
THE TWO-CHILD POLICY THROUGH THE LENS OF LEGAL PHILOSOPHY

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ABSTRACT

In a world where overpopulation strains finite resources, threatens economic stability, and exacerbates social inequalities, India stands at the forefront of this global challenge. With a population surpassing 1.4 billion, India has surpassed China to become the world's most populous country. This demographic surge brings with it a myriad of pressing issues, from poverty and unemployment to food insecurity and environmental degradation. To address this critical issue, India has implemented various population policies over the years, with a recent focus on the contentious two-child policy. This policy, adopted by several states, including Uttar Pradesh, Bihar, and Maharashtra, aims to curb population growth by incentivizing families to limit themselves to two children. However, the efficacy and ethical implications of such measures are subjects of intense debate. Drawing upon a rich tapestry of philosophical perspectives, this article explores the intricate nuances surrounding India's two-child policy. From the perspective of utilitarianism championed by traditional thinkers such as Jeremy Bentham and John Stuart Mill to contemporary theories of total utilitarianism and averagism posited by Derek Parfit, Jan Narveson, and others, a diverse array of philosophical frameworks inform the ethical and practical considerations of population control. These philosophers can support the two-child policy, and they also contribute to the optimum population size of the society and the overall welfare of the country. This article has been written by reviewing various articles and journals. The research results are that the two-child policy, if implemented, will be for the greater good of society, will provide maximum happiness for people, will decrease poverty and will make it easier for the government to enforce laws.

Overpopulation is one of the major concerns in our country today. India, with more than 142.86 crore people, overtook China with a population of 142.57 in April 2023, making it the first and most populated country in the world.¹ Our country, just like other countries in the world, has scarce and limited resources. If the population is not controlled, then the demand of the growing population will exceed the available resources, causing more costs to society than benefits. These costs include poverty, unemployment, food insecurity, insufficient income rate, illiteracy, higher rate of conflict, which leads to several social problems in the country. As per the poverty estimation data provided by the Tendulkar Committee, approximately 25.7% of the people in rural areas and 13.7% in urban areas in India live in poverty. Additionally, India is placed 107th out of 121 nations by the Global Hunger Index. ² One of the main reasons for this is the rise in population. The population in the country has been increasing at the rate of 2.2% per annum for the past 45 years and this increases the demand and utilization of goods. Additionally, future generations will come to a situation wherein their necessities of life will not be met. The government of India invested a lot of time and money into population policies to decrease the population. Though these policies emphasized using contraceptives, education, and the most effective way to form family planning policies, it never really decreased the population majorly.³ All of this calls for immediate and strict rules and regulations for imposing a limit on the growing population. Some states such as Uttar Pradesh, Bihar, Andhra Pradesh, Odisha, Gujarat, and Maharashtra are some of the states in which India has adopted the two-child policy. The total fertility rate in these countries has increased above 2.1, which is the limit for the fertility rate in a state. The policy has been criticized and approved by the citizens on various grounds. The Uttar Pradesh Population (control, stabilization, and Welfare) Bill, 2021 provides incentives for those who have two children and undergo voluntary sterilization, Any person who has more than two children will be barred from 77 welfare schemes that would be intelligible to applying for government jobs and would not be allowed to contest elections for the local authorities. ⁴

¹ UN DESA Policy Brief No. 153: India overtakes China as the world's most populous country, <https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-no-153-india-overtakes-china-as-the-worlds-most-populous-country/> (last visited Dec 15, 2023).

² Times of India Global Hunger Index 2022: India ranked 107 out of 121 countries (2022), <https://timesofindia.indiatimes.com/india/global-hunger-index-india-ranked-107-out-of-121-countries/articleshow/94873797.cms> (last visited Dec 15, 2023).

³ International Journal of Sociology and Social Policy, vol. 22 no. 11/12 <https://doi.org/10.1108/01443330210790193>⁴ Rashid, O. (2021)

⁴ Omar Rashid, Two-child policy: U.P. Law Panel submits draft law to adityanath The Hindu (2021),

Ancient and classical philosophers such as Jeremy Bentham and John Stuart Mill are some of the philosophers who spoke about Utilitarianism. Utilitarianism is a philosophical thought whereby “greater happiness is achieved through greater numbers”.⁵ Limiting the number of children produced per family decreases the overall consumption of resources in the society, this gives a better opportunity for the future generations to prosper. The amount of people that would benefit from this is enormous as it involves generations of people whose necessities can be fulfilled. These philosophers are consequentialists, where the consequence of the action is more important than the action itself and that the good or bad depends on whether it brings happiness or sadness. They use this principle even if the greatest good comes from lying, cheating, or killing. John Stuart Mill, on the other hand, believed in “Rule Utilitarianism”. He agreed with Bentham about utilitarianism, but he said that there must be some basic rules to achieve this and that these rules that are made should maximize happiness for everyone.⁶ It is, therefore, essential to note that the population must be maintained at the right levels so that severe social and economic problems are not caused. Population explosion can only be controlled by implementing proper and strict rules on the limit for the number of children produced per woman or else people would just act according to their desires. Doing this would be the best probable outcome and maximize happiness, considering our future generations.

Derek Parfit, a British philosopher, talks about total utilitarianism. Total utilitarianism, also known as totalism, seeks to increase the overall level of well-being in the world. This is achieved by multiplying the number of individuals by their average quality of life to maximize this total sum.⁷ Therefore, totalists believe a situation can be improved by increasing the average well-being level of the existing population. However, this may not be possible according to the current situation, as a lot of poverty exists in India. When the population reduces, poverty also tends to decrease as people will have more money in their hands, and their probability of unemployment also decreases. Thereby improving the well-being of the people and promoting economic growth.

Average, or average utilitarianism, focuses on improving the average level of well-being in a population, irrespective of the total number of individuals.⁸ Unlike total utilitarianism,

<https://www.thehindu.com/news/national/two-child-policy-up-law-panel-submits-draft-law-to-adityanath/article35945325.ece> (last visited Dec 15, 2023).

⁵ Crimmins, J.E. Jeremy Bentham, Stanford Encyclopedia of Philosophy. Stanford University.(2021)

⁶ Hooker, B, Rule consequentialism, Stanford Encyclopedia of Philosophy. Stanford University.(2015)

⁷ Ethics (2023), <https://en.wikipedia.org/wiki/Ethics> (last visited Dec 15, 2023).

⁸ Ethics (2023), <https://en.wikipedia.org/wiki/Ethics> (last visited Dec 15, 2023).

averagism rejects the idea that reductions in the average well-being can be compensated for by adding more people to the population. Formally, averagism states that a state of affairs A is considered better than B if and only if the average well-being in A is higher than in B. Averagism faces criticism for its counterintuitive implications, which are argued to be as severe as the repugnant conclusion. Notably, Derek Parfit demonstrates that averagism leads to the surprising conclusion that a population with just one person experiencing slightly higher average well-being could be better than any large population, even one with billions of people. From the perspective of averagism, a two-child policy that contributes to reducing the population or improving the average well-being of the population may be seen as ethically justified. This is because averagism prioritizes the overall well-being experienced by individuals on average rather than solely emphasizing the total number of individuals.

Thinkers like Jan Narveson are captured by the idea that people may favor making individuals happy but are neutral about making happy individuals. Person-affecting views in population ethics express the intuition that, under equal conditions, adding a happy person to the population does not necessarily improve the overall state of the world.⁹ The focus could be on the well-being and quality of life of existing individuals rather than on actively promoting the creation of new lives, even if those lives would be happy. The two-child policy, since it aims at controlling population growth and enhancing the well-being of the existing population by ensuring adequate resources for each individual, aligns with person-affecting views by prioritizing the well-being and quality of life of individuals in the current population. This resonates with the idea that making individuals happy is valued, but creating additional happy individuals doesn't necessarily enhance the overall state of affairs.

Jeff McMahan describes the problem of asymmetry in population ethics as when considering whether to bring a person into existence, and the significant moral reason lies in the potential for their life to be worse than non-existence. The mere notion that a person's life would be worth living doesn't hold as compelling a moral reason for their creation.¹⁰ The two-child policy aims to limit population growth, especially when resources are scarce. There is a potential to prevent the existence of individuals whose lives might be characterized by suffering, hardship, or a quality of life considered not worth living. In this view, the policy aligns with the moral consideration of avoiding the creation of lives that could be significantly

⁹ Ethics (2023), <https://en.wikipedia.org/wiki/Ethics> (last visited Dec 15, 2023).

¹⁰ Ethics (2023), <https://en.wikipedia.org/wiki/Ethics> (last visited Dec 15, 2023).

worse than non-existence. It can also be said that the two-child policy, by restricting population growth, may not necessarily be driven by a moral imperative to create more lives worth living actively. Instead, it could be seen as a measure to ensure a sustainable and manageable population size without a strong emphasis on actively promoting the creation of additional lives with positive well-being.

Aristotle talks about population size in politics. He says that every individual needs to have sufficient material goods and that these material goods must be used based on necessity and not in a luxurious manner, which wastes resources. The quantity of product per citizen must be calculated based on the relationship between land and population.¹¹ The government needs to intervene and ensure there is no wastage of resources and that the resources are not used haphazardly. People tend to give in to luxury which limits the amount of resources for the growing population. limited resources that are present in today's day must be used in a more regulated way. Therefore, the larger the population, the less self-sufficient people will be. Unequal distribution of land can be defined as the situation wherein the land available is not equally distributed among the population. In India, the distribution of land is not proportionate. As the population keeps increasing, the amount of land and wealth in each person's hands keeps decreasing, and the demand for basic requirements such as food keeps increasing. This puts more pressure on the farmers to produce more food crops intensively to meet the market, but the farmers and the government may not be able to cope with quick technological changes to farm on the available land. This results in land degradation. Apart from this, various social and economic problems accompany the increasing population. Aristotle mentions that if the population is too big, it becomes harder to run the society efficiently, and it also becomes more challenging to enforce laws. He also mentions that if the population is too large, the distribution of public wealth and offices will not be done effectively and efficiently. According to Aristotle, a society can only be stable if large middle-class citizens can live a comfortable life, and to achieve this, it becomes essential to draw a relationship between land and population. If this is not done, then overpopulation will lead to poverty which will not make the society stable.

In conclusion, by drawing insights from philosophers such as Jeremy Bentham, John Stuart Mill, Derek Parfit, Jan Narveson, and Aristotle, it can be concluded that the perspectives presented by these philosophers, rooted in utilitarianism, total utilitarianism, averageism,

¹¹ Aristotle on Population Size Theodore P. Lianos*, Aristotle on Population Size, <https://www.jstor.org/stable/44806062> (last visited Dec 15, 2023).

person-affecting views, and Aristotle's political philosophy, collectively contribute to the argument that the two-child policy could be justifiable for the greater welfare of society. The challenges faced by the two-child policy, including concerns about reproductive rights, a potential rise in abortions, and the need for incentives, are acknowledged. However, using the help of disincentives may be a more effective strategy to encourage responsible family planning. The Supreme Court's recognition of the broader societal and economic considerations further emphasizes the need to balance individual rights with the nation's well-being. In essence, while the two-child policy is not without its criticisms, it could contribute to the greater good of society by curbing overpopulation, and by doing so, the associated social, economic, and environmental challenges will also be curbed in society. As India grapples with balancing individual rights and collective well-being, further research and nuanced policy considerations will be essential for sustainable and ethically sound population control measures.