

SYNOPSIS

That the present Special Leave Petition is being filed under Article 136 of the Constitution of India against the Final Impugned Judgment and Order dated 03.09.2019 passed by Hon'ble High Court of Delhi at Delhi at New Delhi in W.P. (C) No.6259/2019, whereby the Hon'ble High Court was pleased to dismiss the Writ Petition filed by the petitioner herein.

It is respectfully submitted that while passing the impugned order, the High Court has failed to appreciate that right to clean air, right to drinking water, right to health, right to peaceful sleep, right to shelter, right to livelihood and right to education guaranteed under Articles 21 and 21A, can't be secured to all citizens without controlling the population explosion.

The High Court failed to appreciate that after detailed discussion, debate and feedback, Entry 20-A was inserted in List III of the 7th Schedule through 42nd Amendment in the Constitution in 1976, which permits Central and State to enact law on Population Control and Family Planning.

The Court also failed to appreciate that after compressive discussion, the National Commission to Review the Working of the Constitution, one of the most eminent Judicial Commission, headed by former Chief Justice of India Justice M.N.Venkatachaliah on 31.03.2002 recomonded to insert Article 47A in the Constitution to control population explosion. It is

necessary to state that MGNREGA, RTE, RTI and RTF were recommended by the NCRWC.

At present, around 125 crore Indians have AADHAAR, around 20% viz. 25 crore citizens (including children) are without AADHAAR, and around 05 crore Bangladeshi and Rohangiya intruders illegally reside in India. From this, it is evident that the total population of our country is more than 150 crore and we have marched much ahead of China. We have around 2% agriculture land of the world and merely 4 % drinking water. However, our population is 20% of the world. If we compare ourself with China, our agricultural area is around one-third of China, however, the rate of population growth is more than three times of China. In China 11 children are born every minute and in India 35 children born every minute.

Population explosion is root cause of most of our problems including shortage of drinking water, forests, land, food, clothes, house, poverty and unemployment, hunger and malnutrition and air, water, soil and sound pollution. It is also the root cause of crowd in trains, police stations, tehsils, jails and Courts. It is the rootcause of theft, dacoity and snatching, domestic violence, physical-mental harassment of women and separatism, fanaticism, stone pelting etc. A small survey, conducted on thieves, dacoits, snatchers, rapists and mercenaries confirms that around 80% criminals and offenders are such that their parents

have not followed policy of "Ham Do–Hamare Do". Therefore, it is evident from the above stated facts that population explosion is the root cause of more than 50% problems of our country.

We celebrate International Day for the Elimination of Violence against Women on 25 November every year, but violence on women is increasing and the root cause is population explosion. After birth of a girl, the woman is subjected to physical-mental harassment, though, it depends on the husband. Some people abandon their first wife if 3-4 daughters are born and perform second marriage to fulfil their desire to have a son. For daughters, to have good health, social economic and political justice, liberty of thoughts, expression, belief, faith, and worship, equality of status and opportunity, a population control law, based on the Model of China, is urgently required.

Population explosion is the root cause of the pitiable condition of our International Ranking. We are ranked 103rd in the Global Hunger Index, 43rd in Suicide Rate, 168th in Literacy Rate, 133rd in World Happiness Index, 125th in Gender Discrimination, 124th in Minimum Pay, 42nd in Employment Rate, 66th in Rule of Law Index, 43rd in Quality of Life Index, 51st in Financial Development Index, 177th in Environment Performance Index, 139th in GDP Per Capita. However, we are the first in the matter of draining underground water, though we have 4% of ground water and merely 2% agricultural land.

Population Explosion is the root cause of corruption also. We are ranked 66th in 1998, 72nd in 1999, 69th in 2000, 71st in 2001 and 2002, 83rd in 2003, 90th in 2004, 88th in 2005, 70th in 2006, 72nd in 2007, 85th in 2008, 84th in 2009, 87th in 2010, 95th in 2011, 94th in 2012, 87th in 2013, 85th in 2014, 76th in 2015, 79th in 2016, 81st in 2017 and 78th in 2018.

We celebrate National Pollution Control Day on 2 December and made immense efforts to control pollution. But, air, water, soil and sound pollution is constantly increasing due to population explosion. Success of Clean and Healthy India Campaign is doubtful in absence of a population control law.

Save Girl Campaign may be successful, but torture after marriage, cannot be stopped in absence of a strict and effective population control law. After birth of 3-4 daughters, physical and mental torture are hurled on the woman, though the girl child depends on husband instead of wife. Several people prefer polygamy in the desire of son. Therefore, India urgently needs an effective population control law to stop discrimination between boys and girls and to provide equal rights and equal opportunity.

The majority of the tax payers follow "Ham Do-Hamre Do", but the persons getting subsidized food cloths and houses etc. are not adhering it. Thousands of years before, Lord Ram had initiated the policy of Ham Do - Hamare- Do, and for giving clear

message to common man, he along with his brothers Laxman, Bharat and Shatrughan, followed "Ham Do–Hamare Do", though, problem of population was not so dangerous. Population explosion is more dangerous than bomb explosion and without implementing effective population control measures, Healthy India, Literate India, Prosperous India, Resourceful India, Strong India, Secured India, Sensitive India, Clean India and Corruption and Crime-Free India campaign won't succeed.

The NCRWC after making immense efforts for two years and elaborate discussion had suggested addition of Article 47A in the Constitution and formulation of Population Control Law. Till now our Constitution has been amended 125 times, the decision of the Apex Court has been altered thrice, hundreds of new laws have been enacted, but population control Law, utterly required for country, is not made, though it will curtail more than 50% problems of our country. The NCRWC is one of the most prestigious Judicial Commission of India. Former Chief Justice of India Justice M.N. Vankatchalaih was the Chairman and Justice Sarkaria, Justice Jeevan Reddy and Justice Punnaiya were its members. Former attorney General Mr. Keshav Parasaran and Soli Sorabjee and Loksabha Secretary General Mr. Subhash Kashyap were its members. The Member of Parliament Sumitra Jee and late P.A. Sangama Ji were also its Member. Senior Journalist C.R. Irani and Mr. Abid Hussain, Ambassador to America, were also members.

It is estimated that as long as 02 crore homeless people would get homes, around 10 crore homeless children will be born. Many Legislators, intellectuals, sociologists, environmentalists, educationists, judges and philosophers agree that population explosion is the root cause of more than 50% problems. The NCRWC, making immense efforts for two years and discussion with all stake holders, had handed over its report to the Union Government on 31.3.2002. The MANREGA, RTE, RTI, RTF etc were enacted on the recommendations of NCRWC but Executive never prepared even a draft of population control law. It is necessary to state that separation of power cannot restrict the Court to direct the Law Commission to prepare a report on population explosion.

LIST OF DATES

- 03.01.1977: Entry 20A (Population Control and Family Planning) was inserted in List III (Concurrent List) of 7th Schedule.
- 31.03.2002: After detailed discussion, the NCRWC recommended to insert Article 47A to control population explosion.
- 09.05.2018 Petitioner withdrew the W.P.(C) No. 157/2018 from Supreme Court with liberty to approach authorities. A true copy of order dated

09.05.2018 passed by this Hon'ble Court in W.P.(C) No. 157 of 2018 is annexed herewith as **ANNEXURE P-1 at (Pages to)**.

21.05.2018 Petitioner submitted detailed representation regarding 'Implement NCRWC recommondation on Population Control' to the Hon'ble Home Minister, Government of India, New Delhi. A true copy of representation dated 21.05.2018 filed by the Petitioner is annexed herewith as **ANNEXURE P-2 at (Pages to)**.

28.05.2019 The petitioner filed Writ Petition (Civil) No. 6259 of 2019 before the Hon'ble High Court of Delhi at New Delhi. A true and typed copy of Writ Petition (Civil) No. 6259 of 2019 filed by the petitioner before the Hon'ble High Court of Delhi at New Delhi is annexed herewith as **ANNEXURE P-3 at (Pages to)**.

29.05.2019: The High Court issues notice, granted 4 weeks time to file counter and 2 weeks to rejoinder. A true copy of order dated 29.05.2019 passed by Hon'ble High Court of Delhi at New Delhi in Writ Petitiion (Civil) No. 6259 of 2019 is annexed herewith as **ANNEXURE P-4 at (Pages to)**.

03.09.2019: The Hon'ble High Court was pleased to dismiss the Writ Petition (Civil) No. 6259 of 2019 filed by the petitioner.

15.11.2019: Hence, this Special Leave Petition.

Bar
and
Bench

INDIAN LEGAL NEWS

**IN THE SUPREME COURT OF INDIA
(ORDER XXI RULE 3(1) (a))
CIVIL APPELLATE JURISDICTION
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2019
(ARISING OUT OF THE FINAL IMPUGNED JUDGMENT & ORDER
DATED 03.09.2019 PASSED BY HON'BLE HIGH COURT OF DELHI
AT NEW DELHI IN W.P. (C) NO. 6259/2019)**

IN THE MATTER OF:

BETWEEN	POSITION OF PARTIES	
	Hon'ble High Court	This Hon'ble Court
Ashwini Kumar Upadhyay S/o Sh. Suresh Chandra Upadhyay Office: 15, M.C. Setalvad Chambers, Supreme Court of India, New Delhi-110001 Residence: G-284, Govindpuram, Ghaziabad-201013, (U.P.)	PETITIONER	PETITIONER
VERSUS		
1. Union of India Through the Secretary, Ministry of Home Affairs North Block, New Delhi 110001	Respondent No.1	Respondent No.1
2. Law Commission of India Through the Chairman/Secretary 4 th Floor, Loknayak Bhawan, Khan Market, New Delhi-110003	Respondent No.2	Respondent No.2

TO,

THE HON'BLE CHIEF JUSTICE
AND LORDSHIP'S COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA

HUMBLE PETITION OF ABOVE-
NAMED PETITIONER

MOST RESPECTFULLY SHOWETH: -

1. That the present Special Leave Petition is being filed under Article 136 of the Constitution of India against the Final Impugned Judgment and Order dated 03.09.2019 passed by Hon'ble High Court of Delhi at Delhi at New Delhi in W.P. (C) No.6259/2019, whereby the Hon'ble High Court was pleased to dismiss the Writ Petition filed by the petitioner herein.

2. QUESTIONS OF LAW:

The following questions of law arise for consideration of this Hon'ble Court.

- a) Whether the Hon'ble High Court has not failed to appreciate that on 03.01.1977, after detailed discussion, debate and feedback, Entry 20A was inserted in List III of 7th Schedule of the Constitution but Executive did nothing to effectuate it?
- b) Whether the Hon'ble High Court has not failed to appreciate that the NCRWC, one the most eminent Judicial Commission, on 31.3.2002, after detailed discussion, debate and feedback, recomended to insert Article 47A in the Constitution to control population explosion but Executive did nothing to implement it?

- c) Whether the Hon'ble High Court has not failed to appreciate that Law Commission had prepared 277th report very recently on its own direction?
- d) Whether the Hon'ble High Court disposed of the petition arbitrarily without counter and rejoinder, against its own order dated 29.05.2019?

3. DECLARATION IN TERMS OF RULE 3(2) :

The Petitioner states that no other such or similar petition seeking leave to appeal has been filed by him against the final impugned judgment and order dated 03.09.2019 passed by Hon'ble High Court of Delhi at New Delhi in W.P.

(C) No.6259/2019.

4. DECLARATION IN TERMS OF RULE 5 :

The Petitioner states that Annexures P-1 to P-4 produced along with Special Leave Petition are true copies of the pleadings/documents which formed part of the records of the case in the Court below against whose order the leave to appeal is sought for in this petition.

5. GROUNDS

Leave to appeal is sought on the following grounds, amongst others, without prejudice to each other: -

- A. Because the High Court has failed to appreciate that on 03.01.1977, after detailed discussion, debate &

feedback, Entry 20A was inserted in List III of 7th Schedule of the Constitution but Executive did nothing to effectuate it.

- B. Because the High Court had failed to appreciate that the NCRWC, one the most eminent Judicial Commission, on 31.3.2002 after detailed discussion, debate and feedback, recomended to insert Article 47A in the Constitution to control population explosion but Executive did nothing to implement it.
- C. Because the High Court had failed to appreciate that Law Commission had prepared 277th report very recently on its own direction.
- D. Because the High Court disposed of the writ petition arbitrarily without exchanging counter and rejoinder against it own order dated 29.5.2019. Though, respondents were not against the petition and sought time to reply.
- E. Because the High Court has failed to take cognizance of the petitioner's representation dated 21.05.2018 to Union Home Minister.
- F. Because the High Court has not used its plenary power confred under Article 226 in the matter, which is of national importanece.

6. **GROUND FOR INTERIM RELIEF:**

No interim relief

7. **MAIN PRAYER**

In view of the aforesaid facts and circumstances, it is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to: -

- a) grant Special Leave to Appeal against the final impugned judgment and order dated 03.09.2019 passed by Hon'ble High Court of Delhi in W.P.(C) 6259 of 2019; and
- b) pass such further order(s) or direction(s) as this Hon'ble Court may deem fit and proper in facts and circumstance of the case.

8. **PRAYER FOR INTERIM RELIEF:**

NIL

AND FOR THIS ACT OF KINDNESS THE PETITIONER IS IN DUTY BOUND SHALL EVER PRAY.

Filed By

(Ashwani Kr. Dubey)
Advocate for Petitioner

Drawn on: .11.2019

Filed on: 15.11.2019

IN THE SUPREME COURT OF INDIA
(ORDER XXI RULE 3(1) (a))
CIVIL APPELLATE JURISDICTION
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2019
(ARISING THE FINAL IMPUGNED JUDGMENT & ORDER DATED
03.09.2019 PASSED BY THE HIGH COURT OF DELHI AT NEW
DELHI IN W.P.(C) NO. 6259/2019)

IN THE MATTER OF:-

Ashwini Kumar Upadhyay Petitioner

Versus

Union of India & Anr. Respondents

I.A. No. _____ of 2019
Application for exemption from filing the Certified Copy
of Impugned Order

[PAPER BOOK]
(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER: ASHWANI KR. DUBEY

Bar & Bench (www.barandbench.com)

Bar and Bench

INDIAN LEGAL NEWS

IN THE SUPREME COURT OF INDIA
(ORDER XXI RULE 3(1) (a))
CIVIL APPELLATE JURISDICTION
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2019

IN THE MATTER OF:-

Ashwini Kumar Upadhyay Petitioner

Versus

Union of India & Anr. Respondents

OFFICE REPORT ON LIMITATION

1. The Petition(s) is/are within time.
2. The Petition is not bared by time and there is no delay in filing the same against Impugned Judge and Order dated 03.09.2019 passed by Hon'ble High Court of Delhi at New Delhi W.P.(C) No. 6259/2019.
3. There is no delay in filing the present Special Leave Petition (Civil).

New Delhi.

BRANCH OFFICER

Dated: 15.11.2019