

**IN THE SUPREME COURT OF PAKISTAN**  
**(ORIGINAL JURISDICTION)**

**PRESENT:** MR. JUSTICE MIAN SAQIB NISAR, HCJ  
MR. JUSTICE FAISAL ARAB  
MR. JUSTICE IJAZ UL AHSAN

**HUMAN RIGHTS CASE NO.17599 OF 2018**

(Regarding alarming high population growth rate in the country)

In attendance: Mr. Anwar Mansoor Khan, Attorney General  
Syed Nayab Hassan Gardezi, DAG  
Mr. Tariq Mehmood Jehangiri, A.G. Islamabad  
Mr. Sibtain Mehmood, AAG, Sindh  
Mr. Zahid Yousaf Qureshi, Addl. A.G. KP  
Mr. Ayaz Swati, Addl.A.G. Balochistan  
Mr. Qasim Ali Chowhan, Addl. A.G. Punjab  
Cap. Retd. Zahid Saeed, Secretary M/o NHS&RC  
Mr. Imran Gichki, Secy. Population Balochistan  
Mr. Abdul Ghaffar, D.G. Population Welfare  
Department, Govt. of Pakistan  
Mr. Asghar Ali, Secy. Population, KP  
Mr. Fazal Nabi Khan, DG, PW, KPK  
Mr. Muhammad Jahangir for PBS, ILD  
Mr. Muhammad Riaz for PBS, ILD

Date of hearing: 03.01.2019

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**JUDGMENT**

**MIAN SAQIB NISAR, CJ.-** As of 2017, Pakistan is ranked as the fifth most populous nation in the world, with a population of over 200 million. While all nations and economies rely on population growth and a creation of future younger generations, such growth must be sustainable and proportionate to the resources available. Approximately 14,000 babies are born in Pakistan which is already struggling to feed, educate and provide employment for its existing population. Pakistan has experienced unchecked population growth since its creation in 1947. From 1998 (*the previous comprehensive census*) to 2017, Pakistan's population has increased by 57%, with the addition of approximately 76 million people to the population. Projected growth trends from the United Nations suggest that if this population growth rate does not slow considerably, Pakistan can expect to have its population increase by 50% resulting in an estimated 306 million people, surpassing the United States, Indonesia, Brazil, and Russia

to become the world's third largest country in terms of population trailing behind India and China. The steadily increasing population rate in Pakistan is a ticking bomb which will certainly not wait till it is convenient for us to take note of it. What will follow this population explosion is starvation, famine and poverty, the likes of which are already visible in areas like Thar. Other indicators of overstretched resources and infrastructure are apparent in Pakistan's unemployment rate, maternal and child mortality rate, literacy and educational enrolment figures, and access to clean water and adequate food. A brief overview of the above figures reveals the extent of the resource and infrastructure shortcomings for an already large populace. Pakistan currently has a very high mortality rate for children under the ages of five years (*75 deaths per 1000 live births*), an above average maternal mortality rate (*178 deaths per 10,000 births*), and approximately 44% of the population lacks access to clean drinking water. Furthermore, Pakistan's literacy rate is 58% while over 22 million children are out-of-school. Future projections indicate the number of educational institutions to reduce in number. The above figures make it clear that Pakistan is not equipped to handle the addition of another 100 million people to its ranks.

2. After the Proclamation of Teheran, 1968<sup>1</sup> (*Proclamation*) at the 1968 International Conference on Human Rights, 'family planning' was recognised by the international community as both a right and a means of enabling other human rights. In this regard, paragraphs 16 and 17 of the Proclamation are relevant which read as under:-

*“16. The protection of the family and of the child remains the concern of the international community. Parents have a basic human right to determine freely and responsibly the number and the spacing of their children;*

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<sup>1</sup> Pakistan was amongst the 84 members who adopted the Proclamation of Teheran by consensus on 13.05.1968. The Proclamation affirmed, for the first time in a global agreement, the basic right of parents “to determine freely and responsibly the number and the spacing of their children” (paragraph 16).

*17. The aspirations of the younger generation for a better world, in which human rights and fundamental freedoms are fully implemented, must be given the highest encouragement. It is imperative that youth participate in shaping the future of mankind;”*

As obvious from the language of the above reproduced paragraphs, the right to freely and responsibly determine the number and spacing of children involves imparting sufficient information and means to the parents to control reproduction as well as providing them with adequate knowledge regarding the advantages and disadvantages of such determination. Also apparent from the above language is the interdependence of planned births with the right of the younger generation to be afforded all fundamental and human rights recognised by the international community. Thus, the right to well-informed and controlled pregnancies is a right that paves the path for enabling several other rights; for an overburdened economy cannot be expected to juggle with a growing population while struggling to provide a better facilities and opportunities for its progeny. This right, which forms part of the international commitments of Pakistan, originates from the right to life under Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 (*Constitution*), and other fundamental rights such as the right to education, equality, speech, information and due process (*Articles 4, 25, 25-A, 19, 19-A and 10-A of the Constitution respectively*), which are in turn inevitably linked to the economic progress of the State expected to make such rights available to its people. Unfortunately, by failing to prioritise the provision of information and means of controlling unplanned and unwanted births, the country now faces a surplus of unskilled and unemployed manpower for whom basic human and fundamental rights are luxuries they can at best only hope for, but never attain.

3. As the guardians of the fundamental rights of the people of Pakistan, this Court has for decades safeguarded the fundamental rights

guaranteed under the Constitution, and in pursuance of the above mentioned international commitment, recognised that such rights cannot be severed from principles of socio-economic progress under Articles 37 and 38 of the Constitution. As aptly observed by this Court in Miss Benazir Bhutto Vs. Federation of Pakistan and another (PLD 1988 SC 416):-

*“Articles 3, 37 and 38 of the Constitution juxtapose to advance the cause of socio-economic principles and should be given a place of priority to mark the onward progress of democracy. These provisions become in an indirect sense enforceable by law and thus, bring about a phenomenal change in the idea of co-relation of Fundamental Rights and directive principles of State Policy. If an egalitarian society is to be formed under the rule of law, then necessarily it has to be by legislative action in which case it would be harmonious and fruitful to make an effort to implement the socio-economic principles enunciated in the Principles of Policy, within the framework of the Fundamental Rights, by enlarging the scope and meaning of liberties, while judicially defining them and testing the law on its anvil and also, if necessary, with the co-related provisions of the Objectives Resolution which is now a substantive part of the Constitution.*

*The liberties, in this context, if purposefully defined, will serve to guarantee genuine freedom; freedom not only from arbitrary restraint of authority, but also freedom from want, from poverty and destitution and from ignorance and illiteracy. That this was the purport of the role of the rule of law which was affirmed at Lagos in 1961 in the World Peace Through Law Conference:*

*“Adequate levels of living are essential for full enjoyment of individual's freedom and rights.  
What is the use of freedom of speech to under-nourished people or of the Freedom of Press to an illiterate population. The rule of law must make for the establishing of social, economic and cultural conditions which*

*promote men to live in dignity and to live with aspirations””*

*[Emphasis Supplied]*

Fortified with the above cited paragraph, we are inclined to conclude that fundamental rights such as the right to free speech or information are of no use to those struggling with malnutrition, hunger and starvation. Economic prosperity is thus a *sine quo non* for the implementation of all fundamental rights, the paramount right being that of life. A plethora of judgments of this Court have sufficiently emphasised that Article 9 of the Constitution does not merely protect the right to ‘exist’ or ‘live’ but embodies the right to live a meaningful life with a minimum standard of living. In **Ms. Shehla Zia and others Vs. WAPDA (PLD 1994 SC 693)** it was held that:-

*“The word ‘life’ has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally.”*

4. Similarly in the judgment passed in **Suo Motu Case No.19 of 2016 (2017 SCMR 683)** it was held that “[t]he Fundamental Right to life (Article 9), includes the right to adequate and safe drinking water and basic health care”. In **Pir Imran Sajid and others Vs. Managing Director/General Manager (Manger Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257)** and **Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383)** Article 9 of the Constitution was held to include a right to livelihood. In the judgments reported as **Barrister Zafarullah Khan Vs. Federation of Pakistan (2018 SCMR 2001)**, **General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum Vs. The Director, Industries and Mineral Development, Punjab, Lahore (1994 SCMR 2061)**, **Suo Motu Case No.10 of 2010 (Contamination of Water of Mancher Lake due to Disposal Effluent from MNV Drain now converted**

into RBPOD) (2011 SCMR 73), Shahab Utso Vs. Government of Sindh through Chief Secretary and other (2017 SCMR 732), Shehla Zia's case (*supra*) the said Article was held to include the right to safe drinking water and a safe and health-friendly environment. In OGRA through Secretary Vs. Midway II, CNG Station (2014 SCMR 220) and Iqbal Zafar Jhagra and Senator Rukhsana Zuberi Vs. Federation of Pakistan (PTD 2014 SC 243) the said fundamental right was held to include the right to provision of electricity and gas. In Younas Abbas Vs. Additional Sessions Judge, Chakwal (PLD 2016 SC 581) and National Engineering Services Pakistan [NESPAC] (Pvt.) Limited Vs. Kamil Khan Mumtaz (2018 SCMR 211) the right to life was interpreted in the following terms:-

*“It is now well established that right to life as envisaged by Article 9 of the Constitution includes all those aspects of life which go to make a man's life meaningful, complete and worth living. In the case of *Employees of Pakistan Law Commission v. Ministry of Works* (1994 SCMR 1584), it has been laid down that Article 9 of the Constitution which guarantees life and liberty according to law, is not to be construed in a restrictive manner. Life has larger concept which include the right of enjoyment of life, maintaining adequate level of living for full enjoyment of freedom and rights.”*

*[Emphasis supplied]*

In the recent judgment of this Court passed in Barrister Zafarullah Khan Vs. Federation of Pakistan etc. (Constitution Petition No.57/2016 etc.) wherein the Federal Government was directed to construct the Diamer-Bhasha and Mohmand Dams, the right to life and the importance of water in this regard was elucidated in the following terms:-

*“For the last several decades, there has been reference to the right to clean water, as stemming from the right to life enshrined in the Constitution as a fundamental right. On a national level, various judgments including those reported as*

**General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum Vs. The Director, Industries and Mineral Development, Punjab, Lahore (1994 SCMR 2061), Suo Motu Case No.10 of 2010 (Contamination of Water of Mancher Lake due to Disposal Effluent from MNV Drain now converted into RBPOD) (2011 SCMR 73) and Shahab Utso Vs. Government of Sindh through Chief Secretary and other (2017 SCMR 732)** robustly discuss how clean and safe drinking water is necessary for the existence of life, and that contaminated and polluted water poses a threat to human existence. The oft-quoted words of Saleem Akhtar, J. in the case of **Ms. Shehla Zia and others Vs. WAPDA (PLD 1994 SC 693)**, where the immediate context was regarding the hazards of electromagnetic fields, are equally germane here:-

“Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word ‘life’ is very significant as it covers all facets of human existence. The word ‘life’ has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally.”

Therefore water is a resource to which everyone is entitled, is indispensable to those who wish to lead a dignified life, and forms the basis of many other rights including the right to life, health and quality of life. It is a fundamental right that emanates from the right to life enshrined in Article 9 of the Constitution...”

[Emphasis supplied]

As evident from the above precedents, it is by now established law that the right to life includes a right to basic amenities and living standard, access to clean drinking water, electricity, employment etc. and there is no denying that the same is heavily dependent on the economic progress of the

country which suffers a constant handicap on account of the rapidly growing population. Poverty is thus deeply intertwined with each fundamental right guaranteed in the Constitution, since divorced from an economically thriving environment, there remains no meaning of the fundamental right to life as explained above, nor can other fundamental rights be implemented in their true letter and spirit. The threat of over-population, or "population explosion" is a doom the country is unknowingly moving towards if a national crusade for population control is not launched in time. It is an unfortunate reality that the earth is becoming too small to accommodate our growing numbers and its resources are rapidly decreasing at an alarming rate. This is not only adversely affecting the general quality of life but also threatening the mere existence of life on earth. Hence in pursuance of its duty to safeguard the fundamental rights of the people which is inseparable from socio-economic progress, the Supreme Court has *suo moto* commenced this long and hard but necessary journey to control the rate at which our population is multiplying.

5. Pakistan's family planning programme began with private sector initiatives in 1953 and expanding to include public sector support and involvement in the early 1960s onwards. In 1953 the Family Planning Association of Pakistan was established and received a lukewarm response from the Government. However, in 1959 General Ayub Khan attended an Family Planning Association of Pakistan (*FPAP*) conference and spoke about the need to combat overpopulation. In 1965, with the introduction of the third 5-year plan, family planning received renewed funding and support from the public sector. In the late 1970s the family planning programme fell prey to opposition from General Zia Ul Haq, who opposed publicising or expanding the programme due to religious opposition. The next major step forward came in 1990 with the introduction of a new National Health Policy which required all healthcare outlets to provide family planning services. A social action programme was developed which incorporated family planning



in tandem with rural development, education, and sanitation efforts. An ongoing issue with the previous decades of the family planning programme was the high degree of centralization which has undoubtedly damaged the effectiveness of such programmes. Although Pakistan had success in increasing contraceptive use in the 1980s and 1990s, a plateau was ultimately reached. The contraceptive prevalence rate (*CPR*), or the percentage of married, non-pregnant women using both modern and traditional methods of contraception, rose from 12% in 1990-91 to 28% in 2000-01, but between 2000 and 2009, there was hardly any change in CPR which was 30% in 2000 and remained unchanged in 2006. In 2012, Pakistan made a commitment to Family Planning 2020 (*a global partnership to empower women and girls by investing in rights-based family planning*). A number of service providers are trained to dispense contraceptives, fit intrauterine devices (*IUDs*), or advise on other birth control measures. Although two other Muslim countries, Iran and Bangladesh, had simultaneously launched population control campaigns during the 1970s (*examined later in this opinion*), they had remarkable success in such efforts while the campaign in Pakistan miserably failed and thereafter for decades the subject of family planning remained a taboo for elected governments whose five-year plan could never accommodate population planning initiatives.

6. Therefore, in the absence of policy initiatives to curb the startling population growth and in our capacity as the guardians of the fundamental rights guaranteed by the Constitution, this Court was constrained to help relaunch this campaign. Initially when this Court took cognizance of the instant matter, the Federal and all the Provincial Governments (*including the respective Chief Secretaries*) were required to file their concise statements. The learned Attorney General for Pakistan, the learned Advocates General of all the Provinces and other stakeholders unanimously agreed that a uniform policy for all the Provinces is required to control the population of Pakistan. A Task Force was constituted comprising of the

persons mentioned below, to prepare a policy for this Court's consideration:-

- i. Secretary, Inter-Provincial Coordination (*Chairman*);
- ii. Director General Population, Ministry of National Health (*Member*);
- iii. Secretaries, Population & Welfare of all Provinces (*Members*); and
- iv. Director General, Population of all Provinces (*Members*).

The said Task Force submitted its report and after lengthy deliberations, a Committee was constituted comprising of the names and having the Terms of Reference (*TORs*) proposed by Capt. (R) Zahid Saeed, Secretary, Ministry of National Health Services, Regulations and Coordination who was appointed as the convener of the meetings authorized to co-opt any other person on account of their expertise in the matter and modify/add the *TORs* as deemed necessary. The said Committee submitted a comprehensive report in which Recommendations (*hereinafter referred to as the "Recommendations" reproduced later in this opinion*) have been made to curb the alarming population growth rate in Pakistan. In order to sensitize the matter and to increase public awareness on the issue, the print and electronic media was also directed to print and broadcast the Recommendations continuously for three days free of cost. Thereafter, the Council of Common Interests (*CCI*) held its meeting which ultimately approved the Recommendations submitted to this Court. Additionally, a symposium was held by the Law & Justice Commission of Pakistan (*LJCP*) and the Ministry of National Health Services, Regulations & Coordination (Population Programme Wing) wherein valuable suggestions have been made by experts, academics, religious scholars and social activists (*which shall be examined below*). Subsequently, on 29.12.2018, this initiative of relaunching a nationwide population planning campaign, alongwith the Recommendations, received unanimous endorsement from the elected representatives from all Provinces, major political parties and religious

scholars at a national dialogue organized by the Population Council. Before dilating upon these Recommendations, we deem it expedient to provide a brief overview of efforts made by other countries including Iran, Bangladesh, India and China in this crusade for population control and planning and examine the role of the legislature, executive, judiciary, public functionaries and other stakeholders in this arduous task.

7. **The Islamic Republic of Iran:-** In Iran, in less than one generation the population growth rate of 4.06% in 1984 fell to 1.15% in 1993 and a total fertility rate of 6.4 births per woman in 1984 declined to 1.9 in 2010. The reason behind this was a development plan passed by the Iranian Parliament in 1989, which included a birth control programme, as a part of which, *inter alia* a huge media campaign was initiated to encourage women to space their pregnancies for three to four years, to limit the number of children to two, and to avoid pregnancy under the age of 18 and above 35. Following this the Iranian Parliament removed previous incentives for high fertility and clergy bodies and the judicial system issued the authorisation for family planning and supported the policy. In 1993, the Iranian legislature passed a law regarding family planning which, *inter alia*, provided for incentives for smaller families including for instance some social benefits for the first three children in a family. The said law focused on reducing infant mortality, promoting women's education and employment, and extending social security and retirement benefits to all parents so that they no longer consider children as cushions/security for their old age. The magnitude of success received by this family planning program can be accredited to the government-backed awareness, information and education program in this regard and to a health care delivery system that was able to meet reproductive health needs. The Ministry of Health of Iran established pre-marital counseling classes throughout the country which the government made mandatory for couples planning to marry to participate in before they could receive their marriage

license; population education became part of the curriculum at all educational levels; university students were required to take a course on population and family planning; and family planning services were provided for free by the country's primary health care system, which is based on different levels of care and an established referral system. In rural areas, the Ministry of Health and Medical Education is the main provider of health care services, and trained health workers proactively provide door-to-door family planning related information and services. In urban areas on the other hand health services are largely provided by the private sector which equally play a significant role in awareness and services for family planning. In order to increase and meet the supply of modern contraceptives, many are now manufactured in Iran, in fact the only condom factory in the entire region is in Iran, which exports its products to neighboring and Eastern European countries. As a result of these measures, today 74% of married women in Iran between the ages of 15 to 49 practice family planning; 60% use a modern method; and one-third of modern contraceptive users have relied on a permanent method, i.e., female or male sterilization.

8. **The Republic of India:-** In India, legislative efforts to curb population growth began as early as 1994 when for example, under Section 175(1)(q) of the Haryana Panchayati Raj Act, 1994, any person having more than two children was deemed to be disqualified from being a member of the Gram Panchayat, Panchayat Samiti or Zila Parishad. When the constitutionality of the said provision was assailed before the Indian Supreme Court, it was upheld in the judgment of **Javed & Others Vs. State of Haryana & Others** [2003 (8) SCC 369] recognising that the purpose behind such legislation is *inter alia* to popularize the Family Welfare/Family Planning Programme which was in line with the National Population Policy holding that "*In our view, disqualification on the right to contest an election by having more than two living children does not contravene any fundamental right*

*nor does it cross the limits of reasonability. Rather it is a disqualification conceptually devised in national interest.”.* The importance laid by the Indian Supreme Court on the implementation of the population control policy to secure the fundamental rights of the people of India is evident from the following paragraph of the judgment *supra*:-

*“...Reasonableness and rationality, legally as well as philosophically, provide colour to the meaning of fundamental rights and these principles are deducible from those very decisions which have been relied on by the learned counsel for the petitioners. It is necessary to have a look at the population scenario, of the world and of our own country.*

*The torrential increase in the population of the country is one of the major hindrances in the pace of India's socio- economic progress. Everyday, about 50,000 persons are added to the already large base of its population...It is a matter of regret that though the Constitution of India is committed to social and economic justice for all, yet India has entered the new millennium with the largest number of illiterates in the world and the largest number of people below the poverty line. The laudable goals spelt out in the Directive Principles of State Policy in the Constitution of India can best be achieved if the population explosion is checked effectively. Therefore, the population control assumes a central importance for providing social and economic justice to the people of India (Usha Tandon, Reader, Faculty of Law, Delhi University, - Research Paper on Population Stabilization, Delhi Law Review, Vol. XXIII 2001, pp.125-131). In the words of Bertand Russell, "Population explosion is more dangerous than Hydrogen Bomb." This explosive population over-growth is not confined to a particular country but it is a global phenomenon. India...has the population problem going side by side and directly impacting on its per capita income, and resulting in shortfall of food grains in spite of the green revolution, and has hampered improvement on the educational front and has caused swelling of unemployment numbers, creating a new class of pavement and slum-dwellers and leading to congestion in urban areas due to the migration of rural poor. (Paper by B.K. Raina in Population Policy and the Law, 1992, edited by B.P. Singh Sehgal, page 52)...*

*...The above facts and excerpts highlight the problem of population explosion as a national and global issue and provide justification for priority in policy-oriented legislations wherever needed...*

*...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 51A. 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 down-trodden. Under Article 47 the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. None of these lofty ideals can be achieved without controlling the population inasmuch as our materialistic resources are limited and the claimants are many. The concept of sustainable development which emerges as a fundamental duty from the several clauses of Article 51A too dictates the expansion of population being kept within reasonable bounds."*

Another illustration of legislative efforts to combat the menace of growing population can be found in the judgment of **Air India Vs. Nergesh Meerza and Others [(1981) 4 SCC 335]** where the rapid multiplication of population was judicially noticed and the constitutional validity of legislative means to check the population was upheld as the Indian Supreme Court found no fault with the rule which would terminate the services of air hostesses on the third pregnancy with two existing children, holding the rule to be both salutary and reasonable for two reasons:-

*"In the first place, the provision preventing a third pregnancy with two existing children would be in the larger interest of the health of the Air Hostess concerned as also for the good upbringing of the children. Secondly...**when the entire world is faced with the problem of population explosion it will not***

**only be desirable but absolutely essential for every country to see that the family planning programme is not only whipped up but maintained at sufficient levels so as to meet the danger of over-population which, if not controlled, may lead to serious social and economic problems throughout the world.**

The foregoing extracts clearly reflect the conviction and certitude of the legislature and the judiciary that the national interest of India lay in population control of the severity that disqualifications from elections and posts etc., was deemed to be an appropriate and necessary measure to enforce India's two-child policy. For breach of the two-child norm several states put together a package of punitive measures including exclusion from elections, exclusion from ration cards, kerosene and other BPL incentives, denial of education in government schools to the third child and withdrawal of welfare programmes. This phased manner of implementing the two-child policy, was soon followed by stringent measures in the form of Indian Ministry of Health and Welfare's Guidelines on Standards of Female Sterilization, enacted in October 1999. Through a public interest litigation decided through the judgment reported as **Ramakant Rai Vs. Union of India and Others** [2009 (16) SCC 565], data from the States of Uttar Pradesh, Bihar, and Maharashtra surfaced regarding government practices for female sterilization, which largely revealed that the poor, female population was targeted which lacked counselling or informed consent, lacked pre- and post-operative care, and included unhygienic and un-anesthetized operating conditions, sterilization of minors, coercion and cruelty. In light of evidence of the morbidity suffered by women, along with the unreported deaths due to the lack of quality care in sterilisation camps the Indian Supreme Court in the noted judgment issued directives specifying the quality of care standards along with appropriate protocols that were to be stringently followed. While the issue of health concerns and human rights violation arising from targeted sterilization of a certain

deprived class of the population has been addressed by the Indian Supreme Court in **Devika Biswas Vs Union of India (UOI) and Others [2016 (10) SCC 726]** as well, the Courts and the legislature and executive in India nevertheless remained uncompromising in the object of population reduction. As a result of these stringent legislative measures complimented by judicial support, in the year 2017 the annual population growth percentage in India has decreased to 1.1% while that of Pakistan remains at 2.0%.

9. **The People's Republic of Bangladesh:-** In contrast to India, the national family planning program in Bangladesh is considered to be "culturally sensitive" because it uses strategies that acknowledge and account for gender inequality. A mixed contraceptive method was adopted prioritising oral pills over other methods such as sterilization or clinical services like IUDs which are met with hesitance, particularly among rural populations. The Government of Bangladesh formed a National Committee and a National Plan of Action was developed following the International Conference on Population and Development (ICPD) in 1994 for implementation of the goals set in the Plan of Action. Under the integrated approach of population and development, national policies were formulated on population, maternal health and strategies were developed for reproductive health, population, health and nutrition. Taking a community-based approach, married, literate village-women were recruited and trained in basic medicine and family planning to go door-to-door dispensing birth-control pills and barrier contraceptives, providing outreach services to couples, particularly married women with limited mobility outside the home or compound and referring women for clinical contraception. Simultaneously, the government prioritized girls' education which lead to delays in marriage and childbearing as knowledge, status and confidence gave them greater control over family-planning decisions. This led to remarkable success in population control since prevalence of contraceptive



use increased dramatically from 3% to 45% among married women since 1971 and the fertility rate declined from about seven births per woman in the mid-1970s to 3.4 births per woman in 1993. These can largely be attributed to its Government's efforts, particularly over the past 15 years to expand access to family planning methods and services and awareness campaigns.

10. **The People's Republic of China:-** China, the most populous country in the world which unlike Pakistan can sustain its rapid growth of population due to its progressive economy, has been able to control its growth rate by adopting the 'carrot and stick' rule. Article 25 of the Chinese Constitution and Article 12 of the Marriage Law require that family planning be promoted by the State. Attractive incentives in the field of education and employment were provided to couples following the 'one-child norm'. At the same time drastic disincentives were cast on the couples breaching such norm which even included penal action. These stringent measures have led to a radical decrease in the population growth rate in China, therefore, China's Family Planning Commission, which for nearly four decades enforced the country's notorious one-child policy, will be absorbed by a new agency as the government attempts to go back on its one-child policy.

11. It is pertinent to mention that the elucidation of the population control measures of various countries was only for illustration purposes. Although Pakistan is at a disadvantage for having launched this population control campaign decades after similarly populated countries such as Iran, China, India and Bangladesh, we also remain at an advantage to benefit from the errors that have surfaced decades after the implementation of the respective strategies employed with regard to their population control campaigns. Be that as it may, understanding the policy efforts to promote birth control and family planning methods only provides half the context required to formulate an effective plan. Indeed, a number of the failings of

the previous family planning initiatives stem from an ignorance of the unique cultural and religious milieu of Pakistani society. A perusal of data from the annual Demographic and Health Survey reveals a number of preconceived notions, obstacles and misconceptions regarding family planning, family size, childbearing and religious instructions regarding birth control and spacing pregnancies. Looking to fellow Muslim countries, or those nations with similar cultural ideals, it is clear that an effective family planning policy is an achievable goal even in spite of cultural, societal, or religious hesitance.

12. In order to learn from the mistakes of other countries in such campaign and to ensure that the efforts made in this relaunched campaign do not suffer the same fate as the previous one, a National Population Symposium was held by the Ministry of National Health Services, Regulations & Coordination (Population Programme Wing) in conjunction with the LJCP under the auspices of this Court on 05.12.2018 where several experts made valuable contributions to sketching a roadmap for this campaign of population control. One of the points raised was that family planning campaigns involves a two-fold process of (1) raising the demand for contraception use and (2) reducing the **unmet need** for contraception which comprises of a fair percentage of married women. The foremost task should be the meeting of demand of contraceptives and making them easily assessible to people while increasing the awareness with regards to the need of contraceptives. Moreover, the best global practices in family planning must be adopted including modern tested and effective methods in addition to a contraceptive mix method which has proven to be effective in many countries. Global evidence also supports task sharing/shifting strategies which should be quickly rolled out in Pakistan to enable mid-level and community-based service providers to provide services to rural, peri-urban and urban poor communities. We must emphasise the need to resort to reproductive health programming which

involves the participation of men in contraceptive use and supporting women for use of contraception. Subscribing to family planning methods will benefit the country in the form of a higher GDP per capita and reduced unemployment, increased health benefits including reduced maternal mortality, improved infant and child health and fewer abortions; these would in turn lead to greater freedom to determine the number and spacing of children; environmental benefits include reduced pressure on natural resources (*water, agriculture, energy, etc.*) as well as reduced air water and soil pollution; and it will also result in increased resources per capita for schooling and healthcare sectors and infrastructure. If resources are not increased by rationing the amount of births burdening the economy each year, this working population age will either be unemployed or due to lack of education and skill training will be working in unskilled and menial jobs. In order to ensure that this working age population is productively employed, a drastic decline in the population is required which must be supplemented with an education 'emergency' whereby education and technical training for the working age population is provided targeting both genders equally. Additionally, strong policy reforms are required centred on capturing the demographic dividend, the total fertility rate (*TFR*) must be reduced to a sustainable rate, a national action plan is required to be introduced in order to train our human resource and match skills to the available work opportunities, and ensure an increase in work opportunities for women so as to increase the source of income of each familial house. The United Nations Fund for Population Activities<sup>2</sup> (*UNFPA*) is ready to assist Pakistan in building consensus on high quality, equitable and voluntary family planning as a national priority working with key stakeholders including development partners. Under the current Country Programme for Pakistan (2018-2022) UNFPA will focus on increasing capacities at all levels to accelerate delivery and accessibility of high-quality family planning

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<sup>2</sup> The principle global inter-governmental organisation in the UN system with a mandate for family planning.

information and services; UNFPA stands ready to foster partnerships and provide technical support to the implementation of the Recommendations approved by CCI and endorsed by the Provincial Legislators. This strategic decision will also enable Pakistan to honour the commitments made at international and national level particularly those made in the 1994 International Conference on Population and Development Programme of Action and the commitment made to reaching Sustainable Development Goals. Finally, coordination must be strengthened at all levels starting from the existing fora which include the Country Engagement Working Group (CEWG), Provincial FP2020 Working Groups, Family Planning Donor and Reproductive Health working groups, civil society organisations and the private sector working for the cause of population planning.

13. Be that as it may, as mentioned earlier in this opinion, the set of eight key Recommendations which have been prepared by the Task Force and approved by CCI are reproduced below:-

RECOMMENDATION	RESPONSIBILITY	TIMEFRAME
<b>1. Establish National and Provincial Task Forces for steering, providing oversight and taking critical decisions to reduce population growth, lower fertility rate and increase contraceptive prevalence rate (CPR):</b>		
a. National TF chaired by Prime Minister to include Chief Ministers of all the Provinces, Federal and Provincial Ministers of Population, Health, Education, Finance, Planning and representatives of civil society.	M/o NHS	By 31.12.2018
b. Provincial TFs chaired by respective Chief Ministers to include Provincial Ministers of Population, Health, Education, Finance, Planning and representatives of civil society.	PWDs	By 31.12.2018
c. Progress towards reducing population growth rate, lowering fertility and increasing contraceptive prevalence rate to be monitored through a robust data collection system and assessments of results and presented before National and Provincial Task Forces.	M/o NHS and PWDs	Bi-annually (NTF)  Quarterly (PTF)
<b>2. Ensure Universal Access to FP/RH Services:</b>		

i. Mandate all public health facilities (BHUs, RHCs, THQs, DHQs, Teaching Hospitals) to deliver family planning services as part of the essential service package.	Federal/Provincial Governments	By 30.06.2019
ii. All general registered private sector practitioners and hospitals to provide FP counselling, information and services to male and female clients.	Federal/Provincial Governments	By 30.06.2019
iii. Lady Health Workers to provide FP, ante-natal and post-natal counselling, and contraception services on priority basis.	Federal/Provincial Governments	By 30.06.2019
iv. Current cadre of male mobilizers to be made active and accountable for counselling men on family planning.	Federal/Provincial Governments	By 30.06.2019
v. NGOs and Civil Society Organizations to work in close coordination with provincial DOHs and PWDs to extend FP/RH services to underserved and unserved areas.	Federal/Provincial Governments	By 31.03.2019
vi. Federal and Provincial Governments to link population programs with Social Safety Net programs like Benazir Income Support Program and introduce conditional cash transfer schemes or incentivized schemes for adoption of FP service and institutionalized birth delivery.	M/o NHS, PWDs and BISP	By 30.06.2019
<b>3. Finances:</b>		
i. Federal Government to create a five-year non-lapsable Special Fund for reducing Population Growth Rate with annual allocation of Rs.10 billion. The Fund shall be set up exclusively from federal resources without any cut from provincial funds. The Fund will:	M/o Finance and M/o NHS	By 30.06.2019
a. Meet, for five years, 50% amount of additional allocations made by the provinces for procurement of contraceptive commodities over and above the budget provision of FY 2018-19 in the respective head.	M/o NHS in coordination with PWDs and Finance Div. & PD&R Div.	FY 2019-20 through FY 2023-24
b. Meet, for five years, 50% cost of increase in LHWs for 100% coverage for doorstep services in rural and peri-urban areas.	M/o NHS in coordination with DOH and Finance Div. & PD&R Div.	FY 2019-20 through FY 2023-24
c. Support innovative approaches of Federal and Provincial Governments for reaching poor and marginalized population to reduce population growth and	M/o NHS in coordination with DOH and Finance Div. & PD&R Div.	FY 2019-20 through FY 2023-24

increase contraceptive prevalence rate (CPR).		
ii. Federal and Provincial Population and Health budgets for FP/RH to be doubled over the next two years and protected from reallocation to other programs and departments while ensuring timely releases.	M/o Finance, M/o NHS, DOH and PWDs	FY 2019-20 through FY 2020-21
iii. Donor financing to NGOs and private sector organizations involved in FP/RH to be streamlined through an effective coordination mechanism.	EAD and M/o NHS in coordination with PWDs and DOH	By 31.03.2019
iv. Corporate Sector to allocate CSR funds for FP services and advocacy.	SECP/FBR	By 31.01.2019
<b>4. Legislation:</b>		
i. Family Planning and Reproductive Health (FP&RH) Rights Bill ensuring mandatory FP/RH services by all general health care facilities in public and private sector.	M/o NHS, M/o Law and Justice and Provincial Governments/PWDs	By 31.03.2019
ii. Early Child Marriage Restraint Act be introduced by Federal and Provincial Governments (Sindh passed this Act in 2013).	M/o NHS, M/o Law and Justice and Provincial Governments/PWDs	By 31.03.2019
iii. Pre-marital counselling on family planning should be mandatory for Nikah registration; LHWs or appropriate service providers to provide the requisite counselling.	M/o NHS, M/o Law and Justice and Provincial Governments/PWDs	By 31.03.2019
iv. "Right to promotive and primary health care for mother and child be made mandatory" as the right to education given in Article 25-A of the Constitution.	M/o NHS/M/s Law and Justice	By 31.03.2019
<b>5. Advocacy and communication:</b>		
i. A national narrative to be developed in consultation with Provinces and other stakeholders to create a sense of urgency and necessity of reducing population growth rate and achieving socio-economic wellbeing for all.	M/or NHS, M/o Information, M/o Religious Affairs and PWDs	By 28.02.2019
ii. Mass movement leading to a call of action to be launched involving political leaders, corporate sector, academia, judiciary, executive, ulema, media, intelligentsia, civil society and youth.	Federal and Provincial Governments and all stakeholders	Immediate
iii. PEMRA to provide free airtime for FP messages on radio and TV channels at prime time.	M/o Information and PEMRA	By 15.03.2019

iv.	Behavioural Change Communication campaign to highlight the role and responsibilities of men in family planning.	Federal/Provincial Governments/Media and Civil Society	Immediately
<b>6. Curriculum and Training:</b>			
i.	Health and hygiene to be included at primary school level.	PWDs and Federal and Provincial Education Departments	By 30.06.2019
ii.	Life Skills Based Education and Population Studies to be included in Secondary and Higher Secondary schools.	PWDs and Federal and Provincial Education Departments	By 30.06.2019
iii.	Population Dynamics in Pakistan to be included in College and University level education.	HEC, Federal and Provincial Education Departments	By 31.03.2019
iv.	Population modules to be included in training at all Civil Services and Judicial Training Institutions.	National School of Public Policy	By 31.03.2019
v.	PMDC and PNC to include modules on FP/RH in MBBS and Nursing Degree Programs, respectively.	M/o NHS, PMDC and PNC	By 31.03.2019
vi.	Training to be provided to all public and private health care providers on all modern contraceptive methods.	M/o NHS, DOH and PWDs	By 31.12.2019
<b>7. Contraceptive Commodity Security:</b>			
i.	Incentivizing Local Production of Contraceptives: Federal and Provincial Governments should encourage/incentivize the pharmaceutical companies/investors to establish contraceptive production units in Pakistan on WHO/FDA standards.	M/o NHS in coordination with relevant Federal and Provincial authorities	By 30.06.2019
ii.	Pooled Procurement model to be adopted by the Federal and Provincial Governments (subject to their consent) to garner the benefits of economy of scale.	M/o NHS, PWDs and DOH	FY 2019-20 onwards
iii.	Supply Chain Management System to be strengthened to ensure availability of all contraceptives at Service Delivery Points.	M/o NHS, PWDs and DOH	By 30.06.2019
iv.	FP Commodities should be included in the essential drug list of primary, secondary and tertiary drug list.	PWDs and DOH	By 31.03.2019
<b>8. Support of Ulema</b>			
i.	Joint Declaration of Ulema made at Population Summit-2015, Islamabad	M/o NHS, M/o Religious Affairs,	On continuous basis

to be widely advocated.	M/o Information, PWDs and DOH	
ii. Training courses on family planning to be arranged at Provincial Judicial Academies and relevant training institutes for Ulemas and Khateeb.	DOH/PWDs and Provincial Judicial Academies	By 30.06.2019

Adopting an approach similar to that of Iran, and focusing on the main impediment to the cause of population planning, these recommendations involve increasing the demand and utilization of contraceptives for which a mass movement is suggested taking on board political leaders, *Ulema* and clerics, the corporate sector, academia, executive, judiciary, media, intelligential and youth. The *Ulema* and Islamic scholars must also be urged to promote Islamic teachings in the context of controlled birth so that each child may be assured an enlightened and prosperous life. For this national cause, the Pakistan Electronic Media and Regulatory Authority (*PEMRA*) should allocate free airtime for family planning messages on all radio and television channels in prime time. Adopting the community-based approach of Bangladesh, these recommendations include the mandatory delivery of family planning services by all public health facilities and hospitals, as part of the essential service package, as well as the mandatory provision of family planning counselling, information and services by all registered private sector practitioners and hospitals. After thorough training the lady health workers and the current cadre of male mobilizers are suggested to be reactivated targeting the women and men of each family and ensuring active and accountable counselling for them. More crucially, it has been recommended that Federal and Provincial Governments introduce conditional cash transfer schemes for adoption of family planning services and institutionalised birth delivery and financial support programs such as the Benazir Income Support which should be linked with population planning initiatives. Moreover, it has been recommended that the Pakistan Medical and Dental Council (*PMDC*) and the Pakistan Nursing



Council (*PNC*) should include mandatory modules on Family Planning and Reproductive Health so we may rope in our future doctors and nurses to this national crusade. Obviously, the general cooperation of our NGOs and civil society is also expected and requested for this national cause. The Federal and Provincial Governments should also consider incentivising the local production of contraceptives by investors and pharmaceutical companies to increase their supply and accessibility and consider pooled procurement of contraceptives. The executive must play an active role in ensuring effective implementation of such laws. The Federal and Provincial Governments have agreed to allocate a sustainable amount of funds for this urgent cause, which will be a commitment that they must stick to in order to achieve any success in this population control campaign.

14. The Recommendations are expected to accelerate government efforts to reduce the population growth rate, lower the total fertility rate, and increase the contraceptive prevalence rate. These Recommendations which are aligned with provincial population policies and recognize the Federal Government's role in fostering, coordinating, and facilitating national progress, specify clear priorities, roles and responsibilities, and timelines for action. All that remains is for stakeholders at all levels to translate these Recommendations into urgent action. Because further complacency in controlling population by engaging in futile debates of responsibility or blame fixing, will prove to be a sure drift towards disaster. Immediate action by all pillars of the State and the public at large is not only the need of the hour, it is now a question of survival and thus must commence without any delay. As mentioned in the beginning of this opinion, it is undeniable that the right to life and several other rights are meaningless if owing to overpopulation, people are deprived of basic amenities such as food, water etc. Even otherwise, being one of the most populated countries in the world, Pakistan needs to realise its responsibility and play its role in curbing its uncontrol and unplanned population before

starvation, malnutrition, illiteracy, poverty and unemployment become the fate of a large segment of its population.

15. The population explosion that we so rightly fear can only be overcome if we stand against it together as one; if we successfully convince the common man that our limited resources cannot feed more than two children per house; if we accept that required transformative investments in human development can only be made if our hands are not tied by severe economic constraints and depleting resources; if we admit that the ratio of mouths to feed has long outweighed our resources; if all stakeholders, including policymakers, legislators, care providers, civil society activists and religious scholars, play their roles in unison to support responsible parenthood behaviours in our society; and if we can convince ourselves that population planning is not a plan for the future, but a remedial step that has already been taken too late: only then can we diffuse this ticking bomb. Having equipped the nation with the above Recommendations, collaboration of the three pillars of State and all stakeholders and the words of wisdom and caution of experts for this campaign reduce the population growth rate, this journey we have embarked upon will indeed be one that our posterity will thank us for.

CHIEF JUSTICE

JUDGE

Announced in open Court

on \_\_\_\_\_ at \_\_\_\_\_

Approved for Reporting

Waqas Naseer

JUDGE