

BREEDING THE BEST AND THE BRIGHTEST — A LEGAL VIEWPOINT

The Introduction of A Population Incentive

Singapore is well-known as a very population-conscious city-state. Indeed, its comprehensive population control programme is an outstanding achievement. Many population control concepts, which will be discussed later, have been adopted in Singapore. However, none of these provoked as much controversy and indignation in the country and abroad as when Prime Minister Lee Kuan Yew, in his August 14, 1983 National Day address, made the first announcement designed to encourage women graduates to reproduce or to reproduce more. Prime Minister Lee stated to the effect that because women-graduates do not reproduce enough or do not even get married, they are wasting talent-laden genes in the cause of population control. He reasoned that due to this factor some four hundred graduates were being lost annually.

Moreover, even those woman graduates who marry do not reproduce as much as their less educated counterparts. Married woman graduates produce on average 1.7 children compared to 3.5 for women with no formal education. Therefore, Prime Minister Lee warned that Singaporeans were reproducing in a lopsided manner. And, if this was allowed to continue, Singapore would not be able to maintain her present standards and levels of competence, and her economy, administration and society would be adversely affected. It was alleged that inherited traits were more important to child development than environment conditioning.

Early in 1984 First Deputy Prime Minister Dr. Goh Keng Swee announced that from July, 1984 graduate-mothers would have preference for places at the best primary schools for their third and subsequent children. Normally, children beyond the first two in a family get last choice for schools. Thus, this is an incentive for graduate-women to have more children, as Singaporeans generally place their children's education as a top priority. The new rules thus add mothers' education levels as a factor in deciding primary school entrance.

A new incentive in the form of a 30% tax relief was introduced for working mothers with a University degree and a third child. It is geared to encourage graduate women not only to have more children but to continue working in both public and private sectors. This scheme was announced with the 1984 Budget in March.

Singapore's Finance Minister, Dr. Tony Tan, explained that this policy is justified because not only does it induce better educated married women to continue working, it also encourages them to have more children in order to correct the present lopsided pattern of procreation in Singapore. But how effective is this incentive when graduate working mothers earn quite high incomes, so that the payment of tax is not such a great burden to them?

Early in June this year a further incentive was announced by the Singapore Government.¹ However, this time the incentive benefits non-graduate mothers instead. This new incentive offers a cash grant of S \$10,000 to each mother below 30 years old from the lower income group who chooses to undergo sterilization or ligation. There are three prerequisites for eligibility for this grant. First, both parents must be Singapore citizens or permanent residents. Secondly, neither of them must have any "O" level passes. And thirdly, the combined family income must not be more than S \$1,500 per month.

This generous cash grant is approximately one-third of the cost of a Housing Development Board (HDB) three-room flat. And, under this scheme, the money will be credited to the mother's account in the Central Provident Fund (CPF) to pay for the flat. However, if the mother decides not to purchase the flat, the money can only be withdrawn when she reaches the age of 55. Before then, the money will be earning interest.

The aim of this scheme is clear. It seeks to break the "low-education, low-income, large families" cycle. It appears to be a good incentive, because it benefits poor mothers who either need the money in their old age or are facing acute housing problems. It benefits the existing children of lowly-educated mothers too, because if their mothers go through permanent sterilization or ligation before they are 30 years old, their families will be smaller. With less mouths to feed, the family income of S\$1,500 per month or less may be adequate to provide a better environment, educational facilities and nutrition for the existing child or children.

In Malaysia, no such bold incentive has been proposed, although statistics reveal that highly-educated women reproduce less than uneducated and less well-educated women. It is still an open question whether the Malaysian Government will make new rules such as those made in Singapore. Should Malaysia impose such an incentive? If the Government wishes to do this, first it has to impose the scheme of preference for places at the best schools.² Currently, Malaysians too are education-conscious, in that they now take great pains to ensure that their children get into the best schools and thus get the best education. Secondly, the Malaysian tax scheme may have to be revised.³ And thirdly, Malaysia may have to provide cash grants or housing incentives to poor uneducated mothers.⁴

Population surveys both in Singapore and Malaysia show that women with a lower education want a marginally higher mean number of children than women with a higher education attainment. Further, Malaysian women with no education marry younger than their more learned counterparts.

¹The *New Sunday Times*, 3rd June 1984, p. 4, column 3.

²Presently, the normal trend is to place children in schools nearest their homes.

³The Income Tax Act of Malaysia does not distinguish graduate female tax-payers from their non-graduate counterparts.

⁴This incentive appears to benefit the poor, but can Malaysia afford to provide such incentive to Malaysian women as a large proportion of Malaysian population would qualify for this incentive?

Therefore, they are exposed to pregnancy at their most fertile stage, for a longer period. Working women marry later than those not working, and women in professional, technical, administrative and managerial positions have a higher mean age at first marriage.

This ultimately leads to the conclusion that better educated women in Malaysia have less children than the less well-educated ones.

Background to Singapore's Population Policies

Before 1949, birth control in Singapore was practised by couples in Singapore on an individual basis. However, this practice was confined only to a small group of persons; mainly the more educated and wealthier classes. The idea of providing family planning services to the general public was first discussed in a major correspondence in the *Straits Times* in January 1935. Subsequently, one Mrs. M. Sanger in a visit to Singapore in February 1936 advocated that family planning should be an essential part of the official public health programme. The Chinese Christian Association noted in December 1936 that birth control clinics should be set up in Singapore.

After the Second World War Singapore was faced with social and economic dislocation. It was then that the Social Welfare Department realized that to solve the problem of food shortage, parents should be advised on family planning.⁵ In April 1949, a series of lectures on birth control was delivered to about sixty women. At the end of the series, they voiced their support for a voluntary family planning society to be formed. A report urging the provision of family planning services to mothers attending infant welfare clinics was prepared as a result of these lectures.⁶

On May 28, 1949, the majority in the Municipal Council Chambers decided to allow the infant welfare clinics to render family planning advice upon request after the other work of the clinic had ended for the day.⁷ However, this service proved inadequate as it was limited to only once a week in three of the five clinics.

Therefore, on July 22, 1949, the Family Planning Association (FPA) was formed to provide private family planning services on a non-profit making and voluntary basis. Prior to 1966, the FPA has been effective in decreasing fertility in Singapore. In December, 1965 the Singapore Family Planning and Population Board Act, 1965 was passed by Parliament, without debate. It came into force on January 7, 1966.

On January 12, 1966, the Singapore Family Planning and Population Board (SFPPH) was formally established with its inauguration by the then Minister of Health, Mr. Yong Nyuk Lin. During the ceremony he stated:

⁵Hena Smith, "Singapore: Family Planning Association in Proceedings of the Seventh Conference of the International Planning Parenthood Federation, Singapore 1963", Amsterdam; *Excepta Medica, International Congress Series*, No. 72, 1964, p. 714.

⁶George G. Thomson, and T.E. Smith, 'Singapore: Family Planning in an Urban Environment' and 'The Politics of Family Planning in the Third World', edited by T.E. Smith, London: George Allen & Unwin, 1973, p. 22.

⁷Hena Smith, *op. cit.*, p. 714.

Singapore, as we all know, is a very over-crowded little island of nearly 2 million people living in an area of just over 2 hundred square miles or a density of population around 8,000 people per square mile. Family planning is therefore a matter of national importance and indeed, one of urgency for us. Our best chances for survival in an independent Singapore is to stress on quality and not quantity.⁸

This change in government policy from one of indirect participation to one of a direct provision of family planning services was proclaimed not long after the separation of Singapore from the Federation of Malaysia on August 9, 1965. With the separation it was realised that Singapore with a limited small land area and limited natural resources had to survive alone without her traditional economic hinterland. At that time the crude birth rate was about 30 per thousand population and the annual rate of population increase was no less than 2.5 per cent.

Following a misappropriation of funds by an official in the FPA, the government directed the SFPPB to takeover the functions and assets of the FPA on November 1, 1968⁹ However the FPA was re-established in November 1971 and registered with the SFPPB in accordance with section 11 of the SFPPA Act, 1965. Since then the FPA merely complements and supplements the activities of the SFPPB in population education through talks, workshops, seminars, reference materials and films.

In its early phase, the SFPPB laid emphasis on generating public awareness about the population problem and on stressing the need for family planning. By 1968, the message to 'Plan your Family' appears to have been widely publicised.

In the next few years, the emphasis was shifted to 'Singapore Wants Small Families'. In 1972 the theme was "Two-Child Families for Singapore" and subsequently 'Boy or Girl — Two is Enough'. In the 70's too, sterilization was promoted as the best method of family limitation among couples who had two or more children.¹⁰

The crude birthrate in 1965 was 29.5 per thousand population. At the end of the First Five-Year Plan (1966-1970) in 1970, the crude birth rate had dropped to 22.1 per 1,000 population.¹¹ Fertility, as reflected by the gross reproduction rate, was reduced at an accelerated speed, amounting to 28% (from 2,095 to 1,500) during the five-year period 1966-1970, as compared to the 29% decline during the 9-year period 1957 to 1965.

In 1975 at the end of the Second Five-Year Plan, the birth rate was further reduced to 17.1 per thousand population, from 22.3 in 1971. During this same period the gross reproduction rate fell by 31.1% from 1,475 in

⁸Quoted in 'First Annual Report of the Singapore Family Planning and Population Board, 1966', Singapore: Government Printing Office, 1967, at p. 17.

⁹'Sixth Annual Report of the Singapore Family Planning and Population Board 1971', Singapore: Yeap Sing Art Printing 1972.

¹⁰'Ninth Annual Report of the SFPPB, 1974, Singapore': Eurasia Press, 1975; p. 29.

¹¹A drop of about 25 percent.

1971 to slightly below replacement fertility level of 1,017 in 1975. With this achievement, the current strategy of the population control programme in Singapore is now to maintain fertility at this level, in order to attain zero growth to stabilize its population.

This remarkable achievement was secured not only by the recruitment of new acceptors to the national programme but also by the introduction of a comprehensive range of effective population policies during the years coinciding with the Second Five-Year Plan period. These policies *inter alia* included the complete liberalization of the restrictive laws concerning induced abortion and sterilization, and the institutionalization of a series of thorough social incentives and disincentives aimed at promoting the two-child family and sterilization.

Now that the quantity is under control, the Singapore Government is seeking to control and improve the quality of the population. Prime Minister Lee, who feels that nature is the more important influence on a person's performance, has called on graduates and professionals to reproduce more "quality" children so that Singapore's present standards can be maintained; as graduates and professionals were having fewer children than their not well-educated counterparts. Many graduates and professionals do not even marry. But, how sound is this policy in improving the quality of population?

Nature vs Nurture Debate

In support of his statements on genetics, Prime Minister Lee relied on certain academic research which indicated that nature is a more important influence on how well a person performs than nurture is.

According to a controversial University of Minnesota survey, eighty per cent of a person's efficiency depends on nature and only twenty per cent on nurture. This was supported by local experts including Professor E S Monteiro, who was Dean of the Medical Faculty of the University of Malaya from 1948 to 1965. He provides this analogy:

Just as a car is built with a fixed horse-power, so a child is born with a fixed IQ. You cannot increase it, but you can further develop it by environmental factors, in the same way that a car can be fine-tuned.¹²

He added that if bright talented people do not reproduce, their genes will be lost. And in Singapore, where the procreation ratio is not balanced (that is, highly educated women having 1.7 children compared with 3.5 for women with no formal education), the effects will definitely have a serious bearing on the intelligence of the population in future years.

A study on genetics in twins at the University of Minnesota including that of twin brothers Jim Springer and Jim Lewis, demonstrated the positive heritability of human traits.

¹²Quoted in *Asiaweek* (Vol. 10 No. 6) Feb. 10, 1984 at p. 20.

In 1869, Francis Galton, in his book *Hereditary Genius*, concluded that genetic inheritance explained the greater incidence of achievement within a prominent family. Lewis Terman and Henry Goddard, who were instrumental in introducing IQ tests (based on Alfred Binet's 1905 scale) into the United States in 1911, also expounded the genetic predetermination of intelligence. The popular IQ test, considered a measure of genetic ranking, became a basis for immigration quotas.

William Shockley, a Nobel prize-winner and professor emeritus at California's Stanford University, was of the opinion that if intelligence is to be measured by scholastic aptitude test scores and IQ tests, there is data which indicates very strongly that for white populations genetic differences are more than three times as important as environmental differences in controlling measures of mental capacity.

Arthur Jensen, an educational psychologist whose publications include *Genetics and Education* and *Bias in Mental Testing* put forth the idea of racial genetic differences as factors in measuring variations in intelligence in his 1969 publication in the Harvard Educational Review of "How Much Can We Boost IQ and Scholastic Achievement?"¹³

Both Shockley and Jensen cited four studies of identical twins, raised separately, which showed an average heredity — intelligence correlation of .73 for such twins. Further studies conducted by geneticists demonstrate that the closer the degree of relation, the higher is the correlation with measurable human intelligence.¹⁴

Jon Karlsson, a doctor whose work involved isolation of specific genes related to intelligence and who published *Inheritance of Creative Intelligence* stresses that, based on his research on the population of Iceland, if selection of genes is relaxed, the risk of genetic deterioration is great.

The above are the medical viewpoints of eugenicists or anti-dysgenicists. The dysgenicists, on the other hand, argue that environment is much more important than genes in shaping intelligence. For example, J. McVicker Hunt, in his 1961 volume *Intelligence and Experience*, considers environmental stimulation, especially early education, as conducive to the development of intelligence. He cited his own seven-year study of infants in a Teheran orphanage whereby he concluded that favourable environment was responsible for IQ points gains. Similar research by Harold Skeels in Iowa reached similar results. Orphanage children placed in better environments gained an average of 31.6 IQ points. John de Fines, a behavioural geneticist, pointed out that even if intelligence is 80% heredity, manipulation of the environment could still produce as much as a 20-point rise in IQ scores.

Environmentalist Hunt therefore counsels against taking the eugenic approach, except when dealing with avoidance of disastrous genetic disease.

¹³However, Jensen's ideas were quickly attacked by scholars as "inadequate evidence and illogical conclusions" and "racist".

¹⁴Dozygotic (fraternal) twins at .55, parent-child at .50 and first cousins at .26.

He believes that early interaction with the child, especially in the first three years, is the most important influence in human development, and considers that a parent-education programme would be more effective in raising population intelligence levels than the selection of genes.

Between these two opposing schools of thought are the interactionists. They pursue the middle course, whereby both genes and environment play a role; and they seek to determine just how the two interact.

For instance, Jean Piaget viewed intelligence as an interaction between man and his environment: external, internal and genetic, compounded by experience and the development of central control processes. Thomas Bouchard agrees that both heredity and environment influence all human traits to a great extent. Although he is of the opinion that intelligence is at least partially genetically endowed and that it can be controlled through selective breeding, one should note that experiences in breeding for only one characteristic have not been successful. For instance, crops selected for one trait have a similar genotypic makeup and would all fall to a blight, whereas diverse crop cultivation would include a few immune plants. From his observation, therefore, what we should control is the mix of things.

To sum up, there are still unresolved areas in the "*Nature vs Nurture*" debate. Theories on either side can be substantiated as well as contradicted. Indeed, no fixed medical opinion can be derived from experts all over the world. All are controversial, and neither side can guarantee their correctness; but neither can be simply dismissed as untrue. In view of this, it is submitted that both genes and environment play relatively important roles in determining intelligence. This is, of course, the interactionist's view.

Therefore, Singapore's policy should be applauded medically. However, in view of the unfairness, discrimination and inequality which such a policy may generate, one may question whether it might not be wiser to let nature take its course, and to focus attention and limited resources on the nurture of children. Instead of relying on nature, which we cannot control perfectly, we should manipulate our children's environment, to provide a favourable and conducive atmosphere for their education, so that they may indeed become the best and the brightest.

The Legality of The Policy

Population issues can be viewed from many perspectives-economic, psychological, and sociological, for instance. This article uses law as its framework.

The importance of a legal orientation rests on the fact that law is central to a consideration of public policy. Although law has received insufficient attention in connection with the study of population, its importance should never be underestimated. Law determines public policy through a variety of means - for example, statutes, regulations implementing statutes, and judicial determinations of the constitutionality of government actions. This Part emphasizes the constitutional dimension of public policy affecting population control.

The constitutional factor is vital because in the case of Malaysia, the Constitution is the basic legal document of the nation. It defines the subjects on which the federal government can act and also establishes the limits of authority for all levels of government. The Constitution thus has two functions. First, it provides the federal government with its powers; federal action can extend only to issues explicitly or implicitly within its purview under the Constitution.¹⁵

Secondly, the Constitution imposes constraints on the actions of both federal and state governments, in order to protect individuals and groups.¹⁶ However, as a constitution is an instrument "intended to endure for ages to come",¹⁷ the Malaysian Constitution is a document of general provisions that must be applied to governmental action in concrete situations. The application of generally stated prescriptions to specific situations requires that the Constitution be interpreted by the judiciary, a process that reveals much about the values of the political, economic and social system of the country. The Constitution does not expressly authorize judicial review of the constitutionality of governmental action, but the U.S. Supreme Court inferred such authority from it in 1803,¹⁸ and such review is also inferred in Malaysia.

In examining the legal dimensions of the population issue, then, the principal focus of this article is on the Constitution because the Constitution as interpreted by the judiciary defines the nature of permissible governmental conduct affecting social structures and individual behaviour and reflects the values of Malaysian society. Singapore's Constitution is basically similar to that of Malaysia, in relation to fundamental rights and liberties.

Many quarters in Singapore felt that a policy of priority was discriminatory and contrary to the Singapore Constitution. For instance, the Singapore Catholic Church in its tabloid, 'The Catholic News', condemned the policy, as it discriminated against the underprivileged; once entrenched in the education system, the discrimination would be perpetuated. Singapore's former Minister of Health and PAP chairman, MP Dr. Toh Chin Chye, was quoted to the effect that the priority policy contravened the Constitution. This was followed by a petition by the Nanyang Technological Institute Students Union, signed by about five hundred students of the institute. Are all these complaints and allegations justified from the legal point of view? In other words, we must ask whether the policy is indeed legal, and not unconstitutional.

Article 12 of the Constitution of Singapore guarantees equality. The relevant parts of this article state:

¹⁵ *McCulloch v Maryland*, 17 US (4 Wheat) 316, 405, 425 (1819)

¹⁶ *Ibid.* at 404, 423, *Hurtado v California*, 110 U.S. 516, 536 (1884).

¹⁷ *McCulloch v Maryland*, *op. cit.*, at p. 415.

¹⁸ *Marbury v Madison*, 5 US (1 Cranch) 137 (1803).

- Equality. 12 (1) All persons are equal before the law and entitled to the equal protection of the law.
- (2) Except as expressly authorised by this Constitution, *there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth* in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property of the establishing or carrying on of any trade, business, profession, vocation or employment.

This article is similar to article 8 of the Federal Constitution of Malaysia. Article 16 of the Singapore Constitution also guarantees equality and, in particular, prohibits discrimination *inter alia* on grounds of descent in the affairs of education. Clause (1) reads:

- Rights in 16 (1) Without prejudice to the generality of Article 12, *there shall be no discrimination against any citizens of Singapore on the grounds only of religion, race, descent or place of birth —*
- respect of
education.
- (a) in the administration of any educational institution maintained by a public authority, and, *in particular, the admission of pupils or students*¹⁹ or the payment of fees; or
- (b) in providing out of the funds of a public authority financial aid for the maintenance or education of the pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside Singapore).²⁰

A literal interpretation of article 16 in particular will show that the policy is indeed contrary to the Constitution. This is because, *prima facie*, treatment in the admission of pupils or students is different between children of graduate mothers and children of non-graduate mothers.

What about the right of privacy? Indeed, the population growth of Singapore has reduced the privacy of its citizens and has thereby circumvented, and in effect decreased, the protections afforded by the (probably constitutional) right of privacy.

Although the right of privacy is not expressly mentioned in the Singapore (nor the Malaysian) Constitution, it is implied by articles 9(1) and 5(1) of the Constitutions, respectively. In effect, both these articles guarantee that no person shall be deprived of his "personal liberty save in accordance with law". This guarantee shields the individual from unnecessary governmental interference in the decision whether to have a child.²¹ The United States Court went so far as to state that,

¹⁹The emphasis is the writer's.

²⁰Malaysia's equivalent of this Article is found in Article 12 of the Federal Constitution.

²¹*Carey v Population Services International*, 431 U.S. 678 (1977).

If the right privacy means anything it is the right of the individual, married or single, to be free of unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.²²

Thus in the cases of *Roe v Wade*²³ and *Planned Parenthood of Central Missouri v Danforth*,²⁴ the right of privacy has been used to invalidate legislation imposing a total ban on abortions or requiring a husband's consent to his wife's having an abortion.

However, the United States courts have been rather inconsistent with their stand. In *Maher v Roe*²⁵ and *Harris v McRae*,²⁶ the courts held that the government is not constitutionally required to pay the expenses of abortions for indigent women, even when it pays the expenses of childbirth. It appears that the right of privacy is not infringed when the government encourages childbearing.

Indeed, *Carey's case, supra*, suggests that government action that seriously infringes the right of privacy will be constitutional only if it advances a compelling interest, and is no broader than necessary to achieve that interest. The U.S. Courts²⁷ have ruled that if no serious infringement exists, then the government needs no more than a "reasonable basis" for its action — a standard that is more easily met.

Therefore, the Singapore Government, having shown that there is a "reasonable basis" (though not necessarily a perfect or proven basis) for its action, then its recent population policy is, it is submitted, legally justified.

Would the policies seriously intrude on the right of privacy? An analysis of the U.S. Supreme Court's attitude reveals that the test whether a serious infringement on the right privacy exists or not depends on whether or not the government has placed a direct and substantial burden on, and thus discouraged conduct protected by, the right. Thus, direct negative reinforcement of protected conduct *via* significant penalties may be termed a serious intrusion on the right of privacy. On the other hand, positive reinforcement through the use of rewards to motivate individuals to pursue a certain course of protected conduct is not, even though the reinforcement may incidentally discourage other conduct that is also protected.

It is submitted that the Singapore policies place no obstacles — absolute or otherwise — in the non-graduate Singapore women's path to produce offspring. The policies do not force upon them sterilization or abortions. A non-graduate woman who desires as many children as she wishes will simply have to bear the consequences of her behaviour. No further rights are taken away from her.

²²*Ibid.*, at p. 685.

²³410 U.S. 113 (1973).

²⁴428 U.S. 52 (1976).

²⁵432 U.S. 464 (1977).

²⁶100 S.C. 2671 (1980).

²⁷In *Zablocki v Redhail*, 434 U.S. 374, (1978); *Roe v Wade, supra* and *Maher v Roe, supra*.

The Singapore Government merely makes childbirth a more attractive alternative for the graduate mother, thereby attempting to influence her decision to have children; but it does not force her to have children. Therefore, it is submitted that *prima facie* the Singapore policy does not appear to constitute a serious intrusion on the right of privacy of Singaporean citizens.

However, the Universal Declaration of Human Rights declares that all human beings are born equal in dignity and rights.²⁸ The Singaporean policy when implemented means that children born of graduate mothers have more rights than children born of non-graduate mothers. Moreover, the right to equality is the entitlement of all human beings without distinction of, *inter alia*, political opinion, social origin, birth or other status.²⁹ Further, Article 12 of the Declaration states that no one shall be subjected to arbitrary interference with his privacy, family or home. Therefore, should any government order or encourage an educated person to produce more, and a less well-educated person to stop? Although the Singapore action is by no means arbitrary, considering that education is so important in this age and time, people may be coerced or "forced" to comply.

Article 16 of the Declaration defines the right of all men and women to found a family. Needless to say, it is indeed the decision of both husband and wife to decide how many children they should have. Should any Government interfere with this fundamental right to decide? Or should we assume that the Government is merely giving incentives and disincentives in its efforts to correct population lopsidedness or a social imbalance?

There is no doubt that if the Universal Declaration of Human Rights is read strictly, then the incentive may appear to violate basic human rights. However, it is submitted that the Government is not forcing anyone to comply, nor is it imposing a mandatory law on Singaporeans. It is ultimately left to the people to decide. An incentive is not mandatory — one can avail oneself of it, or just reject it.

Moreover, while medical opinions are uncertain and divided, perhaps we should not take the risk and allow a lopsided procreation pattern to continue. Necessary precautions, like those Singapore is taking, should be taken to check social imbalance. Nevertheless, besides this incentive, it is also necessary to structure the environment in favour of healthy nurture of our children.

It is submitted that the human rights stated in the Universal Declaration of Human Rights are not absolute. They are all subject to limitations. One such limitation is stated in Article 29(2) of the Declaration itself. It reads:

In 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.

²⁸Universal Declaration of Human Rights, Article 1.

²⁹*Ibid.*, Article 2.

It is submitted that the Singapore policy and government action is such a limitation, imposed legally, solely for the purpose of meeting the just requirements of public order and the general welfare in a democratic society (that is, to correct a social imbalance). Hence, this policy is not in violation of human rights.

Indeed, this sort of paternalistic law is necessary for the common good, especially in societies like Singapore where natural resources, especially land, are limited, and where population needs to be controlled. The evils of an over-populated Singapore may be worse than the Government playing the role of a father who knows best.

Nevertheless, the Singapore Government action may be challenged in the courts as being unconstitutional and is contrary to Article 16(1)(a) in particular. However, the success of such a suit seems unlikely. In Malaysia, there is no such problem because the Prime Minister in fact encourages more children to be born, irrespective of the descent or status of the mothers. Learning from the Singapore experience, it is submitted that there is a need to control the Malaysian population — that is, to lay stress on having a “quality” population, rather than just controlling quantity. However, the best means to achieve this is not by giving incentives to graduate mothers to produce more children, but to create and maintain a suitable environment which will favour the growth, development and education of children.

Family planning *inter alia* emphasizes freedom of choice in childbearing decisions. The principal emphasis is on the individual. Individuals should have an absolute discretion to decide on the number of children they will have. And where individuals are encouraged to have a certain number of children by a system of rewards and penalties, have they not lost their freedom to determine the size of their families?

On the other hand, has freedom to determine family size ever been absolute anyway? Is it and has it not been always subject to national interest and well-being as well as the general welfare of society? If so, Singapore's action may well be one of the progressive national measures to promote social progress and better standards of life.

Conclusion

From the above it appears that there are two conflicting interests on this issue. On the one hand, is that of the individual who wants to protect his human rights, his individuality and his constitutional rights to liberty and education; on the other hand, is that of society, for whom the Government seeks to regulate and control the population in order to ensure that a small city-state like Singapore can support its masses.

As the Singapore population size must be limited, Singapore individuals must be relied upon to curtail their childbearing in the best interests of society. Given easy access to safe, effective means of birth control, and education about the dangers of over-population, individuals should be able to make voluntary childbearing decisions that will yield an appropriate

population size. Accordingly, we need not be concerned with the welfare of society as long as we protect the welfare of the individual.

The Tehran Proclamation of Human Rights explicitly provides that family planning must be made not only freely but also responsibly. Involved in a responsible parenthood is the balancing of the individual with the collective right — that is, from the right of children to that of the society at large. Thus, instead of a conflict of individual and collective rights, we should have a balancing of and harmonization of these rights. In the end human rights for all can be strengthened.

Thus, it is submitted that because this population policy has not been proven conclusively as biologically and medically sound, a government should neither formulate nor maintain such a policy. A policy which favours some but is detrimental to others generates inequality and tension; and it is still questionable whether there is a "reasonable basis" for adopting such a policy. It seems best to leave the decision of childbearing to individuals themselves. Therefore, the Singaporean Government and other governments should concentrate their resources on the nurture of children and the education of their adult population on the importance of family planning, and individual responsibilities to society as a whole.

*Lee Mei Pheng

*Tutor,
Faculty of Law,
University of Malaya,
Kuala Lumpur.

