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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Date of decision : 3<sup>rd</sup> September, 2019*

+ W.P.(C) 6259/2019

ASHWINI KUMAR UPADHYAY ..... Petitioner  
Through: Mr. Chetan Sharma, Sr. Adv.  
with Mr. Ashwini Kumar Upadhyay, Adv.

versus

UNION OF INDIA AND ANR. .... Respondents  
Through: Mr. Ajay Digpaul, CGSC with  
Mr. Nikhil Bhardwaj, Mr. Sanjeev Narrula,  
Dr. Tejaram DC, Adv.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER**  
**03.09.2019**

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**D.N. PATEL, CHIEF JUSTICE (ORAL)**

1. This so called Public Interest Litigation has been preferred with the following prayers :

*“a) direct the Union of India to ascertain the feasibility of implementing 24<sup>th</sup> recommendation of National Commission to Review the Working of the Constitution (Justice Venkatchaliah Commission) on Population Control (Appendix);*

*b) declare that State may set Two Child Norm, as a criteria for government jobs, aids and subsidies, and,*

*may withdraw statutory rights viz. right to vote, right to contest, right to property, right to free shelter, right to free legal aid etc.;*

*c) direct the Government to declare First Sunday of every month as 'Health Day' in place of 'Polio Day' to spread awareness on population explosion and provide contraceptive pill, condoms, vaccines etc. to EWS and BPL families, with polio vaccines;*

*d) in the alternative, direct the Law Commission of India to prepare a comprehensive Report on Population Explosion within three months and suggest the ways to control it; and,*

*e) direct the Government of India to take appropriate and reasoned steps on petitioner's Representation dated 2.5.2018 within three months (Annexure-2);*

*f) pass such other order(s) or direction(s) as this Hon'ble Court may deem fit and allow the cost of the petition to petitioner.”*

2. Counsel appearing for the petitioner submits that Entry 20-A of List III of the 7<sup>th</sup> Schedule to the Constitution of India permits both the Central as well as the State Government to enact a law on the subject of “Population Control and Family Planning” and therefore, as per the recommendations of National Commission to Review the Working of

Constitution on Population Control, 24<sup>th</sup> Recommendation should be implemented by the Union of India at the earliest. These recommendations were made in the year 2002. It is submitted by counsel for the petitioner that though these recommendations are not on record, but as per the knowledge of this petitioner, the said recommendations are about the enactment of Article 47-A to the Constitution of India for population control and family planning. It is further submitted by counsel for the petitioner that MGNREGA, Right to Education, Right to Information and Right to Food etc., which were also recommended by the National Commission to Review the Working of Constitution on Population Control may also be implemented by the Union of India.

**3.** Having heard counsel for the petitioner and looking to the facts and circumstances of the case, we see no reason to entertain this writ petition mainly for the following reasons :

(i) To implement the 24<sup>th</sup> recommendation of the National Commission to Review the Working of the Constitution (Justice Venkatchaliah Commission) on Population Control is within the domain of the Central Government and/or the State Governments.

(ii) To enact the law, based upon the 24<sup>th</sup> recommendation of the National Commission depends upon the will of the Parliament or the State legislatures. The law is nothing but the desire of the people. The desire of the people is considered at Parliament and the State Legislatures. It is for the Parliament or the State Legislatures to enact the law and not for this Court

to direct or to suggest the enactment of the law. The main role of the Court is to interpret the law as it is. Rarely this court will enact the law and that too in peculiar circumstances.

(iii) Both Parliament as well as the State Legislatures have developed individual mechanism for the enactment of the law and more particularly when such type of recommendations are being given by the Commissions constituted either by Parliament or by the State Legislatures.

(iv) Thus, it is for the Parliament or for the State Legislatures to enact the law as per the recommendations of the commissions. Enactment of the law depends upon several factors. The report of the commission is already with the State Legislatures and with the Parliament and it is left open to them to enact the law, as per the priority of the Parliament/State Legislatures.

4. So far as other prayers are concerned, it is also for the Government to declare first Sunday of every month as the Health Day in place of Polio Day.

5. Similarly, it is for the Parliament or for the State Legislatures to set two child norms as a criteria for Government jobs, aids and subsidies; for right to vote; right to contest; right to property; right to free shelter, right to free legal aid etc. We see no reason to give any direction to the Parliament or to the State Legislatures to enact a law based upon two child norm. So far as enactment of the law is concerned, at this stage we see no reason to give any direction to the Parliament or to the State Legislatures to set two child norms for the

purposes as stated hereinabove and we see no reason to entertain this writ petition for prayer (b) is concerned only when such type of law is enacted, the work of the court will begin, to look at the challenge to the enactment or to the implementation of the law.

6. It is for the Parliament or for the State Legislatures to initiate actions as per the recommendations/report given by the National Commission to Review the Working of the Constitution on population control. Similarly, by the Parliament or by the State Legislatures, the direction can be given to their own Law Commissions to prepare a comprehensive report on population explosion. The States are already having their own Law Commissions and if not, they have their own Law Officers. They can get the comprehensive policy from their own Law Commissions.

7. It ought to be kept in mind that if such type of writ petitions are being allowed, perhaps this Court will have to work for several departments of the Government. The primary function of the Court is to interpret the law as it is. Issuing writ of mandamus for the enactment of the law is a rare phenomenon and there are several norms for such type of enactment by the judiciary.

8. In view of the aforesaid facts and reasons, we see no reason to entertain this writ petition and the same is therefore disposed of.

**CHIEF JUSTICE**

**SEPTEMBER 03, 2019/kr**

**C. HARI SHANKAR, J.**