

INDIA'S COMPULSORY STERILIZATION LAWS: THE HUMAN RIGHT OF FAMILY PLANNING

On July 21, 1976, the legislative assembly of Maharashtra, India, passed a bill providing for compulsory sterilization. Although the bill, entitled the Maharashtra Family (Restriction on Size) Act,¹ has not been brought into force, the possibility of its being resurrected and applied still remains. In short, the Act would limit families to a governmentally determined size. Such a state imposed prescription apparently conflicts with the recognized principle that family size is to be determined by individuals. This principle is the basis of the United Nations human right of family planning.²

One nation's population is no longer the isolated concern of that sovereign. Due to a "shrinking world," the economic, social, and political implications of overpopulation cannot be confined within any one nation's territory.³ Concomitantly, there is a need for concerted international concern to control world population growth.⁴ The United Nations response has been to concentrate on two potentially conflicting areas: the sovereignty of nations in es-

1. See Appendix of this comment *infra*; Maharashtra Family (Restriction on Size) Act of July 21, 1976, [1976] L.A. Bill No. XXV (India). The Act defined "eligible person" as one residing in the state who

at any time has three children or who has more than three children on the appointed date, and such person if a male, has not completed the age of 55, and if a female, has not completed the age of 45, and includes a person who having either all three male, or all three female, children, has a fourth child.

Id. § 2, para. 6. The Act provides for compulsory sterilization of "eligible" persons. By sterilizing parents who have three children, the government is effectively determining the family size limit.

2. The principle that individuals have the right to determine the number and spacing of children is recognized in several United Nations documents. See generally UNITED NATIONS FUND FOR POPULATION ACTIVITIES, UNITED NATIONS AND POPULATION: MAJOR RESOLUTIONS AND INSTRUMENTS (1974).

3. The effects of overpopulation include: drainage of the world food reserves, decreasing oceanic fishery yield, pollution, environmental illness, climate change, deforestation of land, loss of individual freedom, and political conflict. These phenomena affect the entire global population. See WORLDWATCH INSTITUTE, TWENTY-TWO DIMENSIONS OF THE POPULATION PROBLEM, WORLDWATCH PAPER 5 (1976).

4. The United Nations General Assembly recognized the need for international concentration on population control as early as 1957 in the Resolution on Demographic Questions. G.A. Res. 1217, 12 U.N. GAOR, Supp. (No. 18), 14 U.N. Doc. A/3805 (1957). The need for international guidelines for population solutions is evidenced by the United Nations designation of 1974 as World Population Year, and the holding of the World Population Conference that same year.

establishing population policies; and, the free choice of the individual in determining family size.⁵

The intent of this comment is to examine the scope of the human right of family planning as espoused by the United Nations, and to discuss possible objections to any compulsory sterilization in light of this right.⁶ It will become clear that spacing children, birth control, education, and information all comprise integral and necessary elements functional to the exercise of the "right." Therefore, absent some provision within the Act to ensure the requisites of education and information, legislation operating to limit family size, even if otherwise justifiable, will result in an unreasonable and excessive infringement upon the basic and fundamental right of the individual to plan his or her family. Moreover, less restrictive alternatives which render compulsory legislation more acceptable as it relates to the human right are apparent. The Maharashtra Family Act will thus be used as an example of a statutory scheme that trespasses upon the scope of the human right, but that could be adapted in accomodation with the individual's free choice.

I. SCOPE OF THE HUMAN RIGHT

In 1966, the General Assembly of the United Nations recognized the sovereignty of nations in formulating and promoting their own population policies, with due regard for the principle that the size of the family should be the free choice of each individual.⁷ This principle of freedom of choice by the family in determining its own size had been expressed earlier that same year by twelve heads of state in the 1966 Declaration on Population by World Leaders.⁸

5. G.A. Res. 2211, 21 U.N. GAOR, Supp. (No. 16), 41, 42, U.N. Doc. A/6316 (1966) [hereinafter cited as Resolution 2211]. In the final preambulatory paragraph of the Resolution on Population Growth and Economic Development, the Assembly specifically recognized the sovereignty of nations in formulating and promoting their own population policies with due regard for the principle that the size of the family should be the free choice of each individual.

6. The specific religious, moral, and cultural conflicts raised by the Act are beyond the scope of this comment.

7. G.A. Resolution 2211, *supra* note 5.

8. Declaration on Population by World Leaders appears in POPULATION DIVISION OF THE DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, POPULATION NEWSLETTER No. 1, 44 (1968). In their Declaration on Population by World Leaders these heads of state professed their belief that

[t]he majority of parents desire to have the knowledge and means to plan their families; that the opportunity to decide the number and spacing of children is a basic human right.

The number of states endorsing the declaration increased to 30 the following year. They

This was the first international instrument to acknowledge the individual's choice as a fundamental human right.⁹ Recognition that family planning was a human right became official United Nations policy at the International Conference of Human Rights at Teheran, 1968. At Teheran, both a proclamation¹⁰ and a resolution¹¹ were adopted which articulated the individual's freedom to plan his family as the basic human right "to determine freely and responsibly the number and spacing of children and a right to adequate education and information in this respect."¹²

Thus, the freedom of decision for the individual includes not merely the right to determine family size, but also the prerogative to space their children and, most importantly, to have an awareness of and access to the means necessary to facilitate these decisions. The resolution outlined the relationship between population growth and human rights by emphasizing that a burgeoning populace impairs the full realization of basic individual rights. Further, it stressed the immediate need for population control in order to preserve and promote the future enjoyment of those rights.¹³

were: Australia, Barbados, Columbia, the Dominican Republic, Finland, Ghana, India, Indonesia, Iran, Japan, Jordan, Republic of Korea, Malaysia, Morocco, Nepal, the Netherlands, New Zealand, Norway, Pakistan, the Philippines, Singapore, Sweden, Thailand, Trinidad and Topango, United Arab Republic, United Kingdom, United States, and Yugoslavia.

9. *Id.*

10. Proclamation of Teheran, *published in* Final Act of the International Conference on Human Rights, Teheran, 22 April - 13 May 1968 (A/CONF. 32/41) A United Nations Publication, Sales No. E, 68, XIV. 2 [hereinafter cited as Proclamation of Teheran].

11. Res. XVIII of the Teheran Conference, *published in* Final Act of the International Conference on Human Rights, *id.* at 14-15 [hereinafter cited as Resolution XVIII].

12. For instance, paragraph 16 of the Proclamation of Teheran provided that "[p]arents have a basic human right to determine freely and responsibly the number and spacing of their children." Proclamation of Teheran, *supra* note 10, at 3. The right as set forth in the resolution was

couples have a basic human right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect

Resolution XVIII, *supra* note 11, at 15.

13. Immediately preceding the text where the basic human right of parents to number and space their children was stated, the Resolution declared:

[b]elieving that it is timely to draw attention to the connection [*sic*] between population growth and human rights,

1. Observes that the present rapid rate of population growth in some areas of the world hampers the struggle against hunger and poverty, and in particular reduces the possibilities of rapidly achieving adequate standards of living, including food, clothing, housing, medical care, social security, education and social services, thereby impairing the full realization of human rights.

2. Recognizes that moderation of the present rate of population growth in such areas would enhance the conditions for offering greater opportunities for the

The right alluded to as between the resolution and the proclamation differs slightly. In the proclamation the right is that of the "parents," whereas in the resolution it is reserved to "couples."¹⁴ This indicates that the right is not necessarily restricted to those people who already have children. To the contrary, as observed by Mr. Singh, the Indian representative to the Teheran Conference, these documents should preserve for couples the decision to have no children at all.¹⁵

A major facet of the resolution is that it includes a right of access to adequate education and information necessary to enable individuals to plan their families.¹⁶ If individuals lack an understanding of birth control methods, they surely will remain unaware of their ability to plan and control births. Given such circumstances, the family planning right would remain illusory. The importance of education and information as they relate to the means available to exercise the human right of family planning was further stressed in the 1969 General Assembly Declaration on Social Progress and Development.¹⁷ In the section of that Declaration calling for mobilization of resources through national and international action, a specific reference was made to provide families with the knowledge and means necessary to exercise their right to determine the number and spacing of children.¹⁸ Thus, although knowledge and means were asserted in the declaration to be essential to the planning of families, paradoxically they were not enumerated as part of the human right.¹⁹ This inconsistency no longer exists because the World Population Plan of Action adopted a statement superseding that declaration, stating that "[a]ll couples and individuals have the basic human right to decide freely and responsibly the number and spacing of their children and to have the informa-

enjoyment of human rights and the improvement of living conditions for each person

Id. at 14.

14. Proclamation of Teheran, *supra* note 10; Resolution XVIII, *supra* note 11.

15. Summary Records of the Second Committee to the International Conference on Human Rights, U.N. Doc. A/CONF. 32/c.2/SR.5, at 57 (1968).

16. Resolution XVIII, *supra* note 11.

17. G.A. Res. 2542, 24 U.N. GAOR, Supp. (No. 30) 52, U.N. Doc. A/7630 (1969). [hereinafter cited as Resolution 2542]. The means necessary to exercise the family planning right would include the various known birth control methods and devices.

18. *Id.*

19. The Declaration made reference in article 4 to the human right as a *principle*. *Id.* at 50. However, article 22 of the Declaration, which referred to the knowledge and means necessary to the exercise of the right, was placed under the heading, "Means and Methods" for achieving the aforementioned principles. *Id.* at 51.

tion, education and means to do so”²⁰ Thus, the right to education and information is clearly to be incorporated as an element of the human right.

The Plan of Action recognized the conflict which exists in developing countries arising out of the interrelation between man's proliferation and his desire to achieve a more satisfactory existence.²¹ It also accepted the idea that merely providing contraceptives is an ineffective and deficient method to reduce population.²² Birth control methods will not be used unless people perceive a personal benefit in limiting their families.²³ Therefore, the Plan of Action has encouraged governments to consider the factors which motivate couples to desire smaller families and, more importantly, to foster those motives.²⁴ It appears from the Plan of Action that the United Nations envisioned an educational approach to population control that ensures that people will have both the desire and ability to consciously plan their families. This educational factor must be considered in examining a law such as the Maharashtra Family Act which imposes compulsory limitations on an individual's family planning right. If appropriate education and infor-

20. The World Population Plan of Action was approved by the Conference on Aug. 30, 1974. The single declaratory statement of the right as including "education and means" appears therein. World Population Plan of Action, *reprinted in* UNITED NATIONS WORLD POPULATION CONFERENCE HELD AT BUCHAREST: U.N. STATEMENT AND TEXT OF THE WORLD POPULATION PLAN OF ACTION, 71 DEP'T STATE BULL. 429, 440 (1974) [hereinafter referred to and cited as Plan of Action].

21. *Id.* at 441. Following a statement that population and development are interrelated, the plan states:

[P]opulation variables influence development variables and are also influenced by them; the formulation of a World Population Plan of Action reflects the international community's awareness of the importance of population trends for socio-economic development, and the socio-economic nature of the recommendations contained in this Plan of Action reflects its awareness of the crucial role that development plays in affecting population trends

Id. at 443.

22. Plan of Action, *supra* note 20. Evidence of this recognition is abundant throughout the Plan of Action which strongly stresses the vital role to be performed by education in resolving population problems. See also M. Mead, *World Population; World Responsibility*, 185 SMITHSONIAN 4157 (1974).

23. Unless couples comprehend that they will experience a practical, personal benefit from planning their families, they have no motivation to understand, much less take the affirmative steps required to effectively use contraceptives. Thus, even if birth control methods are abundant and accessible, they will be ineffective until these practical benefits are perceived.

24. Plan of Action, *supra* note 20, at 445-46. Factors which may motivate couples to have smaller families include: reduction of infant mortality; basic education and improved status for women, including wider opportunities for employment; promotion of social justice; improvement of life in rural areas; provision of old age security; and better education for the rising generation as to the desirability of small families.

mation are neglected, then such a law, in effect, amounts to a violation of the individual's right to space the children, as well as to decide overall family size.

The scope of the words "freely" and "responsibly" which qualify the human right of family planning have yet to be clearly articulated by the United Nations. The Plan of Action was the initial international instrument to define the "right" in terms of the individual's decision-making responsibility. Parents are now required to consider plans for their present and future children in light of the impact that their decision may have on the general community.²⁵ The term "responsibility" implies a need for some authority to define the appropriate behavior, and to establish penalties for behavior it deems irresponsible.²⁶ However, the Plan fails to examine how a responsible decision is to be pursued or ensured.

In the establishment of national demographic policies, states are called upon to consider broad social objectives. The Plan of Action takes cognizance of the fact that each nation encounters different obstacles in achieving its objectives. With this in mind, the Plan of Action allows for a degree of flexibility when implementing demographic policies.²⁷ However, the extent to which a government may limit the individual's freedom of choice remains unclear.²⁸ The requirement that the individual's decision be made responsibly, in consideration of the community welfare, and therefore, that national demographic policies be taken into account, logically supports the conclusion that state limitations may be imposed which are consistent with the human right of family planning.²⁹

25. *Id.* at 443. The same paragraph which states the right also enunciates the concomitant duty to exercise the right responsibly.

[T]he responsibility of couples and individuals in the exercise of this right takes into account the needs of their living and future children, and their responsibilities towards the community.

26. Objectives and Principles of the World Population Plan of Action, U.N. Doc. E/CONF.60/CBP/10, at 13 (1974) (this is a technical background study for the World Population Conference) [hereinafter cited as Technical Background Study].

27. Plan of Action, *supra* note 20, at 452.

28. Technical Background Study, *supra* note 26.

29. The family planning right has been characterized as "exclusive" to parents. Resolution 2542, *supra* note 17, at 50. Yet, the same resolution recommended that national geographic policies be taken into account. *Id.* at 52. The inclusion of these two concepts within the same resolution is indicative of the General Assembly's belief that those concepts are capable of compatible realization. *But see* Technical Background Study, *supra* note 26, at 12-13. The background paper noted as an apparent contradiction the resolution's characterization of the right as "exclusive" to parents while also recommending that national demographic policies be considered. It is suggested that this contradiction may be resolved by

The question arises as to whether the language attending the family planning right permits parents to have as many children as they wish. At some point unrestricted individual freedom may conflict with the general welfare. The language of the right itself requires that individuals make family decisions responsibly. In order to determine the requirements of responsible parenthood, it is necessary to balance "individual" and "collective" rights.³⁰ By analogy, the resources of a country may dictate that the general interest of the community in receiving adequate nutrition requires a limitation on the size of its population.³¹

II. EFFECT OF GOVERNMENT INTERFERENCE WITH THE HUMAN RIGHT

Since the legal status of human rights is unsettled,³² the consequences of a determination that a law violates a particular human right remain uncertain.³³ A nation instituting policies which violate a human right may be subject to political repercussions from the United Nations, a body whose chief avowed purpose is the promotion of human rights.³⁴ However, the United Nations possesses no

interpreting "exclusive" to mean not that parents enjoy the unfettered exercise of the right, but rather that they are the sole holders of the right.

30. Because responsibility of parents includes consideration of the general community, the "individual" right of parents to determine the number of children must be exercised with regard for the well being of the general public, *i.e.* the "collective" right.

31. For instance, the collective right may dictate that a nation's population remain at a certain level compatible with its ability to provide its citizens with adequate nourishment given its available resources. Should the population reach this threshold level, it would seem that necessity, the final and absolute parameter superimposed on all human rights, must spring forth and demand that these individualistic rights give way to the superior collective right of the species.

32. Authorities differ on the obligations imposed by human rights. The traditional view is that nations are legally bound only by treaties. Under this view, a country is not legally committed to comply with human rights unless that state is a party to a human rights treaty. However, several authors have urged that the traditional view confuses the instruments containing the human rights with the substantive rights themselves. These authorities maintain that non-treaty sources also render human rights legally binding. These sources include natural law, customary international law, and general principles of law recognized by civilized nations. A third view is that the declarations of an international body may speed up the custom generating process so that human rights declared by the United Nations may become legally binding. D. PARTAN, POPULATION IN THE UNITED NATIONS SYSTEM 30-37 (Law and Population Book Series No. 3, 1973) [hereinafter cited as PARTAN]; Lee, *Law, Human Rights and Population: A Strategy for Action*, 12 VA. J. INT'L L. 309, 317 (1972); UNITED NATIONS FUND FOR POPULATION ACTIVITIES, LAW AND POPULATION No. 2 (undated).

33. Under the traditional view discussed by Partan, human rights impose only a moral obligation on countries which are not bound by treaty. Thus, a country may violate human rights and be subject to no enforceable legal sanctions. PARTAN, *supra* note 32, at 30-37.

34. This assumes that the country in violation of the human right is a member of the

legislative authority, nor does it purport to impose legally binding obligations upon its member states.³⁵ Thus, although the United Nations is without effective means to enforce what that body declares to be *human rights*, it does encourage compliance through economic and political influence.³⁶

A significant amount of United Nations funds have been appropriated for the purpose of planning and supplementing various national population projects.³⁷ The benefits thus received may be instrumental to the success of a nation's strategy to control its population. Government programs which promote the human right of family planning should receive financial support, while those which are inconsistent with that right should be denied monetary aid.³⁸

It is imperative that the United Nations evaluate India's somewhat arrested sterilization law in relation to the human right of family planning. Because India has received substantial financial backing for its population programs,³⁹ the United Nations official position will determine whether that support will continue should the Act be enforced. Moreover, because other countries experiencing critical effects of overpopulation may be contemplating similar legislation, the United Nations position may serve as a

United Nations, or in some way associated with it. The United Nations disapproval of a member state's policy as violative of human rights must, by the nature of the union itself, exert political pressures.

35. PARTAN, *supra* note 32, at 15. The United Nations Charter limits the Assembly's authority to recommendation. U.N. CHARTER, arts. 10-14.

36. The Assembly and the UN system have been given no explicit authority to take coercive measures to enforce the international law human rights obligations of Member States It would therefore be considered beyond UN power for the Assembly to attempt to subject governments to judicial or other review of their actions relating to human rights without their consent. The principle just referred to certainly applies to review in any forum of the facts in any particular case where the purpose of the review is to determine whether the government involved has breached its international law obligations. It may not extend to a more generalized UN review of action taken by Member States to give effect to human rights in accordance with their obligations under the UN Charter and customary international law.

PARTAN, *supra* note 32, at 41.

37. United Nations Office of Public Information, Economic and Social Council, Record of the Month, 12 U.N. MO. CHRON. 12, 16 (Feb. 1975). Up to 80 million dollars of United Nations funds were programmed for demographic projects throughout the world. This was a 12 million dollar increase above the existing fund level.

38. PARTAN, *supra* note 32, at 44.

39. POPULATION REFERENCE BUREAU, INC., WORLD POPULATION GROWTH AND RESPONSE 1965-1975, 78 (1976) [hereinafter cited as POPULATION REFERENCE BUREAU]. In July 1974, the Indian government signed an agreement with the United Nations Fund for Population Activities (UNFPA) whereby the UNFPA would, over a five year period, provide 40 million dollars to the Indian population program.

guideline for acceptable governmental controls.⁴⁰

It is difficult to identify at what point a nation may justifiably impose a collective interest that, in effect, restricts the individual's freedom of decision in the exercise of a human right. Yet, the Universal Declaration of Human Rights recognizes that such a point indeed does exist:

[I]n the exercise of his rights and freedoms everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.⁴¹

Discussing general limitations on human rights, a noted authority has asserted that a state may not legally alter the "basic extension"⁴² of a human right.⁴³ Thus, according to this authority, the general welfare could never justify the complete elimination of the exercise of an internationally recognized human right.⁴⁴

When applying this principle to the family planning right, assuming that the general welfare does dictate that family size be restricted, the reasonable deduction follows that it is permissible to have moderate limitations on the individual's right to determine family size. However, notwithstanding the general welfare criterion, the family planning right may not justifiably be totally constricted. Educational information and contraceptives must be made available to individuals before governmental limitations are imposed. It is established that birth control education and information are integral to the family planning right and, as such, the basic ex-

40. The Plan of Action recommends that the population trends and policies discussed therein and adopted by nations should be continuously monitored and reviewed biannually as a specialized activity of the United Nations. Plan of Action, *supra* note 20, at 453. In performing this specialized activity, the United Nations could, in addition, evaluate national policies to determine whether they are in compliance with the United Nations' interpretation of the human right of family planning.

41. The Universal Declaration on Human Rights, G.A. Res. 217, U.N. Doc. A/810 (1948), at 77 [hereinafter cited as Universal Declaration of Human Rights].

42. The "basic extension" of a human right may be described succinctly as the skeletal parameters silhouetting the minimal elements essential to define the human right and beyond which, if restricted, the right would cease to exist.

43. Garibaldi, *General Limitations on Human Rights: The Principle of Legality*, 17 HARV. INT'L L.J. 503, 507 n.8 (1976).

44. *Id.* Garibaldi recognizes that states lawfully may restrict the extension of human rights, and that the extension of a given right probably will differ among nations. However, he maintains that the international instruments that promulgate the rights must be used to determine the "basic extension" of the right. That basic extension cannot be altered by the domestic legislation of any state.

tension of the right would clearly encompass those two necessary social tools. Moreover, the assured availability of adequate education and information promotes the general interest of population control, and their elimination could not be justified in the name of general welfare as is required for the imposition of limitations on human rights.⁴⁵ Thus, in order to be permissible, any governmental limitation on individual freedom to determine family size must be imposed only subsequent to the actual and full availability of birth control information and methods. It follows that any legislation failing to ensure birth control education and information prior to the imposition of sterilization may be guilty of excessively restricting a human right. In order for the state to impose such a limit it must first extend to each person the capacity to understand his circumstance in order to intelligently exercise the family planning right. This eliminates the danger of a country using compulsory sterilization as a short cut to controlling its population by restricting the individual's right beyond the extent that is required by the general welfare.

The Maharashtra Family Act exemplifies legislation that unjustifiably circumscribes the right to determine the family size. However, certain measures could be adopted to correct this defect and render the Act consistent with the right.

III. WEAKNESS OF THE MARHARASHTRA FAMILY ACT: LESS RESTRICTIVE ALTERNATIVES

In 1976, India announced a statement of policy which allowed each state to institute compulsory sterilization laws.⁴⁶ One state, Maharashtra, passed such a law.⁴⁷ Because of India's governmental and corresponding policy changes occurring subsequent to the

45. This follows from the principle that individual rights may be restricted *only to the extent* justified by the public interest. Universal Declaration of Human Rights, *supra* note 41.

46. National Population Policy, statement by Dr. Karan Singh, Minister of Health and Family Planning, in New Delhi (Apr. 16, 1976) [hereinafter cited as National Population Policy]. Dealing with the question of whether Indian states may take action to remedy population problems, Dr. Singh states:

[w]e are of the view that where a state legislation, in the exercise of its own powers, decides that the time is ripe and it is necessary to pass legislation for compulsory sterilization, it may do so.

Id. para. 15. The federal government of India recommends that any such law enacted by a state apply uniformly to all Indians regardless of race, religion, or caste. A report concerning the Policy Statement appears in *L.A. Times*, Apr. 17, 1976, § 1, at 1, col. 3.

47. See Appendix of this comment *infra*; Maharashtra Family (Restriction on Size) Act of July 21, 1976, [1976] L.A. Bill No. XXV (India). The Bill was passed by the legislative assembly on July 21, 1976.

passage of the Maharashtra Family Act, it is doubtful that the Act will be brought into force in the near future. However, since the problem of overpopulation remains critical in India, as well as in other Third World countries, an analysis of the effect of the Act on the human right of family planning remains vital with respect to possible future legislation and implementation.

With the advent of legislation like the Maharashtra Family Act, the state limits the extent to which the individual may "freely" exercise the right to determine family size. If a couple or an individual has three living children, the Maharashtra Family Act will require one of the parents to be sterilized.⁴⁸ However, the Act does provide for an exception if a couple has three children all of the same sex.⁴⁹ In essence, by such enactment Maharashtra determined that a responsible decision by an individual requires that there be no more than three children in a family.⁵⁰

If the exercise of collective rights and the interest of the general welfare of Maharashtra are so compelling as to warrant the limitation on family size, then the law was justified⁵¹ and theoretically would have been supported by the United Nations. This presumes, however, that the law would not have inhibited the individual's exercise of the right beyond the extent justified by the general welfare before sterilization was to be imposed. This, in turn, would have required that Maharashtra fully respect the decision of each individual to have either one, two, or three children, as well as no children at all.⁵² Furthermore, the government has the obligation to mobilize its resources in order to provide the individual with

48. *Id.*, § 2, para. 6. For the definition of persons eligible for compulsory sterilization, see note 1 *supra*.

49. See Appendix, § 2, para. 6 of this comment *infra*. Maharashtra Family (Restriction on Size) Act of July 21, 1976, [1976] L.A. Bill No. XXV (India).

50. According to the language of the right as promulgated by the United Nations, the individual has the right to determine family size "freely" and "responsibly". Included in a responsible decision is the consideration of the community interest. Plan of Action, *supra* note 20, and accompanying text. The Maharashtra government has determined that families will be limited to three children in the interest of the general welfare. See Appendix, Preamble, of this comment *infra*. Maharashtra Family (Restriction on Size) Act of July 21, 1976, [1976] L.A. Bill No. XXV (India). The rationale, then, is that the state is acting to ensure what it has determined to be a responsible decision.

51. See Universal Declaration of Human Rights, *supra* note 41, and accompanying text.

52. See Appendix, § 1, para. 6, of this comment *infra*. Maharashtra Family (Restriction on Size) Act of July 21, 1976, [1976] L.A. Bill No. XXV (India). According to the exception, if parents have three children of the same sex, the full exercise of the right includes the decision to have a fourth.

the information and education necessary to plan their families.⁵³

India is the second most populous country in the world.⁵⁴ An examination of the conditions in the country reveals the disastrous effects of uncontrolled population growth. Extreme poverty, environmental pollution, and scarcity of food are all widespread.⁵⁵ The government of India has maintained a policy of encouraging birth control since 1952.⁵⁶ Even though the budgets for population programs have been high,⁵⁷ the success of these programs in controlling population has been dubious.⁵⁸ Although there has been some decline in the birth rate, this has been partially offset by the corresponding decrease in the death rate due to medical advances,⁵⁹ resulting in continued population growth.⁶⁰ In view of the relative failure of the programs to improve the adverse social effects of overpopulation, it appears that compulsory sterilization is justified. Indeed, this concept of promoting the collective interest is incorporated in the preamble of the Maharashtra Family Act.⁶¹

Even though compulsory sterilization may be justified, the Maharashtra Family Act, as written, exceeds the scope of permissible limitations. The defect lies in the failure of the Act to protect the individual's right prior to sterilization. There is no provision in the Act to ensure that the government will inform its populace of the available methods for exercising the right to plan their families prior to the imposition of sterilization.⁶² Maharashtra conceivably could neglect these educational elements of the family planning right and rely on compulsory sterilization as the only means necessary to solve its population problem.⁶³ Consequently, the Act con-

53. Resolution 2542 *supra* note 17; Plan of Action, *supra* note 20.

54. POPULATION REFERENCE BUREAU, *supra* note 39.

55. INDIA'S POPULATION FUTURE (Kumar & Batsala, eds. 1974) [hereinafter cited as INDIA'S POPULATION FUTURE].

56. POPULATION REFERENCE BUREAU, *supra* note 39.

57. The total budget allocation for the Five Year Plan (1969-1974) was 374 million dollars. *Id.*

58. INDIA'S POPULATION FUTURE, *supra* note 55, at 7.

59. *Id.* at 3.

60. POPULATION REFERENCE BUREAU, *supra* note 39.

61. WHEREAS, the alarming growth in population must also in the interest of public health and in the interest of economic and social welfare generally and of the individual in particular, be checked and restricted. . . .

See Appendix, third preambulatory paragraph of this comment *infra*. Maharashtra Family (Restriction of Size) Act of July 21, 1976, [1976] L.A. Bill No. XXV (India).

62. *See id.*

63. National Population Policy, *supra* note 46. This statement evidences India's commitment to family planning, education, and information. However, with the advent of compulsory sterilization, the government will not have the same motivation to educate its

stitutes an impermissible limitation of the family planning right.

In order to ensure that the Maharashtra Family Act, and similar measures which may be contemplated by other states, do not impose unwarranted restrictions on the individual's family planning right, it is proposed that they include two safeguards. The first would integrate compulsory education within the system designed to implement sterilization. Maharashtra's statute provides a comprehensive scheme intended to actuate sterilization.⁶⁴ Within this same program, a requirement of mandatory education pertaining to available family planning methods should be included.

Specifically, the Act in its present form requires that individuals with two or more children report the size of their family to officials. A provision is included whereby these officials are to keep records of this information. The Act also requires that "every person occupying a house, enclosure or other place shall allow Enumeration officers such access thereto as required for the purpose of collecting the information."⁶⁵ Since the system provides that Enumeration officers are to have direct contact with the populace, it would not be burdensome to impose on these officers a duty to disseminate family planning information to every person questioned. The necessary information should include a discussion of the benefits of a planned family, instructions as to available birth control methods, as well as where these methods could be obtained. The class of persons required to register under the Act, which is presently restricted to those parents with two or three children, should be expanded to include all married persons. At the time of such registration it should be the duty of the registrar to explain the benefits and methods of family planning.

The second safeguard would be to ensure that all means of birth control be made available by the legislation. Maharashtra's bill requires that examinations and sterilizations be conducted at

citizens. Because the state will *enforce* family size restriction by sterilization, it no longer will be dependent upon the individual's decision to practice birth control in order to combat population growth. With population control thus ensured, the government has less incentive to provide the education and information necessary to the individual's family planning right. Thus, because the state would no longer directly benefit from providing education and information, it may be tempted to neglect these aspects, which are vital to the individual's ability to exercise the human right.

64. See Appendix, § 3, of this comment *infra*. Maharashtra Family (Restriction of Size) Act of July 21, 1976, [1976] L.A. Bill No. XXV (India). The Act provides for and details the appointment of one or more boards to carry out the provisions of the Act.

65. *Id.*, § 15, para. 6. The Act requires that local authorities keep registers of persons having two children or persons having three or more children within their jurisdiction.

“approved institutes” by “approved practitioners.”⁶⁶ Each of these facilities should be required to have available to the public methods of birth control other than sterilization. Every married person should then be required to appear at such an institute within a defined period subsequent to registration. At this appearance, the duty again should be imposed on the “practitioners” to emphasize the benefits of various methods for family planning. The practitioner should additionally communicate to the individual the fact that the family will be limited to three children⁶⁷ via compulsory sterilization. With the institution of such standards, the individual would be properly notified that, if he limits his family through alternative birth control methods, he may effectively avoid compulsory sterilization.⁶⁸

IV. CONCLUSION

It remains plausible that legislation requiring compulsory sterilization can be enacted and yet remain consistent with the individual's human right of family planning. Such government regulations which permissibly limit the right should be supported by the United Nations. Compulsory sterilization laws may be reconciled with the human right of family planning by providing assurance that, prior to sterilization, the individual is guaranteed the *full* exercise of the right, including family-planning education and information. Certainly the Maharashtra Family Act fails to ensure that people will be provided with the education and information necessary to enable them to fully exercise their right before they are required to be sterilized.

This comment has proposed a scheme for compulsory education and the provision of birth control methods to be integrated into the existing structure of the Act. Maharashtra, and other states which may be considering compulsory sterilization laws, should employ the above proposals as guidelines ensuring morally acceptable legislation. If amended to include these suggested safeguards, the Maharashtra Family Act would be compatible with the human

66. *Id.*, § 4, paras. 1, 9.

67. *Id.*, § 2, para. 6. In some cases, the limit on the family size will be expanded to allow four children.

68. *Id.*, § 3, para. 11(b). Under the Act, anyone can avoid sterilization by having less than three children. Furthermore, parents having three children, the youngest of which is five years of age or over, may be exempted from sterilization by the submission of a signed pledge to have no more children.

right of family planning, and continued United Nations funding in support of its population program would be justified.

Deborah L. Castetter

APPENDIX ONE

L. A. BILL No. XXV OF 1976.

A BILL

to provide for restriction on the size of family of certain persons.

(As passed by the Legislative Assembly on the 21st July 1976.)

WHEREAS the population of the State has increased and is increasing despite the family planning programmes of the State, adversely affecting the development plans of the State and the economic and social welfare of the individual;

AND WHEREAS, if this alarming growth in population is not checked, it may be impossible to remove poverty, improve the standard of living and realize the fruits of economic development of the State;

AND WHEREAS, the alarming growth in population must also in the interest of public health and in the interest of economic and social welfare generally and of the individual in particular, be checked and restricted;

AND WHEREAS, to check this growth in population, it is expedient to provide for restriction on the size of the family of certain persons by recourse to compulsory sterilization and for matters connected therewith: It is hereby enacted in the Twenty-seventh Year of the Republic of India as follows, namely:—

SHORT TITLE, EXTENT AND COMMENCEMENT

1. (1) This Act may be called the Maharashtra Family (Restriction on Size) Act, 1976.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall come into force in the whole of the State of Maharashtra from such date as the State Government may, by notification in the *Official Gazette*, appoint.

DEFINITIONS

2. In this Act, unless the context otherwise requires,—

(1) “appointed date” means the date on which this Act is brought into force in the State;

(2) “approved institute” means such Government Hospital, Primary Health Centre, Municipal Hospital, Zilla Parishad Hospital, Government Dispensary and such diagnostic centre, hospital or dispensary conducted or managed by such voluntary organization or charitable trust or otherwise as the Director may from time to time approve for the purposes of this Act;

(3) "approved practitioner" means a person who is entitled to practice any system of medicine in the State under any law for the time being in force relating to medical practitioners; and who, in the opinion of the Director has acquired skill in sterilization operation, either in practice or by virtue of holding an appointment in any approved institute, over such period as may be prescribed, and who has been duly approved by the Director for the purposes of this Act;

(4) "Board" means a Board constituted under section 3;

(5) "Director" means the Director of Health Services, Government of Maharashtra, and includes any person duly authorized by the State Government for the purposes of this Act;

(6) "eligible person" means a person residing in the State of Maharashtra who at any time has three children, or who has more than three children on the appointed date, and such person if a male has not completed the age of 55, and if a female, has not completed the age of 45, and includes a person who having either all three male, or all three female, children, has a fourth child.

Explanation.—For the purposes of this clause, 'children' means the total number of living children whether born in the State or without it, which an eligible person alone has, or which he and his spouse have together; and includes children of an unwed mother and children given in adoption, but does not include children taken in adoption;

(7) "prescribed" means prescribed by rules made under section 22;

(8) the expression "residing" with its grammatical variations in relation to an eligible person means that the person has been or is residing in any part of the State for not less than six months, such residence being determined in the prescribed manner;

(9) "sterilization" includes such medical or surgical procedure, as the Director may, by general or special order from time to time determine as would effectively deprive any person of his power of reproduction, but does not include a procedure which involves removal of reproductive glands or organs unless such removal is necessary for medical or therapeutic reasons; and the expression 'sterilization operation' shall be construed accordingly;

(10) "Superintendent" in relation to an approved institute means the person by whatever designation called who is in charge of such institute and includes any person duly authorized by the Superintendent for any of the purposes of this Act.

CONSTITUTION OF BOARD: ITS POWERS AND DUTIES

3. (1) For the purpose of carrying out the provisions of this Act, the State Government may, by notification in the *Official Gazette*, constitute one or more Boards for such area or areas as may be specified in the notification.

(2) Each Board shall consist of not less than five persons of whom one shall be a person who in the opinion of the State Government has adequate knowledge of law, and there shall be persons who are entitled to practice in the State any system of medicine under any law for the time being in force relating to medical practitioners of whom one at least shall be a person who is a registered practitioner under the Maharashtra Medical Council Act, 1965. The Chairman shall be appointed by the State Government from amongst the members of the Board.

(3) *The members of the Board shall be appointed by a notification in the Official Gazette, and shall be paid such allowances for meeting the personal expenditure in attending meetings and for attending to any office work of the Board, as the State Government may, by order, determine.*

(4) *The Board shall have a Secretary and such staff as the State Government may by order determine to enable the Board to exercise its powers or to perform the duties conferred or imposed on it by or under this Act.*

(5) The members of the Board shall hold office for a period of three years from the date of their appointment in the *Official Gazette*. Any member of the Board may resign his office by tendering his resignation in writing to the Director and thereupon, his office shall become vacant. The members shall be eligible for re-appointment after the expiration of the term of their office.

(6) In the event of a vacancy in the office of a member, the same shall be filled in by appointment of a member according to the provisions of sub-section (2).

(7) During any vacancy on the Board, the continuing members may act as if no vacancy had occurred.

(8) The members of the Board may be removed at any time without assigning any reasons.

(9) The Board shall exercise the powers conferred on it by or under this Act. The Board shall also exercise such other powers as may be necessary for carrying out any of the provisions of this Act. The powers of the Board shall be exercised, and duties imposed on it shall be performed, in such manner by the Secretary or by such other person as the Board may, with the approval of the State Government, by order, determine.

(10) The business of the Board shall be conducted in such manner as may be prescribed. The quorum at any meeting of the Board shall be three.

(11) Subject to the provisions of this Act and the provisions of the succeeding sub-sections, on the application of an eligible person (hereinafter referred to as "the applicant"), the Board shall, if it is satisfied on the evidence produced before it,

(a) that sterilization may constitute danger to the life of the applicant, or

(b) that on the appointed date, the last child of the applicant is five years, or more than five years old, and the applicant duly gives an

undertaking in writing that he will restrict the size of his family irrespective of the number of wives to three or more than three children which he had on that date, and in case pregnancy occurs after the birth of such last child in any such family, to report the pregnancy to the Board not later than sixty days from the date of the pregnancy, and get the pregnancy terminated according to the provisions of the Medical Termination of Pregnancy Act, 1971, and likewise further undertake to get himself sterilized within sixty days from the date of the undertaking, or

(c) that the spouse or all the spouses of the applicant is or are dead, and the applicant has not married again, or

(d) that the applicant or his spouse is, on medical evidence, incapable of reproduction,

exempt the applicant from being sterilized as hereinafter provided:

Provided that the State Government may by an order in writing delegate the power of exemption to an officer not below the rank of a Civil Surgeon specified in the order in cases falling under clause (c) or clause (d) of this sub-section.

(12) The period within which the application may be made shall be 30 days from the date of receipt of notice under sub-section (1) of section 4.

(13) The exemption granted under this section shall be subject to such conditions as may be specified in the Order, regard being had to the enforcement of the objects of this Act.

(14) For the purpose of enabling it to give exemption under sub-section (11), the Board may require the applicant or his spouse to be medically examined at any approved institute specified by it and in doing so, the Board shall, subject to the directions of the State Government, as far as practicable for carrying out any such examination, appoint such persons who in its opinion are fit and competent to carry out the examination. The person carrying out the medical examination shall submit his report to the Board as expeditiously as possible.

(15) If, on receipt of the medical report under sub-section (14), the Board is satisfied that it is necessary to exempt the applicant or his spouse from sterilization, the Board may by an order in writing exempt the applicant or his spouse or both, as the case may require, and furnish the applicant with a copy of the exemption order. Such order shall state the date on which the Order has been made, and the reasons for which the Order has been made.

(16) The Board may, on the request of any eligible person, permit him to be represented by a pleader.

Explanation.—For the purposes of this section, the expression “pleader” includes an advocate, attorney, vakil or any other legal practitioner.

(17) The production of an exemption Order shall, unless the contrary is proved, be conclusive proof of the fact that the person named in the exemption order has been exempted from sterilization for the reason stated in the Order.

COMPULSORY STERILIZATION OF CERTAIN PERSONS

4. (1) Subject to the provisions of this Act including this section, it shall be the responsibility of every person after the appointed date to restrict the size of family to not more than three and in the case of a person having either all three male or all three female children to restrict the size of family to not more than four children and of every person who on that date has three or more children to ensure that such number of children is not exceeded, and for that purpose, every eligible person shall get himself sterilized at an approved institute as provided in this section. The Director shall serve on every person (who, according to his knowledge and information, is an eligible person either on the appointed date or thereafter), a notice to the effect that the person specified in the notice is an eligible person and is required to be sterilized as aforesaid.

(2) Where on the appointed date, a person has already three or more than three living children, he shall present himself for registration for sterilization at an approved institute not later than 90 days from the appointed date.

(3) Where a child is born to a person and such a child is the third or fourth living child, as the case may be, then, such eligible person shall present himself for registration for sterilization at an approved institute not later than 180 days from the date on which such child is born to him.

(4) On presentation for registration under sub-section (2) or (3), the Superintendent of the approved institute shall also communicate to the eligible person the date before which he shall present himself for sterilization at the approved institute specified in the communication.

(5) Unless exempted by the Board, it shall be the responsibility of every male eligible person to get himself sterilized first as provided in this section. Unless also exempted by the Board, it shall be the responsibility of every female eligible person to get herself sterilized, in the event of her spouse being exempted from sterilization.

(6) Unless exempted by the Board, where a female eligible person has a spouse above the age of 55, then it shall be the responsibility of such eligible person to get herself sterilized, unless her spouse volunteers to get himself sterilized.

(7) Every registered eligible person shall present himself before the approved institute for sterilization on or before the date fixed and communicated to him by the Superintendent under sub-section (4).

(8) *It shall be the duty of the Director to arrange for the sterilization of all eligible persons in any area or areas as expeditiously as possible, and for that purpose the Director may, with the previous approval of the State*

Government, by order, appoint as many approved practitioners as are necessary and give adequate publicity to the arrangements made by him for medical examination of eligible persons, and for their sterilization in such area or areas specified in the order.

(9) No eligible person shall be sterilized unless he has been duly medically examined by an approved practitioner, and the approved practitioner has recorded in writing that such sterilization does not constitute any danger to the life of the eligible person.

(10) The terms and conditions on which approved practitioners may be appointed for performing medical examination or the sterilization operation in any approved institute or otherwise shall be determined by the Director with the approval of the State Government.

(11) Notwithstanding anything contained in any law relating to medical profession for the time being in force in the State including the ethics of that profession, it shall be the duty of every approved practitioner to sterilize according to the procedure approved by the Director in this behalf every eligible person who presents himself for sterilization at an approved institute as provided in this Act.

PROVISION FOR CERTIFICATES ON STERILIZATION.

5. (1) Where any person has been sterilized in pursuance of the provisions of this Act, the Superintendent of the approved institute in which such person has been sterilized shall grant such person a certificate to that effect in the prescribed form. The Superintendent shall send a copy of the certificate to the local authority in whose jurisdiction the sterilized person resides and the local authority shall make an entry in the register maintained by it under section 15 in relation to the person to whom such certificate relates: Provided that, where any eligible person has been sterilized at any time on or before the appointed date, then such person shall obtain a certificate of sterilization from such Superintendent and in such manner as may be prescribed.

(2) The certificate granted under sub-section (1) shall, subject to the provisions of sub-clause (b) of clause (2) of section 6, be conclusive proof of the fact that the eligible person holding such certificate has been duly sterilized. In the absence of a sterilization certificate, it shall be presumed, until the contrary is proved, that an eligible person has not been sterilized.

TERMINATION OF PREGNANCIES IN CERTAIN CASES

6. (1) Notwithstanding anything contained in the Indian Penal Code, or the Medical Termination of Pregnancy Act, 1971,

(i) any eligible person who is pregnant on the appointed date or remains pregnant after that date but before the actual sterilization of herself or her spouse, as the case may be, within the period provided in sub-section (2), or sub-section (3), of section 4, shall unless the pregnancy is

of more than twelve weeks, get her pregnancy terminated under the said Act;

(ii) where, notwithstanding the sterilization of an eligible person, pregnancy occurs at any time then,—

(a) such pregnancy may be terminated according to the provisions of the said Act;

(b) the certificate granted under section 5 to the eligible person shall stand cancelled and inoperative; and

(c) the eligible person who was sterilized before the occurrence of such pregnancy shall, subject to the provisions of this Act, be liable to be sterilized again under this Act within such period as the Director may, by order, determine.

(2) All the provisions of the Medical Termination of Pregnancy Act, 1971, shall apply for the termination of any pregnancy referred to in sub-section (1) as they apply to the termination of the pregnancy under the said Act.

PROVISIONS FOR PAID LEAVE TO PERSONS WHO ARE STERILIZED OR WHOSE PREGNANCY IS TERMINATED

7. Notwithstanding anything contained in any law for the time being in force in the State, every eligible person who is sterilized or whose pregnancy is terminated shall, on a certificate of the Superintendent of the approved institute where he has been sterilized or where the pregnancy has been terminated, be entitled to paid leave for three days in the case of vasectomy and medical termination of pregnancy, and seven days for tubectomy; and every employer of such eligible person (whether, permanent, temporary or otherwise) shall ensure that such paid leave for such number of days is duly sanctioned to the eligible person. Where a Superintendent for reasons to be recorded in writing certifies leave to be necessary for any additional days in any case, the employer shall also ensure paid leave for such additional days.

PROHIBITION AGAINST RESTORATION OF CAPACITY TO PROCREATE

8. (1)(a) No eligible person who has been sterilized shall get himself restored to reproductive capacity by any medical or surgical procedure; and

(b) no person shall restore any eligible person to reproductive capacity by any such procedure, except with the previous permission in writing of the Board.

(2) The permission referred to in sub-section (1) shall not be granted by the Board except—

(a) where all the living children have died, or

- (b) where from amongst the living all the male or all the female children have died.

APPEAL

9. (1) Any person who is aggrieved by any order under any of the provisions of this Act, may submit an appeal in writing within 30 days from the date of receipt of the order to the State Government.

(2) On receipt of the appeal, the State Government may, if necessary, arrange to get the aggrieved person examined in such manner and by such authority as it thinks fit.

(3) The State Government may, after making such inquiry as it thinks fit and after considering the report of the authority under sub-section (2), if any, and after hearing the aggrieved person pass such order as it thinks fit.

(4) The decision of the State Government in the appeal shall be final and conclusive, and shall not be called in question in any court.

ALL MEDICAL EXAMINATIONS, ALL STERILIZATIONS, ETC., UNDER THIS ACT TO BE FREE.

10. All medical examinations, all sterilization operations and all termination of pregnancies made in pursuance of the provisions of this Act and any medical treatment necessary as a result of such operations or termination of pregnancies shall be made free of cost.

PROPAGANDA OF ANY KIND AGAINST COMPULSORY STERILIZATION PROHIBITED.

11. No person shall carry on any kind of malicious propaganda or propaganda on religious grounds against compulsory sterilization of an eligible person as provided in this Act.

FALSE CERTIFICATES OR FALSE REPORTS OF EXAMINATION PROHIBITED.

12. No person shall give any false certificates, make a false declaration or make any false report of any examination made or conducted for the purposes of this Act.

PROVISION FOR COMPENSATION IN CASE OF DEATH, ETC., OF ELIGIBLE PERSON DUE TO STERILIZATION OPERATION OR TERMINATION OF PREGNANCY.

13. *The eligible person, in the event of his permanent disablement and the nominee or nominees of the eligible person in the event of the death of the eligible person, arising out of his sterilization operation, or as the case may be, termination of pregnancy, be entitled to such compensation not exceeding*

five thousand rupees in case of death, and three thousand rupees in case of permanent disablement as the State Government may, by order determine, regard being had to the consequences to the family of the eligible person following such death, or as the case may be, permanent disablement.

The State Government shall make rules in relation to making nominations for receiving compensation in the event of death of the eligible person, for apportionment of the compensation among the nominees and for all matters supplemental and incidental thereto.

Explanation—In this section “permanent disablement” means such disablement, whether of a temporary or permanent nature, as incapacitates the eligible person for all work which he was capable of performing before such operation or termination of pregnancy resulting in such disablement.

OBLIGATION ON CERTAIN PERSON TO MAKE DECLARATION OF LIVING CHILDREN.

14. (1) Where a person has two or three living children on the appointed date or where a second or third child is born to any person after that date, then every such person shall make a declaration within 30 days of the appointed date as the case may be of the date of such birth in the form in Schedule A appended hereto.

(2) Where a fourth child is born to a person who has either all three male or all three female, children then such eligible person shall inform of such birth to the Director within 30 days of such birth.

DUTY OF LOCAL AUTHORITIES TO MAINTAIN REGISTERS OF ELIGIBLE PERSONS OF HAVING TWO AND THREE CHILDREN, RESPECTIVELY.

15. (1) Every local authority shall maintain registers of persons having two children, and of persons having three or more children within their respective jurisdiction.

(2) Every local authority shall have a Registrar for supervising the work of maintaining registers under this section, such Registrar shall,—

(a) In a Corporation area be the Municipal Commissioner;

(b) within the limits of any municipal area, be the Chief Officer;

(c) elsewhere, be the Chief Executive Officer of the Zilla Parishad.

(3) The local authority may, for maintaining such registers, also appoint such persons as Enumeration Officers as may be necessary to collect, or aid in, or supervise the collecting of, information within any specified area from eligible persons having two, three or more than three children, respectively.

(4) An Enumeration Officer may ask all such questions set out in a prescribed form of all persons within the limits of the local area for which

he is appointed as, by instructions issued in this behalf by the State Government, he may be directed to ask.

(5) Every person to whom any question is asked under sub-section (4) shall be legally bound to answer such question to the best of his knowledge or belief.

(6) Every person occupying any house, enclosure, vessel or other place shall allow Enumeration Officers such access thereto as they may require for the purposes of collecting the information and as, having regard to the customs of the State, may be reasonable, and shall allow them to paint on, or affix to, the place such letters, marks or numbers as may be necessary for the purposes of collecting the information under this section.

(7) (a) Any person who intentionally gives false answer to, or refuses to answer to the best of his knowledge or belief, any question asked of him by an Enumeration Officer which he is legally bound under sub-section (5) to answer, or any person occupying any house, enclosure, vessel or other place, who refuses to allow an Enumeration Officer such reasonable access thereto as is required by sub-section (5) to allow, or who removes, obliterates, alters or damages any letters, marks or numbers fixed or painted on any place, shall, on conviction, be punished with fine which may extend to one thousand rupees.

(b) Any person who abets any offence under clause (a) of this sub-section shall, on conviction, be punished also with fine which may extend to one thousand rupees.

(8) *For the purpose of maintaining the registers referred to in sub-section (1) of this section, a local authority shall, subject to rules made in this behalf by the State Government, be reimbursed with the expenditure incurred by it in that behalf.*

(9) Notwithstanding anything contained in this section, if any local authority fails to maintain the register as provided in sub-section (1) of this section, then the State Government shall require the Registrar to maintain such register; and for that purpose, the Registrar shall be entitled to requisition the services of such staff of the local authority as may be reasonably necessary for the purpose. Failure on the part of any member of the staff of the local authority to assist the Registrar in maintaining the register shall constitute a breach of the condition of his service; and it shall be competent to the State Government to punish such member in such manner as the State Government may in the circumstances of each case think fit.

Explanation.—In this section,—

(1) local authority means—

(a) a municipal corporation constituted under any law for the time being in force in the State;

(b) a municipal council constituted under the Maharashtra Municipalities Act, 1965;

(c) a village panchayat constituted under the Bombay Village Panchayats Act, 1958; and

(d) in any village for which there is no panchayat, the Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, having jurisdiction in such village.

(2) the expression "corporation area" means the area within the limits of a Municipal Corporation constituted under any law for the time being in force in the State.

(3) the expressions "municipal area," and "Chief Officer" shall have the meanings respectively assigned to them in the Maharashtra Municipalities Act, 1965. (Mah. XL of 1965)

(4) the expression "Chief Executive Officer" shall have the meaning assigned to it in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. (Mah. V of 1962.)

NO DAMAGES PAYABLE EXCEPT FOR NEGLIGENCE.

16. Without prejudice to the provisions of section 13, no person who is sterilized or whose pregnancy is terminated under the provisions of this Act shall be entitled to any damages, except when neglect is established in the process of performance of the sterilization operation or in terminating pregnancy or in giving medical treatment to such person after such operation or termination of pregnancy.

PENALTY.

17. (1) Whoever contravenes the provisions of section 4, 5, 6, 7, 8, 11, 12 or 14, shall, on conviction, be punished with imprisonment for a period which may extend to two years; and where the case so requires shall also be liable to be sterilized or the pregnancy of such person shall be liable to be terminated as provided in section 6, even during the term of such imprisonment:

Provided that in the absence of any special or adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall not be less than six months.

(2) Where an eligible person has been sterilized, or the pregnancy of any eligible person is terminated under sub-section (1), then, the State Government may, by order in writing, remit the unexpired period of the imprisonment, if any, and thereupon, the eligible person shall be released from the prison forthwith.