second measure would be to provide them with sufficient subsidies or grants, along with such awareness drives which will discourage them from having a third child. Thirdly, people have more than two children in the hope of getting a son. Hence, the third measure would be to make them understand that the gender of a child cannot be a certain act so indulging in reproduction till a son is born is a long shot and might drain their financial resources. This has to be explained along with the awareness drives of overpopulation and possible benefits of the two-child policy to them.

There is another significant measure which has double benefits. The people should be educated about the hitch of overpopulation. This can be done by investing more in education. This will help in reducing the population growth, as well as increasing the quantum of educated people. Educating people about this is a better option than making a legislation. It is because once the legislation is passed and the stage of implementation comes, then there will be a need to ensure effective implementation. If an effective implementation does not occur, then there will be

another problem, and it will not even help in achieving the target of reducing population growth. On the other hand, if we invest in education, then the people themselves are aware of this hitch of population growth, and they will voluntarily help in reducing it. This does not need any implementation because the people are acting on their own volition. Therefore, such measures must at least be tried before passing such a legislation on the two-child policy.

## 6. CRITICAL ANALYSIS OF TWO-CHILD POLICY IN INDIA WITH ONE-CHILD POLICY IN CHINA

China adopted the one-child policy in 1979 and removed it in 2015.<sup>23</sup> This policy worked for China as their primary aim was to reduce the population growth.<sup>24</sup> However, it created significant issues as the population over sixty-five years of age constituted ten percent of the population which previously constituted only four percent.<sup>25</sup> Hence, this policy has comparatively depleted the workforce for China in the next generation. This is a concern since China will have to maintain the extent of their work and growth rate with lesser hands in the next generation. India is not at a stage where the only aim should be population control while disregarding the quantum of the workforce for the next generation. If such a law is passed in India, many people will not even have more than one child as a precaution. However, if just the measures mentioned above are taken, then such an issue can be overcome.

The one-child policy in China has also led to an imbalance in the sex ratio.<sup>26</sup> It led to a rise in the desire for a boy, which further led to increased abortions, which pose a danger to the woman bearing the child.<sup>27</sup> In India, we might be having a two-child policy which will not pose a threat to sex ratio as grave as in China, but the desire for at least a boy will exist which still does. Therefore, the aforesaid measures regarding the desire for a son need to be applied here too. However, those measures still will not ensure the balance in sex-ratio, which is a major concern. Therefore, the one-child policy in China had its shortcomings, and we should learn from them. Sometimes, it is construed that this policy is one of the reasons which helped China develop and sometimes this policy seems a lucrative option. Nevertheless, we cannot keep a blind eye towards the issue of depleting future workforce and imbalanced sex ratio. Through such a

---

<sup>23</sup> *Supra* 14.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

policy, there is a possibility that we might develop currently, but can we ensure future development too?

## CONCLUSION

I am not at all saying that the target of this policy is wrong. Instead, it is a desirable target, that is, to control population growth. Nevertheless, this target is not the sole factor that should be considered. The two-child policy has its pros and cons. However, the need to implement such a policy arises only when the pros outweigh the cons. Currently, the cons seem to overpower the pros up to some extent. The awareness drives need to be supplemented with some additional measures which might even be the ones suggested in this paper. This policy might look appealing on the face of it, but its nuances which affect our future development cannot be ignored. Moreover, implementing such a policy raises a few concerns which need to be answered. The fundamental question which will arise is whether the life of an innocent and harmless unborn child is more important than a compulsive law? Also, where do we stop then? Now we are limiting the number of children, what is next? This is setting a wrong precedent in a democracy where everyone should have the right to choose, even if that is the number of children. Moreover, it is not like this problem of overpopulation cannot be curtailed in some other way as discussed already. This should be considered as the last resort when it is absolutely imperative and in need. But before that, the possible measures could be tried rather than directly bringing in the two-child policy.

## RESULTS AND DISCUSSION

The finding of this research paper suggests that multiple reasons and causes influence growth of population. Therefore, it is imperative that those reasons may be taken into account and be tried to address. Some measures like the three-prong additional measure scheme has been suggested. Along with this, education is another important measure which has double benefits. Moreover, there are some grey areas in law regarding right to life and liberty. Hence, the same needs to get settled too. Thereafter, if the population growth is still not controlled, then moving for a two-child policy could be probable. However, before addressing such concerns of fact and some rights of law, a two-child policy may not be absolutely necessary. Therefore, it is suggested that a two-child policy should be the last resort for overcoming population growth.



REFERENCES

1. Population Matters. India's Population and Family Planning Policy. 2013 Mar. 8. <http://population-hs6110.blogspot.com/2013/03/small-family-happy-family.html>.
2. Carolyn Henning Brown. The Forced Sterilization Program under the Indian Emergency: Results in One Settlement. *Human Organization*. Spring 1984; Vol. 43, No. 1: pp 49-54. (NOTE- Abbreviated form of Journal is not available).
3. Government of India, Ministry of Health & Family Welfare. *National Health Policy*. New Delhi; 1983. 18 p.
4. Prabhash K Dutta. Is two-child policy a realistic goal in India? *India Today*. 2019 Oct. 23.  
<<https://www.indiatoday.in/news-analysis/story/is-two-child-policy-a-realistic-goal-in-india-1612148-2019-10-23>>
5. C. Alison McIntosh & Jason L. Finkle. The Cairo Conference on Population and Development: A New Paradigm? *Popul. Dev. Rev.* 1995; Vol. 21 No. 2: pp 223-260.
6. Vanessa Page. Investopedia. Child Policy in India. 2020 Feb. 6. <https://www.investopedia.com/articles/personal-finance/051415/indias-twochild-policy.asp>.
7. Swati Gupta. CNN. A two-child policy in overpopulated India? It won't work, say experts. 2019 Jan. 22. <https://edition.cnn.com/2019/01/21/health/india-two-child-policy-debate/index.html>.
8. Social Statistics Division, Central Statistics Office, Ministry of Statistics and Programme Implementation. *Youth in India*. New Delhi: Central Statistics Office, Ministry of Statistics and Programme Implementation; March 2017. 86 p.
9. Jatin Verma. JV's. Two-Child Policy: Is 'Two Child Policy' Required For India. 2019 Oct. 25. <https://www.jatinverma.org/two-child-policy-is-two-child-policy-required-for-india>.
10. Worldometer. India Demographics.  
<https://www.worldometers.info/demographics/india-demographics/> [NOTE- The Date of publication is not given].
11. Constitution of India, 1950.
12. SCC Online.