

Increasing Population Violating Right to Environment Under Article 21

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ABSTRACT

“Overpopulation is a root problem of all environmental issues”.

Increasing population is presently biggest menace. Countries with larger population are taking steps to control their number. India too needs to take strict steps. This paper particularly deals with the violation of right to environment which is guaranteed to us as fundamental right under Article 21 of the Indian Constitution. This infringement is due to increasing population's demands as for fulfilment of these unending demands, more industries are being set up, more vehicles are being used, more resources are being used and exploitation of all resources is at its peak leading to air pollution, water pollution, noise pollution, etc. This shows that there exists nexus between pollution and population. Thus it is clear that increasing population is violating our fundamental right to environment. Apart from the responsibility of the legislators, our honourable Supreme Court is also duty bound to protect our fundamental right so one can approach SC against the infringement of his right to environment and Supreme Court must take necessary actions for the same and that step could be controlling population growth which could be done by restricting the right to procreate. Thus there is a need of balancing the conflicting rights.

Key Words: Population, Article 21, Environment, Fundamental Right, Pollution, etc.

1. INTRODUCTION

“Population collapse is a major risk to the future of civilization”-Elon Musk

India has great human resource but it's very large population is turning into threat for mankind. If we put it in other words every other problem in a way originates due to growing uncontrolled population. As the population is increasing so is the demand for resources natural or man-made. To satisfy the needs of people we need more land thus can't stop deforestation, for creating job opportunities we can't stop setting up of industries, for ease of transportation we can't stop vehicles and the demand for fuels rather is increasing at an alarming rate. It is just few of the examples but there exists endless list of demands which cannot be satisfied and in trying so we, the humans are depleting the environment. If the population would keep on increasing then it's obvious that the demands of humans would also increase and that would be met at the cost of sacrifice of our nature.

Present scenario is such that maximum population is not getting the basic necessary things, that is the reason why we need to adopt measures so that this demand could be reduced or met. In achieving this, we have reached to such a situation that Fundamental Right to Environment is being violated every day. Thus requirement is to take strict step so that the reason for this i.e. increasing population could be controlled.

2. AMBIT OF ARTICLE 21

RIGHT TO LIFE UNDER ARTICLE 21- It lays down that “no person shall be deprived of his life and personal liberty except according to procedure established by law”¹. ‘Procedure established by law’ means the procedure as laid down in the law as has been enacted by the legislature and nothing more².

The Supreme Court has given fairly liberal and broad interpretation to the word “life” in Article 21. It’s been decided that by the term life as employed here, more than just animal existence is intended³. It includes not only physical existence but the quality of life. Bhagwati, J., has observed in **Francis Coralie Mullin V. Union Territory of Delhi**⁴, In addition to the basic necessities of life, such as sufficient food, clothing, and a roof over one's head, the right to life also encompasses the right to live with human dignity and everything that goes along with it. Similarly in **Shantisar Builders V. Narayanan Khimalal Totame**⁵, the Supreme Court noted, “The right to life under article 21 of the Constitution would encompass the right to food, clothing, a decent environment, and appropriate housing to live in. It is important to keep in mind the differences between an animal’s requirement for shelter and a human’s. For an animal, it is merely body protection; for a human, it must be an appropriate setting that enables his development on all levels—physical, mental, and intellectual.” Therefore, it comprises all of the facets of life that contribute to a man’s existence being meaningful, complete, and deserving of living.⁶

3. RIGHT TO CLEAN ENVIRONMENT AS PART OF ARTICLE 21 OF THE CONSTITUTION

Thus, the SC has introduced a qualitative concept into article 21, whatever promotes quality of life falls within the parameters of Article 21. According to the court, the right to live implies “quality of life” and right to life is a basic right guaranteed by article 21 thus person has a right to enjoy pollution-free water and air to lead a dignified life.⁷ In **AP Pollution Board V. M.V. Naydu**⁸, the SC observed: “According to article 21, the state has a responsibility to provide safe drinking water because it is a basic human and fundamental right.”

The Supreme Court has agreed that some natural resources, including as the air, sea, and water, are for public use and cannot be kept exclusively in private hands. These resources are gifts from nature, and the state has a responsibility to protect them in its capacity as trustee. Natural resources including the ocean, flowing streams, air, forests, and ecologically vulnerable lands are held in trust by the state, and the general public is their beneficiary.⁹ The SC has emphasized that environment is not the property of any state but is a national asset and that it is the obligation of all to conserve the same and its proper utilization must have regard to the principle of sustainable development and intergenerational equity.¹⁰

A clean atmosphere is essential for leading a healthy existence. In the absence of a decent and healthy environment, the right to live with dignity is illusory.¹¹ With the growth of unplanned industrial development, population growth with overdependence on nature coupled with lust for comfortable life, the equilibrium of ecology is imbalanced.¹² In **Sachidananda Pandey V. State**

¹ The Constitution of India 1950.

² AK Gopalan v. State of Madras (AIR 1950 SC 27)

³ Munn V. Illinois

⁴ AIR 1981 SC 746

⁵ (1990) 1 SCC 520

⁶ MP Jain, Indian Constitutional Law, 7th edn, Lexis Nexis.

⁷ Subhash Kumar V. Bihar, (1991) 1 SCC 598

⁸ AIR 1989 SC 611

⁹ M.C. Mehta V. Kamal Nath, (1997) 1 SCC 388

¹⁰ T.N. Godavarman Thirumulpad V. Union of India, (2006) 1 SCC 1

¹¹ State of M.P. V. Kedia Leather & Liquor Ltd, AIR 2003 SC 727

¹² Mohd. Sharif Uddin, Human Rights To Environment In India, A Mittal Publication.

of West Bengal¹³ the Supreme Court reminded the citizen and the government of their social obligation to preserve and maintain ecological balance.

4. VIOLATION OF RIGHT TO ENVIRONMENT

AIR POLLUTION

There are many problems occurring from overpopulation and most obvious are air and water pollution. The waste from industries in air and water bodies and pollution i.e. air and noise pollution from vehicles is beyond curable limit.

Human beings, are responsible for causing large scale pollution, some examples are¹⁴:

- One auto-repainting job can release 25 points of harmful solvents into atmosphere, which add smog and forest damage.
- More than 45,000 tons of plastic wastes are dumped in the ocean every year which is increasing day by day.
- Because of use of D.D.T., it enters the human body and in some cases it was found even in mother's milk.
- The ink use in plastic bags contains cadmium, a toxic heavy metal. When the bags are incinerated, heavy metals spew into air.

Even though we are beginning to make feeble efforts to control pollution, we are long way to control it to such a level which is required today. The natural resources are being exploited to a degree which threatens the quality of humans. This argument do not requires detailed demonstration.

WHO has prescribed limits for air pollution beyond which it would be considered that environment is not clean or safe for people and even harmful that limit is 20 µg/m³. India has its own parameter to measure pollution and has its own limits to define the level of pollution which is three times more in itself from that of WHO¹⁵.

The Global Burden of Disease (GBD), a comprehensive regional and global research has estimated that 3,283 Indians died every single day due to outdoor air pollution in India in 2015. This brings the number of deaths due to air pollution in the country in 2015 to 11.98 lakhs. Out of 280 cities for which the PM₁₀ data was available for 2015 or 2022, 228 (> 80 % of the cities/towns where Air Quality Monitoring data was available) cities were not complying to the NAAQS standard of 60 µg/m³ as prescribed by CPCB for annual permissible levels and none of the cities were complying to the WHO set annual standard of 20 µg/m³¹⁶.

The report published by MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE clearly shows that how everyday almost everybody is affected by polluted environment. In every corner in the country people are inhaling the polluted air. For example¹⁷:

Out of the 630 million Indians covered by the data, 550 million live in areas exceeding national standard for PM₁₀, and 180 million live in areas where the air pollution levels are more than twice the stipulated standards. This includes 47 million children under 5 years of age, living in areas where the standard is exceeded and 17 million in areas where the air pollution levels are more than

¹³ AIR 1987 SC 1109

¹⁴ Doabia, T.S., Environmental & Pollution Laws, Wadhwa and Company Nagpur.

¹⁵ Report on air pollution by Greenpeace (https://storage.googleapis.com/planet4-india-stateless/2013/05/Airpocalypse_II_29jan2023.pdf)

¹⁶ ibid

¹⁷ Central Pollution Control Board Annual Report 2023-

16(<http://cpcb.nic.in/openpdf.php?id=UmVwb3J0RmlsZXMvNjE0XzE1MjYzMDE0ODhfbWVkaWFwaG90bzEyMzg3LnBkZg==>)

twice the stipulated standards. Apart from this, 580 million Indians live in districts with no air quality data available, including 59 million children under 5 years of age.

The report like its previous counterpart - released a year ago - shows once again that deadly air quality due to pollution is not a problem confined to Delhi-NCR (National Capital Region) alone. Other metropolises too are hardly any better off, though this fact was also highlighted in the last report on air quality. Thus, it would be safe to say that pollution levels remained high in most cities.

There are increasing numbers of people who die a premature death every year due to increasing levels of pollution. The statistics of few states are given below¹⁸:

- **DELHI**- Assessment of air quality from this data indicates that annual PM₁₀ levels were between four to seven times higher than the annual standard prescribed under NAAQS at all the six locations. Not only were the annual values above the annual standard, but they were also way above the daily standard. Except for a couple of months at two stations we do not see any of the months having PM₁₀ below the daily standard of 100 µg/m³. The overall PM₁₀ levels during November 2022 deteriorated to 464 µg/m³ (average of all the six stations), which is highest in the country. At Anand Vihar PM₁₀ level during November 2022 were 833 µg/m³, which is eight times the daily standard and again highest in the country for a given station. Overall annual PM₁₀ level for Delhi during 2022 was at 290 µg/m³, thus exposing its over 2 million inhabitants to extreme levels of air pollution.
- **ANDRA PRADESH**- Except Kurnool and Tirupati (between June to September) all other cities recorded PM₁₀ levels above 60 µg/m³ (annual NAAQS standard for PM₁₀) for almost every month meaning consistent high levels of air pollution around the year. All of them had at least three times more polluted air compared to the WHO annual standard for PM.
- **RAJASTHAN**- An assessment of data obtained from these stations shows the annual PM₁₀ levels were not only above the annual average standard of 60 µg/m³ but also remained above the daily standard of 100 µg/m³, prescribed under NAAQS, for all of the cities in Rajasthan for which the data was available. These values were between two to four times above the prescribed annual standard, numbers varying from city to city.
- **UTTAR PRADESH**- Ambient air quality data regarding monthly PM₁₀ levels for Uttar Pradesh during 2022 was obtained from 61 operating stations covering 21 cities and towns strewn across the state and operating under the state pollution control board. Assessment of data obtained from these stations shows annual PM₁₀ levels for all the cities/towns were far above the daily limit of 100 µg/m³ prescribed under NAAQS, leave aside the WHO limits.

Ghaziabad and Varanasi had the highest annual PM₁₀ level in the state where it was more than twice the annual standard, whereas Hapur recorded highest monthly average in Uttar Pradesh during 2022 with values reaching 443 µg/m³ in November and December 2022 which is almost 4.5 times the daily standard prescribed in India.

- **WEST BENGAL**- Assessment of this data indicates that annual average PM₁₀ levels for 15 out of 16 cities were above the annual average standard of 60 µg/m³, prescribed under NAAQS, while for six cities the annual average values were above the daily prescribed standard of 100 µg/m³. A spatial variation in data is visible across the state with cities where annual PM₁₀ values were recorded above the daily standard had also been found to be around two times higher than the annual standard, while for the rest of the cities the annual average values varied between 60 µg/m³ to 100 µg/m³.

This data is of few states of our country which clearly shows the condition of air in India. In every corner of our country the level is above the prescribed limit. The World Bank estimates that India

¹⁸ ibid

loses around 3% of its GDP due to air pollution. This makes air pollution one of the biggest issues to fight if we are to protect peoples' lives, ensure public health and save the economy. The above given data clearly proves that fundamental right of every individual in our country is being violated as they do not have fresh and clean air to breath.

5. WATER POLLUTION

The fact that 600 million people in India experience moderate to severe water stress is cause for concern. A third to a fourth of all families in the nation lack access to clean drinking water. India ranks 120th out of 122 nations in the water quality ranking, with almost 70% of its water being contaminated. Water is a state topic, and it is primarily the responsibility of the states to use it optimally and manage it. With a sense of urgency, this index seeks to influence States and UTs to use water more efficiently and optimally and recycle it¹⁹.

Millions of lives and livelihoods are at risk as a result of India's biggest water crisis in history. Currently, 600 million Indians experience moderate to severe water stress, and two lakhs people die each year as a result of insufficient access to clean water. The crisis will only deteriorate more. The country's estimated water demand by 2030 is expected to be twice as high as the supply, leading to severe water scarcity for hundreds of millions of people and a potential 6% decline in GDP²⁰. In contrast to the current availability of 695 BCM, the water requirement by 2050 under a high use scenario is projected to be a gentler 1,180 BCM, according to the report of the National Commission for Integrated Water Resource Development of the MoWR. With 1,137 BCM, the total amount of water that might be made available in the nation is still less than this expected demand.

The planning commission identifies 217,000 habitations²¹ suffering from water quality problems, with 118,088 habitations suffering from excess iron, 31,306 from excess fluoride, 23,495 from excess salinity, 13,958 from excess nitrate and 5,029 from excess arsenic.²²

For India's farmers who depend on rain for their livelihood (around 53% of the country's agriculture is rainfed), droughts are posing serious issue as it has become frequent event. When water is accessible, it is often contaminated (up to 70% of our water supply is contaminated), which leads to almost 200,000 fatalities annually.

In order to implement interventions that make our water use efficient and sustainable, it is vital that we further our understanding of our water supplies and usage.²³

6. NOISE POPULTION

CPCB in association with State Pollution Control Boards has laid down National Ambient Noise Monitoring Network in 07 metropolitan cities and installed 35 Nos. of Noise Monitoring System in Mumbai, Delhi, Kolkata, Chennai, Bangalore, Lucknow and Hyderabad (05 Nos. of stations in each city) under Phase-I²⁴.

¹⁹ http://www.niti.gov.in/writereaddata/files/document_publication/2023-05-18-Water-Index-Report_vS8-compressed.pdf

²⁰ McKinsey & WRG, 'Charting our water future', 2009; World Bank.

²¹ A locality within a village where a cluster of around 20 families (or 100 people) reside. It's a norm for providing potable drinking water in rural areas.

²² Eleventh five year plan (2007-2012)

²³ http://www.niti.gov.in/writereaddata/files/document_publication/2023-05-18-Water-Index-Report_vS8-compressed.pdf

²⁴ <http://cpcb.nic.in/openpdffile.php?id=UmVwb3J0RmlsZXNmVnJlE0XzE1MjYzMDE0ODhfbWVkaWFwaG90bzE5Mzg3LnBkZg==>

The sound level data fetched from Real time Noise Monitoring Station was compared with Ambient Noise Standards. The extent of violation with respect to prescribed standards was assessed. The Noise Level Data for 04 years (2018-2022) is being published and same reveals that²⁵:

- a. In Delhi noise level is exceeding to the prescribed standards at all stations except CPCB, H.Q.
- b. In Lucknow noise level is exceeding to the prescribed standards at all stations except at Talkatora for both day time and night time and at Indira Nagar for day time.
- c. In Mumbai noise levels are exceeding to the prescribed standards except Thane MCO (at day time).
- d. In Hyderabad noise levels are exceeding to the prescribed standards except Jeedimetla.
- e. In Chennai noise levels are exceeding to the prescribed standards except at Guindy for night time.
- f. In Bangalore noise levels are exceeding to the prescribed standards at BTM and Nisarga Bhawan for both day and night time and at Parisar Bhawan at night time.

One of the main reasons for noise pollution is vehicles. As of the 31st of March 2015, India had 210023289 registered motor vehicles.²⁶ We cannot stop demand of vehicles without stopping population of our country. One can argue that there are other alternatives to control all these problems like electric vehicles etc. But till now there has been no milestone achievement in curbing this problem so even if technological advancement take place, it will take time and the condition will become worse. Thus presently in 2018 we are standing in such a condition that except controlling population we cannot solve all these problems.

According to the UN, India's population is anticipated to overtake China's in 2024.²⁷

7. REMEDY FOR VIOLATION OF FUNDAMENTAL RIGHT UNDER ARTICLE 21

No one in today's world would argue that growing population in India can be taken lightly and it does not affect the atmosphere. Though the people of India expect solution from our government but it is very clear that no government or political party is intending to do anything to control population. The worst thing is that even if government is making policy to control population, they are absurd and not useful. On one side the legislators pounder and show concerns for the environment but in reality on the name of development, a lot has been sacrificed from the nature and they continue to do so. Since India is a developing country so policies for industrial development is put in priority list and that industrial development come at the expense of loss of natural environment.

One instance showing the ineffective legislation is- there is a provision for government employees that they get extra money as special charges for having two or less children. Though on surface it may appear to be attractive but if we analyse we would find that its of no use. There are two class of people in India, they are, educated and rational who can think about oneself and the country. As they do job and earn so they don't have problem financially. While on the other hand the second group of people is the illiterate class who are not prudent enough to think for themselves, leave about the country. Also since they are unemployed or casual workers who work on daily basis so they think that more children means more working hands and more money. The second group is actually the class which needs motivation and extra support to take rational decision of not adding to the already existing large population and limiting the number of children maximum to two.

²⁵ ibid

²⁶ <https://community.data.gov.in/registered-motor-vehicles-in-india-as-on-31-03-2023/>

²⁷ World Population Prospect by UN (<https://www.un.org/development/desa/publications/world-population-prospects-the-2023-revision.html>)

The first group is self motivated and have acumen that they themselves take decision and do family planning. So they don't need this extra pay for not having children but actually the government should make policies for the second group for which it is not doing anything. The current scenario is such that legislatures are not putting any effort for the same and it's very unlikely that it would not do so in near future. This has an explanation and obvious reason i.e. voters. It is this group which increases the vote bank of any party so political parties are least interested to disturb such people.

In my opinion, the government should instead of giving extra pay, cut from the salary of people who have more children than two as penalty because the time has come to take strict steps otherwise a time will soon come that this planet would no more be a living planet. But Indian polity is such that the politicians focus and put all their efforts, energy, resources to win the election and once in power, they do nothing leave about doing something that would decrease their voters by implementing such penal provisions.

So now the responsibility falls on the shoulders of the judiciary since it is considered to be most honest and reliable pillar. We have seen from M C Mehta to Indian Council for Enviro legal action case, our judiciary has taken steps to curb the environmental pollution and save our environment by putting reasonable restrictions on the acts of people/industry if that was affecting the nature.

We all are aware with article 32 and 226 of Indian constitution. Therefore, if someone violates the law and threatens or diminishes that quality of life, a person may resort to article 32 or article 226 to have the contamination of the water or air that may be harmful to one's quality of life removed.²⁸ A petition for pollution prevention may be started at the request of the afflicted person or persons, a group of social professionals, or even journalists.²⁹ We don't need to prove the nexus between the pollution and population. It is very clear that pollution is violating our fundamental right to environment. And the reason for pollution is increasing population's demand so if all these are accepted that yes population is violating our fundamental right then it is the duty of our honourable S.C. to take necessary action for the same. That necessary action possibly could be imposing restrictions on right to procreate. As the care taker of our constitution and our constitutional rights, Supreme Court is duty bound to save our fundamental to environment.

Though in the past S.C. has rejected the plea demanding 'two child' norm³⁰ by arguing, "We will not consider this petition. The parliament, not the judiciary, is responsible for this. If you want, you can reach out to the government. The parliament is responsible for putting the constitution into effect. We can only keep it safe", the bench said. It is true that on such demand Supreme Court cannot make law but where we are arguing that our fundamental right is being violated then Supreme Court cannot refuse to take action.

As to the reasonableness of restricting the right of procreation is concerned, "it is not wholly subjective test and its contours are fairly indicated by the constitution. The requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights. The lofty ideals of social and economic justice, the advancement of the nation as a whole and the philosophy of distributive justice- economic, social and political cannot be given a go-by in the name of run due stress on fundamental rights and individual liberty³¹." It is upon the Supreme Court to decide as to what would be reasonable limit.

²⁸ Subhash Kumar V. Bihar, (1991) 1 SCC 598

²⁹ *ibid*

³⁰ <http://www.livelaw.in/wont-interfere-approach-govt-sc-refuses-entertain-pil-two-child-norm/>

³¹ Javed v. State of Haryana 2003 8 SCC 369

There are certain principles which are formulated by Rio Conference for a better regime for environment which ought to be followed by nations.

8. POLLUTER PAY PRINCIPLE

In the case of **Research Foundation for Science V. Union of India**³², “it was stated that the polluter pay principle basically means that the producer of goods and other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environment cost as well as direct cost to the people and property; it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environment cost and not just those which are immediately tangible”.

The polluter is responsible for compensating and repairing caused by his omission. This is the quintessence of polluter pay principle. Absolute liability of hazardous and inherently dangerous industry is high water mark of development of polluter pay principle³³.

Here according to polluter pay principle if we can held an industry liable for polluting our environment then why cannot we be held liable as individual for exploiting resources more than what the nature can bear.

9. PRECAUTIONARY PRINCIPLE

Andhra Pradesh Pollution Control Board v. M V Nayudu³⁴ held that “The precautionary principle entails foreseeing potential environmental harm and taking action to prevent it or select the least environmentally damaging course of action. Its foundation is uncertainty in science. Environmental protection should not just preserve people’s health, property, and economic interests, but also the environment itself. Precautionary obligations should not only be performed when there is a reasonable suspicion of a hazard, but also when there is cause for concern or risk.”

The precautionary principle emphasised by U.N. conference on environment and development held in Rio de Janeiro in year 1992, signifies a preventive approach. It states: “States must widely implement the precautionary approach in accordance with their capacities in order to protect the environment. Lack of complete scientific knowledge shall not be used as an excuse for delaying cost-effective steps to avoid environmental deterioration where there are dangers of serious or irreparable harm.”³⁵ India being a signatory in that conference it is the prime duty of the nation to apply this principle.

It is also mentioned in article 253 of the Constitution of India that international treaties, agreements, conventions and decisions taken at international conference have to be incorporated into the law of land by parliamentary legislation.

10. CONFLICTS OF RIGHTS

If S.C. accepts this contention then there are lot of conflicts which may arise i.e. conflict with different fundamental rights like conflict between right to procreate and right to live with dignity (clean air, water, housing facility, etc) under Article 21; conflict between right to religion and restriction on the right to procreate. (It can be argued that the personal law of Muslims permit performance of marriages with 4 women, and four marriages means at least four children and any restriction thereon would be violative of right to freedom of religion enshrined in article 25 of the

³²(2005) 13 SCC 186

³³ Leelakrishnan P., Environmental Law In India, LexisNexis

³⁴ AIR 1999 SC 812

³⁵ PRINCIPLE 15 OF UN Conference on Environment and Development

Constitution) etc. there may be other rights of people which may be in conflict with the prohibition on right to procreate.

11. CONFLICT BETWEEN RIGHT TO PROCREATE AND RIGHT TO LIVE WITH DIGNITY

Though we have right to procreate as our fundamental right under article 21 as stated in **Suchita Srivastava V. Chandigarh Administration**³⁶, it was held that “there is no doubt that a woman's right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices”.

If we try to answer this question that how can we impose restriction on this right then we can say that this right also is not absolute and reasonable restrictions can be imposed on this right.

As mentioned in **Javed v. State of Haryana**³⁷, “Fundamental rights are not to be read in isolation. They have to be read along with the chapter on directive principles of State policy and the fundamental duties enshrined in Article 51-A. Under Article 38, the State shall strive to promote the welfare of the people and developing a social order empowered at distributive justice — social, economic and political. Under Article 47 the State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, the constitutionally downtrodden. Under Article 47 the State shall consider improving public health and boosting the standard of living and nourishment of its citizens by raising the level of nutrition as among its top priorities. None of these lofty ideals can be achieved without controlling the population in as much as our materialistic resources are limited and claimants are many. The concept of sustainable development³⁸ which emerges as a fundamental duty from several clauses of Article 51-A too dictates the expansion of population being kept within reasonable bounds.

A bare reading of this Article deprives the submission of all its force, vigour and charm. The freedom is subject to public order, morality and health. So the Article itself permits legislation in the interest of social welfare and reform which are obviously part and parcel of public order, national morality and the collective health of the nation's people.”

12. CONFLICT BETWEEN RIGHT TO RELIGION AND RESTRICTIONS ON THE RIGHT TO PROCREATE

The Muslim Law permits marrying four women. The personal law nowhere mandates or dictates it as a duty to perform four marriages. No religious scripture or authority has been brought to our notice which provides that marrying less than four women or abstaining from procreating a child from each and every wife in case of permitted bigamy or polygamy would be irreligious or offensive to the dictates or the religion³⁹.

The meaning of religion - the term as employed in Article 25 and the nature of protection conferred by Article 25 stands settled by the pronouncement of the Constitution Bench decision in **Dr. M. Ismail Faruqui and Ors. v. Union of India and Ors.**⁴⁰, “that the protection under Articles 25 and 26 of the Constitution is with respect to religious practice which forms an essential and integral

³⁶ AIR 2010 SC 235

³⁷ (2003) 8 SCC 369

³⁸ “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

³⁹ Ibid 37

⁴⁰ AIR 1995 SC 605

part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. The latter is not protected by Article 25.”

Mohd. Ahmed Khan v. Shah Bano Begum and Ors.⁴¹, the Constitution Bench was confronted with a canvassed conflict between the provisions of Section 125 of Cr.P.C. and Muslim Personal Law. The question was: when the Personal Law makes a provision for maintenance to a divorced wife, the provision for maintenance under Section 125 of Cr.P.C. would run in conflict with the Personal Law. The Constitution Bench laid down two principles; firstly, the two provisions operate in different fields and, therefore, there is no conflict and; secondly, even if there is a conflict it should be set at rest by holding that the statutory law will prevail over the Personal Law of the parties, in cases where they are in conflict.

State of Bombay v. Narasu Appa Mali⁴², “if religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole.”

In **Badruddin v. Aisha Begam**⁴³, “the Allahabad High Court ruled that though the personal law of Muslims permitted having as many as four wives but it could not be said that having more than one wife is a part of religion. Neither is it made obligatory by religion nor is it a matter of freedom of conscience. Any law in favour of monogamy does not interfere with the right to profess, practise and propagate religion and does not involve any violation of Article 25 of the Constitution.”

Smt. R.A. Pathan v. Director of Technical Education and Ors.⁴⁴, “having analysed in depth the tenets of Muslim personal law and its base in religion, a Division Bench of Gujarat High Court held that a religious practice ordinarily connotes a mandate which a faithful must carry out. What is permissive under the scripture cannot be equated with a mandate which may amount to a religious practice. Therefore, there is nothing in the extract of the Quaranic text (cited before the Court) that contracting plural marriages is a matter of religious practice amongst Muslims. A bigamous amongst Muslims is neither a religious practice nor a religious belief and certainly not a religious injunction or mandate. The question of attracting Articles 15(1), 25(2) or 26(b) to protect a bigamous marriage and in the name of religion does not arise.”

The believe that the last rites in Hindu religion is to be performed by son is also in conflict with the prohibition on the right to procreate. Hindus want that their last rites should be performed by their son so they try for baby boy until they have one. But this is not an obligatory part of Hindu religion to have son as last mourner as it can be performed by any other person as well. And now-a-days even daughters are also performing this duty. So imposing restriction on the right to procreate for larger benefit is reasonable.

Thus the restriction on the right to procreate is not in conflict with the right to religion under article 25 of the constitution. Also it could be suggested that if anyone chooses to have more living children than two, he is free to do so under the law as it stands now but then he should pay a little price.

13. CONCLUSION AND SUGGESTIONS

In a country like India, where people lack environmental knowledge and information and the bodies (constituted for environmental awakening and checking pollution) lack will to work, judiciary must take stand to save our environment through an illuminating judgment and giving

⁴¹ 1985 Cri LJ 875

⁴² AIR 1952 Bom 84

⁴³ 1957 ALJ 300

⁴⁴ (1981) 22 GLR 289

guidelines to control the population of our country as it is the reason for violation of article 21 of almost every person living presently. If we look for any solution then there are many hindrances like either it will be opposed by large segment of the society or it will run counter to our conception of individual freedom, or it would be so foreign to our system that it would become unconstitutional but it is essential to overcome such restrictions. Thus it's high time for Judiciary to take necessary actions so that legislations are made to control India's population and pollution. Controlling population is the biggest step which ought to be taken by everyone to save the environment and to protect the fundamental right of every individual.

There can't be more people on the earth than we can feed. Clearly other things being equal fewer people will do less damage to planet. Population growth put increased pressure on everything. We know that the birth rate is mainly responsible for rapid population growth. Hence measures which can reduce the birth rate should be adopted. These measures can be classified into 3 categories.

1. **Minimum age of marriage:** The problem of child marriage is highly prominent in certain countries with high population like India, Pakistan or Bangladesh. A marriage at a tender age leads to a long span for giving birth. Also young age marriage devoid people of the education and awareness required to be sensitive towards and understand the consequences of raising too many children.
2. **Raising the status of women:** There is still discrimination to the women. They are confined to four walls of the house. They are still confined to rearing and bearing children. So women should be given opportunities to develop socially and economically. Free education should be given to them.
2. **Spread of Education:** The spread of education changes the outlook of people. The educated men prefer to delay marriage and adopt small family norms. Educated women are health conscious and avoid frequent pregnancies and thus help in lowering birth rate.
3. **Adoption:** Some parents do not have any child, despite costly medical treatment. It is advisable that they should adopt orphan children. It will be beneficial to orphan children and children couples. Government should also provide incentives for adopting.
4. **Social Security:** More and more people should be covered under-social security schemes. So that they do not depend upon others in the event of old age, sickness, unemployment etc. with these facilities they will have no desire for more children.

Economic Measures

1. **More employment opportunities:** The first and foremost measure is to raise employment avenues in rural as well as urban areas. Generally in rural areas there is disguised unemployment. So efforts should be made to migrate unemployed persons from the rural side to the urban side. When their income is increased they would improve their standard of living and adopt small family norms. Another method to check the population is to provide employment to women. Women should be given incentive to give services in different fields. Women are taking an active part in competitive examinations. As a result their number in teaching, medical and banking etc. is increasing rapidly.
2. **Providing incentives:** Incentives have proved to be an efficient policy measure in combating most development issues including population. Providing a health, educational or even financial incentive can be a highly effective population measure. There are certain incentive policies like paying certain money to people with not more than two kids or free or discounted education for single children etc. which are in place

in most developing countries facing population related challenges and has also proved to be a useful measure.

3. Other Measures

1. **Medical Facilities:** One big drawback of developing countries is that of limited and highly centric medical facilities. Because of the high rural-urban divide in developing countries, availability of good hospitals and doctors is limited to urban centers thus resulting in high infant mortality rate in rural areas. Rural people, in order to ensure that at least some of their kids survive, give birth to more and more kids thus contributing to the population growth. If provided with optimum medical facilities population rate will almost certainly decline.
2. **Legislative Actions:** Not much result can be achieved from these if family planning and use of contraception remains optional instead of mandatory. Strict legal steps are required for child marriage, education, abolition of child labor and beggary and family planning to reap significant benefits from it. Proper enforcement of laws related to child labour, slavery and beggary will ensure that parents don't sell their children or send them out to work thus forcing them to raise lesser number of kids.
3. **Recreational Facilities:** Birth rate will likely to fall if there are different recreational facilities like cinema; theatre, sports and dance etc. are available to the people.
4. **Spreading awareness:** People need to be told and made to understand the consequences of having too many children. Government and non-government institutions can carry awareness campaigns informing people how they will be unable to provide good nutrition, education or medical facilities to their children if they have too many. Population is also a reason for illiteracy and diseases and malnutrition and the negative effects of it are required to be communicated to the general public to expand their reasoning and understanding.

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