

# Role of Legislation in Population and Development Planning

*An assessment of legislation as an important tool for  
developmental change in Asia and the Pacific:  
Problems and prospects*

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Countries in the Asian and the Pacific region provide an interesting panorama of legal systems and the dynamics of developmental change. For demographers, social scientists and health lawyers, this panorama offers not only rich material for research but also a challenge to find meaningful solutions to the many and varied developmental problems of these countries. Increasingly, it is being realized that legislation is an important tool of developmental change and this article examines how law can influence population and developmental planning in the Asian and the Pacific region.

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Diversity and multiplicity are two prominent features which loom large in analysing the problems of the large conglomeration of countries within the ESCAP region. No two countries in the region have identical legal systems or legal structures. In many countries, different population subgroups are governed by different laws, both statutory and customary. Ethnicity, religion and place of residence (or domicile) are among the factors on the basis of which different laws apply within a single territory.

Different countries have different experiences with regard to the implementation of legislation. Effective implementation depends on a number of variables. A law which has operated successfully in one country may be of limited or no relevance to another, even though both countries might have similar size populations. For instance, Sri Lanka and Nepal each have a population of 15.7 million, but there are striking differentials in demographic and other characteristics. In Sri Lanka, 81 per cent of the women are literate compared with 9 per cent in Nepal. To take another example, the infant mortality rate (for children under 1 year of age) in Nepal is 146 per thousand compared with 39 per thousand in Sri Lanka<sup>1/</sup>

A similar observation holds true for countries with different size populations. For example, China with a population of over 1 billion might devise legal strategies which may not be appropriate for Vanuatu with a population of 142,000.

In an article dealing with regional perspectives, only a few national examples can be cited. Furthermore, not all the observations and comments would necessarily be of universal validity.

### **Definition and scope of “population law”**

In the 1970s, a small group of lawyers and demographers around the world began to examine the interrelationship between legislation and population change. The body of laws having a direct or indirect relationship to population came to be called “population law”. Conceptually, this term means:

“The body of laws and regulations which has a bearing on population dynamics:

- (a) by regulating the growth, composition and movement of the population; and
- (b) by inducing behavioural and attitudinal changes in individuals, with a view to enhancing the quality of life both at the micro-level of the family unit and at the macro-level of the community or nation.”<sup>2/</sup>

Inasmuch as the concepts of “population” and “development” are intricately interwoven, the definition of population law can be adapted to embrace within its scope all developmental laws as well. Under that definition, the following categories of laws may be identified as being of relevance to policy makers and lawyers:

- Laws directly affecting human reproduction (contraception, sterilization, menstrual regulation, abortion etc.);
- Laws relating to formation of families (minimum age at marriage, requirement of consent, prohibited degrees of marriage, incidents of marriage including duty of support and custody of children), termination of marriage, succession and inheritance, and taxation;
- Laws regulating sexual behaviour (homosexuality, heterosexual, prostitution, polygamy, polyandry, rape etc.);
- Laws dealing with quality of life issues (education, access to health care, quarantine, social welfare benefits, employment and security of tenure, status of women, migration (both internal and foreign), housing and colonisation schemes, land tenure systems, child labour etc.);
- Laws dealing with vital events (registration of births, deaths and marriages, notification of communicable diseases, reporting of change of residence etc.); and
- Laws dealing with the environment (pollution control, construction of houses and other buildings etc.).

These categories are merely suggestive of the possible clusters which might be considered in examining how law affects population dynamics and the standard of living.

### **Legal recognition for population and developmental policies**

During the past few years several countries have made explicit mention of population and/or development planning objectives and goals in national constitutions (e.g. China and Thailand). The Chinese constitution makes family planning a “duty” of married couples.<sup>3/</sup> Besides their symbolic value, the constitutional provisions help to offer a sense of direction for national policies and mandate goal-related activities. Equality of the sexes and non-discrimination are two other aspects which have received specific mention in some national constitutions (e.g. Sri Lanka).

The evolution of family planning (or population, as the term later came to be used) programmes has taken different forms in different countries. India

was one of the first countries in the region to provide for such programmes in the national development plan formulated in 1952, although as long ago as 1949, the the Minister of Health for Sri Lanka had called upon the World Health Organization to take cognizance of the global implications of rapid population growth.<sup>4/</sup> The integration of family planning services into general health services has been a common modality.<sup>5/</sup>

Propagation of family planning has not always been easy; cultural, religious, ethnic and political constraints have been formidable. It has taken and still takes a fairly long time to sensitize politicians and policy makers to the need for instituting such programmes. Intrauterine devices (IUDs) currently are widely used, although there was a time when they had to be smuggled into some countries. There is one case in which a collection of IUDs were smuggled into a country under the guise of decorations for Christmas trees.<sup>6/</sup> There are many examples such as this which exemplify the difficult context in which population policies and programmes were conceived. However, even after conception, they have gone through a difficult gestational period, some not surviving but others blossoming. From the point of view of policy-making and programme implementation, it is a distinct advantage to articulate in important legal texts (including national constitutions and important documents such as national development plans) a country's commitment to population and development planning. The political will required to translate this commitment into action needs to be reflected in relevant activities such as by providing for high-level representation in institutional mechanisms responsible for population and development planning, programme implementation and evaluation .

### **General population law trends**

In Asian and Pacific countries, social life is structured around the institution of the family. Laws as well as customs favour or have a bias towards marriage and legitimacy. There are pressures of all kinds to ensure that those on the threshold of marriage get married, preferably early. However, with the gradual expansion of educational and vocational opportunities, the average age at marriage has generally increased.

Difficulties in finding a marriage partner of an appropriate social standing, the institution of dowry, and possibly the influence of population education programmes, which publicize the advantages of late marriages, have resulted in marriages taking place at a later age than used to be the case at the turn of the century or even three or four decades ago.

The increase in the minimum age of marriage by legislation has been an important intervention in this context. (In India, the minimum age of mar-

riage for females was increased in 1978 from 15 years to 18 years for females and from 18 years to 21 years for males). The family life scenario is rapidly changing, as exemplified by the greater acceptance of the status of spinsters, especially among the educated classes.<sup>7/</sup>

Many measures for improving the status of women are dependent on legal reforms aimed at removing existing barriers to equality and greater emancipation. Such reform by itself is not enough; laws need to be recognized and accepted by the people and they must be enforced effectively to ensure that the legislative intent is achieved.

### **Specific population law trends**

Legislation on abortion has had a profound effect on the population growth rate. Japan blazed a new trail in 1948 with its Eugenic Protection Law; this was followed, albeit after an interval of several years, by similar legislation in countries such as India and Singapore. According to estimates, over 1.7 million abortions took place in Japan during 1955.<sup>8/</sup> Abortions in some other countries have been estimated to be in the millions for a single year.<sup>9/</sup>

The high incidence of illegal abortions makes it difficult to collect detailed statistics on the number of births prevented through abortions.

In some countries, abortion law reform has faced considerable opposition, as in the case of Sri Lanka, a predominantly Buddhist country. Restrictive laws generally tend to penalize the poor; it has been observed that in countries with restrictive abortion laws the rich and upper social groups are able to circumvent the legal restrictions with impunity.<sup>10/</sup> Irrespective of the legal provisions and the availability of limited facilities for the early termination of pregnancies in public sector medical institutions, illegal abortions take place under unhygienic conditions, resulting in maternal mortality and morbidity. Therefore, there is need for countries to examine their legislation on abortion in a sober climate free of emotion and polemics.<sup>11/</sup>

The next most controversial fertility limitation method is sterilization, both male and female. Sterilization is controversial for several reasons. Compulsory sterilization programmes have given rise to questions of compatibility with human rights and freedom of choice. Similar issues have arisen even with regard to sterilization programmes linked to a system of incentives and disincentives. No surgical intervention is free from error and the question of compensation for those who have had complications looms large in implementing national sterilization programmes.

Sterilization is generally an irreversible method and in countries with

a high infant mortality rate the ability to be able to procreate will be perceived much more strongly as against all the distinct advantages of a small family. Remarriage might also necessitate children, especially in societies where there is an unfortunate social stigma on childless couples.

Despite these limitations, sterilization has proved to be a viable method of fertility limitation. In some countries (e.g. India and Singapore) statutory provisions set out the circumstances in which sterilization may be performed. In many legal systems, this method is valid on the premise that what is not expressly prohibited by law is permissible. Consent of the individual concerned, or that of his or her guardian, is a prerequisite for the validity of surgical interventions.<sup>12/</sup>

The provision of contraceptives or conception barrier methods has had a profound impact on the quality of life by enabling couples to determine the size and spacing of their families. Oral contraceptives, IUDs, condoms and injectables are among the widely used contraceptives. Law interfaces with policy in relation to issues such as the requirement for a prescription for oral contraceptives and also in relation to the categories of health-care personnel entitled to distribute them. In countries with a high incidence of adolescent pregnancies, a lower age limit might be imposed by legislation, if such legislation already provides for a minimum age limit for users.<sup>13/</sup> Tariff barriers, restrictions on distribution outlets etc., are constraints on the widespread use of contraceptives. Easy access to contraceptives is an important factor in minimizing the number of unwanted pregnancies.<sup>14/</sup>

### **Miscellaneous population law trends**

One of the mysteries which jurists have not yet been able to unravel is how exactly law operates and influences the course of history, and the behavioural and attitudinal changes of men, women and children.

One thing which is clear, however, is that law does have a symbolic value. For instance, even though the number of taxpayers in any country is relatively small, a change in the tax law providing for tax exemptions only in respect of a limited number of children will reflect the country's commitment to the small family norm. Thailand, for instance, amended the tax legislation permitting tax deductions only in respect of the first three children.<sup>15/</sup>

The mandatory recording of births, deaths, marriages, divorces and communicable diseases is important not only for statistical purposes but also for public health purposes. The requirement of a birth certificate for admission to schools, for obtaining infant foods etc., has led to better compliance with the registration of vital events in some countries such as Sri Lanka.<sup>16/</sup>

## **Developmental laws**

Legislation cannot offer miracles when economics and development planning, based on different ideological and philosophical nuances, have failed to yield a bumper crop of good and quick results to enhance the quality of life. However, there is no doubt that legal reform can accelerate the development process either by removing unnecessary constraints or by providing a more conducive environment in which developmental policies can thrive.

Legislation dealing with compulsory schooling, compulsory immunization, compulsory use of buildable or arable land, proper labelling of the nutrient value of packaged food etc., can have some impact on the quality of life. The number of people using packaged food is relatively small in most countries in Asia and the Pacific, but laws need to address different target groups in relation to different quality of life themes.

Urbanization and population migration are two issues which lend themselves to regulation through several modalities such as the prohibition of free movement and preferential treatment for those with small families. The establishment of new industries with proper regard to living facilities and impact on the environment, for instance, can have a positive effect not only on the quality of life of individual members but also of the environment. In other words, a multidisciplinary approach to urbanization would have more far-reaching quality of life implications than if only the immediate problems resulting from migration were taken into account.

## **Towards an integrated approach**

In a short article such as this one, justice cannot be done to a vast subject such as law and population. Further reference may be made to other publications which provide a more detailed account of the interaction between law and population.<sup>17/</sup> On the assumption that there is a convincing case for a legal input to population and developmental planning, the rest of this article outlines a possible course of action for Asian and Pacific countries.

It is suggested that a multidisciplinary committee comprising policy makers, lawyers, demographers and social scientists be mandated to examine the existing legal provisions with a view to identifying their relevance to population and developmental planning goals, objectives and programmes.

In the past, attempts were made to examine laws with regard to different subject areas such as family laws, social welfare laws and so on.<sup>18/</sup> This approach has certain limitations, particularly that of blurring the possible interactions with related issues. Instead, it is possible to examine the legislation with regard

to specific population subgroups, namely infants, children, adolescents, men, women, unmarried adults, those married but childless, those married but with children, families where the parents or couples are not living together (owing to death, divorce, separation or employment elsewhere) and vulnerable groups (the aged, handicapped etc.). In respect of each such subgroup, the existing statutory provisions need to be identified and thereafter proposals for law reform must be made with regard to available resources and population and developmental goals. To take one example, in the case of adolescents, it would be possible to consider whether existing legal provisions offer adequate protection or safeguards against early pregnancies and, if not, whether paramedical personnel such as midwives may be authorized to provide family planning guidance, including the provision of contraceptives.

In respect of the category of adults, the existing legislation on employment and vocational opportunities, on the freedom of migration etc., could be examined and appropriate provision could be made to ensure their integration into the national developmental process through compulsory vocational training, in addition to other measures such as marriage counselling and medical screening before employment. In other words, an attempt should be made to visualize how a baby due to be born tomorrow would be able to perceive not only how the law treats him or her but also what the law expects of him or her from the cradle to the grave.

At every possible interface between law and human behaviour, attempts should be made to ensure that the legal provisions are in harmony with national population and development goals. Concentration on isolated issues such as that of the status of women<sup>19/</sup> for instance, will not, on its own, provide the holistic approach needed to optimize the role of legislation. Having done this exercise, appropriate action needs to be taken to initiate law reform. At the same time, it is necessary to establish a permanent parliamentary committee with the mandate to examine the population implications of draft legislation. (As one recipient of the Parliamentarian's Population Award once remarked, this is not the time to rest on our laurels.)<sup>20/</sup>

Much remains to be done to improve the quality of life. The enactment of new legislation sometimes tends to delude us that all that is needed has been accomplished with the stroke of the legal draftsman's pen. A classic example is breast-feeding; country after country has rushed to introduce legislation to implement the International Code of Marketing of Breast Milk Substitutes. Whilst such legislation is an important measure, the broader-issues of infant and maternal malnutrition, more equitable land reform measures, subsidized food schemes etc., have been relegated to the background.<sup>21/</sup>

Population law also needs to address new and emerging issues such as



surrogate motherhood<sup>22/</sup> and the removal of restrictions on the role of the private sector in family, population and developmental activities.<sup>23/</sup>

Asian and Pacific countries provide a panorama of population success stories as well as failures. Some of the success stories might have been even greater success stories and some of the failures might have been transformed into miracles if there had been a better perception of the role of legislation as an instrument of population and development planning. There are no standard models or structures; each country must devise what it thinks is best and what it is able to implement effectively. In this context, it is worth recalling the advise of Mahler: "So let us stop wasting our time on idle polemics about topic 'X' being globally more important than topic 'Y' in research, or trying to formulate a statement of 'global priorities'. What we need are non-dogmatic approaches that together would make up a 'global strategy' to allow countries to achieve the aims they consider important."<sup>24/</sup> At no stage in human history has there been so much urgency as now to take stock of what has been done so far for the betterment of mankind and to tap the potentiality of law to facilitate our efforts to make this world a better world for the people of today and for those yet to be born.

#### References/footnotes

1. UNICEF, *The State of the World's Children 1986*, (Oxford University Press, New York, 1985) pp. 132-153.
2. Jayasuriya, D. C. *Legal Dimensions of Population Dynamics: Perspectives from Asian Countries* (Associated Educational Publishers, Mt. Lavinia (Sri Lanka), 1979) p. 10.
3. See Isaacs, S. L. and Cook, R.J. "Laws and Policies Affecting Fertility: A Decade of Change", *Population Reports*, Series E, No. 7, 1984, pp. EIOS-E151; and Cairns, G. S. and Heckel, N. I. "Women's Equality in the World's Constitutions", *Populi*, vol. 12, No. 2, 1985, pp. 52-55.
4. *Official Records of the World Health Organization*, No. 21 (Geneva, 1949) p. 84.
5. Roemer, M. I. *National Strategies for Health Care Organization: A World Overview* (Health Administration Press, Michigan, 1985) p. 7.
6. Keeny, S. "View from the Village", *Populi*, vol. 4, No. 1, 1977, p. 9.
7. Caldwell, J. C., Reddy, P. H., and Caldwell, P. "The Causes of Marriage Change in South Asia", *Population Studies*, vol. 37, 1983, pp. 343-361. See also Jee-Peng, Tan "Marital Fertility at Older Ages in Nepal, Bangladesh and Sri Lanka", *Population Studies*, vol. 37, 1983, pp. 433-444; and Rindfuss, R., Parnell, A. and Hirschman, C. "The Timing of Entry into Motherhood in Asia: A Comparative Perspective", *Population Studies*, vol. 37, 1983, pp. 253-212.
8. Ciba Foundation Symposium 115, *Abortion: Medical Progress and Social Implications* (Pitman, London, 1985) p. 33.
9. Jayasuriya, D. C., *op.cit.*, pp. 42-43.
10. Jayasuriya, D. C. *Law and Social Problems in Modern Sri Lanka* (Sterling Publishers, New Delhi, 1982) pp. 121-129.

11. See Cook, R. J. and Dickens, B. M. *Emerging Issues in Commonwealth Abortion Laws* (Commonwealth Secretariat, London, 1983).
12. See Stepan, J. "Voluntary Sterilization is No Crime", *People*, vol. 9, No. 3, 1982, p. 34.
13. See Paxman, J. M. *Law, Policy and Adolescent Fertility: An International Overview*, (IPPF, London, 1984).
14. Ciba Foundation, *op.cif.*, pp. 34-35. See also Donaldson, P. J., Nichols, D. J. and Ehn Hyun Choe "Abortion and Contraception in the Korean Fertility Transition", *Population Studies*, vol. 36, 1982, pp. 227-235.
15. Taxation Code (Book VI) A.D. 1980 (referred to in UNFPA, *Annual Review of Population Law*, 1981, vol. 8, (United Nations, New York, 1982) p. 383.
16. See Jayasuriya, D. C. *The Vital Registration System in Sri Lanka*, (Department of Census and Statistics, Colombo, 1981).
17. The Country Population Monograph series published by ESCAP provides concise information on the population laws of several countries in the region. The *International Digest of Health Legislation* published by the World Health Organization; the *Annual Review of Population Law* published by the United Nations Fund for Population Activities; and *Open File* published by the International Planned Parenthood Federation are the principal sources of information for legal developments and trends in this area. See also Jayasuriya, D. C. *Legal-Dimensions of Population Dynamics: Perspectives from Asian Countries*, (Associated Educational Publishers, Mt. Lavinia, 1979); Paxman, J. M. *Law and Planned Parenthood* (IPPF, London, 1980); Isaacs, S. L. *Population Law and Policy: Source Materials and Issues* (Human Sciences Press, New York, 1981); Barnett, L. D. *Population Policy and the U.S. Constitution* (Kluwer-Nijhoff Publishing, Boston, 1982); David, H. P. "Incentives, Reproductive Behavior, and Integrated Community Development in Asia", *Studies in Family Planning*, vol. 13, 1982, pp. 159-173; Office of Technology Assessment, *World Population and Fertility Planning Technologies: The Next 20 Years* (Congress of the United States, 1982); and Gerard, H. "Types of Intervention Available to a Demographic Policy: A Theoretical Approach", *Population Bulletin of the United Nations*, No. 16, 1984, pp. 16-24.
18. See Jayasuriya, D. C. "The Family Law Curriculum and the Population Problem: Another Look at an Old Problem", *Malaya Law Review*, vol. 24, 1982, pp. 264-274.
19. See Sadik, N. "Women and Family Planning", *Populi*, vol. 12, 1985, p. 44; Jayasuriya, D. C. "Sri Lanka: The Few and the Many", *People*, vol. 7, 1980, p. 25; and Jayasuriya, D. C. "The Changing Status of Women in Pakistan: Some Demographic and Legal Dimensions", *Future*, vol. 3, 1976, p. 4.
20. Atapattu, R. "A Feeling of Hope", *Populi*, vol. 12, 1985, p. 6. See also Salas, R. "Guidelines for a Decade", *Populi*, vol. 11, 1984, p. 41.
21. See further Jayasuriya, D. C., Griffiths, A. and Rigoni, R. *Judgement Reserved: Breast-feeding, Bottle-feeding and the International Code* (Asian Pathfinder Publishers, Nawala, 1985).
22. See further, Kennedy, I. *Contemporary Legal and Social Issues in Medical Practice and Health Care* (Commonwealth Secretariat, London, 1986), p. 3.
23. Baum, W. C. and Tolbert, S. M. *Investing in Development: Lessons of World Bank Experience* (Oxford University Press, New York, 1985) p. 219.
24. Mahler, H. "Support to Research on Fertility Regulation: Global Needs and Priorities" in Diczfalussy, E. and Diczfalussy, A. (eds.) *Research on the Regulation of Human Fertility* (Scriptor, Copenhagen, 1983) p. 354.