

POPULATION POLICY AND LAW - AN INDIAN PERSPECTIVE

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THE FINAL Act of the International Conference on Human Rights held in Tehran (1968) declared that it is high time to draw attention to the connection between population growth and the human rights' and observed that 'the present rapid rate of population growth in some areas of the world hampers the struggle against hunger and poverty and in particular reduces the possibility of rapidly achieving adequate standards of living, including food, clothing, housing, medical care, social security, education and social services, thereby impairing the full realization of human rights.'

Present day environmental crisis is mainly due to unplanned and indiscriminate exploitation of finite natural resources, unprecedented population explosion and technological advancements. The population growth alone has been the main cause of many human miseries. Mankind achieved its first billion in about 1850 A.D. It took only next 70 years to reach a double billion mark by 1925, and only next 37 years to the third billion, by 1962. The growth is unabated.¹ According to the head of the U.N. Population Fund, Dr. Nafis Sadik, 'if the present rate of growth continues, world population may stabilise at eight billion, but may be go as high as fourteen billion and that the world population by the year 2000 would reach six billion.

India is second populous country in the world after China. According to the Population Reference bureau,² at Washington, the India's population was 800.3 million in 1987. If we look at Table I given below, India's population is on steady rise continuously except in one decade, i.e. 1911-1921. It was due to the influenza epidemic in 1918 which took a heavy toll of 15 million.

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1. It reached four billion in 1976 and five billion in 1987.

2. 13 April 1987.

Table I

Year	Population (in millions)	Decadal Growth (in millions)
1891	235.9	2.4
1901	238.3	2.4
1911	252.1	13.8
1921	251.4	-0.7
1931	279.0	27.6
1941	318.7	39.7
1951	361.1	42.4
1961	439.2	78.1
1971	547.4	108.2
1981	683.8	136.4

If this momentum continues, by the year 2002, India's population is expected to be 1,031 million against China's 1361 million. The density of the population, which was 81 persons per square kilometre in the year 1921 has now risen to 221 per square kilometre. The mounting pressure of population in India has given rise to many problems - such as poverty, unhygienic conditions, over exploitation of natural resources, deforestation, urbanisation, unprecedented industrialisation, problem relating to public health and sanitation, migration etc. It gives a dismal picture of future India.

Population and environment

The worst affected area of population explosion is the environment. There cannot be a greater danger to the environment than the uncontrolled rapid growth of population. It has rightly been said that population and environment are the two sides of the same coin. Because the real cause of major environmental problems like deforestation, overgrazing, massive influx into urban conglomerates and its

resultant problems, and various kinds of pollution is the high density of population which is continuously on the rise. The natural setting of the environments has been disrupted by the population growth.

J.O. Oucho has aptly observed that "since 1970 it has been fashionable to draw a distinction between population and environment as two crisis areas, but often times we forget that population is in fact a very integral part of the environment and therefore, when we are addressing ourselves to population we are looking at not only the physical, biological, and chemical environments, we are also looking at the socio-cultural or socio-economic environment in which these developments programmes are being set. And population makes much more sense if you are talking of population within a context."³

The publication of the *Limits to Growth*⁴ made alarming predictions. The study showed that the population exhibits the characteristics of exponential growth, i.e. growth which increases at a constant percentage rate and therefore increases numerically faster and faster. And on the other hand, the necessary resources are finite e.g. arable land or pollution absorption ability. When those finite resources (limits) are imposed on an exponential growth pattern, the actual behaviour of the growth parameters would be in the nature of catastrophic decline. The increasing population may cause increasing pollution. Thus, to avoid the catastrophe, the suggested remedy is to have *strict control* of variables such as population, pollution and use of the natural resources. And since population is growing rapidly (exponentially), the strict control measures must be implemented very quickly. Looking to these catastrophic results many control measures have been adopted by the Indian Government. These measures will be discussed under two heading (a) Persuasive, and (b) Stringent or Penal measures.

Persuasive measures: It includes those methods of

3. J.O. Oucho, WCED Public Hearing, Nairobi, 23 Sept., 1986, quoted in *Our Common Future*, 97 (1987).

4. D. H. Meadows, et. al., *The Limits to Growth* (New York Signet, 1972).

population control which directly or indirectly persuades the common men to check the population growth. These measures include literacy programme, mass-media programmes, various birth control measures, incentives and discentives to control the birth-rate and extol the status of women. Here, the policy of the Government of India has been examined in the light of the above mentioned measures.

National population policy

India is amongst few pioneer countries which had directed its policies and development plans to contain population growth. In its first Five Year Plan (1951-56) the planners agreed that there was a considerable need and necessity for population control in India. The Family Planning Programme was directed to obtain the accurate factors which contribute to the rapid increase of population, devise the ways of educating the public and to make Family Planning Programme advice and service an integral part of the services in hospitals. During Second Five Year Plan (1956-61), Family Planning Clinics were opened in the towns having 50,000 or above population. Thus, the Five Year Plans of India paid special attention to family planning programmes.

On 16 April, 1976 the Union Health and Family Planning Minister announced the National Population Policy. The main assumption behind this policy was that the population explosion was an off shoot of poverty and had to be tackled as a part of overall design for a better life. Thus family planning was integrated with the overall strategy of socio-economic development. Some of the important features of the National Policy are as follows:

- (a) to raise the age of marriage from 15 to 18 for girls and from 18 to 21 for boys by passing the suitable legislation:
- (b) Freezing the population figures at the 1971 level until 2001 for the purposes of representation in Parliament.
- (c) Linking a part of the central assistance to the States with their performance in the Family Planning Programme.

- (d) Paying greater attention to women education.
- (e) Ensuring a proper place for population values in the educational system.
- (f) In addition to individual compensation, the group incentives should be introduced to make family planning a mass movement with greater community involvement.
- (g) Full rebate to be granted in the income-tax for the amounts given as donation for family planning purposes to Government; local bodies or to any registered voluntary organisation.
- (h) Giving more importance to research activities in the field of population control.
- (i) In order to spread the message of family planning through-out the nation, a new multi-media motivational strategy to be evolved.
- (j) Necessary legislative changes to be made to introduce compulsory sterilization after 3 children and measures in the matter of preferential allotment of houses, loans, employment etc.

The family planning programme took a dramatic twist during the national emergency (June 1974 to March 1977). Drastic and coercive methods were adopted by the States to curb the population growth. The compulsory sterilization approach became a major method for family planning. This programme made spectacular progress during emergency period. It achieved a total of 8.2 million sterilization against the target of 4.3 million.

During Janta Government regime (1977-80) the nomenclature of family planning programme was changed to "Family Welfare Programme" and the priority of the government to control the population was adhered to. Thus, it shows that massive family welfare programme has been vigorously pursued over last several years. This has resulted into the downward trend in has started from 1985 when the national average per thousand was 32.9 in 1986 it came to 32.6 and in 1987 it had come down to 32.2.

The National health policy (NHP) passed by

the Parliament in 1983 has laid down an integrated and comprehensive approach towards the future development of health services in the country through family welfare programme clinics. The policy is aimed at providing 'Health for All' by 2000 A.D. The main thrust of NHP is on the preventive, promotive and rehabilitative health services to the people. The goals to be achieved by the year 2000 are as follows:

Birth Rate	21 per thousand
Death Rate	9 per thousand
Infant mortality rate	Below 60 per thousand live birth
Effective couple protection rate	60 per cent
Life expectancy at birth	64 years

Under family welfare programme, the government hospitals, clinics vasectomy and tubectomy operation are done free of cost and as an incentive, some cash payment is made to the male and females who undergoes the operation and to the motivators as well. The various popular methods of spacing or protection against pregnancy are Nirodh or condom, diaphragm, Intra Uterine Devices (IUD), Oral Pills, Spermicides or chemical contraceptives, e.g. Jelly cream, foam tablets. These are available free of cost to public in government hospital and family welfare clinics. These methods are advertised on the TV and other mass-media programmes. The Government has also prepared a para-medical force which is taking this programme to the remote areas of the country.

Literacy and population control

The reproductive behaviour has a direct connection with the literacy in a society. For example, the State of Kerala which has a distinction of having highest literacy rate in India has the lowest birth rate. The birth rate in rural Kerala is 27 per thousand while it is 40 per thousand in rural Uttar Pradesh. The female literacy rate in rural Kerala is 63 % compared to 10 % in rural Uttar Pradesh. Similarly, in Rajasthan state, the female literacy is 11.42 %

and the birth rate is 34.6 per thousand. It reveals that the higher the female literacy, lower the rate of birth. Having this view, many States are providing free and compulsory education to the girl students. The State of Rajasthan, abiding by the Constitutional provision Art. 45,⁵ has declared that no fees shall be charged from the girls in the government schools, colleges and the Universities.

Law and population control measures

There is no consolidated, codified law of population control, but there are some fragmentary pieces of legislations directly or indirectly related to population control measures. The popular method of population control in India is 'sterilization.' This term has nowhere been comprehensively defined. It pre-supposes a 'free consent' of any man or woman who is undergoing the sterilization operation. If any operation is performed without the 'free consent' of the patient, the operation can be challenged on the ground of illegality under Section 90 of the Indian Penal Code.⁶ The consent of the husband is necessary to perform the vasectomy operations. It may also have consequences with regard to the laws of marriage and divorce.

As is evident from the experiences of the emergency time, the sterilization schemes have been misused by some unscrupulous workers. The operations have been performed on 'wrong' persons - unmarried persons, insane persons, married but either they were childless or were having only one child, and on old and infirm persons etc. Therefore, reversion or recanalisation of a sterilised person may be authorised by law. Many unauthorised persons,

5. Art. 45 of the Indian Constitution : "The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

6. S. 90: "A consent is not such a consent as is intended by any section of this code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception, or if the consent is given by a person who from unsoundness of mind, or intoxication, is unable to understand the nature and consequences of that to which he gives his consent, or ... who is under twelve years of age."

quacks, unqualified persons are involved in such activities and are making huge money. Therefore, a comprehensive piece of legislation on sterilization is the need of the time. In USA, the Department of health, Education and Welfare issued regulations on sterilization in 1974. These regulations requires - (a) informed consent, (b) competency of the individual to give consent, (c) 72 hours waiting period between the giving of informed consent and the performance of the operation. The 'informed consent' requires that under Section 50.205, the physician performing the operation explained to the patient the available alternative methods of family planning, that the sterilization procedure is considered irreversible, a full description of the discomfort and the risks that may accompany the procedure etc. This all must have been explained in the presence of a witness chosen by the patient. Specific regulations have been provided to sterilize mentally incompetent or of an institutionalized individual (Section 50.256). Now, there is world wide trend toward liberalization of voluntary 'sterilization' laws and practices. In Singapore, the Voluntary Sterilization Act of 1974 provides that 'sexual sterilization' by a registered medical practitioner shall not constitute 'grievous hurt' within the meaning of the Penal Code.' Similar laws relating to sterilization have been passed by Philippines, Iran, Denmark, UK, West Germany, Sweden, Panama, Japan etc.

Termination of pregnancy

Under the Indian Penal Code of 1860, section 312 permits the miscarriage with the consent of the woman. Termination of pregnancy by an unregistered medical practitioner is an offence under the Code. It also provides that such miscarriage should be done in good faith for the purpose of saving the life of the woman. Looking to the importance of the issue the Indian Parliament passed the Medical Termination of Pregnancy Act, 1971. This Act provides when the pregnancy can be terminated and what shall be procedure to do it?

Section 3 of the Act authorises a *registered medical practitioner* to terminate the pregnancy under the following conditions :

- (a) Where the length of the pregnancy does not exceed twelve weeks,
- (b) Where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioners are of the opinion, formed in good faith that -
 - (i) The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health: or
 - (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped.
- (c) Where pregnancy has been caused by rape (explanation I to Section 3).
- (d) Where the pregnancy occurs as a result of any device or method used by any married woman or her husband for the purpose of limiting the number of children.
- (e) If there is a fear that the environment or the circumstances of the pregnant woman may cause injury to her health (See Section 3(3)).

Section 4, further provides that the pregnancy shall be made only at Government Hospitals and a place approved for this purpose by the Government. The Act has granted protection to the registered medical practitioners for any damage caused or likely to be caused by anything which is in good faith or intended to be done under this Act.

The main purpose of this Act was to encourage the device of abortion as a means of fertility control, more particularly when the some device to control population fails. Thus, the miscarriage has been legalised by this Act if caused under the circumstances mentioned therein. Secondly, the Act provides that the pregnancy can be terminated on eugenic, social therapeutic and humanitarian grounds. Thus, such legislation stopped the woman from going to private practitioners, quacks and dayees for abortion. Such practice was also dangerous to the life of the mother. Stringent penalties have been provided by the Indian Penal Code for causing miscarriage without woman's consent,

(section 313), or when the death of woman is caused by an act done with intent to cause miscarriage (section 316), etc. The punishment provided for such offences is the imprisonment which may extend to ten years and fine also.

Age, marriage and fertility

Child marriage was very much popular in old times in India. But there was a vigorous moment against this age old custom during 18th and 19th century. The early or child marriage has many adverse effects. Besides others, it contributed a lot towards the rapid growth of population.

Ultimately, in 1929, the Child Marriage Restraint Act was passed to banish this custom. This Act is also popularly known as '*the Sharda Act*.' It consists of 12 sections. It came into force on April 1, 1930. The Act has recently been amended in the year 1978. The Act has prohibited child marriages and made it punishable. Section 9 (a) defines the term 'child'. It provides 'child' means a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age. Consequently, other related laws have also been amended e.g. the Hindu Marriage Act, 1956, and the Indian Christian Marriage Act, 1972. Thus, a male below 18 years of age cannot marry and if such marriage is solemnized, it is an offence under the Act. Offences under the Act have been declared as cognizable offences. The Act has also provisions to punish the guardian of minor, promoters, abettor, one who performs or conducts such marriage, and one who negligently fails to prevent such marriage (section 6).

In spite of above legal restraints, the child marriage is still in vogue in the villages and remote areas of the country. If the above mentioned legal provisions are faithfully implemented by the government machinery and abided by the people, the growth rate will decline dramatically. The child marriage gives rise to manifold problems, nourishment problems, child widows, employment and housing problems etc., and it ultimately affects the quality of life. Thus, it is suggested that the

minimum age for marriage of the boys be raised to 23 years and for girls 20 years and such a provision be made applicable to all, irrespective of their religion and caste. Further, such a legal provision should be strictly implemented. Any marriage, in contravention of such provision, should be treated as void. Punishment provided under the Child Marriage Act should also be enhanced.

Stringent measures

The time has come when India should adopt stringent measures, such as to fix the size of family (number of children), the age of marriage and age to produce children by law. To achieve such objectives, compulsory sterilization measures may be adopted. The experience of emergency period has proved it beyond doubt that these compulsory measures have resulted in excesses and authoritarian rule. Such measures are against the rule of law, personal freedom of mankind and violate the right of privacy of an individual.

Looking to the distasteful and horrifying experience of the emergency period, such measures must be implemented in such a way so that there unfortunate events do not take place.

Summary and suggestions

The world population has crossed 5 billion mark on July 11, 1987 and is growing at a rate of 150 every minute and 2,20,000 a day, 80 million a year. India's population has crossed 800 million by mid of 1987. The main cause for high growth rate is the fall in death rate brought about by better health conditions, effective control of epidemics, famine conditions and economic development. Better medicare services have increased the longevity. Keeping this in view, a firm, effective and efficacious national policy on population control is needed. It is proposed that family welfare laws should be executed equally on all the persons irrespective of race, religion, caste etc. At present, the national policy is implemented on unequal basis. All the segments of the Indian society should be invited to frame a workable and acceptable population policy irrespective of

their different personal laws. Following are some of the suggestions to improve the present state of affairs :

1. Real and practical incentives should be set so that the persons are persuaded to accept the population policy and laws.
2. To avoid urban congregation, it is suggested that employment opportunities should be created in the rural areas, health services, service-cum-marketing centres, and other basic amenities of life should be made available to the rural people at their door-steps, This will avoid migration of population to urban areas.
3. Eradication of economic disparity and "education for all" can achieve the objective of 'health for all.' Special attention should be paid to the status and education of women.
4. Some of the other necessary legal measures to curb rapid population growth are as follows :
 - (a) Article 45 of the Indian Constitution should be imparted to all upto the age of fourteen and special attention should be paid to female education.
 - (b) 'Sex education' is a need of the time. It may be imparted at higher secondary level. The adults should be educated as to how they can enjoy sexual life without producing children.
 - (c) A comprehensive legislation dealing with the various aspects of population control should be passed by the Parliament. Instead of piecemeal legislation like, the Child Restraint Act, the Medical Termination of Pregnancy Act, etc., laws covering the aspects, hitherto uncovered, should be passed. The new code, besides above laws, should also have provisions for family, maternal and child care, medicare facilities and must provide for extra benefits to those who adopt family welfare programmes e.g. employment opportunities, tax benefits, housing benefits, and to

make available goods of necessity at subsidized rates etc. Health care service should also be a part of population control laws.

- (d) On the other hand, it should be provided that *free medicare and health care facilities* will not be available to those persons who have more than 3 children. They shall be charged by the State for providing such facilities in the hospitals. Such charges shall increase with the increase in number of children.
- (e) The minimum age for marriage of a boy may be raised to 23 years and for girl 20 years. Any marriage in contravention of this provision should be treated as void. Strict and deterrent punishment should be provided for such marriage.
- (f) Laws or regulation requiring the consent of husband for sterilization or abortion purposes should be scrapped. It would also help in extolling the status of women in the society.

- (g) The Code must also have provisions to discourage the diseased couples, aged persons (who have attained 50 years of age), mentally retarded and minors from producing children.

Thus, it can safely be concluded that population, development and environment are inter-linked. A balance growth of population would result in balance development of a nation, thereby providing a healthful environment. Population problem is interlinked with development and environmental pollution problems. The concern over the 'population problem' also calls for the concern for human progress, human equality and human environment. It has aptly been observed that - "excessive population growth diffuses the fruits of development... a reduction of current growth rate is an imperative for sustainable development."⁷ Therefore, the 'Health for All' objective must be the prime concern of the Government and necessary socio-political and legal measures should be adopted to curb the population growth. Now, our national objective should be 'zero growth of the population.'

7. *supra* note 3 at 105.

