



**July 19, 2021**

To,

The Uttar Pradesh State Law Commission  
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**Respected Sir/Madam,**

We, at Citizens for Justice and Peace (CJP), a civil rights group concerned with the enforcement of the rule of law and the Constitution, would like to take this opportunity to provide our comments to the Uttar Pradesh Population (Control, Stabilization and Welfare) Bill, 2021 for which you have invited public comments.

At the outset we would like to appreciate the intent behind this law which aims to introduce measures to control, stabilize and provide welfare to the population of the state. While providing some or the other incentive to promote family planning among the people is desirable, disincentivising for having more than two children will only pose serious issues for women and also has the potential of a more adverse sex ratio and increase in Infant Mortality and foeticide in the state.

Population control needs to be a concerted effort among the Ministry of Law, Ministry of Health and Family Welfare as well as Department of Women & Child Development. Worldwide successful experiments have shown that there is a direct and deep co-relation between basic civic amenities and healthcare available for women, (including facilities for personal sanitation and hygiene) from marginalised sections, their access to education and health needs, nutrition etc., that also facilitates ready acceptance of population control practices.

Before we proceed to the provisions of the proposed law and how they will affect the society, we would like to present some facts and figures regarding population growth in the country over the years.

As per the Economic Survey 2018-19, India's population grew 1.3% a year from 2011 to 2016, down from 2.5% a year from 1971 to 1981. Further, the total fertility rate of women was 2.2 in 2017 and it has been estimated that the same would plummet to 1.8 in 2021.

As per National Family Health Survey 2015-16, as many as 45.5% married women between age of 15 and 49 use contraceptives and 31.7% use modern contraceptive methods. Sample Registration System (SRS) survey for the year 2018 showed that Infant mortality rate (IMR) in Kerala was 7 per 1,000 live deaths while UP's IMR worsened from 41 in 2017 to 43 in 2018.

The report on 'Household Social Consumption: Education in India as part of 75th round of National Sample Survey - from July 2017 to June 2018' reveals that UP has a literacy rate of 63.4% among women and its total literacy rate stands at 73%. In the same report, Kerala has a female literacy rate of 95.2% and has total literacy rate of 96.2%

Population control is more a function of access and real and ready provision of good public health care to those who cannot afford the same. This is also the subject matter of Directive Principles of State Policy that aims at creating a welfare state.

For instance, Article 38 (2) states that state shall reduce the inequalities faced by the people on the grounds like income, status, facilities, opportunities, etc.

Article 39 confers upon the State the responsibility to make policies towards securing the right to an adequate means of livelihood for all men and women.

In addition to this, Article 47 says that the State should look into the matter of raising the level of nutrition and the standard of living of its people since it is the duty of the State to keep a check on the improvement of public health.

Thus, just a passage of a law that denies benefits to families with more than 2 children simply does not suffice as the same should be –in matters of enlightened governance -- a matter of wider policy that needs a robust public health system to create awareness about health and family planning in rural as well urban areas.

**Following are our comments on the provisions of the proposed draft bill:**

**(8) Disincentives, Revocation of Incentives etc**

**(i) Debarring from benefit of Government sponsored welfare schemes,**

**(j) Limit of ration card Units up to Four,**

**(k) Other disincentives as may be prescribed. AND**

**(12) Bar on receiving any kind of government subsidy**

These provisions introduce various disincentives for individuals having more than 2 children after the passage of this law. Complete or even partial debarment from receiving government sponsored benefits and imposing limitations on ration card has the potential to push 3.6 crore



ration card holders and their families either into more poverty or become victims of forced and targeted sterilisation. (The experience in the latter during the dark years of the Emergency 1975-77 should warn us against any such target-based policies.)

Just when the Supreme Court has set a deadline of July 31 to implement the one nation one ration card scheme which enforces ration card portability, such a provision in law would create myriad issues with the same. At a time when several beneficiaries were able to benefit from this scheme, such a provision will harm the national level initiative.

As many as 29,259 beneficiaries in the possession of ration cards in UP availed food grains in 18 other states between May 2020 and June 2021. Migrants from UP were able to use their ration cards in Haryana, Maharashtra, Gujarat, Andhra Pradesh, Arunachal Pradesh, Bihar, Chandigarh, Goa, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala, MP, Punjab, Tamil Nadu, Tripura and Uttarakhand.

In UP, a total of 58,74,734 intra-district and 6,19,012 inter-district transactions were made under the Pradhan Mantri Garib Kalyan Yojana (PMGKAY) under which food grain was provided free of cost to ration card holders and others between May 2020 to October, 2020 and from May 2021 till June, 2021.

After this provision comes into effect, it stands to affect all these beneficiaries as PDS systems in other states will be burdened with the verification process leading to definite corruption and exploitation of the lower income class, which has already suffered the blows of the pandemic and intermittent lockdowns across the country.

This would also violate the National Food Security Act which mandates that 75% of the rural population and 50% of the urban population shall be provided subsidised grain through the PDS. Under NFSA, there are two 'entitled' categories of ration cards - Priority and *Antyodaya* (poorest of the poor).

*Antyodaya* households get total 35 kg/month of wheat and rice at low rates, regardless of the family size. These provisions have not been accounted for in the draft bill and can pose many issues for PDS system and the crores of beneficiaries. This has the potential to push a large chunk of poor population into starvation.

In early 2019, UP topped the list of PDS corruption cases with 328 cases and this number is likely to rise with such a provision coming in to place.

### **(9) Bar on contesting elections to Local Body etc.**

The bar on contesting local body elections not only violates one's right to contest elections but also stands to exclude a chunk of population from having a say in local government bodies which play a very important role, especially in rural areas. Reservation of seats at 33% for women in Panchayati Raj Institutions has been a game changer in the social sphere for women in rural areas, with all the itinerant limitations. In UP, out of the 9.1 lakh representatives, 3, 04,638 are women; which is commendable. However, this provision could exclude women from rural politics and reverse this change that has taken years to come.

In *Rajabala v. State of Haryana, (2016) 2 SCC 445*, the Supreme Court held that right to vote and right to contest at an election to a panchayat are constitutional rights subsequent to the introduction of Part IX of the Constitution of India. Thus, this provision is in complete violation of people's right to contest elections at local self-government institutions. To implement a policy that is at the very basic level unconstitutional does not behave well for a constitutionally elected state government.

#### **(10) Bar on applying to government jobs**

The exclusion from applying to government jobs is also violative of right to practise any profession, or to carry on any occupation, trade or business under Article 19(1)(g). While clause 6 under Article 19 does allow reasonable restrictions on this right, the same have to be “reasonable”. This restriction classifies as an arbitrary restriction upon the fundamental right of the citizens residing in UP.

In *Laxmi Khandhari v. State of U. P. (1981) 2 SCC 600* the apex court held that the restriction on fundamental rights under Article 19 must bear a close nexus with the object in the interest of which they are imposed. In this case, however, there is no direct nexus between the family size of the applicant to the government job.

#### **(14) Adoption**

This effectively creates a bar on adopting more than 2 children if a couple already has 2 naturally born children. Basically, if a couple has 2 biological children, they can adopt only one child and if a couple has 1 biological child, they can adopt only one child. In either case, every family can only adopt 1 child. Adopting a child is a statutory right (subject to restrictions prescribed) under The Hindu Adoption and Maintenance Act, 1956 or The Juvenile Justice Act, 2015.

To put a bar on adopting children does not really serve the purpose of population control by any measure since these children are already in existence and are in need of care and protection of a family. This will not only impinge upon the right of an individual to adopt who has the resources to raise more adopted children but also impinges upon the right of orphan/destitute children who deserve to be in the care of a family who is willing to adopt them. Limiting the right to adopt a child will have no impact on the population rise, in the first place, as children up for adoption already exist and could do with a good home.

**5(C)- Additional incentives to Public Servants.** —Notwithstanding anything contained in any other law for the time being in force, the public servant, who have only one-child and undergo voluntary sterilisation operation upon himself or spouse, in addition to the incentives provided under Section 4, shall be given the following incentives—

(c) preference to single child in admission in all education institutions, including but not limited to Indian Institute of Management, All India Institute of Medical Science etc.;

We would like to point out that this provision complicates the issue of merit-based admissions and seats that are already reserved for the backward classes of this country. The Bill does not clarify the mechanism that the government will adopt to give preference to a single child vis-à-vis



other children across different States and Union Territories in the country who are not the only child to their parents, and inadvertently have siblings.

### A woman's freedom of choice

Laying down provisions of incentives and disincentives (**Chapter II of the Bill**), will hamper a woman's ability to make an informed decision. It violates her right to privacy, autonomy, that consequently impinges on her reproductive rights. Privacy, which was held as a fundamental right in *Justice KS Puttaswamy vs Union of India (2017) 10 SCC 1*, also postulates the reservation of a private space for the individual, described as the "right to be let alone". The concept is founded on the autonomy of the individual as per the *Puttaswamy* judgment. "The ability of an individual to make choices lies at the core of the human personality", read the judgment.

The Supreme Court had also stated that the body and the mind are inseparable elements of the human personality. It held,

*42. "Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. In 1765, William Blackstone in his Commentaries on the Laws of England spoke of a "natural liberty". There were, in his view, absolute rights which were vested in the individual by the immutable laws of nature. These absolute rights were divided into rights of personal security, personal liberty and property. The right of personal security involved a legal and uninterrupted enjoyment of life, limbs, body, health and reputation by an individual."*

The *Puttaswamy* judgment has also laid down how decisions regarding reproduction are a distinct connotation of privacy. Privacy has been held to have distinct connotations including

- (i) spatial control
- (ii) decisional autonomy; and
- (iii) informational control.

In **para 248**, the court held, "*Spatial control denotes the creation of private spaces. Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or modes of dress. Informational control empowers the individual to use privacy as a shield to retain personal control over information pertaining to the person.*"

Liberty, which is a constitutionally protected right under Article 21 of the Constitution, also includes within its ambit a woman's entitlement to give birth and make decisions regarding reproduction, sans any discrimination. In *Suchita Srivastava & Anr vs Chandigarh Administration (2009) 9 SCC 1*, the Supreme Court had said,



*“There is no doubt that a woman's right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children.”*

It is better to rather invest in better resources, higher literacy for women, empowerment and education of women to help control the population. Chapter II of the Bill also states that such incentives of promotion, increments, subsidies will be given to public servants if he or his wife go through sterilisation. Such provisions leave no bargaining power for the woman who could be coerced into getting sterilised by the male spouse in order for him to be eligible for such additional incentives. According to a report published by the National Health Mission, between 2017-18, 93.1% of the sterilisations performed in India were on women. So, there is a high chance and probability that only women will be subject to this, against their will.

A wholistic view of Chapter II and III of the proposed draft, determines these provisions to be in violation of basic human rights, right to self-determination, right to privacy and right to reproductive autonomy. Even if right to procreate is not exclusively mentioned in the Constitution, it is a basic human right that has been upheld in ***Jasvir Singh vs. State of Punjab*** (CWP No.5429 of 2010; decided on May 29, 2014 by High Court of Punjab and Haryana). The court held thus,

“State has denied the right to procreate to the petitioners only because such a right does not find any mention in the rulebooks or statutes. In the absence of such a right having been spelled out in codified law, it cannot be assumed that the petitioners’ prayer contravenes any law. The denial of the right to procreate thus is alleged to be unreasonable and arbitrary as such a right not being violative of any rule or law, its denial amounts to be a monstrous violation of Article 21 of the Constitution.”

In ***R Rajagopalan vs State of Tamil Nadu*** 1995 AIR 264, the apex court had upheld the right of a citizen “to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters”.

Further, Article 22 of the 1969 Declaration on Social Progress and Development adopted by the UN General Assembly provides that couples have the right to determine, freely and responsibly, the number and spacing of their children.

Furthermore, the incentives/disincentives approach has been denounced by the National Human Rights Commission when such measures were introduced by states like Haryana, Andhra Pradesh, Madhya Pradesh, Rajasthan, Chhattisgarh and Odisha in the past.



Many empirical studies have indicated that such measures cause discrimination against marginalised persons causing abject poverty and on the other hand welfare schemes (which this bill seeks to debar) have empowered women and encouraged rational choices in family planning and reduced fertility rates. We pray leave to present these documents before the Law Commission if they were so required.

Also, “Reproductive Rights Are Human Rights: A Handbook for National Human Rights Institutions”, published by United Nations High Commissioner for Human Rights and two other institutions provides for the “right to physical integrity implies that all persons have the right to control their own bodies, including their sexual and reproductive life, and be free from any intervention, medical or otherwise, save with their full, free and informed consent.”

### **Impact on the marginalised**

The incentives/disincentives approach has been denounced by the National Human Rights Commission when such measures were introduced by states like Haryana, Andhra Pradesh, Madhya Pradesh, Rajasthan, Chhattisgarh and Odisha in the past. Many empirical studies have indicated that such measures cause discrimination against marginalised persons causing abject poverty and on the other hand welfare schemes (which this bill seeks to debar) have empowered women and encouraged rational choices in family planning and reduced fertility rates.

Due to poverty and low literacy rates, people are unaware or don't have the ability to afford contraceptives or abortion and end up having more children. According to the latest NFHS data, social communities that have higher fertility rates are Scheduled Tribes, Dalits, Muslims, followed by Other Backward Classes. Woman in sections of the population with the lowest income also tend to have higher highest fertility rate. The Bill (clause 8), bars such backward classes an opportunity to get subsidies, welfare schemes, access to education, contesting elections, when they need it the most.

There are many states like Kerala, Karnataka and Tamil Nadu which have seen a drop in their fertility rates over the years without having to employ any law to impose population control measures. Coercive policy measures in fact are detrimental towards a goal that all Indians should aspire too. There is a need to study what concerted measures were taken by these states in terms of health and education that can be adopted by the UP government as well in order to ensure socio-economic development in the long term.

Such provisions have a certain potential to encourage forced sterilizations as were reported during the time of Emergency period. Instead, the state should aim to meet the unmet need for contraception for women instead of disempowering them. These provisions could also see a rise in unauthorised and illegal sex-selective abortions as well as men divorcing their wives or giving up their children for adoption so they could contest polls or secure government jobs.

The latest National Family Health Survey, India-5 (2019-2020), also shows how the fertility rates have actually dropped indicating that the country is not going through an explosion that requires such a law that is detrimental to the poor.



defending human rights in the courts and beyond

We humbly request the Commission to take these comments under serious consideration before forwarding the draft bill to be passed by the State legislature.

Yours sincerely,

Nandan Maluste, CJP President

Teesta Setalvad, CJP Secretary

**Attached:** The Uttar Pradesh Population (Control, Stabilization And Welfare) Bill, 2021