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Is there a need for Population Law in India?

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The Malthusian fear of the inability to provide for the increasing population has brought the modern State to ponder upon the idea of using the law to regulate the population, although its effectiveness is hampered by the lack of empirical evidence. The goal of this essay is to look at the reasons for the growing population, particularly in India which is set to become the most populous country in the world in less than a decade, and the inability of the law to counter these reasons. While the country is in the midst of a debate on a population control law, the recently released National Report of the 2nd phase of the National Family Health Survey-5 shows the decline of India's total fertility rate below the replacement level. As per the survey, the fertility rate and household wealth were indirectly proportional and the number of children per woman declined with the women's level of education, therefore, debunking all the myths regarding population increase and the need for a law to control the population through incentives and disincentives. The analysis of the data in the report of the survey thus proves that literacy, income, awareness about family planning, delivery of health services, and women empowerment are factors that influence fertility behaviour and improvement on these indicators materializes in reduced total fertility rate. Hence, it is concluded that the State should focus on the socioeconomic issues grappling with the demographic dividend rather than the neo-Malthusian approach to regulating the population.

Keywords: *population; law; policy, national family health survey, fertility, demographic dividend.*

INTRODUCTION

"The power of population is indefinitely greater than the power in the earth to produce subsistence for man."

- T. Robert Malthus

The basic idea upon which Malthus pondered in his work 'An Essay on the Principle of Population' is that "population, when unchecked, increases in a geometric ratio and subsistence for man in an arithmetical ratio." While Thomas Robert Malthus postulated his fear of population explosion and the earth's inability to provide for the growing numbers in the 18th century, it could not be more relevant than now, when the world population has gone beyond the 7 billion mark and is set to become more than 8 billion in just over a decade from now and could go up to 9.7 billion by mid-century as per the UN's World Population Prospects 2019 report.[1] What is even more alarming is the fact that this increase would be most in the developing countries with India surpassing China in the coming years to become the most populous country in the world. The stabilizing population is an essential requirement for promoting sustainable development with more equitable distribution. Although Malthus was concerned only about poverty and hunger which will encapsulate the large population, the threats from population increase in today's world are multi-dimensional from increased emissions and pollution leading to climate change, decrease in the quality of living standards, spread of diseases, of which the Covid-19 is an ongoing example and, what is considered as the biggest threat from the population is the loss of biodiversity.

All these concerns have brought us to the core concept of population regulation to maintain an equilibrium between man and nature. Population regulation is not only done by nature through positive checks – famine, disease, deaths in war, etc. but there are also preventive checks like late marriage, moral restrain, and simple living as suggested by Malthus. However, the post-modernist approach to population regulation is through the command of the sovereign, i.e.,

[1] 'World Population Prospects 2019' (*United Nations Department of Economic and Social Affairs Population Division*) <https://population.un.org/wpp/Publications/Files/wpp2019_10KeyFindings.pdf> accessed 20 October 2022

through law. An experiment of this formula can be seen in China which has recently removed the restriction on having more than one child as they seem to have stabilized their population growth rate and achieved the necessary fertility rate. But are these the only measures to consider regarding population regulation, what would be the likely impact of such a measure, and most importantly does the state have the authority to create a law to control something as private as birth, if yes then does that amount to coercion and subsequently, should the population be regulated by law?

THE LEGAL QUESTION

The legal issue that arises from this debate is *can* population be regulated by law. The one-word answer to this question is yes, but the issue is much more complex than a simple yes. Although the Indian Constitution mentions '*Population and Family Planning* in the Concurrent List of the Seventh Schedule, thereby giving powers to both Centre and States to legislate on the subject, there has been no effort until now to do the same. There are substantial reasons for this lack of initiative though, the most important being hindering people's choices. The Fundamental rights provide the right to freedom and the right to life and liberty and though not explicitly recognized but that encompasses the reproductive right - the right to choose to have or not to have a child, within its ambit. Legislation directly restricting this choice would be seen as a contravention of the reproductive right of the people.

To avoid this confrontation with people's rights, a new concept of incentives and disincentives has emerged as a middle way, where those adhering to the population law would get the incentives and those not adhering to the population law would be disincentivized. This has created a labyrinth of legislation. While a law directly restricting people's right to have children could be seen as violative of the constitution and struck down, this middle path is coercing people passively to follow the law. And such coercion has the most drastic impact on the most vulnerable sections of society.

GLOBAL SCENARIO

The earth is now home to more than 7 billion people which are unevenly divided throughout the continents. While America and Europe have stable populations and enough resources being the most developed region, the rest of the countries are also catching up to them as below-replacement fertility is now the norm in many industrialized countries (1.3 children per woman in Japan, for example) and emerging countries (1.2 in South Korea, and around 1.6 in China). The problem lies in the South-Asian region, where the concentration of people is highest, with China and India being the two most populated neighbours in the world. China is already way past the discussion phase which leaves the focus of the debate to India, which is already in the middle of the tussle.

PROBLEM WITH THE CHINESE EXPERIMENT

The Chinese experience shows what exactly is wrong with population regulation by law. The working-age population has sharply declined in China which will slow down its economic growth and a majority of the ageing population is inevitable which will further burden the economy. This is what happens when the state interferes with the fertility choices of the individual or family. And in India too, if such a measure is taken, it is bound to alleviate the ageing problem given the statistics in the Population Projection Report, which finds the 60 years and above aged population to go from 13.8% in 2011 to 23.1% in 2036.

THE INDIAN DILEMMA

In 1952, India was the first country in the world to launch a national program, emphasizing family planning to the extent necessary for reducing birth rates "to stabilize the population at a level consistent with the requirement of the national economy" After 1952, sharp declines in death rates were, however, not accompanied by a similar drop in birth rates. The National Health Policy, of 1983 stated that replacement levels of total fertility rate (TFR) should be achieved by the year 2000. The National Population Policy (NPP), 2000 is the central government's second population policy. The medium-term objective of the NPP 2000 was to reduce the Total Fertility Rate (TFR) to replacement levels by 2010. The long-term objective was

to achieve a stable population by 2045, at a level consistent with the requirements of sustainable economic growth, social development, and environmental protection.[2]

Though the Union government of India has denied the need for a population control law, recently Uttar Pradesh and Assam, both ruled by the same regime as in the Centre, have released their new population policy that focuses on bringing down the fertility rate to the replacement level i.e., 2.1 and significantly reduce the growing population of the states through the carrot and stick method by providing certain incentives in the form of promotions, increments, concessions in housing schemes for government employees and the form of rebate in taxes to non-government employees to those adhering to two child norm and bars people from contesting local body elections and availing of government subsidies and other government benefits and become ineligible to apply for State government jobs if they have more than two children.

The Union Government seems to be cautious in deciding whether or not to legislate on population control, as such a law may not only need the Parliament's nod but might also be subject to the test of constitutionality as it will have a direct impact on the citizen's rights. Therefore, until it is the last resolution left, the government does not want to avert such a measure. But the rising majoritarian demand for population control is trying to pressurize the government as it seems to them that only a certain section of the population is solely responsible for the unprecedented increase in population. As irrational as it may sound, the totalitarian approach is slowly taking over the legislative conscience since the political stance is tilting towards having the law. Since that question is political in nature, it would be less relevant here to deal with it. However, what's important here is the intriguing Indian scenario that requires such a law in the first place. The Indian population has increased massively in the two-decade period 1990-2010. What are the reasons for this rise? Can those reasons be overcome/regulated by law?

[2] 'National Population Policy 2000' (*Ministry of Health and Family Welfare*) <https://main.mohfw.gov.in/sites/default/files/26953755641410949469%20%281%29.pdf> accessed 20 October 2022

REASONS FOR POPULATION EXPLOSION IN INDIA

- *Preference for a male child*

Indian society is still patriarchal and male-dominated giving preference to a male child even when there are already one or more daughters in the family. Such a setup has resulted in families having more than two children and sometimes even going up to 6 to 7 in many cases. Given the preference of people for a male child, a population regulation law will only increase the sex-selective abortions of girl children, which although illegal but widely practised in different parts of the country as female infanticide. The bar through legislation might not help the cause to change the mentality of people without putting efforts to educate and make people aware of sex-selective behaviour and gender discrimination which may bring a behavioural change.

- *Lack of Awareness about Contraceptives*

The conservative Indian society still thinks of contraceptives as a taboo subject, as a result, effective prevention through contraception is still not as prevalent as it should be because of people's reluctance. There is also a lack of awareness and misconception among people about different contraceptives such as condoms, birth control pills, intrauterine devices (IUD), female sterilization (tubectomy), and male sterilization (vasectomy) due to a lack of sex education at appropriate levels.

- *Less Life Expectancy*

While this may sound irrational at first as India is having a decent life expectancy at present (69 years), it was not so from the early days. India's life expectancy was a mere 35 years in 1950 which also became one of the reasons for having multiple children so that at least a few can survive to succeed in the family. This turned problematic when the life expectancy in the country increased substantially over the years but the attitude of people did not, which ultimately resulted in a population explosion.

- *More Hands to Earn*

One of the major chunks of the population falls below the poverty line forces families to opt for more children even though they are not able to sustain them just because more people in the family will ensure more persons to earn as even children are forced to do menial jobs like begging, work at restaurants, hotels and more often as household maid/servants and sometimes even in hazardous activities like construction and mining as child labour.

- *Traditional Approach towards Family Planning*

Illiteracy and the traditional attitude of having a joint and big family have kept the Indians at bay from concepts like family planning that are proven to be extremely effective in putting the growing population to a halt. Such steps are not just empowering people to make their own choice and improve their living standards but are also free from coercion or compromises and respects people's choices. And with the improving literacy and awareness among people, family planning is becoming more popular and accepted in Indian society in the recent past.

An in-depth analysis of these reasons proves that the increase in population is amongst the poorest and most vulnerable sections of society and that too out of the necessity to survive. They don't make conscious and informed choices of having children in the lack of awareness and education living in extreme poverty and unknown to family planning. These are the reasons for which they are not certainly responsible, which results in more children. Disincentivizing this stratum of society might work for the population of the number but it would worsen the situation for them and push them further into poverty and desperation. Neither of those incentives would inspire those people to adopt a one or two-child policy since this section is already beyond the government's welfare measures let alone government employees. This particular section of society has been denied access to basic healthcare facilities, education, and opportunities, and punishing them for what they are not intentionally responsible for is a gross miscarriage of justice. Now that the landscape become even more dreadful with the ever-increasing number of people and all options to control it seemingly out of hands, what lies ahead for the Indian democracy? The silver lining of this cloud of ambiguity is in the statistics of the recently published National Report of the 2nd phase of National Family Health Survey-5.

FINDINGS OF THE NATIONAL FAMILY HEALTH SURVEY – 5 (2019-2020)

The National Report of the fifth round of the National Family Health Survey (NFHS-5) was released in May 2022. The Report comprises detailed information on key domains of population, health, and family welfare and associated domains like characteristics of the population, fertility, family planning, infant and child mortality, maternal and child health, morbidity, healthcare, women's empowerment, etc. And as per the Report, for the first time, the Total Fertility Rate (TFR), the average number of children per woman has declined to 2.0, below the replacement level of 2.1. Some important findings of the report that are worth highlighting are:

- All the communities are witnessing a decline in fertility debunking the myth that only a particular community is carrying on with a high fertility rate. The TFR for Hindu women was 1.94, and for Muslim women, it was 2.2. The Christian community has a fertility rate of 1.88, the Sikh community 1.61, the Jain community 1.6, and the Buddhist and neo-Buddhist community 1.39.
- Another interesting aspect was that the number of children per woman declined with women's level of schooling. According to the report, women with no schooling have an average of 2.8 children, compared with 1.8 children for women with 12 or more years of schooling. Schooling or education played a vital role in deciding the fertility rate. It was the same for the median age at first birth — it increased with years of schooling.
- As per the report, the fertility rate and household wealth were indirectly proportional. For the wealthiest population, the TFR stood at 1.6 children. However, for the women in the lowest category of wealth, the number was 2.6 children, i.e., women in the lowest rung had an average of 1.0 more children than women in the highest rung of wealth.
- Overall Contraceptive Prevalence Rate (CPR) has increased substantially from 54% to 67% in the country. However, male attitude towards contraception is still hesitant with 30% of men believing that contraception is only a women's responsibility. But with significant intervention through increasing awareness and service delivery, behavioural change can be induced in society.

India has achieved this milestone not through any law but through making people aware of the need and methods of family planning and by their voluntary participation. It is important to understand the factors that influence fertility behaviour. It is not religion as commonly propounded but literacy, especially of girls, income and delivery of family planning, and health services. The same holds in the context of poverty with the poorest segment having higher TFR than the richest. Therefore, it becomes well established now that rather than the incentives and disincentives, what works in controlling the population is the improvement of social and economic indicators such as education, literacy, and income and empowering people, especially women by making them aware of family planning and health services so that they can make informed choices.

CONCLUSION

Objectives of Cairo International Conference on Population and Development 1994[3] re-iterate the enabling and empowering ways of family planning and informed choices to overcome the problem of the population– increasing the rate of modern contraceptive prevalence, and male contraception, decreasing maternal mortality and infant mortality rates significantly by 2026. The Cairo Conference also emphasized reproductive rights, empowering women, universal education, and maternal and infant health to overcome poverty and high fertility. In addition, since 1994, population policies around the world have undergone a fundamental change as governments embraced an expanded reproductive health framework and committed to supporting individuals' sexual and reproductive rights. The international community affirmed that individuals have the right to make decisions concerning sexual and reproductive health free of discrimination, coercion, and violence. These affirmations extended the principles of informed and voluntary decision-making beyond family planning to the full array of sexual and reproductive health services.

[3] 'International Conference on Population and Development (ICPD)' (*UNPFA,* 5 September 1994) <https://www.unfpa.org/events/international-conference-population-and-development-icpd> accessed 20 October 2022

In line with the international commitment, the National Population Policy, of 2000 also reinforces the vision of the government to encourage voluntary and informed choice and consent of citizens while availing reproductive health care and family planning services. Further, empirical studies on coercive steps to control the population have found that such moves are largely discriminatory against the marginalized people of the society and have little to no effect on the population at large. On the other hand, it was found that poverty reduction and economic reforms have substantially improved labour productivity and employment opportunities which in turn have empowered more women resulting in reduced fertility rates through individual informed choice. And given the fact that India has already achieved the below replacement level fertility rate, the question of having a law to regulate the population stands unrequired. Also, this achievement has not been honed with the help of law, and incorporating one now might only affect the people negatively and could also ruin decades of efforts. Hence, State should focus on the socioeconomic issues grappling with the demographic dividend rather than the neo-Malthusian approach to regulating the population.