A REVALUATION OF JAVED V. STATE OF HARYANA

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"No one is going to have fewer children in order to contest elections. The good candidates will simply stay away..."

- Inderjit Singh (Secretary, CPI – Marxist)[278]

INTRODUCTION

On 30th of July 2003, a full Bench of the Supreme Court of India delivered its judgment in the case of *Javed and Others v. The State of Haryana and Others*[279] (*"Javed"*). The judgment, delivered on behalf of the Court by Justice R. C. Lahoti, clubbed and dismissed over two hundred petitions which challenged the constitutionality of Sections 175 and 177 of the Haryana Panchayati Raj Act, 1994 ("the Act"). The Act essentially laid down the election procedure, qualifications, functions and other details for the Panchayat system in Haryana. A combined reading of the impugned sections effectively disqualified people having more than two children from becoming a *Sarpanch* or a *Panch* of a *Gram Panchayat* or a member of a *Panchayat Samiti* or *Zila Parishad*. The Court in *Javed* saw its decision as being a formal endorsement of the National Population Policy, 2000 ("NPP") and reiterated the same in 2004 in the case of *Zile Singh v. State of Haryana and Others*[280].

This comment aims to establish that the Apex Court erred in upholding the impugned sections since they are in clear violation of Article 14 and 21 of the Constitution of India, 1950 ("the Constitution"). In addition I argue that the Court, while reaching its decision, failed to consider its social implications, has misinterpreted the NPP as well as India's international obligations and has thus failed to protect fundamental rights in the face of misguided public panic about the "population boom".

The petitioners raised another challenge based on Article 25 of the Constitution, but in

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278 Cited in T. Rajalakshmi, 'Population Policy: Children as Disqualification', Frontline, Vol. 20, Issue 17, August16 – 23, 2003.http://www.hindu.com/thehindu/fline/fl2017/stories/20030829002204600.htm (Last visited on 22.02.2009).

279 AIR 2003 SC 3057

280AIR 2004 SC 5100

my opinion the contention was misguided and hence the Court's judgment on the same is valid. I will therefore limit the scope of the comment to the Court's untenable judgment with respect to Articles 14 and 21.

FACTUAL BACKGROUND & THE COURT'S OPINION

Act No. 11 of 1994 was enacted with various objectives based on past experience and in view of the shortcomings noticed in the implementation of preceding laws related to the same subject. Furthermore, it was also enacted in order to bring the legislation in conformity with Part IX of the Constitution of India relating to "The Panchayats'; added by the Seventy-third Amendment. One of the objectives set out in the Statement of Objects and Reasons was to disqualify person, having more than two children after one year of the date of commencement of this Act, for election of Panchayats.

The impugned sections of the Act, read as follows:

"175. (1) No person shall be a Sarpanch or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who -

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(q) has more than two living children :

Provided that a person having more than two children on or upto the expiry of one year of the commencement of this Act, shall not be deemed to be disqualified;"

"177(1) If any member of a Gram Panchayat, Panchayat Samiti or Zila Parishad -

(a) who is elected, as such, was subject to any of the disqualifications mentioned in Section 175 at time of his election;

(b) during the term for which he had been elected, incurs any of the disqualifications mentioned in Section 175,

shall be disqualified from continuing to be a member and his office shall become vacant.

(2) In every case, the question whether a vacancy has arisen shall be decided by the Director. The Director may give its decision either on an application made to it by any person, or on its own motion. Until the Director decides that the vacancy, has arisen, the members shall not be disqualified under Sub-section (1) for continuing to be a

member. Any person aggrieved by the decision of the Director may, within a period of fifteen days from the date of such decision, appeal to the Government and the orders passed by Government in such appeal shall be final:

Provided that no order shall be passed under this sub-section by the Director against any member without giving him a reasonable opportunity of being heard."

Placed in plain words the provisions disqualified a person having more than two living children from holding the specified offices in Panchayats. The enforcement of disqualification was postponed for a period of one year from the date of the commencement of the Act. A person having more than two children upto the expiry of one year of the commencement of the Act was not disqualified. This postponement for one year takes care of any conception on or around the commencement of the Act, the normal period of gestation being nine months. If a woman has conceived at the commencement of the Act then any one of such couples would not be disqualified. Though not disqualified on the date of election if any person holding any of the said offices incurs a disqualification by giving birth to a child one year after the commencement of the Act he becomes subject to disqualification and is disabled from continuing to hold the office. The disability was incurred by the birth of a child which results in increasing the number of living children, including the additional child born one year after the commencement of the Act, to a figure more than two. If the factum was disputed the Director is entrusted with the duty of holding an enquiry and declaring the office vacant. The decision of the Director was subject to appeal to the Government. The Director has to afford a reasonable opportunity of being heard to the holder of office sought to be disqualified. These safeguards satisfy the requirements of natural justice.

Several persons (who were the writ petitioners or appellants in the matter) were disqualified or proceeded against for disqualifying either from contesting the elections for, or from continuing in, the office of Panchas / Sarpanchas in view of their having incurred the disqualification as provided by Section 175(1)(q) or Section 177(1) read with Section 175(1)(q) of the Act. The grounds for challenging the constitutional validity of these provisions were very many, couched differently in different writ petitions. It was agreed in Court that the grounds of challenge would be limited to and categorized into five:

1. that the provisions were arbitrary and hence violative of Article 14 of the Constitution;
2. that the disqualification did not serve the purpose sought to be achieved by thelegislation;

3. that the provision was discriminatory;

4. that the provision adversely affected the liberty of leading personal life in all its freedom and having as many children as one chooses to have and hence was violative of Article 21 of the Constitution; and

5. that the provision interfered with freedom of religion and hence were violative of Article 25 of the Constitution.

The Court in *Javed* heard and dismissed the aforementioned arguments and submitted extremely myopic and insular reasons for doing so. Furthermore, the Court completely failed to take into account a number of relevant factors while dealing with this matter; especially with respect to reproductive choice and gender justice.

In the subsequent sections of the paper, I analyse each argument put forth by the petitioner and the rejoinder provided by the Court while rejecting the argument. I attempt to point out the flaws inherent in the reasoning provided by the Court and argue that such errors have disastrous social consequences.

The Impugned Sections are Violative of Article 14

In this part of the comment I seek to establish that the challenged sections are violative of Article 14 of the Constitution on two grounds: (a) the Sections are discriminatory and (b) they are not in furtherance of the objective of the Act.

SECTIONS 175 AND 177 ARE DISCRIMINATORY:

The disqualification in the impugned sections is effective against that person who "has more than two living children." The classification envisaged in the sections is between those who have three children or more and everybody else; it operates only against the former class. The classification is based on a premise of consent, i.e., it is assumed that the children are born by the volition of both parents. The Court itself exemplified the element of consent required by the sections when it stated: "We do not think that...Indian women folk ... are so helpless as to be compelled to bear a third child even though they do not *wish* to do so"[281] (emphasis supplied). Thus, in effect the classification provides that any person who *voluntarily* has more than two children is disqualified under Sections 175 and 177.

The logical question in response to such a classification is: do women in rural Haryana have a choice regarding procreation? In other words: do women in rural Haryana

281 *Supra* note 279

voluntarily bear every child? Numerous sociological studies suggest that the decision to bear a child is one which Indian women (at least in rural India) are forced to make due to spousal, familial and societal pressure.[282]

It has further been noted that patriarchal pressure and illiteracy are two of the leading factors which reduce the woman's decision making power with respect to child bearing283 . The Court in *Javed* has expressly recognized the latter284 factor but has chosen to ignore the former.285 Patriarchal pressure, which often stems from the husband's desire for a male heir, has been one of the main reasons for women in rural India to bear a third or even a fourth child.286 In addition, the average rural female literacy rate in Haryana is about 42.24%287 and is as low as 39.63%288 in a number of districts as opposed to a national average of 47.8%289 . Adding fuel to fire, the recent decision in *Samar Ghosh v. Jaya Ghosh*290 further strengthened patriarchal control over reproductive choice by holding that failure to obtain spousal consent for an abortion, refusal to have sexual intercourse and refusal to have children would amount to "mental cruelty" thus providing grounds for divorce. Therefore one may conclude that women in rural India in general and Haryana in particular have a negligible degree of reproductive choice.

Hence, if the classification is "the number of children a person has *voluntarily*" and it includes women, who usually do not have a choice in the matter, then it is over-inclusive and is thereby violative of Article 14 of the Constitution. An over-inclusive classification is one which includes "not only those who are similarly situated with respect to the purpose but others who are not so situated as well"[291] . It is clear in the context of the

282 *See* Roger Jeffery & Patricia Jeffery, *Population Gender and Politics: Demographic Change in Rural India* 43-Edn (1997) pp43-.45; 254-256

283 Report of the National Human Rights Commission 'National Colloquium on Population Policy, Development and Human Rights' , 23 – 26 (2003).

284 *Supra* note 281

285 *Ibid*

286 Binamrata Rani, 'Breaking the Culture of Silence: The People's Tribunal on Coercive Population Policies' Combat Law (Online), Vol. 3, Issue 4, November – December, 2004. http://www.combatlaw.org/information.php?article_id=525&issue_id=19 (last visited on 28.02.2009)

287 'Literacy Status of Haryana", Report of the State Resource Center, 2 (2006).' http://schooleducationharyana.gov.in/downloads_pdf/achievements/Literacy%20Status%20of%20Haryana.pdf (last accessed on 28.02.2009).

288 K. Santhi, *Women In India,* (2005) p 54

289 *Ibid*

290 (2007) 4 SCC 511.

291 *State of Gujarat* v. *Shri Ambica Mills,* AIR 1974 SC 1300 at 55; In Re: The Special Courts Bill, 1978, AIR 1979 SC 478 at 127. DD Basu, Commentary on the Constitution of India (2007), pp 1390 -1395.

impugned sections that women and men are treated equally when they are clearly not similarly situated with respect to reproductive choice.

Moreover, the Court harped on the objective of the Act while completely ignoring its actual effect on fundamental rights. The test of "direct effect"[292] requires that the effect of the Act on fundamental rights and not its objective should be the criteria for judging constitutionality.

The Court dealt with all gender issues in paragraph 63 of the judgment and with respect to the above issue was of the opinion that a man who compels his wife to have more than two children also disqualifies himself under Sections 175 and 177 and hence the impugned sections are not violative of Article 14. In my opinion the Court is extremely parochial in adopting this approach since it assumes that the man who disqualifies himself also *wants to stand* for a Panchayat post. It fails to appreciate that the man *has* a choice while the woman in denied the same.

In addition, the Court nearly accepted that there were gender discrimination involved but held that "if the legislature chooses to carve out an exception in favour of females, it is free to do so,"[293] thereby shirking the responsibility of striking down a bad law.

The Impugned Sections do not further the objective of the Act:

One of the issues raised by the petitioners was that the disqualification envisaged under the impugned sections "does not serve the purpose sought to be achieved by the Act."[294] The Court, while rejecting the argument, sought to establish a nexus between the sections and the Act by stating that one of the objectives of the Act "is to popularize Family Welfare/Family Planning Programmes" which "is consistent with the National Population Policy."[295] The Court then extended the argument with respect to the NPP by virtue of Article 243G and Entries 24 and 25 of the Eleventh Schedule.[296]

While I agree that the state legislature is empowered by virtue of the aforementioned constitutional provisions to enact laws in order to regulate the functioning of the Panchayat, I believe that the Court dealt with a non – existent issue of legislative

292 *Bennett Coleman & Co.* v. *Union of India,* AIR 1973 SC 106 at 43; *Sakal Newspapers* v. *Union of India,* AIR 1962 SC 305 at 43. *See generally* DD Basu, *Human Rights in Constitutional Law,* (2005) p 152.

293 *Supra* note 281

294 *Supra* note 283

295 *Supra* note 311

296 *Supra* note 314

competency while wholly failing to deal with the actual contention raised by the petitioners.

The Court, while attempting to establish a nexus, erred when it equated family welfare with family planning and used the terms synonymously and consequentially misinterpreted the NPP and its objectives.

The Act uses the term "family welfare" twice; while listing the functions of the Gram Panchayat[297] and the Panchayat Samiti[298]. It *does not* use the term "family planning" at all. One fails to understand how the Court equated the two since the former addresses a larger audience and range of issues while the former, by definition, restricts itself to reducing the size of the family.[299] By failing to appreciate this distinction, the Court in *Javed* erroneously assumed that family planning automatically leads to family welfare and hence the two are synonymous. It is my submission that this is not the case and family planning may in fact adversely affect family welfare.

While interpreting the NPP, the Court claimed that the two – child policy was part of the NPP.[300] All indicators suggest otherwise. India was a party to the United Nations International Conference on Population and Development ("ICPD"), 1994. The declaration of the ICPD recommended a policy approach based on the promotion of reproductive health, informed free choice, and gender equity, i.e., it advocated a move from the "target based approach" to the "target free approach" and India adopted the same in 1996.[301] In pursuance of this approach, the NDA government released the NPP in 2000, which upheld the principles of voluntarism and informed consent with respect to reproductive choices, as opposed to the coercive measures which were formerly favoured by India.[302] A perusal of the objectives[303] of the NPP clearly shows support for this form of population control and does not include the two – child policy, or other incentive / disincentive based schemes, as part of its objectives. Thus the Court in *Javed* has clearly misinterpreted the NPP while holding that it aims to implement a disincentive based two – child policy.

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297 Section 21 (XIX).

298 Section 75 (XIX).

299 *Supra* note 278

300 *Supra* note 311

301 Rupsa Mallik and Jodi Jacobson, 'The Far Right, Reproductive Rights, and U.S. International Assistance', Centre for Health and Gender Equity, August 8, 2002.

302 Rajani Bhatia, "*The Resurgence of Coercive Population Control in India*". http://popdev.hampshire.edu/projects/dt/31#en3 (last visited on 26.02.2009)

303 National Population Policy, Objectives, 4 – 6.

It must also be noted that the Court failed to appreciate the fact that this form of family planning has adversely affected family welfare. It has been noted in India as well as China (an example cited with approval by the Court[304]) that such population policies have led to forced abortion, desertion of the child and mother, female infanticide, refusal to acknowledge parentage and above all, a skewed sex ratio.[305] According to the 2001 census Haryana recorded the lowest sex ratio at 861 females per 1000 males[306] and thus a decrease in the ratio is something Haryana can ill afford. In addition, Amartya Sen, while comparing Kerala (which employs the non – coercive methods of population control) and China concluded that the former method has met with far greater success than the latter.[307]

Therefore, it is seems evident that the Court in *Javed* passed judgment in complete ignorance of a seachange in the area of population control policies and thereby forced 4000[308] otherwise competent people to vacate public office.

Thus it is apparent that the impugned sections and the classification don't bear a rational nexus with the objective of "family welfare" provided in the Act and hence, in keeping with the dicta in a plethora[309] of decisions, are violative of Article 14 of the Constitution.

INTERNATIONAL AND NATIONAL POLICY WITH RESPECT TO REPRODUCTIVE CHOICE

In 1994 at the U.N. International Conference on Population and Development (ICPD) in Cairo, world leaders reached a new consensus on population. Although the ICPD Program of Action (POA) legitimizes demographic goals set by national governments, it recommends policy approaches based on the promotion of reproductive health, informed free choice, and gender equity. The document specifically rejects the use of coercion in family planning programs and discourages the use of social and economic

304 Supra

305 Githa Hariharan, 'A New Emergency', The Telegraph, August 25, 2003. http://www.asiantribune.com/oldsite/show_article.php?id=820 (last visited on 28.02.2009).

306 Census of India 2001, Provisional Population Data. http://www.educationforallinindia.com/page133.html (last visited on 24.02.2009).

307 Amartya Sen, 'Population: Delusion and Reality', Asian Affairs, Issue 17, 2002. http://www.asian-affairs.com/issue17/sen.html (last visited on 28.02.2009).

308 Lakshmi Rama, 'A Choice between Politics, Progeny in India', The Washington Post, October 31, 2004.

309 *Budhan Choudhry* v. *State of Bihar*, 1955 (1) SCR 1045, 1049; *Babu Ram* v. *State of U.P.*, (1995) 2 C 689 at 37.

incentives and disincentives to reduce fertility. These standards have been adopted by India, which was a delegate to the conference. The National Population Policy, 2000 is a manifestation of the same.

During the last 15 years, population control in India has moved away from a tightly connected system of policies imposed by the central government mainly involving pressure on the poor to be sterilized.[310] Instead, individual states are devising their own schemes to enforce a two-child norm. Designed to deter parents of two children from having a third, these policies employ disturbing new incentives and disincentives that trample on the rights and health of the country's people. Disincentive penalties prohibit parents of more than two children from holding posts in local village councils or seeking government employment and deny or circumscribe access to public provision of education, health insurance and other welfare benefits. Working in the reverse, new forms of incentives give preferential access to anti-poverty and employment schemes to individuals who accept sterilization after two children.[311] Emerging studies show how these population control policies have increased socio-economic and political disparities as well as gender-based violence in the country.

Oddly, most of the two-child norm policies came about either concurrent to or just after the national government of India made significant policy changes consistent with the ICPD Program of Action. First, a Target Free Approach (TFA) was adopted in April 1996, which officially removed targets related to contraceptive acceptance. In February 2000 the government announced a new National Population Policy (NPP 2000) that upheld the principles of voluntarism and informed consent in reproductive health care provision. However, many of the new strategies never had a chance to get off paper and on the ground. Health Watch, a watchdog coalition formed to monitor the government's commitments made in Cairo, conducted surveys in nine states and found the new approach poorly implemented.[312] In those areas where the TFA was tried, many officials doubted its merits and too quickly interpreted the subsequent fall in sterilization rates as system failure.

When India's population crossed the one billion mark on May 11, 2000, alarmism around the need to reduce population further undid what little progress had been made toward upholding ICPD and NPP principles in state health policies. The current national government led by the newly elected Congress Party has thus far taken no action to pressure states into adhering to NPP 2000 principles. As recently reported by the Washington Post, officials of the Indian Ministry of Health and Family Welfare

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310 Mohan Rao, *From Population Control to Reproductive Health* (2004) p 176

311 HealthWatch, "State Population Policies," Seminar, 511, March 2002.

312 Kalpana Sharma, "Forget Targets, Remember People," The Hindu, February 27, 2000.

describe population issues as an area now mandated by states without central regulation.

Women in India have raised their voices against the latest resurgence of coercive population control. On March 6, 2003, a group of women representatives from local government bodies in different states spoke out at the National Human Rights Commission. They denounced the two-child norm policies as both anti-women and anti-poor.[313] Immediately following the Supreme Court ruling to uphold the two-child norm policy in Haryana, the All India Democratic Women's Association released a statement condemning the decision and demanding that the national parliament take action to force states to adhere to Cairo and NPP principles.

The Supreme Court in *Javed* has chosen to uphold these very insensitive and archaic policies in the face of extensive studies which show that these methods are violative of fundamental rights. They have further ignored the new method of population control which has been propounded at Cairo Conference and by the National Population Policy, thereby delivering a crippling blow to family welfare and women's reproductive rights in India.

THE IMPUGNED SECTIONS ARE VIOLATIVE OF ARTICLE 21

The Court in *Javed,* while dismissing the petitions, failed to note that the impugned sections were in clear violation of the right to life and liberty guaranteed under Article 21 of the Constitution and erred on two counts: (a) the issue of "reasonability" of the restrictions and (b) the issue of privacy and personal liberty.

REASONABILITY:

The Court, while recognizing the broad ambit of Article 21, stressed on a single factor while deciding the validity of the sections on the touchstone of Article 21: the restrictions employed by the sections is "reasonable" and hence permissible.[314] It then went on to substantiate the need for such "reasonable" restrictions by relying on outdated demographic data from the early 1990s.[315] In addition, for good measure, the Court cited Articles 38 and 47 which have absolutely no bearing on the issue under discussion[316].

313 Mukul, Akshaya, "Two child norm cripples women", The Times of India, March 7, 2003.

314 Supra

315 Supra

316 Supra

It has already been submitted that the data considered by the Court was inaccurate and outdated.[317] In addition it must also be noted that the Court's fear of a "torrential increase in the population of the country" is completely unfounded. Numerous studies, which the Court failed to consider, show that the reasons for a high rate of population are related to the age demographics of the country as opposed to a high total fertility rate (TFR), i.e., number of children a woman has in her lifetime. The TFR in India has reduced from 6 in 1951 to 3.2 in 2001. Yet the population continues to grow not because of the family size but because of what is called 'population momentum'. This is an accelerated in-built growth due to the high percentage of young people (60%) in the population who, even as they have fewer children, produce large quantum increases.[318] Therefore, the only way to curb the population growth is the increase in the age of marriage so that a woman can bear fewer children in her reproductive lifetime.

Thus, it is evident that the Court failed to consider the actual *reasons* for population growth in India and hence failed to note that the two – child norm was *not* the reasonable manner to combat the issue. Hence the Court condoned excessive restrictions on the rights envisaged under Article 21 and thereby allowed for a violation of the same.

PRIVACY:

The right to privacy in India has been read into Article 21 as far back as 1975319 and was reaffirmed in the case of *R. Rajagopal v. Tamil Nadu*[320]. Justices Reddy and Mathew in *Rajagopal* extended the right to privacy to include privacy regarding procreation, motherhood and child bearing. These decisions have been reaffirmed in subsequent judgments321 .

The Court in *Javed*, far from considering issues of privacy, failed to take note of these landmark cases and was thus pleased to hold: "The lofty ideals of social and economic justice ... cannot be given a go-by in the name of undue stress on fundamental rights and individual liberty"[322]. The Court, while considering both issues under Article 21, in essence, applied the "compelling public interest test" laid down in *Gobind*[323] and reaffirmed in *Mr. X*[324] and held that population control was a "compelling public

317 *Supra* notes 24 – 36 and accompanying text.

318 Colin Gonsalves, 'Population Phobia: Two-child Norm in States to Hit Poor Women', Times of India, October 30, 2004.

319 *Gobind* v. *State of M.P.*, AIR 1975 SC 1378.

320 AIR 1995 SC 264.

321 *Mr. X* v. *Hospital Z*, AIR 1997 SC 495; *PUCL* v. *Union of India*, AIR 1999 SC 568.

322 *Supra*

323 *Supra* note 319

324 *Supra* note 321

interest". While one may agree with this view, it is important to note that the impugned sections *did not* control population in an effective manner and hence could not be upheld as reasonable restrictions to rights under Article 21.

It is evident that the right to privacy with regard to procreative choices is one which is protected under Article 21 of the Constitution. It is also apparent that the Court has blatantly and deliberately chosen to ignore these decisions thereby upholding a law which is violative of the right to privacy.

CONCLUSION

One may argue that a criticism of *Javed* is rendered redundant by the Haryana Act 28 of 2006 which omitted Section 175 (q) due to its "disastrous consequences" but the fact remains that *Javed* provided judicial endorsement of an archaic policy thus leaving space for legislative and executive arbitrariness in the future.

Through the course of my paper I have attempted to argue that the challenges under Article 14 and 21 were valid grounds for striking down the impugned laws. Under Article 14 the Court failed to look at the issue of *substantive equality* and satisfied its conscience by merely ascertaining *formal equality*, i.e., it failed to take into account the situation on the ground and the also failed to apply the test of *direct consequence* and the test of *over inclusiveness*. In addition, the Court, through fallacious reasoning and out dated data, managed to forge and link between the objective of the Act and those of the National Population Policy 2000. The Court thus chose to advocate the outdated *family planning* model of population control as opposed to the internationally and nationally accepted *family welfare* and *education based* policy of population control. As regards the challenges under Article 21, the Court turned a blind eye to all issues regarding privacy and chose to stick to a standard of "reasonability" which itself was based on the fallacious interpretation of the National Population Policy of 2000. Thus the Court in *Javed* merely used it authority to put forward a decision based on popular hysteria regarding population control and failed to back the same with any degree of legal reasoning and justice.

Javed is a prime example of a sociological issue which has gained legal attention only due to the fact that it was codified. The Court, while admitting it was a sociological issue, also admitted its inability to deal with such issues from a sociological point of view.[325] Therein lies the error of *Javed* - the Court chose to consider *only* legal issues while disastrously ignoring sociological issues which were the determining factor in

325 Sreelatha Menon, 'A Judgment Can't be a Solution to All Problems: An Interview with R.C.Lahoti', Times of India, Ahmedabad, March 21, 2006.

the matter, i.e., the Court considered legal theory when the direct effect test was most relevant in the given context.

Regrettably, the Court in *Javed* failed to identify and analyse the relevant issues in the matter and hence condoned discrimination and unreasonable restrictions, but what is much more disturbing is that Apex Court, through Justice Lahoti, chose to concretize the error by reaffirming a patently erroneous judgment in *Zile Singh.*[326]

While the debate over population policies in India is still raging, the Supreme Court has chosen to put it to rest prematurely and incorrectly and that needs immediate attention and rectification.

326 *Supra* note 280