



ADVERSE IMPACT OF TWO CHILD NORM IN PANCHAYAT ELECTIONS

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ABSTRACT :

73rd and 74th constitutional amendment ¹granted constitutional status to Panchayat Raj. They work as a unit of local self-government as per Art. 40² and detailed chapter added in Art. 243 to Art.243-ZG the Constitution of India. The Constitutional mandate which provides for 33 percent women reservation in Panchayat is a positive action by a State towards women empowerment.³ But some State has provided 50% of horizontal reservations to women in local self-government like State of Maharashtra. India has adopted two child norm policies in the year 2000 as a part of population control in the light of International conference organized by United Nations on population and development at Cairo. However, the policy adopted by the government aims at population control but on the contrary it has an adverse impact on women empowerment.

KEYWORDS : women empowerment , United Nations on population and development at Cairo.

INTRODUCTION:

After China, India is the most populous country and we have already crossed the 1.25 billion of population and if this upsurge of population is not checked effectively within another ten to fifteen years, China will be left far behind and ours will become the most populous nation. Having only 2.4 per cent of global territory, we have more than 20 per cent of the world population which has made our country one of the most densely populated nation in the world. This has given rise to unparalleled transformation of human values, social institutions and economic structures. Due to overcrowding caused by population explosion, law and order situation in most of the parts of our country is deteriorating day by day. Incidents of Robberies, snatching, stealing, rapes, murders and other crimes like juvenile delinquency is rising. Unemployment among the youth and more among the educated ones is rising menacingly and the gap between the privileged is creating explosive situations.

In most parts of the country, agricultural land holding is becoming smaller and smaller and uneconomical because of its division generation after generation. The housing needs in urban as well as in rural areas are far beyond the available finances and educational facilities are hopelessly inadequate to meet even with the existing demands. The situation has become alarming due to apathy of population to foresee this population explosion time bomb which will create havoc if strong measures are not taken at the earliest to defuse this time bomb. For this,



¹ Narender kumar, "constitutional law of India" Allahabad Law Agency, 9th edition 2017 page-826

² Constitution of India bare act. Art 40

³ Constitution of India bare act Art.243D

two child norm has to be enforced stringently and incentives and disincentives have to be introduced otherwise the growing population will certainly hamper the progress and prosperity of the nation.⁴

JUDICIAL TREND RELATED TO CHILD LAW

The central government tried to resolve the problem of population growth through curtailment of reproductive rights. The National Population Policy 2000 has laid emphasis on in its judgment *Javed & Ors v. State Of Haryana & Ors*⁵, Supreme Court held that the election of Sarpanch, Upsarpanch, or Panch and their disqualification under Ss. 175(1) (q) & 177(1) of Haryana Panchayat Raj Act, 1994 is not arbitrary because the classification is based on intelligible differentiation and such differentiation having a rational relation sought to be achieved viz. implementation of family planning programme.

In This case supreme court of India decided issues whether two child norms is ultra-virus to article 25 of Constitution of India. Supreme Court answered affirmatively with giving falling reasoning.

The Muslim Religion purports polygamy but it is not against the constitutional norms. The custom of polygamy has no direct nexus to Right to have children more than two. However, the restriction is impose by state government of Haryana as per article 243K, clause 4 of Constitution of India. As per this Article, Election to the *Panchayat* is conducted by state government, Article 243 (f) related to disqualification of membership, as per Article 243F clause (b) conferred power to state legislature to impose additional disqualification in addition to parliamentary or state legislature election disqualification.

The subject matter of the Article 25 it is related to freedom of conscience and free profession, practice and propagation of religion. It keeps itself aloof from the fascinating part by subjecting the freedom granted by it to public order, morality and health. This implies that this procreation of children that right will not covered under the ambit of Article 25 of Constitution of India.

Further weakening the authority of Narasu appa mali Judgment Justice DY Chandrachud explicitly overruled. This landmark case in a judgment Indian Young Lawyers Association & Ors. vs. The State of Kerala & Ors⁶. It is famously known as Sabarimala case.

In this case, Judgment is overruled by Justice D.Y. Chandrachud but other fellow judges they are supported by way of not righting against view of D.Y. Chandrachud so, Javed Vs State of Harayana, This case also supported by Sabarimala Judgment. Disqualification imposed by state legislature of Harayana for contesting election it is in fever of public welfare and those contention challenged before honorable S.C. they were liable to dismiss

Ashok Balasaheb Chaugale Vs The State of Maharashtra

Bombay Village panchayat act 1959 S.14(1)(J)(i) It is disqualification of member of panchayat having more than 2 children in this case petitioner is member of gram panchayat he had one son from with 1st wife whom he has taken divorce the custody of child with his wife and he married again and he got 2 children from the 2nd wife as per Bombay panchayat act 1959 as per Sec. 14(1)(J)(i) whether this person disqualified from contesting election as per Bombay High court decision, divorce children also calculated for the purpose of determination of two child norm. If court allow it is not interest in women because to avoid disqualification the member of panchayat he will use divorce as way out to come out from disqualification.

Similarly, in the case of *Ranjana Vishawanath Shahane v. State of Maharashtra*⁷, the Bombay High Court relied on the same line with respect to two child norm and upheld the validity of the cancellation of an appointment of an Aganwadi worker where she has suppressed the fact of the existence of third child

⁴ Bill on two child norm introduced in Rajya Sabha in 2006.

⁵ MANU/SC/0523/2003

⁶ 2018 SCC OnLine SC 1690

⁷ 2016 1 Mah Lj 862 (Bom)

despite having knowledge of the mandate according to rules of the appointment authority that the candidate having two or more child shall not be eligible.

In the case of *Ravindra Ramdas Bhavsar v. State of Maharashtra*, the Maharashtra Administrative tribunal rejected the application by a civil servant upholding the validity of dismissal of the civil servant having more than two children as per rules under Maharashtra Civil Services (Declaration of small family) Rues 2005.

Under the two-child norm, a child given away for adoption is counted for disqualification in all states. The Supreme Court observed that “merely because the couple has parted with one child by giving away in adoption, the disqualification does not come to an end”. After privacy judgment it will be reconsider by the court.

INJUSTICE TO CHILDREN AND WOMEN

The use of several techniques to evade disqualifications or to get elected or to continue to hold office in panchayat raj institutions:

- (a) Avoid registration of many cases of child births;
- (b) Those who register the birth rarely provide evidence of actual date of birth;
- (c) The manipulation of the date of birth due to wide prevalence of home deliveries;
- (d) Denial of paternity of the third child,
- (e) Shifting of spouse temporarily or going for remarriage,
- (f) If disqualified, action is contested by providing false sterilization certificate.⁸

Besides, the husbands for retaining their elected seats in Panchayat, tended to resort to such measures as abandonment of wife, denial of having fathered the child, desertion of pregnant wife, and abortion particularly in cases where fetus is of a girl though incidence of desertion of the wife, and giving away the child in adoption are regular practice. Moreover, people file wrong affidavits stating that they have only two or less children but in fact they have more.

INJUSTICE IN WELFARE GOVERNMENT SCHEME TO THIRD CHLD

How government doing injustices to third child in government schemes. Public services are denied to families with more than two children.

Government Schemes	Applicability
Indira Gandhi Matritva Sahyog Yojana ⁹	Maternity benefit of Rs.4,000 is given to every pregnant and lactating woman of 19 years of age and above for the first two live births.
Balika Samridhi Yojana (Department of Women and Child Development) ¹⁰	To promote survival and care of the girl child, a cash incentive of Rs.500 is awarded at the birth of first or second girl child.
Kanya Jagriti Jyoti Scheme (Government of Punjab) ¹¹	Rs.5000 is deposited at the time of birth of girl child (born in BPL families) limited to parents who have

⁸ Nirmal buch, "Law of two child norm in panchayat implication consequence and experiences." - Economic and political weekly June 11, 2005.

⁹ http://niti.gov.in/writereaddata/files/document_publication/IGMSY_FinalReport.pdf - 8/10/2018 2:00 PM

¹⁰ <http://planningcommission.gov.in/plans/annualplan/ap2021pdf/ap2021ch5-6-1.pdf> 8/10/2018 - 2:10 PM

¹¹ <http://www.pbplanning.gov.in/pdf/New%20Schemes%20for%20Girl%20Child.pdf> 8/10/2018 - 2:20 PM

	adopted two child norm.
Majoni (Government of Assam) ¹²	Rs.5000 is deposited at the time of birth of girl child born in a government hospital and to a family that has adopted the two child norm.
Public Distribution System in Maharashtra and Rajasthan ¹³	Women with more than two children are not allowed to benefit from the Public Distribution

It was an established fact that the size of the family was directly proportional to its socio-economic status. children were being declared illegitimate and even given away in adoption to escape disqualification - the social and economic consequences of which had to be borne by women and their children

Factors affecting to women on violation of two child norm:

- (1) Measure to prevent child birth
 - (a) Abortion
 - (b) Other family planning measures
 - (C) Female feticide

SUGGESTION

Married couple who has no child shall be given following incentives for adopting two orphan abandoned and surrender children by the appropriate Government, namely:—

- (a) a dwelling unit free of cost;
 - (b) one time out of turn promotion to the government employee;
 - (c) free medical facilities, pension, food and shelter in their old age.
- (2) A married couple who have only one child and if either of them voluntarily undergo sterilization or adopting two orphan abandoned and surrender children shall be given the following incentives by the appropriate Government, namely: —
- (a) A dwelling unit at subsidized or concessional rates;
 - (b) free education including technical and medical education to the child;
 - (c) one time out of turn promotion to a government employee;
 - (d) One-time cash reward, as may be prescribed;
 - (e) employment to the child after completion of his education.
- (3) A married couple having two living children and if either of them voluntarily Undergoes sterilization or adopting one orphan abandoned and surrender children shall be given the following facilities by the appropriate Government, namely:—
- (a) free education including higher and technical education to both the children;
 - (b) job to the children after completion of their education;
 - (c) Two extra increments to Government employees and one-time cash reward of ten thousand rupees to those who are not Government employees;
 - (d) preferential allotment of dwelling unit under Government housing schemes;
 - (e) Such other facilities as the appropriate Government may deem necessary.

I would like to suggest government-enforced norm by allowing adoption by elected leaders like Rahul Gandhi and Narendra Modi would make them role models and others will feel encouraged to follow their example,

¹²<https://www.assams.info/assam/majoni-scheme> 8/10/2018 - 2:30 PM

¹³http://planningcommission.nic.in/reports/peoreport/peo/peo_tpds.pdf 8/10/2018 2:40 PM

that people including poor will aspire for leadership position but as per juvenile justice act they are disqualified for adoption.¹⁴

Two child norms should not be applicable for availing government facilities, denial of free education to the third child etc.

Two child norms uniformly should be applicable to state elections, parliamentary election and panchayat elections .

After NavtejSingh Johar and Ors vs. Union of India the Secretary, Ministry Of Law And Justice 2018 judgement right of third gender recognized by the supreme court of India and the word which is used single male or a single or divorce person cannot adopt child under Sec.57of the juvenile justice care and protection of children act 2015.This provision is not in tune with this judgement.

Last but not the least “Two child norm should not be applied for Panchayat election and state election”.

¹⁴ The juvenile justice (care and protection of children Act,2015) sec57(3)