

# Law of Two-Child Norm in Panchayats

## Implications, Consequences and Experiences

*The 73rd constitutional amendment assured hitherto marginalised and poorly represented groups an opportunity of political representation in local self-government bodies. The introduction of the two-child norm, however, has been double-edged in its implications. This paper presents the findings of a field study across five states where the two-child qualification norm has been implemented in local bodies. It reveals the dichotomy that exists at higher policy-making levels where this measure is seen as conducive and exemplary in view of the need to raise small families while at grassroot levels the perception is widespread that the norm is coercive in its impact. More powerful classes and castes have been better able to circumvent the provisions of this norm; women too have become its unintentional victims. The introduction of this norm should have proceeded in tandem with other much needed measures of upliftment in backward areas, such as education, health care and the provision of counselling facilities.*

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### I Introduction

The decade of 1990s started with two major developments in democratic decentralisation and in population policy and strategies in India. The first related to the conclusion of a major exercise in 1992 with the 73rd Constitutional amendment mandating more inclusive, regularly elected panchayats with reservations for scheduled castes, scheduled tribes and women and lowering the minimum age for entry to 21 years. The second development was the state's response to the population figures of 1991 Census, in the conception of a two child norm for elected representatives.

The 'two child norm' for the elected representatives included in some state panchayat laws, runs counter to the objective of bringing women, weaker sections and younger members in these institutions. Hence, the law to empower them is seen as "being circumvented by these imaginatively anti-democratic population policies" [Mohan Rao: 2003].

With the excitement about the new panchayat experiment, this law and its implications did not receive adequate attention. In this paper I present results of an exploratory, qualitative study<sup>1</sup> in 2001-02, of the implications, consequences and experiences of this law in panchayats in five states of Andhra Pradesh, Madhya Pradesh, Haryana, Orissa and Rajasthan. Lack of state level data about disqualification cases under this law was one of the serious constraints faced in our study. So we continued our engagement with the issue and I supplement the results of the study by state level data collected in 2004.

### Evolution of Two-Child Norm

The history of the two-child norm in panchayats began soon after the 1991 Census when the National Development Council (NDC) set up a Committee on Population with then chief minister of Kerala (K Karunakaran) as its chairperson in 1992. It

recommended legislation in parliament prohibiting persons with more than two children from holding any post from the panchayats to the Parliament in future. It was suggested that such legislation would convey the country's seriousness about adopting the small family norm. The report was presented to the NDC in 1993. A number of states have since adopted this norm for elected panchayats, urban local bodies, cooperatives and agricultural produce market committees, etc and also for entry and promotions of employees in public services and to decide the eligibility for government's welfare programmes and services.

Rajasthan introduced this norm for panchayats and municipalities in 1992 even before the NDC committee made its recommendation. Andhra Pradesh and Haryana introduced it in 1993. Orissa introduced it for zilla parishads in 1993 and for village and block level panchayats in 1994. Himachal Pradesh and MP adopted it in 2000 and Maharashtra in 2003 with retrospective effect from 2002. The state of Chhattisgarh created out of MP, inherited it in the MP law and has retained it so far. In the context of country's national and international commitments the NDC recommendation predates the ICPD agreement of 1994 and the National Population Policy (NPP) 2000 and most of the states adopted the norm before NPP 2000.

### II Understanding the Two-Child Norm

In the two child norm as formulated for aspirants to elected posts in panchayats (i) a person having more than two children/more than two living children after a specified date is not eligible for entry or continuance in panchayats, and (ii) having more than two children does not attract disqualification on the date of coming into effect of the law introducing this disqualification or up to the end of one year thereof if an additional child is not born thereafter. This effectively means that the norm is applicable only to persons in the active reproductive age group, and exempts older individuals who have completed their families. The action

to disqualify is taken on a complaint/petition alleging violation of the norm except whereas in MP (and at gram panchayat<sup>2</sup> level in Orissa) the competent authority can also initiate action on his own initiative. The competent authorities are generally executive officers, e.g., collectors, commissioners except in Andhra Pradesh and Orissa (for PS and ZP) where the judicial officers do this adjudication.

The introduction of this norm and the widespread fascination for it draw inspiration from China's one child policy. China has achieved remarkable success in reducing its population growth rate, which is supposed to be due to norm-based population policies, and many in India have envied it. In fact a number of policy-makers, doctors, and others interviewed in our study, referred to China with obvious admiration. But even in India, Kerala and Tamil Nadu have achieved much faster declines in fertility than China has achieved since it introduced the 'one child policy' and the related measures [Sen: 1995] without employing such coercion. The negative implication of the one child policy was also seen in China in 'gendered social problems, frightful in nature and proportion', and 'worrying socio-demographic consequences' [Greenhalgh: 2001] of declining child sex ratio and the reducing number of girl children and relaxations were thus made in the policy, which was loosened further, and took son preference into greater account. Many rural communities in China moved to institute a two-child policy and adopted an exception allowing couples whose first child was a girl to have a second child [ZengYi: 1989, Short et al: 1998].

The assumption in introducing and supporting this government-enforced norm is that it will encourage couples to adopt contraceptive measures. When it is applied to elected leaders, they will be considered models and others will follow their example. Others state that community leaders should be practising what they preach. They raise the issue of those not having foresight to plan their family, or not having knowledge or power to do so, subsequently being made in charge of planning for the community [Bhat: 2003].

The success of using such a norm in panchayats through a law assumes that the law can make people decide to have small families. It further assumes that – (i) People including the poor who tend to have many children, will aspire for leadership positions and hence follow the norm to fulfil their aspiration. The introduction of this norm in panchayats almost simultaneously with the entry of SC/ST and women guaranteed by the 73rd amendment clearly links their consequent emerging political aspirations with legally prescribed conditionality of fertility choices; (ii) local political leaders are seen as social models and therefore others will follow them in their desired family composition, (iii) choice of number of children is independent of the sex of the children; (iv) health services are adequately available, affordable and accessible to give confidence for survival of children among all sections, and (v) contraceptive services are universally available and equally accessible.

Each of these assumptions is questionable especially when seen in the context of past experience of coercive measures and of the ground realities and the two-child norm is a coercive measure.

The two-child norm has no direct relation to the character and functions of the panchayats. The norm, as formulated, directly and indirectly, impacts entry and continuation of exactly those sections, which were included by reservations mandated in the 73rd amendment. When the NDC committee recommended the norm, the new composition of panchayats was very much under

active consideration, with the the joint select committee of parliament studying the amendment bill. Hence, it is surprising that those who suggested this measure for its perceived contribution to 'population control' did not pause to consider its likely impact on women, weaker sections and youth.

### III Methodology

The study was exploratory and qualitative in nature and used a combination of secondary data and primary data. Primary data was qualitative in nature and included semi-structured interviews, detailed case studies as well as focus group discussions (FGDs) to cover both opinions as well as experiences. We have looked at the norm and its consequences primarily through the experiences of individuals affected by the norm. Affected individuals were seen as those who faced complaints or legal proceedings for disqualification for violating the norm or were prevented from contesting for this reason.

Five of the seven states, which adopted the two-child norm till the time of study in 2001, were included in the study, thereby making it a fairly representative sample. The two exceptions were Himachal Pradesh (which adopted the norm simultaneously with MP but implemented it from a later date) and Chhattisgarh (which inherited it from MP in November 2000). In each state a few districts were selected primarily based on availability of data about affected persons. The selected districts are listed in Table 1.

Individual cases, initially 20 in each state, were purposively chosen through a process of identification of individuals affected by the norm. In MP these were chosen additionally when cases of disqualification for violation of the norm suddenly started towards the end of fieldwork.

Respondents of field study included: (i) panchayat persons affected by the norm (respondents) – interviews and case-studies; (ii) panchayat persons not yet affected by the norm (respondents) – interviews; (iii) persons in leadership, positions, opinion makers or officials (key respondents) – interviews and (iv) community – focus group discussions

The details of the different kinds of 262 respondents are outlined in Table 2.

**Table 1: Selected States and Districts**

State	Districts
Andhra Pradesh	Nalgonda, Ranga Reddy, Mahboob Nagar
Haryana	Ambala, Gurgaon, Faridabad
Madhya Pradesh	Betul, Vidisha, Sehore, Neemuch, Hoshangabad, Bhopal
Orissa	Cuttack, Khordha, Angul, Dhenkanal
Rajasthan	Ajmer, Alwar, Sawai Madhopur, Jaipur

**Table 2: Respondents in Five Study States**

State	Respondents	Key Respondents		Community FGD
		Govt Officials	Others	
Andhra Pradesh	23(9)	10	14	2
Haryana	22(9)	08	14	2
Madhya Pradesh	20(9) + 18*	11	19	4**
Orissa	20(6) + 7*	16	11	2
Rajasthan	26(7)	11	12	2
Total	111(40) + 25*	56	70	12

Notes: (1) Number in bracket indicates the number of case studies developed.

(2) \* The 25 respondents were those not yet affected by the norm.

(3) \*\* Additional FGDs in the second phase due to disqualification cases started in November 2001 only.

The key respondents from government included a wide range of people from high ranking state level policy-making officials to programme implementers like collectors, deputy collectors and chief medical officers, and village level 'aanganwadi' workers of ICDS projects. The key respondents from civil society included media persons, lawyers and NGO representatives. Care was taken to include lawyers who had experience or information of handling cases related to disqualification under the two-child norm, NGO representatives were chosen from NGOs having some experience in working on women's issues, issues of social justice, or in panchayat matters.

### Limitations and Constraints

The largest limitation faced in practically implementing the study was the unavailability of state level data of disqualified persons, besides the limited time frame and the sensitive nature of issues relating to fertility decisions. In two states, where some data was available at the state level, these were not confirmed at district and sub-district levels.

The norm became operative in different years, i.e., 1995, 1997 or 2001 in different states and there was uneven availability of data about the cases of norm violation even formally instituted by the competent authorities. While Haryana and Rajasthan had some data at the state level, Andhra Pradesh and Orissa had none. Information about persons disqualified at the time nominations to contest panchayat election were filed, was not available anywhere. An added dimension was of persons having exceeded the norm but not faced disqualification. Hence, the data and findings are qualitatively indicative and not statistically representative.

## IV

### Population, Development and Gender

Key indicators<sup>3</sup> of decadal population growth rate, total fertility rate (TFR), unmet contraceptive needs, contraceptive use, changes in couple protection rate, sex ratio, under-six sex ratio and decadal changes in this and male-female literacy gap in the five states give a varied picture. AP and Orissa have significantly lower decadal growth rates (13.86 per cent and 15.19 per cent) than the country level (21.34 per cent) and lower TFR (2.25 and 2.46) than the national average (2.85). In Haryana TFR (2.88 per cent) is roughly the same as national average. Contraceptive prevalence is also much higher than the national average (48.2 per cent) in AP (59.67 per cent) and Haryana (62.4 per cent) and the unmet contraceptive needs in these states are also less than half (7.7 per cent and 7.6 per cent respectively) of the national average (15.8 per cent). The percentage growth in contraceptive prevalence between the two rounds of NFHS also has higher changes in all the five states (21 per cent to 29 per cent) than the national average (19 per cent). These, therefore, do not justify the anxiety shown in introduction of this coercive measure in these states.

In gender related indicators, Rajasthan and MP have higher male-female literacy gap (72 per cent and 51 per cent) than the national average (41 per cent) and Haryana has an alarming decline in juvenile sex ratio (-59). All the five states have a declining juvenile sex ratio. These indicate a need of serious concern about implications of the coercive two child norm particularly in the grassroot level institutions in these states.

## V

### Findings from the Field Study

*Panchayat representatives affected by the two-child norm:* Since the two child norm was included in the panchayat law as part of a policy to motivate panchayat leaders to adopt small family norm, it was reasonable to expect monitoring if many such leaders were still to be disqualified on this ground and what was happening to panchayats as a result of this law. But though disqualifications are subject of formal proceedings, in most states no data was being kept/collected about the number and details of these cases.

Where data was available from various sources, they showed large number of disqualifications for violation of the norm. In Rajasthan between 1995 and 1997, 450 cases of disqualifications had been documented and 112 or 25 per cent of the persons affected were women. Information collected by the study team showed that in the period of 18 months after the 2000 elections, 63 persons (53 men and 10 women) had been finally disqualified for violating the two child norm. Except one member each of zilla parishad and panchayat samiti, these were panchas and sarpanches of gram panchayats with number of sarpanches being disproportionately higher compared to the ratio between panchas and sarpanches in position.

In Haryana no data was available about the situation prior to panchayat elections of 2000. Positions left vacant after decisions of disqualification are reported to the state election commission for holding by-elections; these do not reflect the number of cases completed but these are still subject to appeals and stay orders. However, data available from the State Election Commission show that the number of persons disqualified on various grounds in a period of 16 months after the election of March 2000 were 387(275). These included 101 (31) sarpanch and 270(230) panch. Two (2) were ZP members and 14(12) were PS members (figures in brackets show number of persons disqualified for violating the two child norm). We note that a large proportion of disqualifications were for violating the two-child norm. In all cases except for those against the sarpanches it was the overwhelming reason. The actual number of cases for the state as a whole would be more as we found 166 cases in only three study districts visited for field work in this period.

In MP, the law became operative from January 26, 2001 but some of the senior government officers as well as elected representatives and media persons were convinced that the legal norm would come into effect only at the time of the next panchayat general election in 2005. The first phase of our fieldwork in August 2001 showed that a number of elected representatives had violated the norm, but neither did they know about the norm nor was any action initiated under the law. This was despite the state law enabling the competent authorities to start action without waiting for complaints.

In November 2001 the news of the issue of disqualification notice to a woman gram panchayat sarpanch in Neemuch district, which borders Chittorgarh in Rajasthan, was published. Thereafter there followed a spate of complaints and disqualifications across the state. By end March 2002, the number of complaints/cases as reported in the media rose to 52 in seven districts. There were many other cases, which did not find mention in the media.

In Andhra Pradesh and Orissa very little data was available at any level. The Orissa state election commission gave a list of seven cases in nine districts. However, a quick visit to 10

districts showed 27 cases in nine districts. Data was similarly not available in Andhra Pradesh where most cases were pending in civil courts with stay orders on the disqualification notices. Data collected by us in July 2004 show 1,552 disqualifications of panchayat representatives in Haryana on various grounds given in the law, after panchayat election in 2000. Of them, 1,350 (87 per cent) were for violation of the two-child norm. Similarly, in Rajasthan total disqualifications after the election in 2000 were 808 with 508 (63 per cent) for violation of two child norm.

In MP there were 2,122 disqualifications. Of these 1,140 (54 per cent) were for violation of the two child norm. Chhattisgarh, which had inherited this law from MP, had a total of 1,123 disqualifications of which 766 (68 per cent) were for violation of the two-child norm. Thus violation of the two child norm was the ground for disqualification of panchayat representatives in most cases.

Data collected in 2004 about panchayat representatives disqualified for violation of the norm are given in Table 3. The figures do not include those not able to follow the norm and therefore (i) do not seek to contest election or (ii) whose nominations have been rejected and also (iii) those who have exceeded the norm and are in constant tension of facing such proceedings any time. An overwhelming number of disqualifications is at the gram panchayat level. If we see their social composition available for MP state (72 per cent SC, ST, OBC) we find these trends confirming the profile of our sample respondents (Table 4).

*Socio-economic background of representatives:* A total of 136 panchayat representatives were respondents in our study. Of them 111 faced disqualification. The others who had not faced it so far were interviewed to get their perspectives, especially in MP where implementation had not started till the first phase of our fieldwork and in Orissa where data was not available about such persons till they were located through informal channels. All of them were interviewed and 40 case studies were prepared. The socio-economic background of 111 respondents – panchayat representatives facing disqualification is provided in Table 4.

**Table 3: Disqualifications for Violation of Two-Child Norm after 2000 Election\* till 2004**

Name of Place	Panch	Sarpanch	Member		Total
			Panchayat Samiti	Zilla Panchayat	
Haryana	1044	249	49	08	1350
Madhya Pradesh	857	270	11	02	1140
Chhattisgarh	623	143	-	-	766
Rajasthan	390	96	17	05	508
Andhra Pradesh	-	-	-	-	No data
Orissa	-	-	-	-	No data
Total	2914	758	77	15	3764

Note: \* Election in AP in 2001; in Orissa in 2002.

**Table 4: Socio-economic Background of the Respondents**

State	Age		Sex		Caste				Income (pa)	
	21-49	50+	M	F	SC	ST	OBC	Gen	<20K	>20K
AP	23		12	11	7	1	15	-	9	14
Haryana	21	1	14	8	6	-	4	12	8	14
MP	19	1	13	7	9	3	6	2	14	6
Orissa	19	1	8	12	10	1	7	2	18	2
Rajasthan	24	2	19	7	8	-	12	6	4	22
Total	106	5	66	45	40	5	44	22	53	48

The following picture emerges from Table 4: (i) women form 41 per cent of the respondents while the overall proportion of women in panchayats is a little over a third of the membership; (ii) scheduled castes, tribes and backward castes form an overwhelming 80 per cent of the respondents; (iii) roughly 50 per cent have an annual income of less than 20,000 rupees and (iv) most representatives were in the age bracket of 21 to 49 years.

Posts held by the affected representatives is given in Table 5. There are 54 panchas and an equal number of sarpanches among affected persons though the proportion of sarpanches in the panchayats is generally one out of 10 or 15. The sarpanches who have an important leadership role in panchayats were obviously targeted by this law. An overwhelming large number (95 per cent) of the representatives were from the village level. Overall the respondents who faced disqualification were young (21-49 years), poor, predominantly from the scheduled castes and backward castes.

### Experiences of Panchayat Representatives Facing Disqualification

*Contraceptive use and family planning:* Most (80 per cent) of the affected representatives were already aware of the importance of small families, and over a half (53 per cent) had adopted permanent methods but only after their desired family size and its sex composition was completed and this exceeded the legal norm of two. Roughly a fourth (23 per cent) of them were practising some form of contraception. There were also differences among the states. The disturbing factor was that among the respondents we found at least 11 cases in which abortion had been induced and in four cases pre-natal sex determination had been done resulting in abortions in cases of female foetus and continuation of pregnancy if it was reported to be male. These numbers have to be seen in the background of this information not being given easily.

The elected representatives tried to show a reduced number of children in their families to claim that the norm had been followed and the practices adopted are adverse to women as seen in the case studies discussed here (all names changed).

– M Madaniah, a 35-year-old sarpanch from the backward potter caste, won the election from Nalgonda (AP) in August 2001. He has four children from two wives. He knew about the two-child norm prior to the election. He made his first wife go for sterilisation in 2000 and claims that his second wife, mother of two of his children, is no more his wife as he had left her. So he insists that he is not violating the two-child norm. He had married her, as the first wife did not have a child for two years. The desertion of the second wife is obviously to show only two children.

– Somyajulu, a 40-year-old cobbler, schedule caste, educated up to class III, was a sarpanch in Nalgonda from 1995 to 2001. His wife became pregnant for the third time in 1997 and a complaint was lodged against him. He sent his pregnant wife away to her parent's home for two years to avoid proof of the pregnancy and child birth. Along with an NGO official and a dalit leader he went to the authorities with a plea that he was being falsely implicated as he had refused to join the party of the complainant. They met and also told opposition leaders that they could implicate their party supporters for not following the two-child norm. The opponent leaders compromised and the complaint was not

followed through. In the meantime he quietly married a second time. His second wife also had a son who was about one and half years old at the time of our field work. Another case of virtual desertion of the first wife.

– Mitwa, the most educated OBC woman in her family was selected as the ‘pradhan’ of a panchayat samiti in Rajasthan in 1995. The birth of her third child has been a major source of tension for her though she tried to suppress its evidence. She did not want the third child, a second son, but her husband did. “We end up producing children due to men, women are not to be blamed,” she says. She showed visible signs of tension since, as a lactating mother, she could not openly feed her undeclared child or take it to meetings. She had three induced abortions after the election. She continued until 1998, when she was disqualified for violation of this law. Despite being politically connected, with knowledge about panchayat system and wanting to work, her functioning was clearly impaired by the tense state of her mind. Her experience of complaints and litigation has made this youngest woman pradhan bitter, disillusioned and averse to any political participation in future.

– The wife of Mangatram, sarpanch of a gram panchayat in Morena district in MP gave birth to a third child in November 2001. He maintained that the child could not be his as his wife was away at her parents’ home since 1999. He requested the ADM for permission to divorce his wife on grounds of adultery (as reported in Hindi Daily *Nav Bharat*, Bhopal edition dated April 16, 2002). The compulsion of the norm leads to practices and allegations derogatory to women by husbands wanting to prevent their own disqualification.

– RamKunwar, a thirty years old Rajput sarpanch from Sawai Madhopur (Rajasthan) was educated up to class IX and came from a reasonably well off agricultural family. Her father-in-law had been a sarpanch for 18 years. She had one son and two daughters. The family wanted one more son since they believed that one son was equal to only one eye. She had her fourth child, a daughter, when she was the sarpanch. Being aware of the two-child norm in panchayats, she had taken admission for delivery in the hospital in another city in her sister-in-law’s name. She also left the female infant behind in town to avoid detection where it died at the age of six months allegedly of ‘rickets’. So the complaint case against her was dropped. Her husband also has a second wife, a nurse, who has two children. The fertility decisions were not affected and the neglect of the female child and her death was the price paid to stay on in the post to keep the family’s hold on the panchayat.

– Maheshwari’s husband was up-sarpanch and later sarpanch in the panchayat in AP. The couple had three children but all were born before the cut-off date. She became pregnant before the election. She underwent an abortion terminating her five-month old pregnancy because she wanted to contest for the post of

sarpanch reserved for a backward caste woman in the 2001 elections. She lost the election. Later, her two-year old son died when he accidentally drank kerosene. She denied the fact of abortion, perhaps fearing an enquiry. She was pregnant again at the time of our fieldwork.

– Hirulal 36-year old, SC sarpanch in a panchayat in Hoshangabad in MP contested the panchayat election in January 2000 for the first time. His fourth child, a son, was born on May 7, 2001. He received a show cause notice on March 18, 2002 for violating the two-child norm. His wife was five months pregnant when he learnt about the legislation. Determined not to lose his post, he planned to abort the pregnancy. He consulted the doctor in the nearby PHC who in turn advised him to consult another doctor in Hoshangabad. The latter did not agree to do an induced abortion at such an advanced stage of pregnancy because of the risks involved and the likely legal action. So the child was born and he lost the post.

There were thus cases of representatives resorting to desertion of their wives, sex selection tests and aborting the female foetus. Others went ahead and had more children despite the two-child norm because of their own reasons particularly, in the hope of a son to provide for old age security.

– Ram Prakash, a tribal sarpanch in Betul in MP has six children through three wives. Two of the wives are alive. The last child, a boy, was born to the third wife in February 2001. When informed that he was subject to disqualification because of his son he replied: “The sarpanch’s post is not going to support me during my old age, but my son will. It does not really matter if I lose the post of sarpanch.”

– 26 year-old Menka, an ST in the gram panchayat in Angul district in Orissa had three daughters, one of them born after the cut-off date. She had not used any contraceptive or gone for sterilisation, as she wanted a son. During the third pregnancy, she had gone for sex determination test and the doctor had told her that she was carrying a son. So she carried the pregnancy to full term. But it turned out to be a girl – ‘If I had known, I would have aborted. Now I have lost my position and there is no son’, that was all she could say. She tried to prevent her disqualification by getting a certificate that her child was that of her sister.

– Radha, a 30 year-old scheduled caste woman was elected panch in 1997 in Angul district in Orissa. She and her husband make cups and plates out of leaf. During her fourth pregnancy, when she was already a panch, she undertook a sex determination test and was told that the foetus was a female. She had an abortion. In her next pregnancy, she had the test done again and learnt that it was male. She continued the pregnancy and delivered her fourth child, a son and hence faced removal from the post. For her having a boy was more important than the political post. On the other hand, the female foetus was aborted.

Similar stories were found in other states.

### Complaints, Disqualifications and Circumventing the Law

There were instances when cases of violation duly supported by appropriate documents went unheard when the violation was by a person considered powerful or resourceful. For instance, Ramlal who had contested against Mukesh for the post of sarpanch in Sawai Madhopur district had raised the issue of Mukesh’s four children. Ramlal had filed an election petition with

**Table 5: Posts Held by Panchayat Representatives Affected by Two-Child Norm**

Post	Andhra Pradesh	Haryana	Madhya Pradesh	Orissa	Rajasthan	Total
Panch	8	13	6	9	18	54
Sarpanch	14	08	14	11	07	54
Member PS	01	01	-	-	-	02
President PS	-	-	-	-	1	1
Member Z P	-	-	-	-	-	-
President Z P	-	-	-	-	-	-
Total	23	22	20	20	26	111

supporting documents including anganwadi record, birth-death register, immunisation record and ration card but reportedly no action had been taken against Mukesh and he won the election. In another case the pramukh as well as the members of zilla parishad knew about the violation of the norm by a zilla parishad member from mina caste, but they were afraid to speak out because he came from a dominant caste and belonged to the party in power. It was reported that those who had money or influence also succeeded in delaying or influencing the inquiry and prolonging court proceedings so that they could continue in their posts despite violating the norm.

In Orissa the study revealed that ignorance of the norm was one of the main reasons for elected members facing disqualification despite its being in force for more than five years by then. In fact, only two out of twenty representatives, who were interviewed here, said that they knew about the two-child norm prior to contesting the panchayat elections. One person learnt it at the time of filing nomination papers while 11 persons learnt about it when notices were served to them while six were unaware of the norm. As action in any case of violation of the norm could be taken after complaints there were cases of using the two-child norm to settle political scores.

Among the nine case studies in Andhra Pradesh there were three cases where the complaints were politically motivated. In two cases these representatives had held office earlier and the norm had been violated in their earlier term without any complaint having been made. In the third case the complaint was false because the third child was born before the cut-off date. All three cases were from the backward castes, and two were women. Interestingly in all three cases the couple had adopted the permanent method of contraception before the election in which their disqualification was sought.

– Nisha, educated up to class VII, is from the backward potter caste. A mother of three, Nisha underwent tubectomy in 1994, well before the cut-off date. In August 2001, she was elected sarpanch with an absolute majority, defeating the candidate of a party that had till then always held the post of sarpanch in that panchayat. Some people attacked Nisha during a victory procession organised by her supporters. Chilly powder was thrown on her face. Her electoral rival filed a case against her in October 2001 declaring falsely that Nisha's third child was born after May 1995. She feels that rich politicians are misusing the two-child norm law to keep control and power in their hands. She also feels that potential candidates, who are poor, will not be able to run around courts and spend money defending their cases, and this law is not in favour of the poor.

In Haryana the study team came across disqualified representatives who were certain that the complaint against them was politically motivated. There were other panchayat members who had violated the norm but no complaints had been made against them. There were also disqualified representatives who contested the elections because they did not know of the norm. They claimed that they would not have contested had they known about the law.

Representatives have used many strategies to deny the birth of a child, have hidden and misreported children or even tampered with or provided contrary documents. In Rajasthan the study team came across a variety of methods that had been used. In one case the child's horoscope, details on the ration card and school records were provided as proof, but even this did not work. In another case the ANM's records had been tampered. In a third

case the doctors certified that the child was not of the representative and in a fourth the woman representative tried to hide her child among the other children in her joint family. In one case the OBC sarpanch went for a sex-determination test and then went for an induced abortion of the female foetus to avoid disqualification.

In Haryana the study team came across different strategies to avoid disqualification. The common practice in Gurgaon district was to obtain stay orders from a higher authority. There were also five instances where the disputed children had been given in adoption to near relatives and adoption deeds obtained in some cases.

From evidence available from interviews with representatives and from key informants it was seen that the different methods adopted to provide evidence in Andhra Pradesh were producing certificates – birth certificates as well as sterilisation certificates, including certificates of failed sterilisation. There were also cases of desertion of wives in this state. In Orissa the desire to contest a complaint was less as the people were poorer and could not afford prolonged litigation. However there were cases where the representative provided documents to prove that the complaint was ill-founded.

In Madhya Pradesh tactics used to avoid disqualification ranged from expressing ignorance about the norm to pushing the date(s) of conception prior to the cut-off date. For this, they used anganwadi/ANM records and ration cards. Some had given their children in adoption to relatives. In one case the couple planned to divorce each other to avoid disqualification.

## Perspectives and Opinions

*Government officials:* The opinions of government officials on the two-child norm in the five states can be broadly divided into the opinion of policy-makers and senior government officials at the state level, and the opinion of implementers of the norm, primarily officials at the district and sub-district level. Among the senior government functionaries, there is unanimity across the states about the importance of this provision in view of the 'population problem' and 'national interest'. One senior health policy-maker said, "How long can we wait for social development. Population problem is too serious." Another policy-maker concerned with panchayats said, "Population is too serious a national problem. Everything is fair to deal with it."

There was also uniform acceptance of the assumption that this law would set an example for leaders and the community at large. When asked about the potential of this law in increasing women's vulnerability to abortion or desertion the officials discounted the possibility. There was also a misplaced belief that an Indian woman elected to a panchayat becomes so empowered that she could freely decide the timing and number of children irrespective of her family's wishes and social pressures for producing sons. At the implementation level this law was seen as just one more condition to be met for eligibility as a panchayat representative.

However, there are a couple of noteworthy opinions. One official in Haryana noted that this provision was an important tool for harassment and called it the 'Harassment Act'. In Orissa professors at a medical college called for harsher laws similar to the one-child norm in China, which is interesting in the light of the low population growth rate in Orissa. In Andhra Pradesh, a district medical officer claimed that this law was unnecessary

considering the desire for small families, which is already near universal.

**Lawyers:** The opinion of lawyers in these states can be broadly divided into the opinion of those who practise in the high court and those who practise in subordinate courts. Across the five states there was agreement among high court lawyers that the norm was justified. The issue of 'national interest' was also mentioned more than once. In Rajasthan there was more than one case with the high court ruling in favour of the norm immediately after it came into force and lawyers agreed with the decision.

A lawyer practising in a subordinate court in Andhra Pradesh was categorical that "This act is deceiving the poor. The educated are deceiving the illiterate. Wrong certificates are being produced. Some people say they have given their child for adoption, others deny that the child is theirs ... all sorts of things happen. And, anyway, most candidates complete their term by the time the court trials are finalised ...". He was indicating the expenses of the poor to contest the complaints, the malpractices followed to circumvent the law and the use of stay orders to prolong the proceedings till the tenure of an elected post was almost complete. One lawyer in Orissa felt the law violated the civil rights and was an invasion of privacy. In the case of lawyers who had handled such cases, most felt that the problems in the implementation of the Act could be avoided with better dissemination of information about it.

**Media:** The role of the media in all states had been limited to reporting the law and cases of complaints and disqualification. Media persons across the five states mentioned that there had been little debate in the media about the norm vis-a-vis the democratic rights of people especially women. There was also a feeling that this norm had made a modest beginning with the lower rungs of representatives and should be extended to cover legislators at state and national levels.

**NGO leaders:** Opinion among members of the NGO community in these states was mixed. While some supported the legislation, others felt that it was not in the interests of women and had a great potential for abuse. Some NGO leaders felt that it affected the dalits and the poor adversely because they tended to have larger families for various reasons. Some NGOs admitted that they had not thought about the implications of this provision though they had been engaged in training and capacity building of panchayat representatives.

**Community perspective:** There was a difference of opinion regarding the two child norm among members of the community (those affected as well as those others randomly selected from the community for focus group discussions). In places the men or the more well-off agreed that the norm was useful, whereas women and the poor did not agree. Members also mentioned instances of misuse of this provision to settle scores and the ways in which those who had resources circumvented the norm. This was also confirmed by the case study experiences.

Focus group discussions with community members revealed that while the affluent may go unchallenged for violating the two-child norm and can afford to contest any litigation if they did get implicated, the poor were in no position to do so. Our case studies substantiated these observations. Thus while the complaint against a woman sarpanch from an influential family was closed because the female infant died, obviously, of illness and neglect, (Ram Kunwar's case) another person who had a

stillborn child was disqualified because, as the divisional commissioner observed the representative had done everything to violate the norm; only nature's intervention resulted in the still birth.

## Legal and Judicial Perspectives

To the legal mind, the two-child norm is firmly positioned on issues such as population explosion, resource depletion and sustainable development, requiring measures to contain population growth. The norm is not seen as directly interfering with the right of any citizen to take a decision in the matter of procreation. It is seen as only generating a legal consequence for a person who has exceeded the norm when seeking elected panchayat office.

The courts have accepted the legality of this clause and rejected the arguments of violation of human rights, democratic rights, personal law of minorities, or equality as the clause is not applicable to MPs/MLAs. The judgments have statements of concern about the 'population bomb' and 'population explosion'. The efficacy of social development and women's empowerment and autonomy to further the goal of population stabilisation and the likely negative consequences of a coercive measure have not been brought up before the courts.

The Andhra Pradesh High Court observed,<sup>4</sup> "the said provision has been incorporated in view of the *population explosion which is beyond imagination...* (italics author's). The Punjab and Haryana High court observed,<sup>5</sup> "How can the state assure one the right to work, education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want, if there is no check on the growth of population?. In the recent years, *the growth of population in the country is alarming. It is expected from the panchas and sarpanches to set good examples* and they are supposed to maintain norm of two children. *If they themselves violate the same, what examples they can set before the public*" (emphasis added).

The Rajasthan High Court considered the validity of this norm<sup>6</sup> and observed "though having more than two children does not, in any way, affect the working of the sarpanch, panch or a member of a panchayati raj institution but the population explosion has affected the economic condition of the state and it is with the purpose to implement the mandate of the directive principles of state policy that this measure was considered necessary" (emphasis added).

As a result of these early judicial pronouncements, the panchayat representatives have tried to circumvent the law by adopting practices that show a reduced number of children. It has also, to some extent, led to issues and implications not being debated very widely. The Supreme Court's judgment in Javed and others vs state of Haryana and others in July 2003<sup>7</sup> reflected the same concern for 'population control'. The court accepted the constitutional validity of the Haryana law disqualifying persons with more than two living children to contest or continue in panchayats. The submission that a person's number of children did not affect her capacity, competence and ability to serve in panchayat office and had no nexus with the purpose of the act was not accepted. The court observed that one of the objects of the Haryana law was to popularise family welfare/family planning programme, the clause was also consistent with the National Population Policy and served the purpose of the law.

## VI Analysis of Outcomes

### Impact on the Women's Status

The two-child norm has serious impact on the status of women. Women face double-edged challenge, Decision-making in reproduction has not been in women's hands and yet they suffered consequences of implementation of the norm directly (as candidates) or indirectly (as spouse of those disqualified). A number of disquieting trends were visible in practices used to meet the conditionality of the law without changing decisions about family size and without moving away from strong son preference. One important area of concern was the desertion of women. Other areas of concern noted in the interviews and case studies were: (i) hospital admission for delivery under wrong name, neglect and death of female infant; (ii) cases of desertion and bigamy; (iii) cases of pre-natal sex determination and induced abortion of female foetus whereas having a son was seen as far outweighing the benefits of being a panchayat representative; (iv) seeking abortion at advance stage of wife's pregnancy; (v) children given away for adoption; (vi) allegations of infidelity, denial of paternity of the third child; (vii) women exposed to violence from their opponents. This included physical and psychological violence and then followed by complaint of violation of two-child norm.

### Impact on Adoption of Contraception/ Small Family Norm

Our study highlights some very significant issues which need to be considered when examining the assumption whether the two-child norm for panchayat leaders can help set a social acceptance of the small family norm. Overall a large proportion (76 per cent) of the disqualified representatives were practising contraception (permanent 53 per cent, plus other 23 per cent). When it was a choice between leadership position and family size, especially if it pertained to a son, the desire for a child won in many cases.

Since the study focused on candidates who had faced disqualification, it was not possible to determine whether the norm did indeed lead to other couples deciding to opt for a smaller than desired family. But it is significant to note that when the respondents were asked what they would have done had they known about the new law, they did not say that they would not have had the additional child. They asserted that they would not have contested the election. It was also disquieting to learn that a number of disqualified representatives had resorted to induced abortion. There is a possibility that the incidence of sex selection tests and induced abortions could be higher among those who did not face disqualification. The report of no cases of disqualifications in some of the districts with very adverse sex ratio and with high political consciousness in MP reinforces this possibility and needs to be studied further.<sup>8</sup>

### Impact on Participation in Governance

The examination of state level data from Haryana showed that nearly three-fourths of all disqualifications were because of the two-child norm. The data collected for disqualifications between 2000 and 2004 also show that in MP, Chhattisgarh and Rajasthan,

54 per cent, 68 per cent and 63 per cent respectively of all disqualifications were for exceeding the two-child norm and in Haryana these were 87 per cent.

Studies of women's experiences in the panchayats after the 73rd amendment have shown a large entry of poor, even illiterate and younger women. Our study noted a high number of women (41 per cent) among our respondents who faced disqualification for violating the two-child norm. Among dalit respondents this proportion was even higher (50 per cent).

The 73rd amendment is aimed at providing women, dalits and younger persons an opportunity to participate in politics and governance. There was evidence in our study, of women being discouraged in view of long-drawn court cases, enquiries and mental trauma resulting from a dilemma between continuing in the post and a simultaneous desire and family pressure for a son. The mental trauma was noted especially in Rajasthan where the norm has been in place for some time. This defeats the very intent of the 73rd amendment to encourage entry of women across class and caste into panchayats.

While experience shows the potential of using this norm to harass opponents, there was also indication that the norm could be circumvented and avoided through manipulation, which is easier for those with political or financial clout. The process of complaints, enquiry and disqualification is a continuing process encroaching upon not only the resources of competent authorities, but also distracting the elected representatives from more productive development work. The majority of the respondents felt that the legislation has been discriminatory because of its selective application to local bodies, and that the norm has worked against the poor who of late were coming forward to contest, particularly at the GP level.

## VII Conclusion

Our study clearly demonstrated that the application of the norm has the potential of adversely affecting both the democratic rights and reproductive choices of individuals. It has serious consequences for the status of women. There is, however, an overwhelming public opinion, especially among key actors like policy-makers, programme implementers, doctors and lawyers that the norm is necessary to reduce family size and population growth and give impetus to development. Policy-makers expected the two-child norm to make people decide in favour of a small family. In their view, those who wanted to be in politics would definitely keep the two-child norm in view.

Discussions with a cross-section of population revealed two broad strands of thoughts. Those working at the policy level and mostly in urban milieu supported the two child norm whereas grassroot workers closer to ground realities had doubts about its efficacy. Also, in several cases, opinions were formed on the basis of personal characteristics rather than in-depth understanding and long-term implications if the norm was to be followed through.

People in relatively privileged position and not directly affected by the two-child norm had either not thought about it seriously or favoured the norm to have an impact on the family size of the poor and illiterates. For many it was not a preventive act, but a way to send a message advocating a small family norm. They seem to have missed the point that the norm itself could be a coercive measure and when enforced as a law could encroach

upon democratic and reproductive rights and choices of individuals. There was inadequate appreciation of the distinction between informed responsible choice for small family and the state's responsibility to facilitate such choice by social development and access to quality services, on the one hand, and the coercion inherent in a norm applied through a law, its limitations and negative impacts, on the other.

The norm imposed by a law ignores the state's responsibility in providing accessible, affordable, equitable, quality health and family welfare services. The inadequacy of these services is seen in high unmet contraceptive needs among desiring couples (documented by NFHS II), high unwanted fertility levels due to high IMR, and poor quality health care services. The social context of early marriages, early pregnancies and son preference is also ignored and all the responsibility is placed only on individuals, particularly women, with serious consequences for them.

The norm contradicts the rights based approach to women's development, and with the objectives of the constitutional amendment enacted towards ensuring greater political participation and empowerment of politically and socially marginalised groups such as weaker sections and women. Those who had the power, influence and resources to manoeuvre or contest, could circumvent the norm. The two-child norm gets selectively applied to persons depending upon their socio-economic vulnerability, political rivalries, perceived importance of the post occupied and as a tool to discourage potentially promising candidates

The study found no evidence to show that the norm has achieved the intended outcome. The law was introduced with the expectation that the panchayat representatives by following the norm would be able to set an example for others to follow. Our field-based qualitative study found no corroborative evidences to this effect. On the other hand, there were enough evidences to suggest that the unintended outcomes were far more serious. Contrary to the expectation, none of the respondents had accepted contraceptives because of the norm. They did so only after the desired family size (invariably including at least one son) was achieved. Clearly, long-term familial security far outweighed political aspirations, thus defeating the very purpose of imposing the norm. Field observations are that acceptance of sterilisation exists independent of this norm. In fact, child/early marriages and frequent childbirth indicate that the policies have to pay much attention to provision of affordable and accessible health and family welfare services, social development and women's empowerment.

The norm also has the potential to aggravate the declining child sex ratio. Cases were noted where persons resorted to sex selection tests and abortions of female foetus. It affects the principle of gender equity. Many of these practices demean the social status of women, which becomes a matter of grave concern.

One issue of concern related to the lack of awareness among key members of society, which includes doctors, lawyers, policy makers and civil servants, about the linkages between population and development as well as the fact that India is currently going through the 'population momentum' phase. The concept of 'population explosion' still seems to be the dominant discourse even though it has been discarded in favour of 'population stabilisation' and 'human development.' Efforts need to be made to educate key influential persons.

There is need for a wider debate on the rationale of the two-child norm in the context of grassroots reality, the equity-oriented

focus of the Indian Constitution and the adverse and demeaning practices for women resulting from the implementation of this norm documented in the experiences of affected persons. [17]

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## Notes

- 1 Study by Mahila Chetna Manch, Bhopal. (Operationally five state studies on a common framework, supported by UNFPA, New Delhi).
- 2 Zilla Parishad, Zilla Panchayats (ZP) are panchayats of district level, panchayat samitis, janpad panchayats (PS) at intermediate block or mandal level, gram panchayats (GP) are for a village or group of villages.
- 3 Data from Census 2001, National Family Health Survey (NFHS) I and II, and National Human Development Report (HDR) 2001.
- 4 *Are Gangadhar vs zilla parishad, Karimnagar and others*, 1995 (5) ALD 585 (DB).
- 5 *Fazru vs state of Haryana*, 1998 (1) PLJ.
- 6 *Mukesh Kumar Ajmera and others vs state of Rajasthan and others*: AIR 1997 Rajasthan 250.
- 7 *Javed and others vs state of Haryana and others in July 2003* [2003(8) SCC].
- 8 The districts of Morena (child sex ratio 837), Bhind (child sex ratio 832), Datia (child sex ratio 874), Gwalior (child sex ratio 853) and sharp decline in child sex ratio (number of females for 1000 male in 0-6 age group) from 1991 to 2001 have reported no case of persons disqualified for violation of the two-child norm up to 2004.

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