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REPRODUCTIVE ACCORDNESS AND STATE OWNERSHIP IN **ARTICLE 2 CHILD POLICY**

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INTRODUCTION

In recent years, questions about family life and marriage have sparked much debate in India. The newest addition to the ongoing debate about regulating family life is a concept that India has long experimented with: childbirth policy. Not only is a petition to the Supreme Court for the introduction of a population control law pending, but several private member bills to discourage couples from having more than two children are also being debated in Parliament.

Such advancements are of serious enshrined in the constitution concern, and this article will address a variety of issues relevant to the ongoing debate. The article will begin with a brief history of the two-child policy's recent emergence in Indian politics. It will then proceed to examine the proposed two-child policy through the lens of the Constitution, arguing that it is clearly unconstitutional. This will be accomplished by arguing that the two-child policy is an affront to the individual's right to equality, liberty, and life, as well as an ineffective way of regulating population growth. Finally, the article will conclude by highlighting the next steps.

CHRONOLOGICAL BACKGROUND

In May 2019, the Delhi High Court heard a case concerning a two-child policy. The petition sought court-ordered implementation of the National Commission to Review the Workings of the Constitution's 24th recommendation on population control. The petitioner claimed that the NCRWC's recommendation to include Article 47A as one of the Directive Principles of State Policy, led by former Chief Justice of India Justice MN Venkatachaliah, was never implemented. The proposed Article 47A aims to promote family norms by providing tax, employment, and educational benefits to those who limit their family to two children. It was also requested that the central government make the two-child policy the norm for all government jobs and subsidies.

The Delhi High Court, on the other hand, dismissed without allowing the petitioner to file a rebuttal. The division bench ruled that the court lacked the authority to order the legislature or state legislatures to pass a specific statute. The Supreme Court has received an appeal against the Delhi High Court's judgement, and has issued notice to all parties involved. Three similar petitions, all for a stricter 'Population Control Law,' are currently pending before the Supreme Court.

The Parliament is also involved in the debate over birth control and population management. In July 2020, a Member of Parliament (MP) filed a private member bill in the Lok Sabha to address the rapidly growing population. Another private member bill for population control was introduced in February 2020, with the goal of amending the Constitution to include Article 47A in the Directive Principles of State Policy. A third private member bill is pending in the Rajya Sabha, in which an MP aims to deprive persons who do not follow the two-child policy of statutory rights such as the right to vote and contest elections. All central government employees must also sign a pledge not to have more than two children as part of the measure. People with more than two children are ineligible to seek for government employment in Assam, which has gone one step further. This law will take effect on January 1, 2021.

These requests have two basic sources of legitimacy. To begin, there's Entry 20-A in the 7th Schedule's Concurrent List, which allows both state and federal governments to legislate on 'Population Control and Family Planning.' Second, the Supreme Court has upheld the constitutionality of a few state laws that prevent people with more than two children from receiving government subsidies and jobs.

Polemics To Constitutional Protections: The Two-Child Policy

The establishment of a policy that limits and regulates the number of children a family can have is a flagrant violation of human rights, the right to self-determination, and reproductive autonomy. The 'Golden Pyramid Test' created by the Supreme Court to determine the constitutional legality of any legislation fails to fulfil the two-child policy. To ensure that no law infringes on a citizen's constitutionally given rights, this test requires a conjunctive reading of equality, liberty, and freedom of rights.

To begin with, a two-child policy would violate the Constitution's Right to Equality, which is stated in Article 14. Although the law is written in fairly neutral terms, its actual execution could have a wide range of positive and negative consequences for diverse groups of people. In

comparison to urban elites, the law will have a negative impact on the impoverished and economically weaker parts of society who do not have easy access to affordable contraception and medicines to prevent child birth. After the *Navtej Singh Johar* decision, this type of indirect discrimination — where a seemingly neutral regulation has a disproportionate impact on one sector of society — is both unlawful and illegal. "The concept of non-discrimination tries to assure that all persons can fairly enjoy all of their liberties," Justice Sikri remarked in *Jeeja Ghosh v. Union of India*. Discrimination arises when opportunities for equitable participation are systematically denied. When public services are based on criteria that are beyond of reach for some people, for example, it leads to discrimination and lack of rights." As a result, a disability to prevent the birth of more than two children due to financial hardship and the government's incapacity to provide inexpensive contraceptive measures should not be penalised.

Equally vital is to recognise that equality no longer entails the State treating everyone equally. It is the recognition that disadvantages are a result of the way social structures are constructed. The results of these institutions' operations on diverse groups and individuals reveal inequity. According to a recent study, the lack of affordable contraceptive drugs in rural areas is more likely to burden women, since men remain hostile of contraception and family planning techniques. Furthermore, depriving those with a third child statutory rights, access to government help, and subsidies will push large segments of society, particularly in rural regions, further to the outskirts of society and outside the fold of state welfare.

As a result, several of the aforementioned Bills that penalise parents for having more than two children will do more harm than good, limiting rural populations' access to already scarce resources. Second, a two-child restriction violates Article 21 of the Constitution, which guarantees the right to life and personal liberty. The term 'liberty' has a broad definition, encompassing all of the elements required for complete human development. Several rights that together make up a person's personal liberty have been elevated to the status of Fundamental Rights as a result of legal interpretation. For example, the right to marry has become an integral part of human liberty and is thus guaranteed by Article 21.

Article 21 also protects an extension of this right: the freedom to make reproductive decisions. "There is no doubt that a woman's freedom to make reproductive choices is likewise a facet of personal liberty as envisaged under Article 21 of the Constitution," the Supreme Court stated in

Suchita Srivastava v Chandigarh Administration. Furthermore, the two-child policy breaches the fundamental right to privacy by prying into a woman's personal matters of family planning and severely limiting her reproductive rights. Furthermore, because the right to privacy recognises the right to bodily autonomy, it can be extended to a person's reproductive decisions.

Any government action that infringes on a citizen's privacy must pass the legality, legitimate state goal, and proportionality tests. Less coercive approaches, such as boosting contraception use, access to affordable abortions, and economic development, are clearly capable of achieving the goal of limiting unfettered population expansion.

CONCLUSION

A two-child policy infringes not only on constitutional prohibitions, but also on a slew of internationally recognised human rights. According to the International Conference on Population and Development, couples have the right to decide whether and when they want to have children, as well as the number of children they want. Furthermore, the Convention on the Elimination of All Forms of Discrimination Against Women's Article 16(1)(e) allows a couple to determine the "number and spacing" of their children.

Furthermore, the goal of reducing poverty through population control is not supported by facts, and research shows that such a policy can backfire. The obvious flaws and ineffectiveness of a two-child policy have since been highlighted by international experience, particularly with China. However, common sense won out, and the Central Government's recent affidavit submitted in the Supreme Court in response to a petition seeking to adopt a two-child policy indicates a lack of desire to act on the subject. "The family welfare programme in India is voluntary in nature," the affidavit correctly said, "allowing couples to decide the size of their family and the family planning methods that are most suited to them." In fact, international experience demonstrates that forcing people to have a set number of children is ineffective and leads to demographic problems."

The Supreme Court has an opportunity to unequivocally hold family planning and reproductive decisions as part of a person's independent right to self-determination, thanks to the current petition and the Centre's affidavit. In light of the Puttaswamy decision, the court should reconsider its earlier position on the two-child policy in order to avoid further violations of citizens' rights and liberties.