



Communication to Commission on the Status of Women  
31 July 2023

**Submission Title: Two-child policies in states of the Republic of India**  
**Submitted by: Population Matters**

**Population Matters** is a UK-based international charity collaborating with partners, friends, and stakeholders globally to achieve a sustainable future for people and planet. We campaign to achieve a sustainable human population to protect the natural world and improve people's lives. We promote positive, practical, ethical, and entirely voluntary solutions – encouraging smaller families, inspiring people to consume sustainably, with the aim of enabling everyone to enjoy a decent quality of life whilst respecting and sustaining the natural ecosystems upon which all life on earth depends. Population Matters believes everyone should have the freedom and ability to choose a smaller family. We are committed to human rights, women's empowerment, and global justice as the framework for all we do.

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NOTE: This submission is based on research commissioned by Population Matters and conducted by an Indian consultant in November 2022. The information was believed to be correct at the time of publication but **has not been updated prior to this submission**. We make this submission to alert the CSW to these issues and policies but acknowledge this limitation and hope the Commission will be able to clarify whether substantive changes have occurred since this evidence was compiled.

## Introduction

1. As is well-known, India has employed strongly coercive measures as part of policies intended to reduce population growth in the past. While concerns over family planning policies (such as over-reliance on female sterilisation, poor quality of surgical interventions and lack of informed consent) still exist,<sup>i</sup> India's policies are now far more in line with the human rights-framework of the UN. India's current national fertility rate is now 2.0, with expected future population growth arising from increased longevity and population momentum.

2. Despite this overall progress towards an effective and rights-based family planning policy, India's federal system allows states to adopt their own legislation and policies. In a number of them, the coercive policies of forced sterilisation have mutated into a subtler form of coercion: limitations on economic or career opportunities and civil rights for those who have more than two children.
3. In seven Indian states, legislation exists which discriminates against people who have more than two children.
4. Discussions about introducing similar measures have taken place in other states.
5. These policies are in contravention of the principles of the Programme of Action of the International Conference on Population and Development, 1994, infringe individuals' civil rights and potentially have a direct impact on livelihoods and career prospects.
6. While gender-neutral in drafting, the consequences of these policies are likely to fall most heavily on women.
7. We recommend that CSW presses the individual states to remove these restrictions and presses the federal government of India to introduce measures to prevent states being empowered to introduce such legislation.

## Evidence

8. Population Matters has identified such policies in Assam, Gujarat, Maharashtra, Odisha, Rajasthan, Uttarakhand and Telangana and Andhra Pradesh. Policies are primarily focused on eligibility for contesting elections or entering government service.
9. The specific policies are:<sup>ii</sup>

| State                                 | Policy   |
|---------------------------------------|--|
| <b>Andhra Pradesh &amp; Telangana</b> | Under Section 19 (3) read with Sections 156 (2) and 184 (2) of the Panchayat Raj Act, 1994, a person with more than two children shall be disqualified from contesting election. However, if a person had more than two children before May 30, 1994, he or she will not be disqualified   |
| <b>Assam</b>                          | Under the Population and Women Empowerment Policy, the government ordered that individuals with more than two children would be ineligible for appointment in any services and posts under the state government after Jan 1, 2021.   |
| <b>Gujarat</b>                        | The amended Gujarat Local Authorities Act disqualifies anyone with more than two children from contesting elections for bodies of local self-governance — panchayats, municipalities and municipal corporations.   |
| <b>Maharashtra</b>                    | The Maharashtra Zilla Parishads and Panchayat Samitis Act disqualifies people who have more than two children from contesting local body elections (gram panchayats to municipal corporations). The Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 states that a person having more than two children is disqualified from holding a post in the state government. |

|                    |   |
|--------------------|---|
|                    | Women with more than two children are also not allowed to benefit from the Public Distribution System.  |
| <b>Odisha</b>      | The Odisha Zilla Parishad Act bars those individuals with more than two children from holding any post in panchayats and urban local bodies.  |
| <b>Rajasthan</b>   | For government jobs, candidates who have more than two children are not eligible for appointment. The Rajasthan Panchayati Raj Act 1994 says that if a person has more than two children, he will be disqualified from contesting election as a village head or a member. |
| <b>Uttarakhand</b> | Uttarakhand Panchayati Raj (Amendment) Act, 2019 bars individuals with more than two children from contesting Panchayat elections.  |

10. These current regulations are not aberrations: since Independence, more than 35 two-child policy bills have been tabled. The states of Chhattisgarh, Himachal Pradesh, Madhya Pradesh, and Haryana have rescinded the two-child norms that they had earlier adopted.
11. Uttar Pradesh has seen a run of recent proposals for punitive two-child policies. The Population Control Bill 2019, which proposed that couples with more than two children policy be made ineligible for government jobs and subsidies on various facilities and goods provided by the government, was later withdrawn – but replaced with the Population (Control, Stabilization and Welfare) Bill in 2021.
12. The 2021 bill proposed incentivising a two-child family size with housing subsidies, soft loans for constructing or purchasing a house, tax rebates, increased pensions, and free health care facilities. For those who did not comply, however, it proposed they should be barred from accessing other government-sponsored welfare schemes, contesting local elections, applying to government jobs have limited access to food rations.
13. The disincentives proposed by the Uttar Pradesh bill – and already implemented in whole or part in other states – have a direct impact on an individual’s livelihood and prospects. They restrict an individual’s choice and exploit their economic vulnerability and career aspirations in the name of ‘population stabilisation’. The bill not only undermines their reproductive rights, bodily autonomy (upheld by Article 21 of the Indian constitution) but its penal clauses are also in conflict with other fundamental human rights and constitutional rights (for example, Article 16 ensures equal opportunity in matters of public employment).
14. While the Uttar Pradesh bills are the only ones laid before legislatures recently, they sparked conversations in other states such as Karnataka and Uttarakhand about introducing similar measures.<sup>iii</sup>
15. The legal basis for states introducing such legislation is Entry 20-A in the Concurrent List of the Seventh Schedule, inserted through the 42nd constitutional amendment in 1976, permits both Union and state legislatures to enact laws on population control and family planning.
16. In 2020, the High Court in Delhi dismissed a plea seeking certain steps, including a two-child norm, to control the country’s growing population.<sup>iv</sup>

17. In a December 2020 affidavit, sought by the Supreme Court when that decision was appealed, the federal government expressed opposition to introducing such measures nationally. It stated that it stands “unequivocally” against imposing family planning on the population and that couples had the right to decide their family size. It also mentioned that India was a signatory to the Programme of Action of the International Conference on Population and Development, 1994, which advocated for a more rights-based family planning. Lastly, the National Planning Policy (2000) also underlines its commitment to “voluntary and informed choice”.<sup>v</sup>

### **Implications for women**

18. These policies undermine reproductive freedom of choice, exacerbate gender inequality, and in a country with considerable socio-cultural barriers to abortion and misconceptions about its legality, will increase the number of forced sterilisations and unsafe abortions.
19. To promote birth-spacing methods and move towards a healthier method mix, the Government of India has tried to increase the basket of contraceptive choices in the last two decades. Nevertheless, the lack of awareness and misconceptions around male sterilisations and intrauterine contraceptive devices have done little to make the contraceptive burden more gender equitable.
20. India’s current contraceptive uptake is heavily reliant on female sterilisations. The perception that family planning and contraception are a women’s burden to bear is pervasive across both rural and urban areas. National Family Health Survey 5 (NFHS-5)—a recent nationwide survey from 2019 to 2021—found that only one in ten men use condoms and male sterilisations account for only 0.3% of all family planning methods.<sup>vi</sup> The onus of contraception has almost entirely fallen on women and female sterilisation has become the most common method of contraception over the last few decades.
21. Practices which limit employment opportunities are likely to impact women disproportionately due to the socio-economic disadvantages and obstacles they already face. Restrictions on political representation will also exacerbate current under-representation of women in politics, further contributing to the likelihood of policies and legislation which are discriminatory in intent or effect, and do not take women’s needs fully into account.
22. However, there is no doubt that population pressures do limit opportunities for individuals and communities and positive, voluntary policies which address it can play a critical role in enhancing development and improving lives. Effective policies consistent with human rights and ICPD principles include enhancing gender equality, meeting the unmet need for contraception, the provision of high-quality, universal education, addressing child and maternal health and tackling poverty. These actions enhance and improve the lives of women and girls. States concerned about the negative impact of population growth should adopt such policies.

## Recommendations

23. We urge the CSW to establish the current status and effects of two child policies of these kinds across India.
24. If the remit of CSW extends to contacts with state governments in India, these governments should be urged to end these discriminatory policies and adopt progressive, rights-based policies to address population issues.
25. We urge the CSW to press the federal government to take action to prevent state governments adopting such policies.
26. We urge the CSW to make a statement condemning these policies and asserting the case for progressive, voluntary, rights-based measures and positive population solutions.

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<sup>i</sup> *The Guardian*, 12 Nov 2014 <https://www.theguardian.com/world/2014/nov/12/india-sterilisation-deaths-women-forced-camps-relatives>;

<sup>ii</sup> *Hindustan Times* <https://www.hindustantimes.com/india-news/the-past-and-present-of-two-child-policies-in-india-101626304115798.html>; Indian Express <https://indianexpress.com/article/india/two-child-policy-in-indian-states-6082879/> ; The Print <https://theprint.in/india/how-ups-proposed-population-policy-compares-to-two-child-norms-in-other-states/695086/>

<sup>iii</sup> Karnataka: <https://timesofindia.indiatimes.com/city/bengaluru/karnataka-hints-at-population-policy-set-to-study-up-model/articleshow/84394771.cms>

Uttarakhand: <https://indianexpress.com/article/india/uttarakhand-studying-ups-draft-bill-to-make-own-population-law-7538474/>

<sup>iv</sup> *Hindustan Times*, 12 December 2020 <https://www.hindustantimes.com/india-news/against-forcing-family-planning-centre-tells-sc-after-population-control-pil/story-IJpqHhdep8jRwRHbfNt5wK.html>

<sup>v</sup> *ibid*

<sup>vi</sup> International Institute for Population Sciences (IIPS) and ICF. "National Family Health Survey (NFHS-5), 2019-20: India." (2020) [http://rchiips.org/nfhs/factsheet\\_NFHS-5.shtml](http://rchiips.org/nfhs/factsheet_NFHS-5.shtml)