GENDER AND REPRODUCTIVE
RIGHTS IN INDIA:
PROBLEMS AND PROSPECTS
FOR THE NEW MILLENNIUM

BY
UPENDRA BAXI

Let me acknowledge at the very outset that I am not an 'expert' in the area of reproductive rights and health. I have so far not addressed in my writing the official discourse concerning the global or the Indian population policy. Nor is social prediction something I am trained to practice. The millennial hype has also passed me by, leaving me wholly incompetent to address millennial futures.

I do not say all this out of modesty, which is in any case no longer a public virtue in a rapidly
globalizing India! With so many disclaimers, some of you may justly wonder at the relevance of my views on reproductive rights. This enigma may even deepen as I proceed. I hope, however, that you would want to practice, for a while, a willing suspension of disbelief as I proceed to share with you some of my concerns.

The first century of the next millennium will be known to human history as inaugural of a truly post-patriarchal era. Women, hitherto denied their humanity, refuse to be among the losers of the next millennium. The weaving of a “hyperquilt of women’s voices throughout most of the planet” has shaken the foundations of male domination. The enunciation of women’s right to be, and to remain, human has already made inchoate everywhere the hitherto imperious voices of patriarchy.

Although I remain anxious concerning the future of human rights as a whole, I do not think that gains arising from the struggle of women’s human rights are reversible.

The scripting of reproductive rights into international human rights law is a major gain. So is the effort to continually innovate to expand their range. This struggle over reproductive rights has, in the past three decades, led to a progressive feminization of theory and practice of governance, development, human rights and global justice. It has also invented extraordinary patterns of global social action. Among these are ways of building transnational networks and coalitions of social and human rights activists and kindred epistemic communities such as health specialists, international lawyers, social and human scientists and policy-makers.

The constitutive power of women’s movements is also most remarkable. Women’s rights are presented at once as a revolutionary break and as emanations from pre-existing human rights. On the one hand, these movements energetically posit the lack of integral concern with women’s right and well-being in prior human rights enunciations and seek to redress it by innovating general and specific norms. On the other, these movements also invoke the presence in earlier human rights formulations the logic and the language of reproductive rights. The conversion of absence into a vital presence is achieved by feminist ways of reading the more established categories of right to life, immunity from torture or degrading treatment, the rights to the highest attainable standards of health, education and information, privacy and dignity. Thus is woven by caring and agile hands a hyperquilt of women’s human rights.

---

1 Manuel Castells, THE POWER OF IDENTITY
   137(1997;Oxford, Blackwell.)
2 Utpendra Baxi, THE FUTURE OF HUMAN RIGHTS
   (2000,in press: Delhi, OxfordUniversity Press.)
II. THE DIALECTICS OF REPRODUCTIVE RIGHTS

What are reproductive rights? Is it a question as important as its close cousin: What ought to be the range of reproductive rights? And yet the element of is and ought commingle, resisting efforts at analytic segregation.

What ought to be has been presciently identified by Professor Rebecca Cook as nothing short of a right to "reproductive self-determination." What we have really, from Tehran to Cairo, Beijing and beyond, are registers of interests and concerns, only some of which assume the form of binding human rights norms and standards. Accordingly, Professor Cook is justified in speaking about "reproductive interests" (entailing reproductive "security and sexuality, reproductive health, reproductive equality" and "reproductive decision-making") rather than reproductive rights.

Like all claims to self-determination, reproductive self-determination signals a revolution in the making.

Initially conceived in the Final Document of the Tehran Conference on Human Rights in 1968 articulating the "basic human right to decide freely and responsibly the number and spacing of children and the right to adequate education and information in this respect," the languages of reproductive rights have matured with the Cairo Programme which expands the notion to include a right to reproductive health, defined as a "state of complete physical, mental and social well-being." And the Beijing Platform even further extends the notion of reproductive health to women's rights "to have control over...matters relating to their sexuality...free of coercion, discrimination and violence."

Freedom inherent to reproductive rights entails, for almost all societies, a revolutionary transformation assuring equality of relationship between men and women, "fullest respect for the integrity of the person, ...mutual respect, consent and shared responsibility for sexual behaviour and its consequences." The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) contains general obligation "to ensure the full development and advancement of women...for the purpose of guaranteeing them the exercise and enjoyment of human rights on a basis of equality with men."

---

U.N.DOC.A/CONF.32/41(1968.)


9. Ibid.

10. Article 3. Convention on Elimination of Discrimination Against Women (CEDAW, popularly known as the
We must, at the risk of some digression, note that the production of insurgent spaces for the claims to women’s reproductive self-determination occurs in places marked by horrendous histories of violation of these rights: Tehran, Bucharest and Beijing. Each site encodes many crucial histories of violation of women’s human rights.

Moreover, the places of enunciation are not the only significant places. Other places also mark the points

Women’s Convention.) Specific rights enshrined in this Convention are:

- Access to education, information and advise on family planning (Article 10(h))
- Workplace safety, safeguarding the reproductive function (Article 11(1)(l))
- Adequate provision of health care, maternity leave, special protection of women from harmful conditions of work during pregnancy, chilled care, and related assistance to working parents (Article 11)
- Elimination of gender based discrimination in provision of health care, including family planning, adequate nutrition, and “free services where necessary”(Article 12)
- Special provision for health care to rural women (Article 14)
- Reproductive autonomy described as the right of men and women to decide freely and responsibly on the number and spacing of children and access to information and means to exercise these rights (Article 16.)

11 See Reed Boland, The Environment, Population and Women’s Human Rights, ENVIRONMENTAL LAW 1137, 1130-1147 (1997.)

of distribution of power and responsibility for advancement of reproductive rights of women.

The places of implementation are the relatively privileged sites of state sovereignty and national governance. The places of monitoring compliance with treaty obligations stand variously constituted by United Nations treaty bodies as well as, occasionally, by national courts and legislatures. The places creating material bases for the exercise of reproductive rights stand occupied by the pharmaceutical industries, medical education and profession and public health specialists.

The constitutive places of violation are irredeemably local, being the sites of micro-fascism of the local state, the home and the hearth, the theatres of war and civil strife, and a variety of workplaces where women are forced to choose between violation of their human rights and the need to earn a livelihood.

What I just now named as the production of insurgent spaces for women’s reproductive self-determination stand enclosed and enmeshed in these variety of places. A forecast concerning the future of reproductive self-determination must necessarily take into account the conflicts, contradictions and collisions among the production of spaces for activism directed to reproductive self-determination and the places, which furnish sites of its subversion.

Normative insurgency, empowering us to identify comprehensive state and civil society failure in the tasks of promotion and protection of reproductive rights, delineates merely an abstract geography of the future. To do better, we need recourse to
concrete geographies of injustice in ways that make the invisible visible, silences speak, and margins become the centre.

International reproductive rights manifestos, national family/population planning policies, judicial pronouncements, mass media expose and global human rights activism do enable this movement, but not always in the ways that empower the violated.

This we know. What we do not quite know is how best to relate the politics of production of human rights with the production of politics in which the irredeemably local place of violation of women's reproductive rights may be structurally erased. That is where, I believe, the future of reproductive rights and health stand situated.

III. RETHINKING EMPOWERMENT?

I suggest that movement in this direction can begin with a few simple steps.

First, we need to learn an important human rights lesson: as concerns the obligation to respect, protect and promote women's rights as human rights, no extant state and society, is developed. All societies, whether labelled as underdeveloped or overdeveloped, emerge as novices upon whom human social learning has to be enforced by the power of New Social Movements.

Epistemic humility, not the arrogance of power, is the very threshold of any meaningful discourse concerning reproductive self-determination. And coercive state policies against impoverished women are equally a problem, calling for redress in, for example, India as well as the United States of America.

Second, we need to continually combat the politics of appropriation of reproductive rights. In particular, the enchanting prowess of the mantra of contemporary globalization: "What is good for the communities of foreign investors, and international / regional financial institutions is also good for the future of human reproductive rights" needs to be met by the determining prowess of the subaltern mantra: "Women's rights are human rights."

Radical critics of global population planning programs remind us constantly about the ways in which concentrations of economic and scientific, hitech power appropriate the logic and language of reproductive rights for their own ends. They present formidable evidence demonstrating how state/corporate power has all too readily rendered millions of women's bodies as sites for corporate experimentation in reproductive technologies.


Betsy Hartmann. REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF REPRODUCTIVE CONTROL (1995; Boston, South End Press, Rev. Edn.) See also, Sonia Correa, POPULATION AND
The histories of the ideology and practice of population control suggest number of ways in which the state/corporate power constructs women’s bodies as sites for “impact upon fertility,” in which bodies of women circulate in the global market of state policy and production for profit, as “information gathering or calculative” devices.15

We stand reminded that Wyeth-Ayerst, the U.S. manufacturer of Norplant, was a major sponsor of the Cairo Conference in ways that, perhaps, led it to an open endorsement of this technology.16 Evidence is responsibly garnered encouraging us to think about the corporate agenda, of the master “plan behind family planning.”


17 Hartmann supra Note 14 at 57-72.

The apprehensions thus expressed remain worthy of closest attention, given the fact that the United Nations system has so far comprehensively failed in articulating even minimalist human rights standards for promotion and protection of women’s human rights applicable to global corporations.18

The normative explosion of reproductive rights has been made possible by immense activist exertions. In each generation, social reproduction of human rights activism remains a necessary condition for the realization of reproductive rights. At the same time, these labours remained enmeshed in the web of global capitalism. Women’s empowerment, we are told, over and over again, cannot simply occur in the absence of conditions that secure and entrench the rights of transnational corporations to pursue and own (through mechanisms, now of the TRIPS-genre) freedom of scientific research and without substantial deregulation of markets, even when ex facie deeply human rights violative.

Third, in promoting regimes of representations concerning empowerment of women, we need to avoid the essentialist trap which homogenises all women. If (and I have no doubt whatsoever) conscientious advocates of reproductive self-determination mean what they say, it becomes necessary to respect the fact that women are located in very different subject-positions concerning the logic of social reproduction. While all women may

18 The millennial Global Compact, initiated by the United Nations Secretary General, has the support of the most egregious transnational corporate violators of human rights. For activist protest against the creeping privatization of the United Nations, with which I have had the privilege of association, see www.corpwatch.org
cherish reproductive autonomy, the ways in which they may so do may differ in important respects, which need exploration.

Women in dwindling ‘minority’ populations may favour pro-natal polices, even at the cost of surrendering their rights to reproductive autonomy. It would be a mistake, for example, to think that Indian Parsi women, confronted so recently as last week, on the occasion of their New Year with dire forecasts concerning the even further diminution of their minuscule community, stand patriarchally encased were they to accept a rather demanding rate of fertility increase.

Similarly, while one may criticise the role of the Holy See in international conferences on women’s rights, as well as condemn anti-abortion clinic aggression in the United States, and unconscionable fundamentalist reservations by Islamic nations to the CEDAW, pious Catholic and Islamic women deserve a serious audience, especially as articulating concern about the mode of production of reproductive rights.

Reduction of their positions to patriarchally constructed discourses on the so-called ‘cultural relativism’, even human rights agnosticism, manifest in the more spurious versions of the “Asian values,” 19 is not, necessarily, helpful for any authentic movement for reproductive self-determination. Non-essentializing strategies towards reproductive self-determination, of course, aggravate further the activist agendum, crowned already with crucifying complexity. But that form of complication remains intrinsic to any conscientious advocacy of women’s empowerment.

Fourth, the languages of empowerment are not always fully sensitive to the class/gender divide, as the raucously interminable contestation over quota-based reservation for women in Indian Parliament so acutely reveals. While an amendment of the Indian constitution provides for reservation for the dalit women in the institutions of grassroots governances (the Panchayti Raj institutions,) leading women’s organisations continue to oppose quota-based representation of women from backward classes in Indian Parliament.

“Empowerment” and “political participation” are thus not self-evident notions, as the enunciatory power of reproductive rights make them appear. Rather, these emerge as contested sites over the modes of production of politics. Feminization of these notions in ways that respect the diversity of women’s subject-positions, as defined or constructed by them, complicates the reproductive rights discourse. Simplistic attributions of ‘false consciousness’ to people whom we do not understand well enough, and with whom we happen to disagree, are frankly unhelpful.

Fifth, while a theoretical adjudication concerning the radical critique of global population policy is beyond the scope of this Lecture, I do wish to call attention to the bare, as well as brutal, fact that

---

appropriation of the languages of reproductive rights and health in dominant governance/technoscientific discourse may not have much to do, after all, with empowerment of women.

Governance discourses stay focussed on incentive/pay-off packages to the makers and implementers of public policy. Technoscientific discourse, in the main, is concerned with ensuring production for profit of contraceptive and reproductive health technologies. Both these discourses combine also to create ideologies of family planning that make public policy legitimate and ensure maximally constellations of conditions and circumstances in which the ideology of economic rationalism justifies 'free market' predation on women's rights as human rights.

I do not wish to suggest that medical/pharmaceutical technologies are unimportant for eventual empowerment and even emancipation of women. I do, however, maintain that this discourse regards women as objects rather than subjects of governance and development policy.

As a result, whatever empowerment occurs, through struggles, remains molecular, not molar. I recognise that even interstitial empowerment is better than none. I also recognise, by way of reiteration, that in a little over three decades this struggle over reproductive rights and health has led to a progressive feminization of theory and practice of governance, rights, development and justice.

But all these acknowledgements do not, in the least, justify the view of globalizing elite, and concerned epistemic communities, that whatever best promotes the interests of global capital, or the scattered hegemonies of communities of direct foreign investors and international / regional financial institutions, signify necessarily a better future of the human right to reproductive self-determination.

IV. THE NPP, 2000: AN OVERVIEW

Against this backdrop, I now attend to your expectations concerning my views on the Indian National Population Policy, 200020. It is indeed a most remarkable formulation, which in my opinion ought to influence the implementation of other older statements of national policy, such as the Education, Water, Forest, Labour, Industrial and Youth policy. Already, one of its major recommendation stands enacted: the National Population Commission, constituted on May 11, has held its first meeting chaired by the Prime Minister of India on 22 July 2000.

I need to mention this because I now address what the NPP says and does not say. When I make its silences speak to us, I do so as by way of a first draft of the honest citizen’s guide to reproductive rights and health in India. My evaluation of the NPP may at times seem even hypercritical but I offer it

---

20 Government of India, NATIONAL POPULATION POLICY 2000 (http://mohfw.nic.in), hereafter cited simply by paragraph or page.
by way of exercise of my fundamental duties of an Indian citizen (enshrined in Part IV-A of the Constitution) requiring development of ‘scientific temper,’ ‘critical enquiry,’ directed to reform, and the ‘pursuit of excellence.’ The act of fulfilment of my constitutional obligations may seem even offensively provocative. I mean to cause no offence, but I do wish to provoke soul-searching reflexivity.

Let me then attend to first what the NPP says.

The NPP’s salient objective is to attain a stable population by 2045 “at a level consistent with the requirements of sustainable economic growth, social development, and environmental protection”, whatever these talismanic phrases may mean. This grand objective is to be pursued in immediate terms (the next decade) by addressing “the unmet needs for contraception, health care infrastructure and health personnel, [provision of] integrated service delivery for basic reproductive and child health care” as also by bringing “down the TFR to replacement levels by 2010.” A statement of Strategic Themes and Action Plan further admirably elaborates the objectives.

The NPP’s understanding of high population growth traverses the familiar ground. The expanding numbers in the reproductive age groups contribute 58%, high infant mortality rate, triggering high “wanted fertility,” contribute 20%, and “higher fertility rate due to unmet need for contraception” contributes an equal percentage to high population growth. The NPP states:

It is imperative that the reproductive age group adopts without further delay or exception the “small family norm” for the reason that about 45 percent of population increase is contributed by births above two children for family.

This imperative, however, is to be achieved by commitment to “voluntary and informed choice and consent of citizens” and by the “continuation of target-free approach in administering family planning services”. This is indeed a progressive shift. Equally welcome are the emphases on “more equitable distribution” and empowerment of women. The themes of “decentralized planning and programme implementation,” promotion of IEC (information, education, and communication) regimes, partnership of professions (social activists, medical and health care professionals, mediapersons, teachers and educationists) loom large over the NPP. so does the excitement about government-industry partnership.

The NPP also proposes some new structures: a National and State Commissions on Population (presided over by the Prime/Chief Minister) to “oversee and review implementation of policy.”

---

21 Para 7.
22 Para 6. TFR refers to the “average number of children born to a woman during her lifetime.” Demographic neoliterates, like me, have every reason to feel mystified by this otherwise powerful statistical tool!
23 Para 9
24 Ibid.
25 Para 5.
26 Ibid.
27 Paras 15-19
28 Paras 11-14.
29 Para 36.
30 PP. 28-29.
ordination cell in the Planning Commission, and a technology mission in the Department of Family Welfare. The important issue of adequate resources is highlighted. But the overall thrust of the NPP is towards dispersal of power and responsibility. The Policy diffuses the inherent tension between these superstructures and participatory implementation by affirmations of an abiding faith in the vitality of the Panchayti Raj institutions, and has great expectations of women's active participation. 33% seats being reserved for women in these institutions.

In broad outline, then, the NPP provides new directions, almost wholly in accord with the Cairo and Beijing consensus. The NPP remains creatively sensitive to major issues of reproductive health in ways that fully address not just “accessible and affordable health care” but also the “increasing provision and outreach of primary and secondary education,” provision of “basic amenities” such as “sanitation, safe drinking water and housing, ...transport and communications.”

The most creative aspect of the NPP, despite its inevitable State prose, is that it regards population planning as a people's affair, not as a dictat of sovereignty. If ways could be found to translate the Policy in the language of a national social movement, as a charter of Indian people's rights to reproductive health and self-determination, its future achievement could well be hailed as historic.

I believe that this is possible when we let the silences in the text of the NPP speak to us.

V. ‘SILENCES’ IN THE NPP

The NPP does not speak to the past, except for a celebratory reference to the fact that, "In 1952, India was the first country in the world to launch a national programme, emphasizing family planning" ..."to stabilize the population at a level consistent with the requirement of national economy." Crafted in the year marking full twenty-five years of the Emergency, the Policy does not have a single word of official remembrance of, or any undertone of national apology for, Indian citizens, women as well as men, who were so egregiously violated by brutalising state policy and action.

This erasure of contemporary history of miscarriage of population policy cancels messages that no policy-making action may ignore, even in the proclaimed “continuation of the target-free family planning services.” In any event, just and rights-oriented governance demand ‘remembrance of things past,’ when that past encodes many a history of human violation. That remembrance truly helps us to appreciate the “myth of voluntarism” in Indian population planning, which the Emergency obviously ruptured. In the eye of subaltern history, however, state managed family planning was always coercive. This retrieval of memory then marks the

31 Paragraph 2
32 Paras 44-45
33 Para 5

34 Marika Vicziany, Coercion in a Soft State: The Family Planning Program in India, 55 PACIFIC AFFAIRS 373,557 (1982.)
first crucial task for the translation of a state policy that speaks to the people of India.

The NPP also does not even once mention reproductive rights. Let alone the notion of reproductive self-determination. At no place in the text do we find a mention of the obligations assumed by India under the two human rights covenants or the CEDAW. But a national policy that does not reflect India's solemn treaty commitments and obligations raises just citizen anxiety. What is more, there is no reference even to Fundamental Rights or the Directive Principles of State Policy. This would then suggest that the NPP is self-originating. And although the language and at times the spirit of Cairo and Beijing animate the text, there is no explicit reference to commitments arising from these, or of the leadership role that India may have played in shaping these.


The articulation of a human rights-free national population policy is truly a cause for concern. The Policy seems to be based on a view of governance that is goal-based, not rights-based. But as Professor Amartya Sen has reminded us, "the emergence and consolidation of ... rights can be seen as being constitutive of the process of development." A scrupulous regard for human rights becomes all the more necessary, given the overall coercive profile and potential of family planning and the fact that the bulk and generality of people upon whom the responsibility for stabilizing population falls, at times with incredible misfortune (Rohinton Mistry's A Fine Balance should be compulsory reading for family planners in India) still constitute "the weaker sections" of Indian society, whose rights to life, livelihood, dignity and well-being remain constantly exposed to state lawlessness and societal violence.

The absence of affirmation of people's rights in the NPP would, indeed, be a cause for alarm were it suggestive of return to the old and discredited notion of development which regarded citizens as subjects of governmental monopoly over the definition of a good society or the public interest. But the NPP may not be thus read, suffused as it is with commitment to information, education, communication and participation.

See supra Note 19 at 288. But see Bharati Sadasivam, THE RIGHTS FRAMEWORK IN REPRODUCTIVE HEALTH ADVOCACY 8 HASTINGS WOMEN LAW JOURNAL 313, stressing the limitation as well dysfunctionality of rights based approaches. I remain unpersuaded, however, given the formative contexts of the Indian population planning
Nor may the Policy be read to suggest, as its original intent, any desire to exclude active judicial participation in ensuring that its twelve Strategic Themes are fully met by 2010 and beyond.

What I have just mentioned constitutes the second task for any translation of official policy into social movement language. In so vital a zone of intimacy as sexual relations, health, and planning a family, people need to be continually assured that governments take their human rights seriously. Policies that are manifestly rights-based produce, I believe, more abiding social co-operation than those that seek this as an act of social trust, where the governed remain bound to believe that governance practices are inherently human rights friendly. Faith in democratic governance stands best cultivated by dialogical transactions that create a socio-ethical conviction in those governed that public policy is not always an act of predation on people’s democratic rights.

VI. CONSTITUTIONAL AND LEGAL CHANGES

The Policy is silent on the constitutional and legal changes necessary for any meaningful advancement towards these strategic goals. While it invokes the inaugural role played by the Panchayati Raj amendments, the only constitutional change it proposes is the continuation till 2026 of the 42nd Amendment that freezes the number of seats in Indian Parliament to the level of 1971 census. Why 2026, and not 2045, by which population stabilization is to be achieved?

And why the proposed amendment? The only rationale offered is that it is a “motivational measure,” to “enable governments to fearlessly and effectively pursue the agenda for population stabilization contained in the ‘Policy’.” But, surely, the third act of translation requires demonstration, for which evidence is surely at hand, that the amendment is necessary to reward states and peoples that have, overall, made progress in direction of fertility control, compared with states that still need to move in this direction. The Policy

---

30 Pages 4-11

41 Para 11
42 Para 37
43 Ibid.
44 Srinivasan (supra Note 40 at p. 14) reminds us that Section 15 of the 42nd Amendment “specifically assures that... states that do well in family planning programmes and control their growth rates are not penalised by reduction in representation to Parliament.” Unless, the 42nd Amendment is extended progressive States will lose, and indifferent states gain, increase in representation. Among the former Tamil Nadu will lose 6, Kerala 4 seats.
will gain in theoretical justification for the attenuation of representation and participatory rights, as well as consistency with the doctrine of the Basic Structure of the Indian Constitution, if these facts were to be highlighted.

A bare reading of the Policy indicates that several legislative changes are required if the Policy were to meet its strategic objectives. But only one change is suggested. For example, it is not clear how the "cutting edge of health infrastructure" at grassroots levels is to be "made publicly accountable" in the absence of a suitable legislative framework.

The NPP relies heavily on incentives, notably structured this round with a Health Insurance Plan. A two-child couple who undergo sterilization are to become eligible, as a family, for health insurance for hospitalisation and a "personal accident insurance cover for the spouse undergoing sterilization." And couples below the poverty line will be "rewarded" when they practice the small family norm after marrying after the legal age of marriage, having the first child only when the mother is 21 years of age, and adopt a "terminal method" after the birth of the second child. What that reward is is not specified, but one does not have to tax one's

and Andhra Pradesh and Manipur 1 seat each. The gainers are Uttar Pradesh by 8, Rajasthan by 4, Madhya Pradesh by 3, seats and Haryana by 1 seat.

imagination on this count, if the past amounts are any guide! I will not burden this essay with other similar provisions articulated in the NPP.

But it is clear, given the long history at least of "ad hoc coercion" in family planning programmes since the Independence, that accountability frameworks need to be introduced though a simple and enforceable legislation, if the bright line between consent and coercion is to be maintained. We know from the past, and certainly during the experience of the Emergency, that no one who transgresses this line remains liable at law. We also know that the invention of the device of mass sterilization camps (at the initiative of District Collectors, and other senior government personnel) has wrecked reproductive health, and the futures, of hundreds of thousands of human beings. No member of health care establishment, including medical practitioners, has been ever held spectacularly liable at law.

---

69 See supra Note 36 at 360. The pioneer figure is the District Collector, Ernakulum, who claimed that 93,997 men were sterilized in mass vasectomy camps in eighty-five days and July 1971 achieved the figure of 63,418 sterilizations "a figure higher than the previous highest total for an Indian district" (pp.576-577.) For "interstate competition for sterilization" see pp.579-580.

While no doubt the much-promoted fertility decline in Kerala stands, rightly, attributed to literacy and empowerment, the use of force and fraud seems seriously underestimated.

50 Ibid. See also, supra Note 37.
"Organised impunity" and "organised irresponsibility" (to evoke Ulrich Beck's phrases from another context) have been the hallmark of much of India's family planning programme implementation. Unless this history is reversed with determination to create a rule of law regime for population/family planning services, the NPP is unlikely to realise its noble aspirations.

Incentives are needed, of course, to motivate internalisation of the small family norm. But it is a mistake of major proportion to think that only the impoverished need incentives. Incentives are needed as well for politicians in high places, and at all levels of governance, to accord full dignity to their co-citizens. As late as July, 1999, we recall, the women's organisations had to mount a huge protest at a Bill introduced by Ms. Kiran Chaudhry, to the State Assembly, Delhi, that sought to deny ration cards, bank loans, "enrolment in government housing schemes and co-operative societies," and even the right to contest elections to families exceeding the two child norm. Advocacy of a whole range of rabid Malthusian disincentives for the disenfranchised citizens of India is unfortunately still, a quarter century after the Emergency horrors, considered worthy of official public utterance.

A family planning ideology, or a policy mind-set, that enables a divide between 'us' (the advanced citizens who have adopted the small family norm) and 'them' (these retarded citizens who threaten to bankrupt Indian future) is profoundly subversive of the constitutional ideal of India as a republic. We need to enlarge our conceptions of disincentives. Perhaps, it is time for constitutional and legal change, which may imaginatively sanction, even by imposing electoral disqualification, anti-people population control advocacy, if the objective of "voluntary and informed choice and consent of citizens" in family planning is ever to be fully achieved.

VII. TRANSNATIONAL CAPITAL AND REPRODUCTIVE RIGHTS

Since I have mentioned Professor Beck, I must also state the need for re-imagining the notion of disincentives beyond the howsoever "target-free" citizenry.

We all know well, from Thalidomide babies to Norplant women, the enormous history of undeserved suffering and human violation. We know how the Bhopal catastrophe impacted on women. We should also know that the learning curve of global capital, in terms of solicitude for human rights violations, is severely retarded, despite their public relations protestations to the contrary.

This knowledge should be put to effective use. I suggest that the NPP be reinforced by a legislation


52 See,

53 Such provisions exist, for example, in the Protection of Civil Rights Act and the legislation, following the demolition of the Babri Masjid, concerning protection of places of religious worship.
that imposes non-negotiable duties requiring all pharmaceutical industries, national or multinational, to disclose full toxicological and epidemiological information on contraceptive health hazards. These industries should also be made absolutely liable for human harms that ensue in terms of the Bhopal principle enunciated by Union of India before Judge Keenan\textsuperscript{54} and implemented by the Supreme Court of India in the Sri Ram Fertilizers Case\textsuperscript{55}. Moreover, duties of reparation and rehabilitation need to be attached for mass disasters caused by corporate capital. In situations of non-compliance, all intellectual property rights and technology transfer agreements must be declared as revoked, subject, of course, to the rigours of judicial review.

Respect for women's rights, as human rights, requires nothing less, especially in an era when leading global human rights NGOs have responded favourably to the United Nations' Secretary General's Global Compact, aimed at 'mainstreaming' human rights. Without adoption of the measures that I commend, the 'mainstream' will indeed turn out to be cesspool!

The globalizing line of argument against this proposal weakens when we recall the human right to equitable, efficient, and equal access to the benefits of scientific progress\textsuperscript{56}.

\section*{VIII. ENSURING DEMOCRATIC RIGHTS}

Finally (without being exhaustive), the silence of the NPP concerning state and societal violence against Indian women is, indeed, deafening. On all indicators, violence against women in India is on the rise and existing postures of law, policy and administration remain, overall, quite effete. As Cairo and Beijing Conferences fulsomely recognised, human rights to reproductive choice and health require determined efforts to combat organised state/societal violence against women. The NPP mentions some forms of these (such as gender-based nutritional discrimination or the plight of the girl child) but even these references remain impoverished in so far as they ignore catastrophic practices of power that trigger, as well as tolerate, Partition-style violence recurrently-enacted. Women remain the worst victims of contemporary Indian practices of politics of cruelty.

How then may the NPP move ahead in socially responsive, and responsible, mode?

There is growing scientific and activist consensus at least on the following prescriptions (highlighted recently by Rebecca Cook and Mahmoud F. Fatallah\textsuperscript{57}). A rights-based population policy will respect

\textsuperscript{54} See, INCONVENIENT FORUM AND CONVENIENT CASTATROPHE: THE BHOPAL CASE (1986; New Delhi, The Indian law Institute; Upendra Baxi ed.)

\textsuperscript{55} A.I.R.1987 SC. 1086.

\textsuperscript{56} See Cairo Programme, Paragraphs 12.10-12.26) and the Beijing Platform (Paragraphs 104,108(o) and (p.)

\textsuperscript{57} Rebecca Cook and Mahmoud F. Fatallah, Advancing Reproductive Rights: Beyond Cairo and Beijing, 22
the human right to safe abortion, minimizing threats to “women’s survival and health”

the right to immunity from contraceptive failure (it still entails heavy forensic struggles for Indian women to obtain redress for contraceptive failure)

the right to hold liable, in civil and criminal law, all agents, public or private, for misinformation or disinformation concerning health risks posed by contraceptive means and mechanisms

the right to literacy and education, with duties of restitution and reparation for state failure

the right to protection of women’s exercise of reproductive autonomy, and health choices, a right against deprivations by the family networks

the right against non-discrimination protecting the birth and longevity of the girl child

the right to immunity from torture, cruel, inhuman and degrading treatment in the delivery of reproductive health services.

Equally valuable is the suggestion that

A law could require that social, economic, political, or other relevant policies, developed by either public or private agencies, be accompanied by reproductive rights assessments.

Indeed, there is no reason whatsoever for the NPP to fail to respond to the recent history of the post-Cairo Conference law and policy initiatives adopted by Argentina, Guyana, Columbia, and Brazil.

It may seem to some of you that this constitutes a too heavily rights-based approach. But we also know that goals / policy-based approaches short-change citizens of their rights to well-being, integrity, and human flourishing.

Public policies quite often, and this is especially true of India’s population policy, democratised disempowerment in the very name of empowering people.

IX. TOWARDS A CONCLUSION

I believe that the languages, logics, and paralogics (rhetoric) of reproductive rights and health have the power of enunciating just as well as caring human futures.

A National Population Policy must take human suffering seriously at the cost of being regarded, by future Indian history, as an instrument of predation on the Indian women. This is a cost that acts at translation of the State prose in people’s languages may help to avoid.

INTERNATIONAL FAMILY PLANNING PERPECTIVES
115 (1996.)

58 See Supra Note 55 at 120-121
59 Id. at 120-121
The task then is no longer to explain the Policy but rather to seek its co-operative transformation in ways redemptive of feminist Indian futures.

Albert Einstein said towards the very end of his life that politics is harder than physics. Politics for human rights (directed to make power accountable, governance just, and state ethical) is even harder because it seeks to combat the politics of human rights69 (appropriating the languages of human rights for ends of power that disserve them).

This names the struggle for gender and reproductive rights in India for the next millennial future.

Thank you all for your patient indulgence towards the silence and the speech in this discourse.

---

69 For an elaboration of this distinction, see Upendra Baxi, supra Note 2.