

Islam & family planning



ISLAM & FAMILY PLANNING

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held in Rabat (Morocco), December, 1971*

Vol. II



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PART THREE

ISLAM AND PLANNED PARENTHOOD

ISLAM AND FAMILY PLANNING

BY

DR. AHMAD SHARABASSY

The term 'family planning' is now being used in Egypt and in certain Arab and Islamic countries. In general, it is applied to questions connected with offspring, particularly as regards their large or small number. The use of the term, however, has not become widespread except in the last ten years or so. If we were to go a little further back into the past, we would find that other terms were in use at the time in this field, some of which are still being used now, such as: birth control, birth regulation, contraception, regulation of conception and prevention of childbearing.

Perhaps of all these, the most fitting and the most expressive of the concept and significance of the term is 'family planning'. The word 'planning' is agreeable to the ear and appealing to the mind, while the word 'family' evokes in the mind the primary social system to which man belongs and for whose sake he is both ready and glad to exert himself.

Let us recall here that attempts to look into the question of offspring as to largeness or smallness in number have accumulated with the passage of time various residual attitudes of mind which people associate with religion and with the doctrine of fate and predestination and with the idea of fatalistic dependence upon God. Those who deal with the problem must bear these residuals in mind in order to be the better able to control them and set them aright for the remedy.

It has been customary to use 'family planning' only when referring to matters connected with offspring. We must correct this usage, however, and restore to the term its wider, more comprehensive meaning. Such rectification would, on the one hand, direct our attention to certain social obligations, and help us, on the other, in

dealing with the problems of population explosion, as will be explained below.

The term 'planning' is comprehensive and wide-ranging in signification. Planning is required in everything. Planning may be concrete, sentimental, economic, social, intellectual, etc. The whole of the universe rests upon the plan and order God decreed for it. If it were not for this precise, far-reaching planning governing all parts of the universe, the 'harmony of the spheres' would be disrupted, and chaos would ensue. Hence God's words: "All things have we created after a fixed decree" (Sura 54/49).

Similarly, the word 'family' has a broad and deep meaning. The family is the first brick or unit in the social structure. The soundness and strength of the social structure depends upon the soundness and strength of the family. To build up or raise a family requires planning and providence. A family generally consists of a husband and a wife, children — male and female — and relatives and kinsmen. All these form a small society, which, by aggregation, forms the larger society.

If the word 'planning' be added to the word 'family', the two words together should encompass all that promotes the existence of well-regulated, well-integrated conditions needed by the family to help it lead a happy life in all its aspects and areas. This planning is manifested or should manifest itself in many sectors, such as the following:

1. Planning the family as regards size: largeness or smallness of number of offspring.
2. Planning the family in preparation for building for it a sound structure.
3. Planning the family as regards income and expenditure, that is, planning it economically.
4. Planning the family by defining the relationships between husband and wife, between children and parents, between the various womb-relations and kinsmen, etc.
5. Planning the family scientifically, intellectually, medically, socially, and so on.

There is little doubt that the greater the vision and scope of those concerned with family planning are and the more comprehensive the range of their interest, the better the benefits will be, the more salutary the effects and the more fruitful the achievement will be. In point of fact the question of whether the offspring are to be large or small in

number is closely related to the various conditions and experiences of the family, whatever the reasons.

* * *

As regards family planning,¹ in connection with the number of offspring, whether large or small, Islamic juristic opinion bases itself more on *istinbāt* (inference) and on *ijtihād* (individual discretion or interpretation) than on citation of texts, since population explosion was not one of the problems with which people were faced in the early days of Islam or in the period of legislation.

Ijtihād, or individual discretion or interpretation, should aim at securing what is of benefit and warding off what is of harm, without, however, overstepping the limits set by the principles or sources of Islamic law. One of the established rules is that harm is to be removed, and that where good lies, there lies the law of God. The Holy Qur'ān says: "God desireth not to lay a burden upon you, but he desireth to purify you, and He would fill up the measure of His favour upon you, that ye may be grateful" (Sura 5/6). It will be observed that when Islamic law deals with matters that alter or change with the changing conditions of man or with time and place, it does not lay down a fixed, uniform rule or a rigid, definitive formula but rather leaves this to the opinions of the more discerning scholars of the community, within the framework of Islamic jurisprudence and in the light of the revealed word: "But if they would report them to the Apostle, and to those who are in authority among them, those who desire information would learn it from them" (Sura 4/83).

(There is little doubt that the size of a progeny, large or small, is not of a fixed, rigid or uniform position, nor is there any doubt that the manner of dealing with this situation cannot assume a fixed, rigid uniform shape but must change and alter in accordance with conditions and circumstances. Similarly, the concept of birth planning swings from one extreme to the other, taking various positions along the arc of the pendulum only to conform with changing circumstances.

¹ I have already, for a long time now, written, lectured and spoken on the subject of family planning from the religious angle. I wrote a chapter on the subject in my book *Muhāḍarāt al-Thalāthā'* (Tuesday Lectures), (Cairo: Dār al-Kitāb al-'Arabī, 1952), pp. 37-53. In 1965, my book *Religion and Family Planning* was published (Cairo: Dār al-Sha'b) — a second edition of which was issued in 1966 with additions by the above mentioned publisher. In 1969 my book *Tanzīm al-Uṣra fī Daw' al-Qur'ān wa al-Sunna* (Family Planning in the Light of the Qur'ān and Sunna) was published by Dār al-Kitāb in Cairo.

At certain times planning may take the form of reduction or control of the number of offspring. At other times and in other places, it may be directed towards increasing progeny and giving childbearing free rein.

For example, we now say that the world is suffering from over-population and from a great explosion of births. Consequently, workers in the field of family planning advocate the regulation and control of childbirth. What their position would be in the future, if — God forbid — atomic wars or world-wide plagues were to break out, destroying large sections of the human race, remains to be seen. They would in all probability advocate the increase and expansion of procreation.

Hence, family planning is a relative question, which cannot be subjected to a rigid, uniform rule, to be followed at all times and in all places. It largely depends on the changing circumstances of man, place and time. That is why the question is closely bound up with the basic principle of interest, considered by the jurists as an important source of Islamic jurisprudence, and concerning which Imām Ibn al-Qayyim says in his work *I'lām al-Muwaqqi'in* (Eminent Recorders):

“The structure and basis of law is wisdom and people’s best interest in this world and the world to come. Law is all justice, mercy, interests and wisdom. Each question that deviates from justice to injustice, from mercy to its opposite, from advantage and from wisdom to wantonness is alien to the Law of Islam, even though it has been introduced therein by attempts at interpretation or quibbling” (Vol. III, p. 27).

Some people, it may be observed, tend to go to extremes in calling for family planning. We find them clamouring for the institution of abortion and sterilization. At the opposite end, we have also those who go to extremes in opposing planning, declaring that the contemplation or the adoption of this line is tantamount to an act of impiety, a denial of fate and divine decree and dissent from reliance on Providence. Yet those same people are fully aware of a golden principle of Islamic Law which declares that “to have recourse to expedients or measures is no negation of trust in God.”

Each of the above extremes is an error to be avoided, and the right thing to do is to steer a middle course, half-way between the two extremes, excess and lapse. The Holy Qur’ān says: “Thus have we made you a central people” (Sura 2/143). And also: “And let not

iqah

thy hand be tied to thy neck, nor yet open it with all openness, lest thou sit thee down in rebuke, in beggary" (Sura 17/29); "But exceed not, for He loveth not those who exceed" (Sura 7/31).

* * *

Let us first admit that the call for family planning should not take the form of a campaign against marriage or against the family, as a social structure, or against childbirth as such, or in favour of any attempts to get rid of children once they are conceived or born. This much is clear. Next, it must be admitted also that love of children and of begetting children is natural and instinctive, irrepressible by artificial obstacles placed in its path. No matter how great the efforts exerted by the civilized humanity towards the regulation of the family, the love of children shall remain the dominant force over hundreds of millions of people all over the globe for a long time to come.

As long as the human race exists, there must perforce be children. We should not, however, regard it as too burdensome a duty. Besides, the Holy Qur'an enjoins us to have children, but at the same time it warns us that the children must be good and righteous. It directs us to pray our God, to give us good, honourable offspring, of an exalted position and of lofty ideals. However, when we pray God to grant us this blessing we should strive to suit action to prayer, within our means and capacity.

Before us is the example of the Prophet Zakariya (Zacharias), who had reached old age, and whose wife was barren. He prayed, after a long wait, that God would bless him with children, hoping at the same time that his children would be righteous, free from defects and evil nature, adorned with the graces of knowledge and diligence. "There did Zacharias call upon his Lord: 'O my Lord!' said he, 'vouchsafe me from thyself good descendants, for thou art the hearer of prayer'" (Sura 3/38). Zakariya made this fervent appeal, expressing earnest solicitation to his Lord, because man, when advanced in years, as he was, without having been blessed with child, yearns passionately for offspring.

Here we have before us God's trustful servants, whom God directs to call on Him and ask Him to bestow upon them, strong offspring, well guided and well-guiding, that bring joy to the hearts of the parents, without sorrow, and ease with no trouble. Thus the Qur'an says: "And who say, 'O our Lord! give us in our wives and offspring

the joy of our eyes, and make us examples to these who fear thee'” (Sura 25/74).

'The joy of our eyes' means feelings of peace and trust, with joy and contentment. A person who is worried or restless cannot feel peaceful or secure. Security consists in stability and dependability, as opposed to insecurity and precariousness. A man's offspring are a source of happiness and joy only if they are sound and strong in mind and body, happy in themselves and give out happiness around them, enjoying the good things of this earth and serving as a source of joy to others.

An erroneous concept has taken firm root in the minds of a great many people, and this is associated by these people with their religious faith. Under the influence of this concept, they believe that a numerous progeny as such is a token of divine favour and religious achievement, an indication of excellence, involving blessedness and nearness to God. This, however, is substantiated neither by transmitted testimonies and traditions nor by reason, for mere numbers include a mixture of children who grow into righteous and unrighteous men, and into believers and unbelievers. In fact, the true believers or the righteous ones are few when compared with the unbelievers or unrighteous. Let us consider what the Holy Qur'an — the paragon of rhetorical excellence — has to say concerning numbers. We perceive that it by no means commends plurality simply because of numbers, nor does it condemn fewness simply because it is limited in number, but on the contrary, it frowns upon plurality which is not accompanied by righteousness but praises fewness when linked with righteousness and integrity.¹

The Qur'an says: "How oft, by God's will, hath a small host vanquished a numerous host! and God is with the steadfastly enduring" (Sura 2/249); and also "Say: the evil and the good shall not be valued alike, even though the abundance of evil please thee" (Sura 5/100).

The Prophet deprecated plurality, if weak and effete, incapable of providing support or comfort saying: "The nations will soon gather together to fall upon you as people would fall upon a trencher." Someone asked if that would be because of their small numbers at that time, and he replied: "No, you will be numerous at that time; but you will be scum and rubbish like that carried down by a torrent, and God will take fear of you from the breasts of your enemy and

¹ Ahmad Sharabassy, *Religion and Family Planning* (Cairo, 1966), pp. 40-45.

cast enervation into hearts." He was asked the meaning of 'enervation' and he replied: "Love of the world and dislike of death."

* * *

Since marriage is the key to procreation, Islam requires that a man be qualified and fit for marriage, in the sense of being capable of fulfilling its obligations and a match for its responsibilities. If he is incapable of satisfying these conditions, Islam demands of him continence and self-restraint, until he is in possession of the requisite means and ability, so that he may enter the married state on a sound basis. At the same time, he would be capable of discharging the responsibilities he owes to his offspring — and how great and numerous these responsibilities are in Islam! God says: "And let those who cannot find a match live in continence till God of His bounty shall enrich them" (Sura 24/33).

In other words, those who cannot marry, on account of their limited means, must strive to keep chaste, and to fortify themselves with self-denial until God of his bounty bestows upon them the means and capacity required for meeting the obligations of marriage. It is only then that they can marry.

The most eminent interpreter of the sacred word, Ibn Jarīr al-Ṭabarī, explains this verse in the following words:

"The Most Exalted One admonishes those who do not have the means to get married to shun adultery, until God enriches them of His bounty and relieves their want out of His plentiful supply."

Is this person, in abstaining from marriage and awaiting for God's bounty to provide him with the means and capacity for maintaining a household, to be considered a violator of the institution of marriage, concerning which the Prophet said: "Marriage is my way; he who deviates from my way is none of me"?

The purport of the above verse is confirmed by the following Prophetic *ḥadīth* (tradition): "O young men, those of you who can support a wife should marry, for marriage keeps you from looking at strange women and preserves you from immorality; but those who cannot should take to fasting, for it is a means of suppressing sexual desire."

In other words, the Prophet counsels postponement of marriage in case of inability to meet its obligations, until there is ability to do so; and also advises the youth to exercise self-abnegation lest they commit illicit acts, contrary to God's word.

'Umar, the second Caliph, is reported to have said: "Nothing prevents from marriage but for impotence or adultery." Thus he mentions two causes which restrain from marriage, the first of which is the man's lack of potency, for which he cannot in any sense be blamed.

This directive may apply equally to all types of impotence be they sexual, material or moral. For a person has to prepare himself, before deciding on marriage. As to wickedness, it is a sinful practice which is not countenanced by a sensible or pious man. It is a reprehensible act, censured by religion, in the case of both the married and the unmarried alike.

Hence we may raise the question: Can we not, using analogy here, and basing ourselves on the grounds that the law found it advisable to counsel the postponement of marriage until its obligations can be met, deduce that it is equally advisable to formulate a policy regarding the size of the family, making the size commensurate with the parents' means and capacity, so that husbands may not be troubled with the evil consequences of having too many children or that they and their wives may not be exposed to harms or dangers in consequence?

* * *

Choosing a definition of family planning that is in harmony with Islamic concepts, we may say that it is to organize the incidence of pregnancy in such a way as to leave reasonable long intervals between pregnancies by adopting lawful, harmless methods for this purpose.

With this definition in mind, if accepted, we can say that talk on this subject is not of recent origin but may be traced back to a more distant past. It was a familiar question, early in Islam, in one of its forms known as *'azl*¹, which was dealt with by more than one jurist, such as al-Ghazzālī and Ibn al-Qayyim. A great many jurists adduced a number of reasons for people to seek temporary contraception, including:

1. The affliction of either of the partners with a contagious disease, which may be transmitted to the children, with dire consequences of wretchedness and misery.

¹ The meaning of this term will soon be defined.

2. Natural disposition on the part of the wife to have pregnancies in quick succession, which she is too weak to sustain.

3. Concern for the health and life of the wife from too many frequent pregnancies, if she is suffering from a malady which might be aggravated by such pregnancies or might be caused by them.

4. The husband's impecuniosity, that is, if he is in too straitened circumstances to be able to meet the demands and needs of numerous children. Imām al-Ghazzālī, in commenting on this reason in his work *Ihyā' 'Ulūm al-Dīn* (The Revival of Religious Sciences), says: "... fear of hardships through numerous children, and precaution against excessive exertion on the part of the husband for earning his livelihood and against the use of evil ways for this purpose. This is not interdicted, for to seek to reduce hardships is enjoined by religion."¹

These jurists also discussed the contraceptive method that was known in the early days of Islam, namely, 'azl which is the prevention of the fusion of the husband's and the wife's reproductive matters in the course of the marital sexual act, by the husband withdrawing from his wife to prevent his seminal matter from finding its way into her uterus.

We may well point out that the primary object of this 'azl, or coitus interruptus, is to avert insemination, and thus stave off conception. Jurists in general agreed that the disposal of the reproductive matter before insemination cannot in any way be regarded as an offence against life of the foetus.

There are numerous traditions, accounts and reported statements that bear out most clearly and openly that 'azl was practised at the time of the Prophet,² and, further, that some of the companions practised it, as a means of contraception, without having been forbidden explicitly by the Prophet against it.

The following traditions, for instance, point to the unforbiddance of 'azl:

1. A genuine tradition relates that Jābir b. 'Abdullāh reported that a man came to the Prophet and asked him about sexual intercourse with a slave girl of his whom he did not want to get pregnant. The Prophet's answer was: "Practise coitus interruptus with her if you wish! What is pre-ordained for her will certainly befall her."

¹ Abū Hāmid al-Ghazzālī, *Ihyā' 'Ulūm al-Dīn*, vol. 2, p. 48.

² Sharabassy, *op. cit.*, pp. 57-70.

2. A tradition, authenticated by both Imāms, Bukhārī and Muslim,¹ related by Jābir b. ‘Abdullāh who said: “We used to practise coitus interruptus during the time of the Prophet while the Qur’ān was being revealed”. In other words, if ‘*azl* had been contrary to the laws of religion, verses would have been revealed, forbidding it. Since this did not happen, the clear indication is that it was permissible.

3. In his *Ṣaḥīḥ*, Muslim relates on the authority of Jābir b. ‘Abdullāh, that the latter was reported to have said: “We used to practise coitus interruptus during the time of the Prophet. The Prophet came to know about it, but did not forbid us. If this were something to be prohibited, the Qur’ān would have prohibited (doing it).”²

4. In the *Sunan*³ of Abū Dāwūd it is reported that the Prophet said: “Coitus interruptus is not to be practised with a free woman without her consent”, which means that ‘*azl* in the case of a free-born woman is permissible, if done with her consent.

5. Rufā‘a b. Rāfi‘ reported that a group of companions, including ‘Alī b. Abī Ṭālib, al-Zubair b. al-‘Awwām and Sa‘d b. Abī Waqqās were, in the company of ‘Umar, discussing ‘*azl*, when Imām ‘Alī said: “There is nothing against it.” One of those present said: “They claim that it is the minor *wa’d* (infanticide)”. ‘Alī replied saying: “It cannot be regarded as *wa’d* except after the seven stages of foetal development have been passed through: first, when it is like a dab of wet earth, then like a drop, then like a clot, then like a lump, then bones, then flesh, and finally a new creature of another make.” Whereupon ‘Umar turned to ‘Alī and said: “You are right, may you live long.”

Imām ‘Alī derived the concept of the seven stages from God’s words: “Now of fine clay have we created man: then we placed him, a moist germ, in a safe abode; then made we the moist germ a clot of blood: then made the clotted blood into a piece of flesh; then made the piece of flesh into bones: and we clothed the bones with flesh: then brought forth man of yet another make — Blessed therefore be God, the most excellent of Makers” (Sura 23/12-14).

¹ The compilers of the two most authoritative collections of *ḥadīth*, the collections being known as *Ṣaḥīḥs* (sound, authoritative).

² It has been said that the words “If this were something to be prohibited” had been added by the reporter of the *ḥadīth*, the author of *Bulūgh al-Marām* (Attainment of the Desired Objective) included it, however, in the *ḥadīth*.

³ One of four compilations of *ḥadīths*, ranking below the two *Ṣaḥīḥs*.

Theologians recognize that the opinion formulated by one of the companions has the same force as those enunciated by the Prophet, if the opinion relates to interdiction and to sanction both of which cannot be determined by discursive reasoning.

From the foregoing, and similar other traditions, it is clearly evidenced that 'azl was allowed when there were justifiable grounds for it. In his work *Nail al-Awtār* (Achievement of Desires), Imām al-Shawkānī asserted that there was no disagreement among the jurists about the lawfulness and permissibility of 'azl. The testimony attesting its permissibility has been traced back to ten of the companions, namely, 'Alī, Sa'd, Abū Ayyūb, Zaid b. Thābit, Jābir, Ibn 'Abbās, al-Ḥasan b. 'Alī, Khabbāb, Abū Sa'īd al-Khudrī, and Ibn Mas'ūd.

Imām Ibn al-Qayyim then cited texts adduced as evidence by those who deny the lawfulness of 'azl, and then proceeded to refute their opinions. He says: "There is nothing (in these texts) which contradicts the traditions which affirm the permissibility." He then adds: "There is no doubt that the traditions reported by Jābir are explicit and authentic as regards the permissibility of 'azl." Commenting on this, al-Shāfi'ī says: "We can trace reports back to a number of companions who thought the practice of 'azl was allowed, with no objection against it."

Imām al-Ghazzālī affirms that 'azl is permissible and that there is no reported testimony or textual evidence to interdict it, nor is there any text or authority to serve as the basis for analogical inference. Against that, there is a definite premiss from which may be deduced the permissibility of 'azl, namely, the lawfulness of abstention from marriage, which means that one may refrain from marriage, and, by the same token, one may refrain from having full sexual intercourse by practising 'azl, or coitus interruptus.

The great authority al-Ghazzālī extended the scope of his discussion of the permissibility of 'azl, to include, besides motives justifying it, the safeguarding of the woman's beauty to keep her in good shape, fit to be enjoyable. This motive does not, however, concern our study here. What concerns us is that al-Ghazzālī mentioned explicitly, as justifiable grounds for 'azl, the risk of having a large progeny and the fear that one might be forced to exhaust oneself or follow dishonest ways to earn a living; this also is not prohibited, for to lessen hardships serves to strengthen belief.

Al-Ghazzālī then follows this up with the dictum that “to place trust and confidence in God is a mark of perfection and excellence.” He adds, however, as if by way of emendation or second thought: “But providence and prudence, and the conservation and saving of means, although incompatible with divine providence, are not things which we declare to be prohibited.”¹

Al-Ghazzālī discussed the views against ‘*azl*, and rebuffed the arguments of those who hold them, and endorsed the opposite views which support the practice of ‘*azl*.

The object to be achieved from ‘*azl* was to prevent the semen from reaching the wife’s uterus and thus cause impregnation. In the past, to prevent conception, the ancients used the only method known to them, namely, coitus interruptus. But contraceptive methods, including this one, have evolved and developed with the times, and people have discovered different means, perhaps less exacting and nerve-racking than the older method.

Since the aim behind all these methods is to prevent the two reproductive substances from coming together, there should be no objection whatsoever, from drawing analogies from the ‘*azl* method used by our predecessors, in support of the argument for contraceptive methods generally.

An important religious textual authority in this connection is the one contained in an account by ‘Abdullāh b. ‘Umar about the Prophet. ‘Abdullāh reported that the Prophet said: “The most gruelling trial is to have plenty of children with no adequate means.”

Thus, according to the Prophet, man’s ordeal grows in magnitude as man’s progeny grows in number, for he would then be hard put to it to provide them with their wants and means.

The Prophet was in the habit occasionally of appealing to God, saying: “I seek refuge in God from the most gruelling trial,” which shows that strains and stresses of life, of whatever source they may be, are to be escaped by the Muslim. He should not lay himself open to the possibility of being subject to them, but should, when necessary, invoke the help of God for protection, and deliverance.

This is what we may conclude from what we understand from the teachings of the Qur’ān and the Prophetic traditions on the

¹ To form a clear and full picture of the place occupied by al-Ghazzālī in scholarship and theology, the reader is referred to my work: *Al-Ghazzālī wa al-Taṣawwuf al-Islāmī* (Al-Ghazzali and Muslim Mysticism) (Cairo, 1965).

subject under discussion — and God knows best His own intentions and His Prophet's. The companions and the followers of the companions and the followers of the followers gave thought to this subject, which testifies to the fact that the problem is one which must be faced, like any other serious problem. To deal with it successfully should not be difficult, if common sense is exercised and a sound approach is adopted.

Here is what the great exponent in the community of believers, of the Qur'anic hermeneutics, 'Abdullāh b. 'Abbās, says: "A large family is one of two cases of penury, while a small one is one of two cases of ease." The one case of penury referred to here is lack of pecuniary means, resulting in insufficiency and inefficiency; and the other is the large family which overburdens the provider to the degree of exhaustion. The two cases or features of ease on the other hand, are first comfortable circumstances, which help in supplying needs, and secondly small numbers of children, which helps raising them properly and meeting their needs.

The Caliph, Imām 'Alī b. Abī Ṭālib, expresses himself in the same vein as Ibn 'Abbās; he says: "A small family is one of two cases of ease." Ibn Abī al-Ḥadīd explains this in his work *Nahj al-Balāgha*. He says: "Fewness of children with poverty is the same as real affluence with too many of them."¹

'Amr b. al-ʿĀṣ, conqueror of Egypt, in one of his addresses to the people of Egypt, says: "O ye people! Beware of four faults which cause vexation after rest: want after affluence and lowliness of condition after honour and grandeur. Beware of having large families, of causing the depression of your status, of squandering your wealth and of indulgence in wanton gossip."

After these companions, we come to Abū Ḥanīfa al-Nu'mān (died 150 H.) who, in a long exhortation,² counsels his disciple *inter alia* in the following terms:

"Do not contract marriage until you are certain of your ability to meet all the woman's needs. First seek learning, then earn your living by legitimate means, then marry, for if you occupy yourself with making money when you should be seeking knowledge, you will not acquire it. Moreover, wealth will tempt you to

¹ *Sharḥ Nahj al-Balāgha* (Beirut, 1964), vol. 5, p. 340.

² The full text is in Ahmad Sharabassy, *Al-A'imma al-Arba'a* (The Four Imāms), 2nd ed. (Cairo, 1965), pp. 43-51.

get for yourself slave-girls and boys, and thus, become preoccupied in affairs and concerns of this world. Beware of occupying yourself with marital affairs before you acquire learning, for it would only serve to dissipate your time, while all too soon children would begin to crowd in upon you and you would have on your hands a large family, whose needs and wants you will be forced to satisfy, and consequently, you will neglect learning.

Seek learning in the prime of your youth and at that age in which your time, your heart and your mind are free of preoccupations, then apply yourself to seeking your future. For multiplicity of children and a large family are a perplexity to the mind. As soon as you have the means, turn your attention to marriage.”

Imām al-Shāfi‘ī (died 204 H.) who came next, gave an explanation of the following Qur’anic verse: “And if ye still fear that ye shall not act equitably, then one only; or the slaves whom ye have acquired: this will make justice on your part easier” (Sura 4/2). He says: “It [justice] is more likely, if you do not have large families.” This interpretation proves that a restricted family is more advisable. Ibn Jarīr al-Ṭabarī confirms this interpretation, by affirming that one wife would be a comparatively light burden for man from the point of view of offspring, for children by one wife would not be in this respect the same as children by a plurality of wives.

We have an example from the Prophetic tradition transmitted to us, which may be taken as some sort of an indirect means for family planning. Abū Dāwūd, on the authority of Asmā’, daughter of Zaid, reports a tradition of the Prophet’s in which sexual intercourse between husband and wife is forbidden if it leads to conception at a time when she is still suckling a baby.

This *ḥadīth* says: “Do not kill your children under false pretences, for the *ghail*¹ gets hold of the rider and throws him off his horse.” That is, a man should not have intercourse with his wife and make her pregnant again while she is still suckling a baby, for the suckled baby will grow weak as a result, and the weakness will endure even till manhood.

The Prophet urged that the lactation period should be free from pregnancy. Pregnancy during this period would be a cause for weakness to the existing suckling baby, as well as to the expected child. Hence, the Prophet views pregnancy in this case as an act of

¹ *Ghail*: The milk of a mother who gets pregnant again while still suckling a baby.

(ج) تذکرۃ الحفاظ - مرتبہ علامہ ذہبی (وفات ۳۸۰ھ)۔

۲۔ علم مصطلح الحدیث (اصول حدیث)

اس علم کی روشنی میں حدیث کی صحت و ضعف کے قواعد و ضوابط معلوم ہوتے ہیں۔

اس علم کی مشہور کتاب علوم الحدیث معروف بہ مقدمہ ابن الصلاح ہے۔
مؤلف ابو عمر و عثمان ابن الصلاح (وفات ۵۷۷ھ)۔

ماضی قریب میں اصول حدیث پر دو کتابیں شائع ہوئی ہیں :

(الف) توجیہ النظر مؤلف علامہ طاہر بن صالح الجزیری (وفات ۳۳۸ھ)۔

(ب) قواعد التحدیث، مرتبہ علامہ سید جمال الدین قاسمی (وفات ۳۳۲ھ)۔

اول الذکر وسعت معلومات اور آخر الذکر حسن ترتیب میں ممتاز ہیں۔

۳۔ علم غریب الحدیث

اس علم میں احادیث کے مشکل الفاظ کی لغوی تحقیق کی گئی ہے۔ اس علم میں علامہ زمخشری (وفات ۵۳۸ھ) کی الفائق اور ابن الاثیر (وفات ۷۶۸ھ) کی نہایہ مشہور ہیں۔

۴۔ علم تخریج الاحادیث

اس علم کے ذریعہ معلوم ہوتا ہے کہ مشہور کتب تفسیر، فقہ، تصوف و عقائد میں جو روایات درج ہیں ان کا اصل ماخذ اور سرچشمہ کیا ہے۔ مثلاً ہدایہ از برہان الیقین علی بن ابی بکر المرغینانی (وفات ۵۹۲ھ) اور اجیاء العلوم (امام غزالی)۔ وفات ۵۰۵ھ)۔

۱۔ اس علم کی رو سے حدیث کی اقسام و اصطلاحات پر مختصر بحث باب اصطلاحات حدیث ص ۳۸ پر ملاحظہ کریں۔

aggression or assault against the baby or an attempt at undermining its health or terminating its life.

The full period of lactation is two years, as indicated by the Qur'ān: "Mothers, when divorced, shall give suck to their children two full years, if the father desire that the suckling be completed" (Sura 2/233). These are two years in which the mother is not to be pregnant. Following this period, another pregnancy, if it occurs, will last for nine months and this means that an intervening space of about three years should elapse between one pregnancy and another, a period in which the mother will have sufficient rest to recuperate. She can then, if she wishes, even extend the space still further between the two pregnancies and thereby indirectly contribute to family planning.

* * *

Scholars of yesterday dealt with the question of contraception, for shorter or longer periods as the case may be, on the basis of specific grounds and exigencies. Similarly, the religious scholars of today are faced with the same old problem, and they are now tackling it in their own way. Even before the call for family planning in its modern sense made itself so widespread, they had been considering it and trying hard to find solutions for it. I deliberately mention this point, because there are people who, in their readiness to think ill of others, accuse scholars and researchers of being mere tools of states and governments, and of being influenced by the latter and induced to launch a campaign for birth control.

1. In 1936 Dr. al-Sa'īd Muṣṭafā al-Sa'īd published his doctoral dissertation with the title of *Extent of the Use of the Conjugal Rights*. The introduction to this book was written by Shaikh Muḥammad Ibrāhīm, rector of the Cairo School of Law and professor of Islamic Law there. In this introduction, the Shaikh cited textual proof of the permissibility of 'azl, stating that the practice of 'azl was in effect a sort of a legal relaxation. The jurist Shaikh followed this up by saying: "I can see no legal objection to the adoption of the sterilization method, or of temporary contraception, in the interest of those concerned, if in the first instance the need for such measures has been fully investigated and vindicated, and proved to be necessary."¹

2. In 1937 Shaikh 'Abdul-Majīd Salīm, then Grand Muftī of

¹ See the full exposition of his opinion with comments thereon in my book *Religion and Family Planning*, pp. 83-91.

Egypt, pronounced a legal opinion (*fatwā*) which contained the following: "Each of the two partners may, with the consent of the other, adopt such measures as would prevent the reaching of the semen to the womb, to prevent conception. According to later Ḥanafite jurists, each of the two partners may, even without the consent of the other, adopt such measures as would prevent the semen from entering the uterus, if the partner concerned has a legitimate excuse of the ones just cited, or any other similar ones.

"There now remains the question whether it is permissible to practise contraception by expelling the seminal fluid from the womb after it has settled there and before animation. The Ḥanafite jurists are in disagreement on this. On the whole, however, their opinions seem to indicate that they held it to be unpermissible, to expel semen in this manner, except for justifiable grounds, as for instance, the drying up of the mother's milk following a new pregnancy when there is still a suckling baby, and the father lacks the means for hiring a wet nurse, and thus save the baby's life. But the foetus, after animation, is not to be aborted. This is forbidden."¹

3. In 1953 the *Fatwā* Committee at Al-Azhar University issued the following *fatwā*: "The use of drugs to prevent pregnancy temporarily is not forbidden, according to the Shāfi'īs, and the Committee endorses the views, seeing that it helps ease matters for people and relieve them of hardships, particularly if concern is felt for the woman's life or health as a result of too frequent pregnancies, without a long enough intervening space between one pregnancy and another to allow the woman to rest and recover her health. God says: 'God wishes you ease, but wisheth not your discomfort' (Sura 2/185); and: 'He hath elected you, and hath not laid on you any hardship in religion' (Sura 22/78). As to the taking of a drug to do away with pregnancy permanently, the rule of religion on this is categorical interdiction."²

4. In 1959, the late Shaikh Maḥmūd Shaltūt wrote as follows: "As to birth control, in the case of women who by nature promptly get pregnant, and in quick succession, and to those afflicted with communicable diseases, and to those few individuals who are too weak in their nerves to bear too many responsibilities, and who do not receive assistance from their governments or from the well-to-do

¹ *Ibid.*, p. 186.

² *Ibid.*, p. 192.

people in their society, to sustain them in the discharge of these responsibilities — in all these cases, a certain degree of birth control, if carried out on an individual basis only, is a remedial measure recommended to ward off certain harm and to ensure sound, healthy offspring.

“Birth control in this sense does not violate the laws of nature, nor is it antithetical to national feelings, nor is it prohibited by the law of Islam. In point of fact, birth control in this sense is enjoined by the Law.”¹

These are but a few examples of the views and *fatwas* of the leading scholars and experts of the age. I have chosen only the *fatwas* that were issued before the present call for family planning became so widespread, to anticipate any suspicion that they were influenced by the present family planning campaign. There is a number of other textual testimonies which I set forth in full in my book *Religion and Family Planning*.² I have also put forward nine objections, in the name of religion, against family planning which I have answered in a detailed critical analysis in more than thirty pages.³

There is a number of observations and questions which should, I feel, be discussed and looked into, for a sound attitude to be taken up in this respect. Some of these are:

I. Family planning should be governed by two principles: 1) that it is a preventive measure, to precede pregnancy and forestall it, on legitimate and valid grounds and 2) that once pregnancy occurs it should not be disposed of, particularly after animation.

In juristic opinion, the embryo is considered as non-existent until animation takes place. Therefore, the task of planning should anticipate conception rather than come after it.

II. The more the workers in the field of family planning stayed away from recommending abortion and sterilization, the closer they would be to the spirit of Islam, and in a better position to win the approval of the Muslim community in this respect.

III. Neither reason nor law allows that we limit our efforts in dealing with the problem of population explosion to attempts at reducing the number of children by various means, already known or to be known later. Rather should we use all efforts to double

¹ *Ibid.*, p. 180.

² *Ibid.*, pp. 152-202; also pp. 68-70 and 75-80.

³ *Ibid.*, pp. 113-135.

production, persevere in tapping of earth's treasures, develop agriculture and industry and co-operate intelligently with other nations for the distribution of surplus products and powers and energies, and for the utilization of all that could be utilized to further man's happiness and well-being.

IV. Besides the visible signs of our care for family planning through the reduction of the number of children, there should be another type of planning for the family, namely, the treatment of those afflicted with sterility — both men and women — so that the public may feel it is the happiness of the family which is a general objective which does not simply consist in just reducing the numbers of certain extra large families alone.

V. We must clearly understand and continually keep in mind that the exercise of family planning is first and last the special concern of the individual himself, to be subject to his will and accordant with his conviction. We shall certainly be the losers if we have recourse here to compulsion, force or punishment.

VI. Family planning from the religious standpoint must be discussed by learned men, specialists in their field and possessed of insight into problems of their society. The subject is not to be left to all and sundry, because, it has been noted that some of those who deal with family planning "stray away dangerously from the path of truth" when they dabble in matters they are ignorant of and speak about them from the religious point of view, without being qualified to do so.

VII. In dealing with family planning, there should be steady co-ordination of work among theologians or religious scholars and others working in the field from its other aspects, for often there are contradictions between the opinions of the former and those of the latter. Instead of an integration of the two outlooks, the tendency has been on frequent occasions for one group to try and destroy what the other group has produced as a school of thought on the subject, which is untoward.

VIII. There are widespread misconceptions and doubts among the Muslim masses and among some of the intellectuals of the Muslim society concerning 'family planning'. We must confront, and look into, such misconceptions, and doubts, and account convincingly for them, to disabuse the minds of people of such erroneous ideas.

There is, for instance, a suspicion that certain western countries — notably, the U.S.A. — are behind the propagation of the idea of birth control among the eastern countries in general and the Muslim countries in particular, their object being to reduce the manpower potential of these countries and thus reduce them to a state of subjection and neo-colonial exploitation.

There are others who say that the call for family planning is a Zionist plot designed to sap the strength of the Arabs and Muslims.

Still others claim that the non-Muslim minorities in the predominantly Muslim states are anxious to see the practice of birth control gain widespread acceptance among the Muslims and consequently weaken them in the process, while these minorities use all their ingenuity to double their numbers and encourage childbearing by their own people to reinforce their position and enhance their status. Also there are others who allege that the dominating and privileged rich classes among the Muslims aim at inducing the Muslim masses to reduce their descendants, in order to render them less likely to rise in rebellion against them, and thus keep the poor from claiming effectively their denied rights.

There is also the misconception that the call for birth control is only transitional. The regulation of birth control, for which scholars strive hard today to discover legal justification in Islamic Law, may assume a new character in the future, totally unacceptable to the Law, namely, birth planning to be standardized and obligatory, and applied in a manner wholly inconsistent with religion.

These are only some of the specimens of various misconceptions, allegations and rumours spread about by various interested people and they no doubt have strong appeal to many people among Muslim masses. It is the duty of those working in the field of family planning to look into each of these misconceptions or accusations critically and analytically, in order to obviate all sorts of obstacles thrown in the way, right and left and thus defeat them at every turn.

IX. Those in charge of Muslim universities and religious institutions should be approached and asked to include family planning in the subjects of the curriculum in these universities and institutions, on the understanding that this study is to be on the basis of the wider and extensive concept of family planning discussed above.

X. Is it possible to discuss on the Muslim world level the idea of inter-state exchange of population, i.e., to allow groups from the

over-populated countries to emigrate to the more spacious and relatively sparsely inhabited areas in need of extra manpower?

To be sure, there are difficulties in the way of the realization of the above aim. But sincerity in approaching the problem, however, may help to iron out a great many of these difficulties.

Since there must be a conclusion to every study or report, we may sum up the conclusions arrived at here as follows:

1. The family is the basis of Islamic society; it rests upon the marriage contract; a contract of the deepest significance. Islam strongly supports marriage and the family.

2. The offspring are a precious and a most valued blessing; their love is innate in man. At the same time they entail obligations and duties to help them grow into good, upright individuals; otherwise they would prove to be a curse to their parents and society than a blessing.

3. It is the duty of the parents to see to it that they (the parents) are qualified physically and economically, and in a better position to carry out family responsibilities.

4. Islam is not opposed to the parents planning their family by means of sound and proper methods, warranted by valid grounds and good reasons, in case of need.

5. Family planning is a conditional matter, dependent upon changing conditions and circumstances, as determined by the individual's own conditions and circumstances, and he may need family planning at certain times and dispense with it at some other times.

6. One of the methods of family planning known to Islamic society was *'azl*, coitus interruptus, resorted to as a precautionary measure against the possibility of pregnancy. By analogy, any other similar method for the same purpose is acceptable. The Muslim society also knew the method of preventing the wife from conceiving if she was suckling a baby at the same time.

7. There should be mutual understanding between husband and wife as regards family planning, which is a right common to both.

8. Any study or discussion of family planning from the religious standpoint should be undertaken by religious scholars well-versed in this subject.

9. There should be continuous co-ordination of efforts, between religious scholars on the one hand, and other workers in the field of family planning on the other.

10. Family planning is not the only means of dealing with overpopulation; there are other methods besides, such as the boosting of economic production and the promotion of development.

11. There is a number of misconceptions and misunderstandings that beset the subject of family planning from the religious angle. These must be studied and thoroughly investigated.

12. The general concept of family planning must be widened, lest the efforts of the workers in the field be confined to the question of offspring alone.

* * *

In conclusion, family planning, as we understand it, is not opposed to marriage or to the begetting of children, nor does its concept imply disbelief in the doctrine of fate and divine dispensation, for God Almighty has bestowed reason upon man to enable him to distinguish between the useful and the harmful, and to help him ~~follow the path that would assure him happiness in this world as well as in the world to come. God did not intend that we should be made unhappy by following His religion, but that we should find happiness by it.~~

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A BRIEF STUDY ON ISLAM'S VIEW ON PLANNED PARENTHOOD

BY

KJAI HADJI NASARUDDIN LATIF

Praise be to God Who has brought us together, worthy gentlemen and honourable brothers, in this country and in this month, joined by mutual love and united in the championship of truth and religion. Blessings and peace be upon His chosen Prophet, the best of all people, who preached God's word and answered the call of his Lord — our master Muḥammad b. 'Abdullāh — and blessings and peace be upon his companions and followers. Now, in answer to the invitation of the International Planned Parenthood Federation I have the honour to stand before you to deliver this brief study on Islam's view of planned parenthood.

THE TERM "PLANNED PARENTHOOD"

When we use a newly coined term or expression, we must first clarify and define it, so that it might have one and the same meaning to all those using it and so that the best understanding possible of the subject under study might be achieved.

What is meant by the terms "family planning" or "planned parenthood"?

Planned parenthood is a deliberate attempt or exercise of free will on the part of man to plan births in the family, without going counter to the principles of religion, and laws of state, or the time-honoured moral values, the end being the welfare of the family in particular and that of the nation and state in general. • ,

~~There is no denying that the family in actual fact in our social system is a small integrated unit, which forms the base or the under-structure of our national life. Hence, it is our duty to try to make of the family — the mainstay of national life and of state power — a~~

strong, sound organism. It is not hard to visualize or perceive that the citizens of a nation, if born and reared in a wholesome home or family, both materially and spiritually, develop physically and psychologically differently from those who are born and reared in a unsound home or in a disturbed family. Consequently, we would not be exaggerating to say that efforts that have for their end the welfare of the nation and of the people have for their original motive the welfare of the family.

In such countries that respect democracy, where the freedom of the individual and of the family, the same as the rights of man, are guaranteed by law, the government — the authority in power — cannot issue a law dictating the number of children a husband and wife are to have, because the affair in this respect is always theirs alone. Planned parenthood is undertaken in democratic countries on the basis of conviction, willingness, mutual understanding and inclination on the part of the individual in those states. There is no compulsion.

Along with this freedom, however, each family must ponder the question: which is better (as regards the family's worldly as well as its spiritual duties and responsibilities) to have fewer children given good care and attention, or to have more children without good care and attention?

The problem of planned parenthood can in reality be viewed from a number of angles, as for instance, from the socio-economic angle, the moral, political as well as the ideological angles. From the point of view of the devout, what is of greater importance by far is the standpoint of Islamic teachings and law; a crucial one, in their view on the subject of family planning. Of special concern to them is the attitude of religion vis-à-vis planned parenthood as to whether it is allowed or prohibited, permitted or interdicted.

Let us consider the question of planned parenthood calmly and without fear. Let us in particular reflect on God's saying in the Qur'ān: "God wisheth you ease, but wisheth not your discomfort" (Sura 2/185); and "He hath elected you, and hath not laid on you any hardship in religion" (Sura 22/78). With these two verses in view, we shall see that the favoured type of planned parenthood is the one defined above — the one which the true spirit of Islamic law cannot prohibit or forbid.

Inasmuch as this kind of planned parenthood is concerned and in the light of our studies and knowledge so far, we can affirm that there

is no verse in the Qur'ān or any explicit text forbidding wife and husband to plan their family. To be sure, there are two verses from two chapters in the Qur'ān in the following terms: "And that ye slay not your children, because of poverty" (Sura 6/151); "Kill not your children for fear of want; for them and for you will We provide. Verily, the killing them is a great wickedness" (Sura 17/31).

But, what is intended by the word "slay" in this context is the slaying of a person or a thing that has a soul. The two Qur'anic verses already cited are clear in their import, namely, the prohibition of the slaying of children. These verses cannot be taken as an argument or a premise for the assumption that the Qur'ān forbids planned parenthood, for the simple reason that planned parenthood is not designed to destroy the foetus, already animated. Planned parenthood is to prevent pregnancy before it occurs.

If we search, gentlemen, the Prophetic traditions which rank as the second source of legislation next to the Qur'ān, we still fail to find in any genuine and reliable Prophetic tradition any statement that the Prophet ever prohibited his companions from practising 'azl¹, although it is clear that the object of 'azl is the prevention of conception or at least to insure longer intervals between pregnancies or childbirths.

If 'azl were prohibited or interdicted in Islam, the Prophet would have proscribed against it. A venerable companion, Jābir, God rest his soul, (cited by Muslim), related the following: "We used to practise coitus interruptus during the time of the Prophet. The Prophet came to know about it but did not forbid us." The Prophet's companion, Jābir, related also that a man came to the Prophet and said: "I have a maid, who serves us and waters our palm trees. I consort with her and do not like to have her conceive." The Prophet said: "Practise coitus interruptus with her if you wish; what is preordained for her will certainly befall her."

What emerges here convincingly is that the Prophet did not prohibit a Muslim from practising 'azl to prevent a pregnancy which that Muslim did not want. On the contrary, it may be understood from a second *hadith*, also related by Jābir, that the Prophet allowed 'azl in explicit terms. But the Prophet added "what is preordained for her will certainly befall her", which means that man's destiny is

¹ 'Azl the act, in a copulatory activity, of ejaculating the semen outside the womb to prevent conception — *coitus interruptus*.

predetermined and that we, as believers and Muslims, believe that the will of God, the Supreme and Omnipotent, has ascendancy over man's will and his choice of action.

All the same, gentlemen, we, as men and as God's creatures, have been granted the freedom to strive and to exercise our will within the limits of our ability and our power of acquisition, a freedom still albeit circumscribed always by the will of God. This situation is exactly the same as that of ill health or disease. True, God has preordained the final result; He has, nevertheless, asked, nay, has urged us to treat illness or disease. Willingness to undergo treatment is a form of free will, but does not in any way go against God's will. Therefore, the teachings of Islam allow us, nay, urge us to seek and strive to treat and cure ourselves; just as they urge us to protect our goods and property rather than leave them rot or spoil in the sun or rain. Is it then reasonable to infer from the above that God and His Prophet prohibit us, as parents in the family and heads of the household, to seek to plan pregnancy, or more exactly, to delay pregnancy for a certain time to safeguard the welfare of our family?

The well-being of the family touches upon certain aspects of life that cannot but be recognized. Among these aspects is the physical health of the wife or mother after parturition, because of her need for rest from pregnancy and childbirth for a reasonable period of time between one pregnancy and the next; the mental and spiritual health of the husband and the extent of his ability to care for the children and raise them in the most satisfactory manner; as well as other considerations which can be regarded as reasonable grounds or arguments for the undertaking of family planning.

No one denies that marriage in Muslim canon Law is viewed as a desirable (commendable) act. One of the aims of marriage is the procreation of children. A child represents an extension of the life of the parents and the fulfilment of their heart's desire in reproducing themselves in their children. The offspring or children, begotten of man's marriage today, are they who will continue the life of the nation and they will shoulder its responsibilities in the future. It is therefore, hoped that the sons and daughters of Islam, who have been raised and nurtured in today's families will be bearers of the message of monotheism in years to come, transmitting it to the nation from generation to generation.

There is no one among Muslim men and women who would deny that children born of marriage are a blessing and a mercy from

God, although one will surely be called on the Day of Judgement to account for one's disposal of this blessing in one's life.

If we take a closer look at this responsibility, both as parents and as members of Islamic society in the wider sense, we shall not find it difficult to realize how important it is that we do our best to raise our children as good Muslims, sound of mind and strong of body. In general, time and effort have to be expended to educate children properly and bring them up as good citizens. Therein lies an important responsibility which must be the special concern of every Muslim; father and mother alike. The failure of the parents to attend to the needs of their children or to instil into them moral values can be theoretically considered as sufficient grounds for attempts to arrange for longer intervals between pregnancies in marriage.

We may in this connection invoke a *fatwā* pronounced by the *Iftā'*¹ Committee of Al-Azhar in Egypt. The following question was submitted to the committee:

Question : "A married man, blessed with one child, fears that, if he gets more children, he will suffer hardships through his inability to educate them and take care of them or through health deterioration due to nervous tension or strain resulting from too heavy responsibilities and cares. He was also anxious about his wife's health, which might not sustain too many pregnancies and childbriths, without a sufficient period of rest between them to allow her to recover her strength and restore to her body what it had lost through pregnancy.

"Are they, he and his wife, to be allowed to adopt certain methods approved by physicians to avoid too many childbirths, and extend thereby the time intervals between one pregnancy and the next, the object being to insure that the mother should rest and recuperate, and the father should not be exhausted physically, impoverished or depressed socially?"

Answer : "Praise be to God, Lord of the Universe and blessings and peace be upon the greatest of messengers, our master Muḥammad, and upon his kinsmen, his companions and their successors forever.

"The Committee, having examined the question, declares that the taking of a drug to prevent conception is not interdicted according to the Shāfi'is, which legal opinion the Committee adopts on the

¹ *Iftā'* : deliverance of formal legal opinion. *Fatwā* : formal legal opinion. *Mufti* : Official expounder of Islamic law (*Wehr*).

principle that the end of religion is to make matters easy for mankind rather than make them difficult, especially if there is cause for worry from too many pregnancies or for concern that the weakness of the woman is the result of successive pregnancies without long intervals between them for her to rest and recover her health. God said: 'God wisheth you ease, but wisheth not your discomfort' (Sura 2/185); 'He hath elected you, and hath not laid on you any hardship in religion' (Sura 22/78).

"As to using a drug to put a permanent stop to conception, this is interdicted. This is our answer to the question, and God knows best."

This was the text of the pronouncement of the *Iftā'* Committee at Al-Azhar on allowing or disallowing the husband or the wife to seek ways of insuring longer intervals between pregnancies in accordance with Islamic canon law. We have reproduced the question and the answer from the work *Religion and Family Planning* by Professor Ahmad Sharabassy (Cairo, 1385 H.), pp. 191-192.

Several years before the issue of the above *fatwā* by Al-Azhar, the late Shaikh 'Abdul-Majīd Salīm, then *Muftī* of Egypt, had given an answer to a question similar to the one submitted to Al-Azhar *Iftā'* Committee. The following is the text of the *fatwā* (formal legal opinion) issued by Shaikh 'Abdul-Majīd Salīm, on 12 Dhul-Qi'da, 1355 H., No. 81, Folder 42:

Answer : "Having taken note of the question, we advise, in accordance with what may be gathered from the texts of the Ḥanafite School, that certain contraceptive measures may be taken in the forms shown in the example, as for instance, the discharge of semen outside the womb, or the woman placing a barrier to block the entry into her uterus of the man's semen.

"The older Ḥanafite jurists forbid the man to ejaculate outside the uterine aperture except with his wife's consent, just as the wife is not permitted to block the way to her uterus except with the husband's permission. Later jurists, however, allowed the husband to ejaculate externally without her permission if he feared that the child might fall upon hard times in life. The author of *al-Muqni'* said: 'Let similar excuses be taken as justifying the setting aside of the wife's right of consent'."

The words, "Let similar excuses be taken as justifying..." may be taken *prima facie* to cover the case of a father on a distant journey and fears for the child. On the basis of previous pronouncements later

jurists said: "The woman has the right to block the entrance to her uterus without the man's (the husband) permission, if she has legitimate grounds for doing so."

In short, it may be said that both husband and wife, each with the consent of the other, can adopt any measures to prevent the seminal fluid from reaching the uterus and thus prevent procreation.

After looking into the above-mentioned pronouncements (*fatwās*) of the *Iftā'* Committee (and it stands to reason that the *Muftī* and the learned authorities who are members of the *Iftā'* Committee in Egypt are naturally leading scholars), we perceive how broad and flexible are the principles of Islamic jurisprudence in matters pertaining to the welfare of human life. It is well-known that Islam lays great emphasis upon marriage, reproduction and multiplication through marriage. Nevertheless, if there are urgent needs and interests which prompt Muslim individuals to delay pregnancy by prolonging the time intervals between childbirths in the family, the tolerant canon law of Islam does not prohibit nor forbid husband and wife from seeking to achieve that end.

In the light of the concepts and studies arrived at up to the present, I, for one, do not feel that Islam interdicts family planning — a form of free will sanctioned by God — to ward off hardship in Muslim married life, just as Islamic principles and laws do not, by any means, agree to each and every method or measure or ways to be taken by the man to secure longer intervals between pregnancies or childbirths. The method or means or way which contradicts any of the principles of Islamic Law is certainly inadmissible, unlawful and improper for use on the part of Muslims in their attempts to plan parenthood.

We believe that learned authorities and scholars do not originally urge the use of any method, means or way that runs counter to the laws of Islam as regards planned parenthood, for this aspect cannot be dissociated from the great responsibility we have towards God on the Judgement Day. There are many who cannot realize the immensity of this responsibility; nevertheless, the learned authorities, scholars and religious teachers naturally understand how serious are the consequences they would have to bear if they were to pronounce a false legal opinion, and thereby lead people astray and make them disobey God's commands. I must add, in this connection, that it behooves us to understand this subject fully and clearly. We must be

able to distinguish between the principle of planned parenthood (as it was defined at the beginning of this article) and the method; the means and the way in which this is carried out. To withhold consent to a specific method does not necessarily mean to withhold consent to planned parenthood.

We are also aware that on the subject of "planned parenthood" there has been anything but agreement, let alone unanimity, among the authorities of the Muslim World, whether in Indonesia or outside it. Also there was no agreed opinion concerning the legality or non-legality of exercising the human will in preventing conception through 'azl (we have already mentioned the predominant accepted opinion, namely, the permissibility of 'azl). Planned parenthood is a well-thought-out, well organized new movement. Unquestionably some people view it with apprehension, with suspicion and with mixed feelings. It is not easy to remove this fear all at once, although the present Indonesian Government calls upon its people to plan parenthood in the interest of society, the state and that of the nation as a whole.

CONCLUSION

1. Islam urges its community to marry and reproduce in marriage.
2. Children are a blessing from God as well as an act of divine mercy to the parents in their marriage and life. From this blessing, however, there follows the responsibility of care and education, both spiritual and physical.
3. Islam does not limit the number of children a family ought to have. The underlying reason for not fixing the maximum number of children is that this is closely linked with the exercise of the human will in the family. Islam and Islamic Law, whose objects are man's interest and well-being in this world here as well as in the Hereafter, seek to give the parents freedom of choice as to the number of children they can tend and raise, depending on their ability and capacity.
4. As Muslims and believers, we must never entertain any doubt as regards God's ability and will, which are immeasurably above man's ability and will, nor must we doubt that the Omnipotent God stands high above all man's puny efforts and that man cannot escape from the destiny decreed for him.
5. If in man's life on this uncertain earth, there can be anything

which might be termed *kasb*¹ or the exercise of human free will, then man should strive with all the means at his disposal, including his reason to seek to improve and plan his living conditions in order to create the best possible form of family life.

6. In certain cases, as when the Muslim man or wife has strong enough grounds or when there are pressing socio-economic needs for family planning, the latter may be undertaken, but with due deference to the Muslim religious beliefs and with proper faith and trust in God's providence and reassurance "How many animals are there which provide not their own food! God feedeth them and you" (Sura 29/6), and provided the measure or the way followed in family planning does not run counter to the principles or teaching of Islam. And God knows best what is right.

In conclusion, may God direct our steps along the path He favours and desires us to have.

¹ *Kasb*: acquisition, gain; this term, which means earning the freedom of one's actions, is used to express free will.

A VIEW OF FAMILY PLANNING IN THE LIGHT OF MUSLIM LEGISLATION

BY

DR. MUHAMMAD EL-MEKKI EL-NACIRI

To begin with, I would like to extend my greetings to you and wish you the best of luck. It makes me happy to participate with you in studying the subject of family planning which is the subject of this Conference. Indeed it is a serious topic, and well deserves your consideration. I do share with you your conviction that it is an extremely important subject which has to be profoundly studied from all angles. I have prepared an analytical and objective study of it in the light of those principles and rules of Muslim legislation known to us and in the light of what we understand to be its aims and implications. By the time this paper was finished I had become convinced of the following results:

One: That family planning is in great harmony with family planning in Islam if what is involved is rendering parents — men and women — aware of their marital and parental responsibilities and more appreciative of those responsibilities both morally and materially, so that they desist from regarding marital life merely as something of pleasure and amusement, and so that they become more concerned about their children's future and keener about begetting and bringing up healthy children, able to face the problems of life.

Two: No one should undertake to start a family unless one is bodily sound and can afford to provide his wife and children with the necessary means. Those ailing, disabled or unemployed people who either do not enjoy good health or cannot maintain families and still choose to take the risk of getting married, act in opposition to the spirit of Muslim Law. Such marriages are not only illegal but also reprehensible. Every administrative proceeding followed to obstruct such marriages and intended to provide beforehand the necessary

material and health safeguards and precautions, conducive to the stability and endurance of married life, is in harmony with the word and idea of Muslim Law.

Three: To have recourse to preventive measures to stop fertilization in the woman's womb and consequently the begetting of children is legally permissible if it is in the interest of one or both of the couple or in the interest of the whole family. Seeking such measures is even more strongly recommended when it is in the interest of the communal welfare of Muslim society. Situation, in the early Muslim history, in which such measures were essential and which can be considered precedents appear in the light of analysis to be less exacting than the situation facing Muslim society at present.

Four: Once the embryo is formed in the uterus we are not free to dispose of it. Abortion is not permissible and is considered a crime in the same degree as homicide, unless the retention of the foetus in the womb poses a serious threat to the life of the mother. In this latter case it is permissible to sacrifice the foetus to save the life of the mother, on the analogy of sparing the tree, which is the origin, and sacrificing the branch instead. But to resort to the sterilization of either husband or wife is not allowed by Islam because it conflicts with the principle of "the protection of the progeny," which requires the preservation of the distinctive qualities of manliness and femininity, necessary for fertilization, and which is one of the general but fundamental rules of Muslim legislation, capable of application any time and anywhere (*lex aeterna*).

Now, I propose, with your leave, to proceed to a detailed discussion of the subject, showing the successive steps which have led me to the above mentioned results, and at the same time, giving a survey, with quotations, of the rules, principles and textual testimonies, in support of my conclusions.

There is no doubt that "protecting the progeny" and keeping the world populated by the human species through multiplication is considered one of the basic aims of Muslim legislation.

But, the Muslim Law, both idealistic and realistic as it is, tends to formulate rules and directives which are in harmony with human realism on the one hand, and on the other, with the idealistic aim which an utopian society must attain. Hence it always aims at retaining or developing those qualities which are the fruits of wisdom, logic, foresight, prudence and sound judgement.

These facts enable us to appreciate the reasons which induced Muslim jurisprudence since it came into existence to take concrete steps, directly and on a large scale for the organization of the family and for freeing it from confusion and arbitrariness. Muslim jurisprudence, considers the family to be the basic cell of society and the main pillar of the nation and state. The Qur'ān, itself, which is the most supreme source of Muslim jurisprudence, gives greater attention to the organization of the family than to any other matter, and defines its rights and responsibilities. Muslim jurisprudence deals also with all aspects of family life, clarifies each of those aspects, great and small, removes all ambiguity and confusion which it may involve, and suggests measures for the protection of the family against disruption or disorganization. Thus it can be said that Islam pays greater attention to the organization of the family, and to family planning, with sound aims and methods, than many other religious systems.

Family planning, as it is known today, aims at making husbands and parents aware of their moral and material responsibilities and more conscious of the parental and marital responsibilities so that they may be mindful of their children's future and eager to beget good children and healthy descendants who will be their best successors and the best support and bulwark for their nation. Family planning is a vital topic which merits full attention from the jurists of Islam, particularly those who are better acquainted with the aims and implications of Muslim Law and with its loft philosophy and noble spirit.

We are certain that modern Muslim jurists have neither recoiled in amazement from the inquiry into this extremely useful topic, nor hesitated to face its pitfalls. They have realized all along that in discussing it the aim is primarily to find out whether Islamic sources and traditions and Islamic legal systems known to our predecessors and to us have in common with the programmes of family planning some points of mutual links. We aim also at finding to what extent those programmes harmonize with Muslim Law in facilitating the planning of the family in a logical way and in accordance with its social, physical, material and spiritual reality so that we may get a progeny, fit and healthy, and well provided with their needs and able in the turmoil of the present world to stand on their feet and be able to face the responsibilities of life and its various difficulties.

Since the only way to have a family and children is marriage, let us then make a survey of the basic social systems as the starting

point in our discussion. Also, as a prelude to the discussion of progeny the fruit and ultimate aim of marriage, let us begin by presenting the legal Muslim view of the ideal legal marriage.

THE MUSLIM VIEW OF MARRIAGE

The leading Muslim jurists do not seem to be in full agreement on the various aspects involved in the question of marriage. Some of them consider marriage simply as something licit and permissible; some others go a step further and regard it as a commendable thing to be recommended; others still go further and consider it as a vicarious duty, in the sense that if done by a number of people the rest are exempted from it; but some jurists went as far as regarding it as an individual duty (*farḍ 'ain*) which has to be done by every person. Finally Muslim jurisprudence witnessed the rise of a new trend of thought, which, in the question of marriage, included interest (*maṣ-laḥa*), which is taken, particularly among the Mālikites, as one of the considerations to recommend marriage. According to this school, marriage has to be considered in the light of the candidate's situation. Thus this group has a spectrum of ideas which go from one extreme to the other. Marriage for them can be permissible or commendable or obligatory and can even be considered as prohibited or disfavoured.

The following is a quick account of the five theories:

The First Theory:

Marriage, according to this theory, is permissible.

Imām al-Shāfi'ī is the most prominent of those jurists who regard marriage as merely licit like eating and drinking exactly on the account of the pleasure one gets from it. Al-Shāfi'ī discusses this question in his voluminous work *Al-Umm*. He holds that in the Qur'anic verse: "And marry those among you who are single, and your good servants, and the handmaidens" (Sura 24/32). The imperative form of the verb "marry" is not meant to be an order but meant to make the act free and voluntary. Shāfi'ī argues that the imperative form of the verb in the Qur'ān and the Sunna (the Prophet's acts and sayings) can have more than one meaning: it can indicate that God has allowed something which hitherto was disallowed. An example of this is the Qur'anic verse: "But when is all over, then take to the chase" (Sura 5/2). Another example is the Qur'anic verse: "And when the prayer is ended, then disperse yourselves abroad and go in quest of the bounties

of God” (Sura 62/10). God also says: “And when they are fallen over on their sides, eat of them, and feed him who is content and asketh not, and him who asketh” (Sura 22/36).

Al-Shāfi‘ī says: “Similar statements are many in the Qur’ān and the Sunna. People are free to hunt or not to hunt when they are through with the pilgrimage rites. Neither do they have to disperse abroad in the land when the prayer is ended. Nor do they have to eat of the female camel sacrifice when slaughtered.”

Of the same line of thinking is Abū al-‘Abbās al-Qurṭubī who is a Mālikite. He infers from the Qur’anic verses “And who restrain their appetites, save with their wives, or the slaves whom their right hands possess: for in that case they shall be free from blame” (Sura 23/5-6), that marriage is not obligatory. He (Qurṭubī) says: “If marriage were obligatory the man who gets married would not be described as ‘not blameable’ in the Qur’ān.”

The Second Theory :

According to the second theory marriage is only preferable.

Some Muslim jurists regard the imperative form of the verb ‘marry’ in the above cited Qur’anic verses as simply indicating the recommendability of the act and not that it is obligatory. Consequently, they say, the Muslim is not compelled to get married.

In his work *Bidāyat al-Mujtahid* (A Beginner’s Manual for a Qualified Jurist who exercises his reasoning in the way of Muslim Law), Ibn Rushd says: “As for the ruling on marriage the majority hold it as recommended.” In his *Aḥkām al-Qur’ān* (Verdicts of the Qur’ān), Ibn al-‘Arabī al-Ma‘āfirī says: “Both Abū Ḥanīfa and Mālik regard it (marriage) as recommended.” We read in *Sharḥ al-Taqrīb* (Commentary on Taqrīb) by al-Waliyy al-‘Irāqī in the course of his discussion of the obligation to get married: “The majority of scholars — including the early ones and their successors — favour the view that marriage is recommended to Muslims and not imposed on them. Thus the Muslim does not have either to get married or keep a concubine whether he is afraid of committing adultery or not. This is said by al-Nawawī to be the view of all scholars.”

The Third Theory :

According to the third theory marriage is a vicarious duty.

Some jurists regard marriage more as a vicarious duty than an individual one. This means that if some Muslims get married and some

remain bachelors, the latter group are not required to marry and are not to be considered sinners. But if all Muslims refrain from marriage, then all of them are to be considered sinners.

One of those who expounded this theory is the Qādi Abū Sa'īd al-Harawī, the Shāfi'ite. He says: "Some of the followers of our legal school hold that marriage is a vicarious duty. If the people of a certain region refuse to perform it, they are to be compelled to do so." In his *Tuhfat al-Fuqahā'* (The Boon of the Jurists) al-Samarqandī, the Ḥanafite, says: "Our fellow jurists differ (on this question). Some regard it as a vicarious duty in the sense that if some fulfil it, the rest get exempted from it."

The Fourth Theory :

The fourth theory regards marriage as a duty binding on every individual.

Some jurists regard marriage as an individual duty to the extent that anyone who is able to get married and maintain (a wife) and at the same time refrains from doing so commits a sin. He, however, does not have to get married except once in his lifetime. Dāwūd b. 'Alī al-Aṣfahānī and his *Zāhiri* followers are considered to be at the head of the exponents of this theory. It is also well known to the school of Ibn Ḥanbal, and it is supported by some of the Ḥanafites (as in *Tuhfat al-Fuqahā'* of al-Samarqandī).

However, the exponents of this theory fall into two groups: one group hold that marriage is to be obligatory and unconditional (irrespective of whether the man who wants to get married fears committing adultery or not). Among this group is Ibn Ḥazm al-Zāhirī. A similar report (*riwāya*) somewhat to this effect is ascribed to Ibn Ḥanbal. The second group regard marriage or concubinage as obligatory in case there is fear from committing adultery. If such fear does not exist then marriage is not obligatory.

In his work *Al-Muḥarrar*, Ibn Taimiyya says: "Marriage for one who desires it is a normative legal action which takes precedence over supererogatory worship (*nafl al-'ibāda*), except when fear of committing adultery exists, when it becomes obligatory." He is also reported to have declared it as unconditionally obligatory.

In *Al-Muḥalla*, of Ibn Ḥazm al-Zāhirī, we read: "It is incumbent on every one who is able to lead a marital life or live with a concubine to take either a wife or a concubine; if he is unable to do so, he is to

fast very often." Ibn Ḥazm adds: "This is the opinion of a group of the early antecedents (*salaf*)."

The Fifth Theory:

The fifth theory lays down different rulings on marriage for different situations.

Some jurists view marriage in the light of interest and reality, and regard it as an act subject to the five legal rulings which apply in different situations and circumstances. Consequently, it can be regarded as voluntary or permissible (*mubāḥ*), preferable (*mustahab*), disliked or disfavoured (*makrūh*), forbidden (*muḥarram*) or obligatory (*wājib*).

In *Aḥkām al-Qur'ān*, Ibn al-'Arabī al-Ma'āfirī, in the course of his commentary on the Qur'anic verse: "And marry those among you who are single, and your good servants, and the handmaidens" (Sura 24/32), says the following: "The word 'marry' is in the imperative mood. However, there are three views on the possibility of making it (marriage) permissible, preferable or obligatory. Our scholars have different rulings for the different situations of man. He may get afraid of committing adultery or he may lose patience; and he may not be afraid of being tempted to commit adultery or he may be able to wait. If he fears to be led astray and consequently suffer the worst retribution he must get married."

In his work *Al-Qawānīn al-Fiqhiyya*, Ibn Juzayy comments on the Qur'anic verse: "And marry those among you who are single, and your good servants, and the handmaidens" (Sura 24/32) saying: "Marriage is generally recommended." The Zāhirites consider it obligatory. It may fall into one of the following categories: (1) obligatory for him who is financially capable and fears to commit adultery; (2) preferable for him who is financially capable and is not afraid of committing adultery; (3) forbidden for him who is not capable financially and is not afraid of committing adultery; (4) disliked or disfavoured for him who is not afraid of committing adultery but is afraid that he may not be able to meet the duties of marriage; and (5) permissible or voluntary in all other cases.

This Mālikite theory came to be adopted by others. Ibn Daqīq al-'Īd includes it in his commentary on *Umdat al-Aḥkām*. He stresses that in case a man is financially capable to get married and fears to be tempted into adultery, he does not have to get married but he is

either to have a concubine or a wife. If he fails to have a concubine then he has to get married.

In *Bidāyat al-Mujtahid*, Ibn Rushd says: "The later Mālikites are of the opinion that it (marriage) is obligatory in the case of some people; recommended in the case of some others; and voluntary in the case of a third group. Each of these rulings is determined by the person's fear of committing adultery." Ibn Rushd then adds in the way of comment: "Those who hold that it is obligatory for some, recommended for some others and permissible for others still are taking into consideration the person's interest (*maṣlaḥa*). This method of analogical reasoning (*qiyās*) is what is known as the question on which there is no definitive ruling (*qiyās mursal*) or indeterminate analogy." By this comment, Ibn Rushd draws the attention of legislators to the fact that in considering the question of marriage, Mālikite jurists took into account the question of interest (*maṣlaḥa*) in accordance with their method which requires consideration of those questions (interests) called (*maṣāliḥ mursala*) i.e., indeterminate or unqualified questions on which the Qur'ān and the Sunna have no definitive ruling, but nevertheless, adopted as a basis of legislation.

From the above brief review of the legal Muslim theories of marriage which provide the way for the procreation of progeny we can see that Muslim jurisprudence does not make it obligatory on all fully responsible (*mukallafin*) people to get married; nor does it regard the healthy bachelors refraining from marriage as sinful or punishable. According to jurists who hold marriage to be merely permissible or recommended, there is absolutely no obligation; and according to jurists who regard marriage as a vicarious duty there is no obligation on every one of the fully responsible men, since in the case of such a duty it suffices that only a proportion of the people perform it.

From the purely legal angle, therefore, those whose circumstances do not allow them to get married and those who have no compelling personal motive to do so, do not have to worry because there is no justification for accusing them of negligence or failure to perform their duty.

True, the only case in which jurists regard marriage obligatory as already explained is that of the person who is able to cope with the financial burdens of marriage and in the case of a person who is unable to stand celibacy on account of fear to be tempted to commit adultery or get into dissolute habits. In this case alone Muslim jurisprudence makes it obligatory that the person must get married and

found a family because all the required guarantees involved in the family life are provided.

It becomes clear from this discussion that the ability of the person to shoulder the burdens of marriage — financial and otherwise — is in itself a sufficient justification for making marriage obligatory on all fully responsible people (*mukallafin*). The fully responsible person is to be obliged to get married when in addition to his ability to do so there is an internal factor, namely, the fear of temptation to commit adultery and the desire to keep away from incontinence and unchastity. This danger of temptation to indulge in vice is a compelling factor which renders marriage obligatory and, consequently, protects society from vice and protects people from falling victim to the dissipated conduct of bachelors.

Should the person, who is physically and financially able to cope with the burdens of marriage, be in such a psychological and physiological state in which fear of temptation into adultery does not arise, and in which no need for marriage is felt, then he, according to most jurists with the exception of Ibn Ḥazm al-Zāhirī, is to be exempted. Ibn Ḥazm on the other hand makes marriage obligatory even if fear of committing adultery is non-existent.

But the person, who is proved to be completely unable — financially and otherwise — to shoulder the burdens of marriage, is not only not required to get married but also forbidden, by Muslim Law, to do so. This forbiddance, by Muslim Law, is meant to be a safeguard against the immediate and subsequent dangers of such marriage. If the person who is financially incapable, gets married either he does not know any better or deliberately, he commits an unlawful act for which God punishes him. His act then is not any different from all prohibited acts which are intentionally done by the fully responsible Muslim (*mukallaf*).

LEGAL SAFEGUARDS REQUIRED FOR MARRIAGE

Having presented an analytical and explanatory account of the Muslim view of marriage, we deem it useful to make a special mention of the legal safeguards requisite in Islam for marriage, to serve as essential factors in the foundation and structure of the family. These safeguards provide the family with stability and security and enable it to grow healthily and to enjoy life. They also show us the extent of

family planning in Islam in its periods of ascendancy. Here we propose to deal especially with two kinds of these safeguards.

The First Kind: Health Guarantees.

If we scrutinize searchingly the Muslim legal literature, we shall discover that Muslim Law lays great emphasis on the need for making legal provisions for each of the married couple and hence to the children who are to enjoy an acceptable level of healthiness and physical fitness. Actually Muslim Law always considers the stability and security of marriage as dependent upon the freedom of the couple from physical defects and from diseases. This means that any serious imperfection or defect or physical deformity of one of the prospective couple is taken as sufficient justification for blocking the marriage contract or, in case of actual marriage, for separation or divorce. Muslim Law does not force either of the married couple to be victimized for the sake of the other if either of them suffers from a fatal disease. If the husband becomes affected with such a disease or develops a deformity or disability after marriage he, according to Muslim Law, will have to be separated from his wife on the ground of the hardship and harm which she, otherwise, will undergo.

Muslim jurists have adopted a law entitling each of the couple seeking marriage to stipulate in the marriage contract that the partner must be free from disabilities or deformities and that if he (or she) later suffers any such defect, the other will have the right to annul the marriage. Muslim jurists have also stipulated quick separation between husband and wife by divorce on account of such defects as entitle the wife to stay or separate and such defects as justify divorce. Those among them who do not allow separation (or divorce) to be postponed for as long as a year except in the case of impotency caused by an accidental disease, have stipulated that the impotency or defect cannot be established except through the testimony of people who are fully informed, with expert knowledge, on physical defects, or through the declaration of the suffering person himself.

Muslim jurists on the other hand consider the marriage of the sick man or woman as invalid because such marriage is liable to be broken on account of the real threat to which either of them is exposed and because of the danger of the disease or defect passing on to the children. This marriage, if continued, might also ultimately add an additional heir, which is not in the heir's interest.

In *Nail al-Awṭār*, al-Shawkānī says: "The majority of those well informed among the companions of the Prophet and their successors hold that marriage can be dissolved on account of defects ('*uyūb*) although they differ as to the details and nature of the defects which occasion its dissolution. Some of the Shāfi'ites hold that the wife can be repudiated for every defect on account of which a slave girl may be returned after purchase, which has the effect of invalidating the contract of purchase. This idea is favoured by Ibn al-Qayyim who argues that this matter is similar to a business engagement as in the case of a commodity acquired by sale. Al-Zuhrī says: "Marriage may be dissolved for any incurable disease."

Ibn al-Ḥājjib reports a tradition related by some jurists which gives the option (right to choose — *khiyār*) to the woman because of any defect that her husband develops following the drawing up of the marriage contract whether he has cohabited with her or not. This is because she is not normally entitled to ask for, and be granted, separation, and therefore, her only means to free herself is by having this right of choice.

We must here make a special reference to what Ibn Rushd says, in his work *Bidāyat al-Mujtahid*, in the course of his explanation of the reasons for granting the option in respect of defects. He says: "The followers of Mālik differ on the reason why the repudiation (giving back) of the husband or wife is confined to the following four defects: madness, elephantiasis, leprosy and defective sexual organs of the man or the woman. Some say: 'Because those defects are usually not open to view while all the other defects are usually visible.' Others say: 'Because those defects may pass on to the children'." Ibn Rushd then, comments on these arguments by saying: "On this second argument, therefore, repudiation may take place on account of blackness and baldness; whereas, regarding the first argument (that those defects are invisible), repudiation may be incurred by any defect of which the husband is ignorant on account of being invisible."

Among the health aspects which Muslim Law takes note of in connection with the establishment of the family and the begetting of children is the disapproval of intermarriage among close relatives and encouragement of intermarriage among non-relatives. The leading jurists among those who support this is al-Ghazzālī in his work *Iḥyā' 'Ulūm al-Dīn* (The Revival of the Religious Sciences) and Ibn al-Jawzī in *Ṣaid al-Khāṭir*. The former warns that the wife must not be an immediate relative because the children will be born puny. He

explains this point by saying that if something becomes too familiar through being seen constantly for a long time then it ceases to produce strong impression on the mind, and one's craving or desire for it becomes weak. The latter warns that marriage between relatives is disapproved of "Because", he says, "such marriage inhibits excitement and enjoyment. The reason is that one is not attracted by a too familiar thing, and favour the unfamiliar one. Novelty has a strange effect." In this connection the Caliph 'Umar is reported to have said to the Sā'ib people: "You have grown meagre; seek marriage to strange women." This latter tradition is in *Gharīb al-Hadīth* by Ibrāhīm al-Ḥarbī.

Also among those considerations of health which Islam regards as important in connection with the family and children is the great attention it pays to the baby's health and safety. In so doing Islam goes to the extent of prohibiting sexual intercourse during the period of nursing because of the harm that may be done if the mother gets pregnant in the meantime. Such sexual intercourse during this period is called *ghīla*, *ghail* or *ghiyāl*.

In his collection of traditions (*Sunan*), Abū Dāwūd includes a tradition accepted as genuine on the authority of Asmā', the daughter of Yazīd son of Al-Sakan, who said: "I heard the Apostle of God — upon whom be God's blessing and peace — say: 'Do not kill your children under false pretences, for the suckling of the child while the mother is pregnant has the same effect as when a horseman is overtaken by an opponent and thrown off the horse'." This means that that kind of sexual act harms the child and weakens it physically, and the child will continue to suffer from this weakness until maturity, thus he grows into an adult, far below his coevals in physical fitness. The word *da'thar* used in the tradition, means 'to tear down', 'pull down' or 'pull off', in the sense of 'to destroy'.

This indicates the sublime wisdom of the Qur'anic verses which make special mention of women who suckle children for two complete years. God — Most High — says: "Mothers, when divorced, shall give suck to their children two full years, if their father desire that the suckling be completed" (Sura 2/233).

Those who act according to this Qur'anic directive and call, in this light, for two whole years of his married life to be devoted to the suckling of the baby and for abstention during these two years from sexual intercourse, as directed also by the Prophetic tradition, hope to achieve the following results: (1) safety of the baby; (2) safety of

the wife; (3) respite and rest from pregnancy and precaution against possible accompanying fever or other complications, thus enabling the parents to devote the interval for the care of the child, particularly at this stage, when care is very vital; and (4) the opportunity to provide the child with the mother's loving care without distraction and further hardship. Furthermore, this makes it possible for a reasonable period to intervene between one childbirth and another, as prescribed by the divine revelation in planning the family. If this divine planning is closely followed, children born to a man will be four in a period of eleven years whereas they could be in the same period fourteen if self-restraint is not exercised and family planning is sacrificed for the sake of chaotic sensual indulgence.

The scholars of Muslim Law, however, are not content only with preserving the married couple in good health and free from physical and other defects and deformities, but they also require other beneficial things. Though they do not consider beauty as an essential requirement for marriage, they nevertheless, give precedence to beauty over ugliness and they tend to regard marriage to the old and the ugly as something in disfavour. In his work called *Al-Qawānin al-Fiqhiyya*, Ibn Juzayy supports this position. It is also reported that during the Caliph 'Umar's rule a man dyed his hair (for the wedding). When the dye faded shortly afterwards, the bride's relatives complained to 'Umar saying that they had taken him to be a younger man. 'Umar gave the bridegroom a good beating and said to him: "You have deceived her people."

In his work *Ihyā'*, Imām al-Ghazzālī regards a good looking face to be part of the woman's qualifications which make living with her more pleasant and render marriage more stable and enduring. He (al-Ghazzālī) says: "It (good looking face) is desired. It helps to render one immune (against temptation). By nature, man is not content with an ugly woman. A man who cannot be sure that he will be able to abide by the teachings of his religion unless he can have pleasurable enjoyment, he must seek beauty because its enjoyment provides a protection for his religion."

Of the same line of thinking is Ibn al-Jawzī who, in his work *Ṣaid al-Khātir* urges the one who wishes to get good children and to enjoy marital life to choose carefully his wife, and when he likes a woman he must get married to her. Ibn al-Jawzī implies that the man seeking marriage is permitted to look at the prospective wife and to talk to her. He says: "Beauty is in the mouth and the eyes."

From the above detailed survey of the considerations of health and the various precautionary measures taken into account by Muslim jurists in connection with the question of marriage and progeny, it becomes abundantly clear to any open-minded person that Islam has beaten the record in its concern for the health of the family and the safety of children from defects and deformities; that Islam excels other systems in this respect; and that it is a pioneer in this field, in advance of others. It is quite impossible and unacceptable for the Muslim jurists and legislators to view with satisfaction, or to approve, any marriage between two people affected by disease or suffering from defects and deformities, particularly if they are victims of a hereditary disease and a chronic or incurable pernicious ailment. It would be inconceivable that our jurists and legislators would entertain any arrangement instrumental in the begetting of weak and sick children.

As long as Islam keeps the door open for either of the married couple, who is free from defects and deformities, to dissolve the marriage on the strength of the right of choice or on account of the harm that may result, there can be no excuse for those who build a family life only to destroy it shortly afterwards. Is it not in our interest to enforce the preventive and saving measures at the right time, beforehand, so that the dangers involved in such illegally and naturally undesired marriages be avoided?

The Second Kind: Material Safeguards

In addition to the health safeguards which Islam takes into account in connection with marriage and begetting of children, it also takes into account the financial factor. Islam takes into consideration man's ability to maintain the family before and after marriage is approved, in preparation for the establishment of the family.

In order to call attention to this above mentioned obvious fact we say that the first thing Islam enjoins upon a man who wants to get married is to be able to provide a dowry. There is full agreement among the scholars of religion on this question, to the extent that it is not allowed to stipulate the foregoing of the dowry, nor allowed for the two parties in the marriage contract to agree to drop it because God says: "Give women their dowry freely" (Sura 4/4). The future husband is also required by Islam to provide the expenses of the wedding banquet. Some jurists consider this as obligatory. Furthermore, he is expected to be able to meet all the other expenses of the wife and to

provide her with a dwelling, furniture, food, clothes, and cleaners, in addition to a servant if the wife does not do the chores herself. The man has also to provide expenses for the children from the moment they are born and during the nursing period and through childhood until they are able to earn their own living in the case of males and until marriage in the case of females. Muslim Law is further elaborated in this respect to enjoin Muslims to continue to provide the expenses for their own children until they are through with their normal studies, even till after their coming of age, provided, however, they have the aptitude and willingness to study. Muslims are also expected by law to continue to cover the expenses of the male child after he comes of age if the child suffers from a physical or mental disability or from a chronic disease which prevents him from earning his living. In addition, Muslim Law requires the man whose parents are still alive and in want to provide them with their expenses out of gratitude and as repayment for their kindness to him when he was still dependent. Even if the parents are not really needy or unable to earn enough for their upkeep, the son still has to provide for them. Imām Abū Ḥanīfa extends the obligation of providing expenses which is imposed upon the husband to include every one of the close relatives, if within the prohibited degrees of relationship (*maḥārim*).

Muslim legislation stipulates also that if the husband divorces his wife revocably he has to provide expense for her throughout the waiting period including the expenses of her dwelling quarters. If one divorces his wife while pregnant, he must maintain her throughout the period of pregnancy, even if the divorce is irrevocable, because women are granted this privilege by God, as in the following verse: "And as to those who are with child, their period shall be until they are delivered of their burden" (Sura 65/4); and "And if they are pregnant then be at charges for them till they are delivered of their burden" (Sura 65/6). The maintenance allowance is in respect of the foetus. But since it is in the mother's womb and cannot be fed except through the mother, the allowance has to be given to her. Similarly if the husband divorces his wife following the delivery of the child and the child refuses the breast of the mother, the husband has to pay for a wet nurse. This is clear from the Qur'anic verse which says: "And if they suckle your children, then pay them their hire" (Sura 65/6). If the husband divorces his wife while she is pregnant and suckling a baby at the same time, he has to provide the double allowance for pregnancy and for suckling.

Muslim Law considers the inability of the husband, prior to marriage, to provide the dowry as a justification for their separation. The husband, however, has, in this case of separation, to pay her half the dowry even if the marriage was not consummated. Divorce in the case of inability to provide the dowry is irrevocable. Mālikite jurisprudence follows the same line by giving the wife the right to be separated from her husband if the latter fails to provide both, the dowry and expense, particularly if his failure to do so is complete or if what he can provide is quite inadequate in any way. Separation between wife and husband on account of failure to provide the dowry is based on traditions related on the authority of Abū Huraira, and Sa'īd b. al-Musayyab, the tenet of al-Shāfi'ī, Aḥmad b. Ḥanbal, Abū Thawr and Abū 'Ubaid. Some jurists hold that even if the husband earns enough to keep body and soul together, still the wife has the right to get separation. They maintain also that if the wife complains to the judicial court of the failure of her husband to provide for her on account of straitened circumstances (*i'sār*), the judge orders the husband, if present in the court to provide the expense or to divorce. Should the husband then refuse to carry out the judge's order, the judge then pronounces them as divorced. If the judge decides on divorce, during the absence of the husband from the court and if at the same time the husband has no money to provide the required expense, the wife may opt for separation.

But, according to Muslim Law, the judge may withhold judgement in the presence of the husband, in the hope that the latter may become financially competent again, or decide to fix a term in his absence. Yet, in the long run, all this will not be in the interest of the husband unless the state of the financial incompetency is removed, and the husband resumes the fulfilment of his duties of marriage regularly, especially the duty of maintaining his family and children, provided that, if the husband recovers his financial competency within the period of waiting (*'idda*), the husband will have the right to recall his wife, but that the divorce will become irrevocable if he continues, beyond the fixed term, to be financially incompetent.

The husband, who is unable to provide the expense and dowry, cannot present himself before the judge and argue that he must keep his wife notwithstanding his continued poverty, invoking in support for his claim popular misinterpretation of Muslim texts and such Qur'anic verses, as the following: "If they are poor, God of His bounty shall enrich them" (Sura 24/32), and "There is no moving

thing on earth whose nourishment dependeth not on God" (Sura 11/6), and "For them and for you will we provide" (Sura 6/152). The provision (*rizq*) promised by God is something obvious and undisputed by fate; but every person is required by Muslim Law to work for his living. Actually one has to secure work and earn one's living and be careful in spending what one earns so that one may be able to meet the requirements of life and to shoulder responsibilities. It is granted that sustenance (*rizq*) is obtainable here or there, but its acquisition depends on the means for obtaining it and the efforts made for that purpose. It remains then for the person who obtains it to dispose of it in the proper way. This is indicated to us by God Who says: "It is He Who hath made the earth level for you: traverse then its broad sides, and eat of what He hath provided" (Sura 67/15). God also says: "And when the prayer is ended, then disperse yourselves abroad and go in quest of the bounties of God" (Sura 62/10). He also says: "And let not thy hand be tied up to thy neck; nor yet open it with all openness, lest thou sit thee down in rebuke, in beggary" (Sura 17/29). The Caliph 'Umar, in a similar context, says regarding the same matter: "May God sustain me. You know that the sky does not rain silver and gold."

From the above clear account we can see the strict stand Muslim jurisprudence takes on the question of those adventurers who behave like foolish people when they seek marriage and want children without having sufficient means to maintain wife and children. He who risks doing so acts in defiance of Muslim Law and flies in the face of its aims unlawfully and wrongheadedly. This is the reason why Islam checks these people and restrains their desires by its legislation which follows God's saying: "And whoso transgresseth the precept of God, assuredly imperilleth his own self" (Sura 65/1).

It also becomes clear from the same account that any legal or administrative measure taken for that purpose (restraining those adventurers) will only serve to support Muslim legislation and to have people abide by its explicit and implicit injunctions, according to the letter and the spirit of the law. We must at this juncture, cite what God says in the Qur'an: "And let those who cannot find a match live in continence till God of His bounty shall enrich them" (Sura 24/33).

THE LEGAL EQUALITY (*kafā'a shar'iyya*) REQUIRED FOR MARRIAGE

Muslim jurists are so much concerned about ensuring healthy and materially comfortable marriage that they regard legal equality between husband and wife as an important stipulation to be fulfilled without which marriage cannot be legal (*shar'i*). The following are some of the elements which constitute equality (*kafā'a*) according to Islamic jurisprudence.

The First Element: Money

The husband must have in his possession well-gotten money from which he can provide necessary expenditure. Ibn Rushd says in his work *Bidāyat al-Mujtahid*: "There is no difference of opinion among the followers of the School that the father of the wife may bring about the dissolution of his daughter's marriage if the husband is found to be so poor that he cannot afford the expense." Wherefore he considers money to be an element of equality. In his work *Al-Qawānīn al-Fiqhiyya*, Ibn Juzayy says: "She (the wife) can demur at her marriage with a man who is unable to meet her rightful demands."

The Second Element: Health.

What is required is that both husband and wife must be healthy and free from disabilities and diseases. Ibn Rushd says in *Bidāyat al-Mujtahid*: "All those who maintain that marriage must be broken on account of disabilities make health a condition for legal marriage. Physical fitness, therefore, can be stipulated as a condition by either party to the marriage agreement." Ibn Juzayy says in *Al-Qawānīn* "Marriage to a sick man or woman whose life may be endangered by marriage is invalid as is generally maintained, and must be dissolved if it is already entered into."

The Third Element: Good Behaviour.

This element consists in good behaviour and sound morals on the part of the husband. Ibn Rushd says in his work *Bidāyat al-Mujtahid*: "As to equality, it is generally held that piety is one of its elements. The followers of the School (*madhhab*) do not differ among themselves on the case of a virgin betrothed by her father to a man who takes alcoholic drinks or who can be described as wicked; the girl, under these circumstances, has the right to refuse to get married to him. The judge then effects their separation. She is also allowed to

do the same if the husband's money is ill-gotten or if he is in the habit very often of uttering the divorce formula." Ibn Juzayy says in his work *Al-Qawānīn*: "The woman cannot be given in marriage to a wicked man. Either she or her guardian — be he the father or grandfather — undertakes to terminate the marriage."

The above legal texts show the great weight which Muslim legislation gives to the securing of all necessary safeguards of health and finance, for the protection and endurance of marriage. They show also how strict Muslim legislation is in insisting on these safeguards before and after marriage, in theory and practice.

PREVENTIVE MEASURES FOLLOWING MARRIAGE

As Islam is greatly interested in making appropriate provisions for healthy and materially contented married life it is equally interested, and in a special way, in what accidental developments take place subsequent to the creation of the family. In the course of the period after marriage the married couple may be forced to adopt measures which would prevent pregnancy and cause the temporary stoppage of procreation.

In the early days of Islam and during the life-time of the Prophet, Islam came to know the first method of preventing pregnancy, namely, the method of *'azl* (coitus interruptus) which requires the man to ejaculate outside the womb so that she does not get pregnant. There are several genuine traditions which regard the method as permissible. They show that the Prophet approved it. Some of those traditions are recognized by some of them only. Among the traditions related by all is the one reported by Jābir which says: "We used to practise coitus interruptus (*'azl*), during the time of the Prophet while the Qur'ān was being revealed."

In his work *Nail al-Awtār*, Shawkānī says: "The majority of the scholars concerned with the sources of Muslim Law (*Ahl al-Uṣūl*) agree with what is stated in *Al-Fath*, namely, that when a companion of the Prophet states that the ruling originated at the time of the Prophet then that ruling acquired the validity of one related on Prophetic authority." He continues to say: "Because apparently the Prophet must have known of it and approved it. The companions, if uncertain, used normally to turn to the Prophet for guidance and decision." He also says: "In many cases (which have reached us) the Prophet's knowledge

of such rulings have been clearly shown. The celebrated traditionalist Muslim, author of *Saḥīḥ*, relates a tradition by Jābir which says: "We used to practise coitus interruptus during the time of the Prophet — upon whom be God's blessing and peace. The Prophet came to know about it but did not forbid us."

In his work *Zād al-Ma'ād*, Ibn al-Qayyim says: "In those traditions which consider coitus interruptus permissible the people on whose authority they are related are ten companions of the Prophet. They are: 'Alī, Sa'd b. Abī Waqqāṣ, Abū Ayyūb al-Anṣārī, Zaid b. Thābit, Jābir, Ibn 'Abbās, al-Ḥasan b. 'Alī, Khabbāb b. al-Aratt, Abū Sa'īd al-Khudri, and Ibn Mas'ūd." He goes on to say: "There is no doubt that those traditions related by Jābir are explicitly and rightly in support of coitus interruptus. Al-Shāfi'ī says: "We relate traditions on the authority of a number of the Prophet's companions who approve of coitus interruptus and see no harm in (practising) it... It has the support of Mālik, al-Shāfi'ī, the scholars of Kūfa and the majority of scholars."

In his commentary on *Al-Muwatṭa'*, al-Bājī says: "While the majority are in support of coitus interruptus as being lawful, Ibn 'Umar and others hold that it is disfavoured. Some of this latter group describe it as a minor infanticide (the burial of children alive — *al-maw'ūda al-ṣughrā*). 'Alī b. Abī Ṭālib says: "No one can be described as buried alive unless he (or she) goes through the seven stages of the process of creation." 'Umar, the Caliph, said to him: "You are right", meaning that, the one buried alive, "must first be a life-germ, then a clot, then a lump of flesh, then a lump of flesh with bones, then the bones are covered with flesh, then it takes its form (as a fully developed creature) and finally it cries (shouts) like a baby." Al-Bājī adds: "It is likely that those who consider it (coitus interruptus) disfavoured base themselves on the saying by the Prophet — upon whom be God's blessing and peace: 'There is no reason why you should not do so.' The Prophet may have meant — and God knows best — that they would suffer no harm if they did not practise it. However, it seems to us that it is disfavoured and its avoidance is recommended; but this does not amount to prescription or prohibition. The majority of jurists consider it permissible..."

In his work *Iḥyā' 'Ulūm al-Dīn*, al-Ghazzālī says: "What is established in our view is that it (coitus interruptus) is permissible. As to the reason why it is thought to be disfavoured, this is because

disfavour signifies the negation of prohibition, negation of impeccability (*tanzih*) and the neglect of virtue. 'Azl (coitus interruptus) is disliked because of the latter, i.e., neglect of virtue. Neglect of virtue in this case would amount to what is implied in the following saying: "It is disliked for the man sitting in the mosque to sit idly without occupying himself with prayer or worship; and it is disliked for a man to be in Makka and to be actually a resident in it and not to perform the pilgrimage annually. The dislike here is for not doing what has priority or virtue." Al-Ghazzālī goes on to say: "We have ruled out dislike on the basis of no prohibition and no purity because to establish prohibition one has to have a text (Qur'anic or from traditions) or use analogical reasoning (*qiyās*) based on a precedent for which a text is available; and in this case (of 'azl) there is no text and no precedent for analogical reasoning."

Regarding the uncertainty occasioned by the tradition reported by Judāma bint Wahb of Asad which is accredited by both Imām Aḥmad and Muslim and which describes 'azl (coitus interruptus) as infanticide in disguise (*wa'd khafiy*), scholars of religion have expressed diverse ideas in their attempt to reconcile it with 'azl as a permissible practice. We find those ideas in Murtaḍā al-Zubaidī's commentary on al-Ghazzālī's "Revival of the Sciences" and in Shawkānī's *Nail al-Awtār*. One group of those scholars adopted an interpretation (*ta'wil*) of Judāma's tradition not opposed to the wording of Jābir's tradition. They, for instance, say that what is meant by Judāma's tradition is merely to point out impeccability (*tanzih*). They also claim that the same tradition does not explicitly denote prohibition, because calling 'azl (coitus interruptus) infanticide in disguise does not necessarily imply that it ('azl) is prohibited. They also suggest that the description by the Prophet of 'azl as 'infanticide in disguise' is similar to his saying that 'dissimulation is polytheism in disguise'. Thus the description of 'azl as infanticide (*wa'd*) is meant to show that 'azl serves to cut down the birth rate of children. They also say that the only reason for calling 'azl 'dissembled infanticide', in the tradition related by Judāma, is that the person ejaculates outside in order to obviate pregnancy. Thus the aim to avoid child-bearing is considered some sort of infanticide. There is, however, some difference between the two. In infanticide two elements are present: first, the intention to do the action; and secondly, the action itself. The action also is concrete and objective; whereas in 'azl only the intention is present. This is why it is described as hidden or dissembled. This is the opinion of

Ibn al-Qayyim. Al-'Irāqī, in his commentary on Tirmidhī, took Judāma's tradition to mean ejaculation outside the womb of the pregnant woman, because in this case fear of pregnancy is excluded and because 'azl may entail the destruction of the embryo through weakness or death which then can be described as infanticide in disguise (*wa'd*).

Another group of scholars solved the problem posed by the tradition of Judāma of Asad by having recourse to the techniques of the science of traditions, which suggest that her tradition may be a weak one on account of its conflict with the most familiar traditions or that, Judāma's tradition, as related by Sa'īd b. Abī Ayyūb, has a continuation, lacking in the same tradition as related by Abū al-Aswad, and left out by Mālik and Yaḥyā in their versions of that same tradition; or that Judāma's tradition may be deemed of no force, considering that its continuation is not mentioned by the four standard collections of the traditions (*sunan*) and because it conflicts with all the traditions on the same subject which the compilers of those standard works include in their compilations that it may be argued that al-Taḥāwī definitely considers Judāma's tradition as abrogated.

As to the tradition related by Abū Sa'īd and mentioned by Muslim and al-Nisā'ī (in their collections of traditions) and referred to by al-Bājī in his commentary on *Al-Muwatta'*, as has previously been mentioned, namely, that when the Prophet was asked about 'azl (coitus interruptus) he said: "There is no harm if you do not do so. This is only fate," it does not imply prohibition as is thought by al-Ḥasan al-Baṣrī and as explained by Ibn 'Abd al-Barr. The majority of the savants see no prohibition in it. What it means is this: No sin or harm will be incurred by your practising it ('azl). Such is the opinion of Shaikh al-Murtaḍā in his commentary on *Iḥyā'* (Revival of the Sciences). Al-Murtaḍā also comments by saying: "Al-Baihaqī said, 'Supporters of 'azl as permissible are larger in number and of better knowledge of the tradition. God knows best'."

From the above accurate and careful presentation it becomes quite certain that the early Muslims during the early rise of Islam were acquainted with some contraceptive methods which were openly practised and known to, and approved by, the Prophet. Of those methods was 'azl (coitus interruptus) which was approved by the prominent authorities and practised by the majority of people.

There is no doubt that good sense on the part of Muslim jurists has guided them to use this as a precedent, for being a natural method

which was known to the early Muslims. Actually nothing justifies any hesitation in advocating the use of the other preventive methods of this age because they are substitutes for 'azl and have identical aims. They must, however, be practised when necessary and without the risk of any certain harm, however small.

THE CIRCUMSTANCES IN WHICH THE PREVENTIVE MEASURES ARE TAKEN

On examining the texts of the traditions contained in the compilations of the traditions (Sunna) which deal with 'azl with the purpose of finding the situations in which 'azl (coitus interruptus) was practised we find that those traditions point out three situations:

The First Situation :

In this situation 'azl was resorted to when sexual intercourse took place with a captive woman, captured in war. The idea was to prevent pregnancy in order to get her ransomed. Her pregnancy would stand in the way of getting her ransomed, and if she gets pregnant she is considered "mother of a child" (*umm walad*), who can neither be ransomed nor sold. This situation is the one described by Abū Sa'īd al-Khudrī in the tradition relating to Ibn Muḥairiz and mentioned by Mālik in his *Al-Muwatta'*. Similar is the situation of a wife who is the slave-girl (*mamlūka*) of another person. Her free (*ḥurr*) husband resorts to 'azl so that she does not get pregnant and beget a slave like her.

The Second Situation :

In this situation the husband resorts to 'azl, out of dissatisfaction with his wife, and does not want to have children by her. This situation is the one which Ibn Fahd al-Yamanī described in talking about his own experience in Zaid b. Thābit's presence and in front of Zaid's audience. It (the description) is related by al-Ḥajjāj b. 'Amr b. Ghuzayya who gave to Yamanī the legal ruling on the case with the approval of Zaid. Ḥajjāj said to him: "It is your own tilth. If you like, you can water it or if you like can let it be thirsty." This is according to Mālik in his *Al-Muwatta'*.

The Third Situation :

In this situation 'azl is resorted to while the wife is suckling and nursing a baby. The husband in this case fears that his wife may get pregnant while suckling her baby.

This situation is the one which Usāma b. Zaid described, in a story about himself, to the Prophet and the one which is related by Imām Aḥmad and Muslim. If we thoroughly examine these situations which occasion 'azl and which are mentioned in the standard books of traditions we find that the motive in resorting to it is not extreme necessity. However, the reasons which induced people to practise it were considered by the early Muslims to be sufficient and valid. To take this as a precedent, for similar methods and for similar, if not much more serious, situations is not to overstep the limits. This is the line of thinking followed by al-Ghazzālī and those who followed in his steps. In his *Iḥyā'* (Revival of the Sciences), al-Ghazzālī considers 'azl as permissible even for the purpose of preserving the woman's beauty and consequently for the continuation of enjoying it. Also, according to him, 'azl is permissible if the woman's life may be endangered by pregnancy, and if he fears that she may suffer the hardships of childbirth labour.

It is obvious that frequent pregnancies and their hardships tend to weaken the wife physically and to rob her of her beauty and freshness of her body. Successive childbirths without long intervals in between and an early pregnancy, if the wife is not fully mature, exposes her uterus to the risks of malformation and to the development of various ailments which have the effect very often of making her childbirth difficult and, consequently, to making her own life in danger.

Al-Ghazzālī also considers 'azl permissible because it limits the number of children who, if many, may be costly beyond the husband's means and may land the father into debt or drive him to crime in order to get money. Al-Ghazzālī emphasizes that freedom from embarrassment consideration has an edifying effect and that prudence is not something discouraged in religion, though it may cause the person to aim short of the ideal and thus neglect priorities.

Abū al-Faraj b. al-Jawzī in his book *Ṣaid al-Khāṭir* follows closely the line of thought of al-Ghazzālī. He says: "If the young man who gets married is destitute, he is preoccupied in finding ways and means for earning a living or begging people for assistance. Then when he gets children his worries increase and he permits himself to seek other ways for getting money until finally he resorts to unlawful means. He wants to get what he needs, in the way of food and clothing, for himself and his wife. How can such a man enjoy life when he is fully engrossed in trying to get what he has to have?"

In another chapter of the same book, Ibn al-Jawzī says: "The believer must be occupied with earning his living and must economize in spending on his family. We are facing the worst times. In these days no one is there to whom you can turn for help or from whom you can borrow what you need. One, therefore, is driven to get involved in illicit and improper things and to put himself into embarrassing situations. Hence it is imperative that the number of the family must be reduced. If the opportunity to earn a living offers itself one must seize it rather than occupy himself with worship or with acquiring more knowledge. Otherwise religion will be lost in such awkward involvements."

What supports this line of thinking which implies the need for precautions to be taken against possible unfortunate consequences is Shāfi'ī's commentary on the Qur'anic verse: "This will make justice on your part easier" (Sura 4/3), which follows the Qur'anic verse: "And if ye still fear that ye shall not deal equitably, then one only" (Sura 4/3). Al-Shāfi'ī maintains that the phrase 'this will make justice on your part easier' (*an la ta'ūlū*), implies a warning against multiplicity of children. He explains the whole verse thus: "If you are afraid that the number of your family will be many, then limit yourself to one wife. This will banish multiplicity of children." This explanation of Shafi'ī is reported verbatim by Ibn al-'Arabī al-Ma'āfirī in his work *Ahkām al-Qur'ān*.

It goes without saying that the situation just analyzed and the cited texts thereon and other analogous ones open the door wide for those who wish to practise *'azl* (coitus interruptus) and who would like to take other preventive measures for the same purpose when they have compelling private health or special material considerations to justify them, apart from public or general considerations.

Very often the health conditions of married women may deteriorate or the husband may suffer from financial difficulties or the economic situation generally is depressed. In such situations the husband and parent find themselves face to face with a temporary crisis which forces them to be provident and frugal until the crisis blows over and things go back to normal, when circumstances become favourable.

DOES MUSLIM LAW PERMIT ABORTION?

If under pressure of ill health and financial straitened circumstances, and for the sake of properly handling their parental and family

responsibilities, husbands and parents adopt measures to prevent pregnancy, their action is understandable. But if, because of carelessness, they fail to adopt those measures and find themselves faced with the (unpleasant) reality, what then? Are they legally permitted to do away with the foetus (by abortion)?

In answering this question al-Ghazzālī, in his book *Iḥyā'*, points to the great difference between 'azl (coitus interruptus) and abortion, and clarifies to avert any confusion in people's minds. He says: "This ('azl) is neither like abortion nor like infanticide (*wa'd*) because abortion is a criminal offence against something which exists and has life and which has gone through the developmental stages the first of which is the injection of the life-germ into the woman's womb, where subsequently, it is fertilized, ready to receive life. To undo this process is a criminal act. If the life-germ becomes a clot and then a lump of flesh, the attempt to get rid of it is still a worse criminal offence. After the lump of flesh is endowed with animation and its constitution is completed then the attempt to put an end to its life is still a much more serious criminal offence. The most horrible offence is of course to kill a fully developed human being after separation from the mother's body.

In answering the same question, namely, whether abortion is legal, Ibn Juzayy says in his work *Al-Qawānīn al-Fiqhiyya*: "Once the woman receives the sperm in her womb it becomes forbidden to do any harm to it. Once it goes through the process of receiving the full form of a creature, any harm done to it, is to be considered a grave offence. The offence is greatest when it is committed after the creature is already animated. Scholars of religion are unanimous in considering the offence as that of killing a human being. From both answers we can conclude that both al-Ghazzālī (the Shāfi'ite) and Ibn Juzayy (the Mālikite) take the same stand on this question, viz., they prohibit abortion and consider it a criminal offence even before the embryo is animated.

Some jurists, however, consider abortion before the embryo receives the spirit, and if done for a good reason, as permissible and not unlawful. These jurists argue that before the end of the fourth month of pregnancy the embryo has no life and consequently to do away with it is neither a criminal offence nor an unlawful act. Ibn Wahbān, a Ḥanafite says: "Among those admissible excuses or justifications (for abortion) is one relating to a pregnancy which causes the mother's milk to dry up at a time when her husband is unable

to hire a wet nurse to suckle her child and consequently the child's life becomes threatened." He then says: "Abortion is justified by the valid excuse and it, therefore, is not considered as homicide."

Jurists are agreed that, after the elapse of the first four months of pregnancy, abortion is prohibited (unlawful), because they account the act after animation a criminal offence and they rule that the culprit has to pay the blood-money (*diyya*) if the foetus comes out alive, but if the foetus comes out dead, the culprit has to pay an indemnity known as *ghurra* unless it can be ascertained that the retention of the foetus, if proved to be animated and alive, will entail inevitably the death of the mother; making abortion the only means for saving her life. In this case abortion is unavoidable, and the mother must not be sacrificed, as the origin, for the sake of the baby. These circumstances relevant to the problem are discussed in jurisprudence under the heading 'choosing the lesser evil', which is one of the general and fundamental legal rules in Islam. This rule has been adopted in the penal law in Maghrib. We read in chapter 453 of the Maghribi penal law: "Abortion is not penal if it is occasioned by the necessity of saving the mother's life and if it is undertaken by a (qualified) physician or surgeon subsequent to a prior notification of the proper authorities."

CONCLUSION

I wish at the conclusion of this discussion to draw attention to what Bakr b. al-'Arabī al-Ma'āfirī observes in his book *Aḥkām al-Qur'ān* when commenting on the Qur'anic verse, "And marry those among you who are single" (Sura 24/31), and discussing the legal rulings on marriage, he says: "Our scholars rely on many traditions (*aḥādīth*), but there is no use in relying on any traditions which are not genuine. In this respect there are two genuine traditions." Of these two traditions, the most familiar one says: "Marry so that you multiply, because I will make display of you in front of the other nations on the Day of Judgement; even I will make a display of those prematurely born (*al-siqṭ*)." Another version of the tradition says: "Marry and beget children." Al-Ḥāfiẓ al-'Irāqī who enquires into the authenticity of this same tradition says: "It (the tradition) was related by Abū Bakr b. Mardawaih in the course of his remarking on one of Ibn 'Umar's traditions, deemed to be of a weak chain of transmission (*sanad ḍa'īf*)."
In discussing the authenticity of the same tradition al-Murtaḍā al-Zubaidī says: "It is included by 'Abdul Razzāq in his compilation,

on the authority of Sa'īd b. Abī Hilāl but with a weak chain of transmission."

But even if that tradition were genuine, it would not connote urging people to multiply by reproduction regardless of all other considerations. For how can Islam benefit from multiplicity if the progeny are not healthy and strong and unequipped properly for the battle of life? Is it not true that the strong believer is more in the favour of God than weak one? This is a genuine tradition of the Prophet as related by Muslim.

The most pertinent reply we can give for those who have misunderstood the special Muslim view of multiplicity and its opposite is the Qur'anic verse: "How oft, by God's will, hath a small host vanquished a numerous host" (Sura 2/249), and the Qur'anic verse: "And on the day of Ḥunain when ye prided yourselves on your numbers; but it availed you nothing; and the earth, with all its breadth became too straight for you, then turned ye your backs in flight" (Sura 9/25); and the Prophetic tradition which is related by Abū Dāwūd in his compilation of the traditions (*Sunan*). In this tradition the Prophet — upon whom be God's blessing and peace — is reported to have said: "The nations will soon gather together to fall upon you as people would fall upon a trencher to eat." Someone asked if that would be because of their small numbers at that time, and he replied: "No, ye will be numerous at that time; but you will be scum and rubbish like that carried down by a torrent, and God will take fear of you from the breasts of your enemy and cast enervation into your hearts." He was asked the meaning of enervation and replied: "Love of the world and dislike of death." Al-Bukhārī relates the following sound tradition: "Among the signs of the Day of Judgement is that men become less and women become more, so that for each fifty women there will be only one master." Is this multiplicity to which the Prophet referred to be considered a blessing or an evil?

We hope that we have presented in the foregoing discussion the most important points which both family planning and Muslim jurisprudence approve. Our aim is to make these points available to the intellectual few and to the public as a whole in order to resolve the ambiguities of the subject and help the students of Muslim legislation and those interested in the matter get at the truth. May God put us on the right path.

ISLAM AND THE PLANNING OF PARENTHOOD

BY

SHAIKH MUHAMMAD MAHDĪ SHAMSUDDĪN

I. THE ORGANIZATIONAL FRAMEWORK

Any examination of the totality of Muslim precepts and teachings on the family (its formation, structure and development) shows clearly and indubitably that Islam has most carefully studied this question and that it instituted for it a whole system of rules and legislations which is certainly apt and competent to found a healthy Muslim society.

Islam did decisively reject the principle which had until then been in currency on sexual relations, which principle condemned sexual intercourse as an evil worthy of contempt. Against that, Islam considered those relations as sacred and clean, and maintained that they must be practised but with care, calling upon people to have families, in beautiful terms such as the following: "And one of his signs it is, that He hath created wives for you of your own species, that ye may dwell with them, and hath put love and tenderness between you" (Sura 30/21). ❧"

The Prophet is reported to have said: "The evil-doers of my nation are the bachelors in it." He also said: "Marriage is my *sunna* (way). He who ignores my *sunna* is not my follower (*laisa minni*)." Traditions and injunctions similar to these are many.

Islam is greatly concerned with producing generations of people who are sound and fit both physically and psychologically, for it is obvious that the ill-qualified in this respect and the maladjusted children are a burden to the state and a danger to society. In order to avert such a difficult situation, bedevilling as it is the modern societies, Islam has successfully devised means and put up barriers to guard against the possible emergence of generations of ill-qualified people, eradicating thereby the disease at its origin.

With regard to the family system, Islam is concerned not merely with sound physical development but also, and at least in the same way if not to a greater degree, with sound psychological development.

It is natural that our efforts to produce healthy generations should start with the choice of husband or wife.

A. DUTIES AND RULES IN RELATION TO THE FORMATION OF FAMILIES

Many traditions, reported to have been said by the Prophet and by members of his family (*Ahl al-Bait*), ~~serve as a guide~~ for both man and woman in matters required of each of them when choosing a wife or a husband.

The greater part of these traditions emphasizes the need for moral and psychological soundness of the partner, in married life, which indicates that God revealed to the Prophet laws of heredity, recently discovered by scientific research, according to which children inherit parental characteristics. The divine revelation also urges people to exercise prudence before starting families to ensure that they get children with sound minds and bodies.

✓ 1) The Choice of a Wife

The Prophet says: "Beware of the verdant midden." Some one said: "O Apostle of God, what is this verdant midden?" He said: "The beautiful woman in a bad breeding spot."

Imām al-Şādiq related that the Prophet said: "Beware of getting married to a brainless woman; to live in company with her is a trial, and children go to waste."

The Prophet is reported to have said: "Look out where you deposit your child. The line of descent is conductive." This tradition implies that the function of heredity has to be kept in sight when choosing a life-partner.

When some friends of Imām Muḥammad al-Bāqir asked him whether it was all right for a Muslim to marry a beautiful but mad woman he loved, he replied: "No, but if he has a mad slave girl he can make love to her, but he should not have children by her."

✓ 2) The Choice of a Husband

As there are commandments to the man choosing a wife so there are commandments to the woman and her guardian how to choose a husband.

The Prophet is reported to have said: "A drinker of wine should not be married and his marriage suit should be rejected."

Imām Ja'far al-Ṣādiq is reported to have said: "He who gives his daughter in marriage to a drinker of wine, has severed ties of womb-relationship with her."

A man wrote to Imām 'Alī al-Riḍā saying: "I have a male relative, who has asked to be married (to one of the girls of the family); but he is of a bad character." The Imām wrote back: "Do not marry him if he is of a bad character."

Imām Ja'far al-Ṣādiq is reported to have said: "Do not marry a woman known publicly to be an adulteress, and do not marry a man known publicly to be an adulterer, unless you know personally that they have repented."

Those traditions regarding the choice of husband or wife are only a selection from among the rules of conduct and commandments relating to marriage, many of which are not of an obligatory nature. Also, the circumstances obtaining at the time when these were announced were not such as to render them obligatory. They, however, can be made use of in the way of giving the Islamic Law (*Shari'a*) courts further powers of certain kinds, and of providing marriage advisory bureaux with guidelines for use in advising men and women as to the best ways to choose a life-partner.

B. LEGISLATION REGARDING THE ESTABLISHMENT OF FAMILIES

Next to the rules and commandments which help both men and women to follow the best ways in choosing a life-partner, come the role of legislations which must be followed for the establishment of a family. These legislations are obligatory and can in no case be ignored.

✓ 1) The woman, the prospective wife, has to have all the necessary qualifications and must not be subject to any of the legal disabilities. She must not be one of the relatives within the prohibited degrees of marriage (*maḥārim*), not close related by *raḍā'* (suckling at the same breast). There should be no other impediments in the way of her marriage, such as adultery, marriage, being still in her waiting period (*mu'tadda*), performing the rites of the minor or the major pilgrimage (*'umra* or *ḥajj*), being a hermaphrodite, being a polytheist or an atheist and, according to some, being from among the People of the Book (*kitābiyya*).

✓ 2) The man, the prospective husband, has to be fully qualified, and free from disabilities. He has to be a Muslim, not an atheist, not a follower of any religion other than Islam, not one of the relatives within the prohibited degrees of marriage (*maḥārim*), not related by *raḍā'* (suckling at the same breast), not one of the in-laws, not one known to have committed adultery, not engaged in the meantime in performing the rites of the minor or the major pilgrimage, and not having already four wives.

✓ 3) Acceptance by both husband and wife to establish marriage relationship. Marriage must not be by compulsion against the couple's wishes. In the case of the girl who is of age, the Twelver Shī'ites require her legal guardian's approval (her father's or grandfather's). The approval of the legal guardian is required by all the legal schools in the case of minors, boys and girls, and in the case of either of them being insane or prodigal.

✓ 4) The marriage contract becomes legally effected by the man proposing and the woman accepting. The Sunnī Muslims require two witnesses to attend the drawing up of the contract. The contract, however, can be directly made by the man and the woman and also by the two legal guardians on behalf of both.

5) The insertion of a provision to cover the dowry is not a condition for the validity of the contract. In this case, however, the wife is entitled to the dowry normally assigned to a woman of her status, under similar circumstances.

These are the legal rules which should be observed when one intends to build a family.

C. FAMILY STRUCTURE, DEVELOPMENT AND RELATIONSHIPS

1) *Seniority in the Family*

The family constituted in accordance with the Islamic legal rules and standards is another cell added to the cells of society based on the wife and the husband.

The rule which Muslim jurisprudence provides for the moulding of the married life is embodied in the following Qur'anic verse: "And it is for the women to act as they (the husbands) act by them in all fairness" (Sura 2/228). But as women have rights, so they have obligations. "In all fairness" is usually defined by the general usage (*'urf*)

which people develop, guided by their true nature and by conforming to Muslim Law and morals.

This definitive (*muḥkama*) Qur'anic verse denotes equality between men and women and between husbands and wives as to rights and obligations.

However, we must point out that equality does not mean similarity or identity. It means that each gets his or her rights and each aptitude gets what befits it and that each potentiality is set within its proper framework. It is in this light that we must understand equality between husbands and wives.

At this juncture we must define what is meant by the seniority of the husband (*qiwāma*) and by his headship in the family. Are they necessary? Which of the two is entitled to exercise them?

What we mean by *qiwāma* is the task of directing the family and managing its affairs in the best way conducive to the promotion of the common interest of all. Welfare of both husband and wife and that of the children.

Qiwāma does not mean overlordship or subjection, nor does it mean the power to subdue and keep in servitude.

It is in place here to point out that according to the Twelver Shī'ites the woman is not obliged even to serve in her house and that it is the duty of the man to arrange for the house-work to be done for her and for the children.

As to the first question, let me mention that *qiwāma* is no doubt necessary, because to put family affairs in order, as in the case of any human institution, there must inevitably be a responsible leadership which can be appealed to for guidance and which is competent to decide issues on which members of the family differ. There is no doubt that dissolution and disintegration may be the fate of every institution which has no leadership to direct it.

As to the second question, about which of the couple is to be the senior member, let me mention that Muslim jurisprudence assigns seniority to the husband. God says: "Men are superior to women on account of the qualities with which God hath gifted the one above the other, and on account of the outlay they make from their substance for them" (Sura 4/34). And also: "But the men are a step above them" (Sura 2/228).

This rule reveals so much wisdom as can be seen if we consider the alternatives or the possibilities of the situation, of which three spring to mind:

- √ 1. That each of the couple may be senior.
- √ 2. That the wife may be senior, to the exclusion of the husband.
- √ 3. That the husband may be senior, to the exclusion of the wife.

It is quite obvious that the first alternative is not a practical one. It gives rise to many problems and much dissension.

It is also quite obvious that the second of those alternatives is not practical and, in the light of Islamic jurisprudence, unfair. It is not practical because the wife: (1) for several reasons is unable to play the role of seniority continuously. She is hampered by her physical and psychological constitution and by the fact that, by her nature, she tends to be more emotional and subject to passions and impulses which do not qualify her for the assumption of leadership. Leadership requires firmness of purpose, power of self-restraint, ability to avoid acting on impulses and to keep passions in check. (2) The fundamental role of the woman in the joint effort to build the family is to see to it that the children are properly brought up, and this prevents her from properly assuming with efficiency the responsibility of the headship and seniority.

This second alternative is also unfair because according to Muslim jurisprudence the husband must toil and work hard in order to provide money for the wife and the rest of the family. He is, therefore, entitled in return to assume the duties of both the head and the senior in family affairs

Thus we are left with the third alternative which must be adopted, as laid down in Islamic jurisprudence. The Qur'anic verse refers to the two considerations for which the seniority is assigned to the husband. God says: "Men are superior to women on account of the qualities with which God hath gifted the one above the other, and on account of the outlay they make from their substance for them" (Sura 4/34). This verse points out also the natural fitness of the man and his legal obligation to work and provide the expense.

2) Begetting Children

The Islamic texts are clear on the point that the primary objective of the establishment of a family is the perpetuation of the human species through the satisfaction of the sexual urges, which is achieved through sexual intercourse between husband and wife. Therefore, marriage presupposes sexual satisfaction; and this entails,

in consequence, the preservation of the species by procreation; the fruit of sexual intercourse.

In His glorious Book, God refers to this fact when He says: "God, too hath given you wives of your own race, and from your wives hath He given you sons and grandsons" (Sura 16/72).

There is a common belief among the Muslims that the multiplicity of the progeny is urged and recommended by Muslim Law. In point of fact, there are reliable texts to this effect, in support of this belief, which can probably act as a check and a hindrance to the campaign presently conducted in Muslim society advocating birth control or birth planning. So what is then the actual legal Muslim stand which can work towards promoting the interest of Islam in the present state of affairs?

Muslim schools (*madhāhib*) of jurisprudence differ on the question of contraception. The reason for this difference of opinion is the consideration as to whether the right of procreation belongs to the father, to the parents or to the nation collectively.

Al-Ghazzālī maintains that contraception is allowable. The Hanafites think it allowable, subject to the wife's prior consent. Some jurists, however, take the opposite stand by prohibiting it. The majority of the jurists in the cities (*amṣār*) outside Hijāz regard with disfavour the idea of contraception. Some Twelver Shī'ite scholars hold the view that the prevention of pregnancy should be disallowed if it is without the wife's consent. The general trend among the Twelver Shī'ite scholars, however, is to be regarded as disfavoured if it is without the wife's consent, and in disregard of the available Muslim texts urging the multiplicity of progeny.

In view of the texts and traditions relating to this matter, we think that the child belongs both to the nation and to his parents together.

The child belongs to the nation because he is one of its members, and as such he takes from it and gives back, interdependently. The legal support for this view is found in the Sunna (Prophet Muhammad's deeds, utterances and unspoken approval) which urges people to get married, frowns upon celibacy, praises the multiplicity of progeny and commends the woman who gives birth to many children.

The child belongs to the parents because they both beget him as a result of their conjugal relations and consequently, they are the agents who are responsible for his being. They, furthermore, bring him up

and make every effort for his proper development. Whatever the child does, his character and behaviour reflect on the parents and are ascribable to them. The father's claim to the child is stronger because the child is related to him (carries his name) and because the father has to provide for him as long as he is unable to earn his living.

Therefore, when defining the Muslim legal stand on the matter of birth control, we have to take into consideration the two sides: that of the nation and that of the parents.

If we consider the Muslim texts and traditions which indicate that the nation has a claim to the child and if we relate them to other texts which warn against marrying a foolish woman and which give the wife or the husband the right to break the marriage contract if one of the partners suffers from some hereditary disease, we shall find that when we set the texts urging the multiplicity of progeny against the rest of the texts referred to, we shall be led to question the belief that Muslim legislation meant, by all those texts urging multiplicity, to lay down, through them, a comprehensive and strict rule to be applied in every case and at all times, and we feel inclined to hold it more probable that those texts are meant to apply to special cases and special periods during which birth rate was very high, and to be used later as a support for rules recommending multiplicity in situations where multiplicity is desired. But when multiplicity produces adverse effects on the married couple and the nation in general, then it is of no harm to impose restrictions on the application of the rules.

It is in the light of the above analysis that we must distinguish between the right of the parents and that of the nation.

Since the child belongs to the parents, they can for health, economic or social reasons control the procreation of children by limiting their number without contravening any legal Muslim rule. They can also stop to have children by resorting to temporary contraceptive methods or by permanent sterilization, again without violating any Muslim legal restriction. The justification for this is the fact that the child belongs to the parents and, consequently, they are free to exercise this right or to relinquish it.

Since the child mutually belongs to the nation, the authorities in charge of its affairs and the protection of its interests cannot adopt birth control as part of its general policy and impose it by force or other compelling means unless it is decisively proved that their action is in the interest of the nation; otherwise we must leave the natural

process of multiplicity take its course. If it is established that multiplicity is in the interest of the nation then the authorities will have to adopt the appropriate means to that end without encroaching on the parents' right to limit the number of their children. When, however, the limitation imposed upon the number of children becomes a general trend and unavoidable course at a time when the nation's interest lies in the multiplicity of progeny, then the authorities will step in to stem that tide by keeping in check the availability of contraceptive methods.

In sum, we must distinguish between the individual familial cases and the nation's general policy, and consequently, give the individuals freedom of action; but the adoption of a national policy for birth control must be done in the light of the nation's needs and interests.

3. *Genealogy and Filiation*

Genealogy denotes relationship by descent. Filiation or affiliation denotes the ascription of a child to his father or mother.

Filiation is established by legitimate birth which results from marital relations legitimized by a legal contract, or from a sexual intercourse with a woman believed by the man to be his wife, when this relationship can be established by the recognition of the child as born in legitimate wedlock or by the testimony of two witnesses considered to have reputable character.

✓ a) The marriage contract is correct and binding when it satisfies the conditions mentioned previously.

If a man sleeps with his wife and ejaculates into her, or if he happens to be together with her in complete privacy, according to the orthodox specifications and if the minimum period of gestation, which is six months, elapses after the sexual intercourse, or if the full period of gestation, which is two years with the Ḥanafites and four years with both the Shāfi'tes and the Mālikites, elapses, and subsequently the woman gives birth to a child, the child will be the legitimate child of both, and will consequently be entitled to all the legal rights of a legitimate child.

✓ b) Sexual intercourse with a woman mistakenly thought to be the wife.

If a man sleeps with a woman other than his wife without a legitimate contract or with a woman who is non-marriageable to him (within

the degrees of marriage taboos — *maḥārim*) while he is ignorant of her true identity and taking her inadvertently to be his wife; and if a man enters into a marriage contract with a woman to whom he cannot legally be married, but without knowing at the time, and then causes her to become pregnant; in these cases the man, because of ignorance, cannot be accused of committing adultery. In these cases also the child has to be filiated to him and both sonship and fatherhood are legally established. The child gets entitled to his legal rights as a legitimate child.

c) Avowal (*iqrār*).

Genealogical relation can be established through one's avowal. Thus if a man avows the filiation of a child, his avowal will be accepted as a legal proof, subject to the following conditions:

i — The likelihood of filial relationship. If the difference in age between the child and the man is so small or implausible for other reasons, the man's avowal is not conclusive and hence inadmissible.

ii — The child considered for recognition must be of an unknown filiation, because if he happens to have any legal filiation, the avowal is to be rejected.

iii — To be valid, a man's claim to be the father of a child must not be disputed by anyone else.

Confirmation by the child of the avowal or the claim is not credible if the child is still very young. But the confirmation by an adult is credible.

When all the conditions for establishing the validity of the avowal are met, then both the fatherhood and the sonship, will be legally established and consequently the child will become entitled to all the legal rights such as maintenance, inheritance and the like.

iv- The testimony of two reputable witnesses.

Generally speaking the genealogy, including sonship, can be legally established by the testimony of two witnesses of reputable character. If two brothers, of a dead man, of reputable character testify that a certain child is the son of the dead man, the sonship of the child becomes legally established and the child becomes more entitled to the inheritor.

The subject we have been discussing has two other questions:

a) Adoption

Adoption is becoming common, particularly in the social sectors influenced by European civilization.

In Islam neither sonship nor any other genealogical relation can become legal through adoption. Islam prohibits adoption and stipulates that each must be related to his father. God says in the Qur'ān: "Nor hath He made your adopted sons to be as your own sons. Such words are indeed in your mouths; but God speaketh the truth, and in the right way He guideth. Name them after their fathers; this will be more right before God. But if ye know not who their fathers are, then let them be your brethren in the faith" (Sura 33/4-5).

b) Repudiating the Child

The husband can disown his relation to the child in two cases only. First, if the child is born in less than the six month's period following the husband's sexual intercourse with the wife, or after the end of the maximum time allowed for pregnancy. The child, in this case, cannot be related to the husband. Second, if the husband denies that the child is his own, though the latter, when a foetus remained in his mother's womb for no less than the minimum period allowed for pregnancy or for no longer than the maximum period allowed for pregnancy; and if the husband makes the denial while the marriage contract is still valid, his wish to disown the boy cannot be entertained unless he resorts to *li'ān*.

By *li'ān* is meant the process by which the husband brings the case before the Sharī'a (judicial Muslim) courts and affirms under oath that the child born of the woman is not his. The judge then asks him to state his testimony four times by saying: "I testify, and God is my witness, that it is true that this child is not my child." Then he has to say: "May God damn me if I am lying in accusing the wife (of unchastity) and if I am wilfully denying that the child (born of her) is mine."

Following the husband's testification in these terms the judge asks the wife to state her testimony. She then says four times: "I testify, and God is my witness, that in accusing me of adultery, he (the husband) is lying." Then she goes on to say: "May God's wrath fall upon me if I am lying."

The judge pronounces the verdict on the basis of *li'ān*. He can decide that the child born of the wife is not his (the husband's) child; and he may decide that the wife and husband are forbidden permanently to have any marital relations with each other.

Another matter still to be finished in this process is that as soon as the husband knows that the child is not his child he has to follow the legal procedure for formal repudiation. Legally he is not allowed to avow the filiation of a child if he himself believes that he is not the father.

4. Maintenance (Expense).

Maintenance, in Muslim Law, is the expense provided by the maintainer for those related to him by virtue of their being wife, father or son. It can, therefore, be divided into two parts: maintenance of the wife and maintenance of the relatives.

Maintenance covers food, clothing, living quarters, bedding, a cleaner, medical fees, medication, maternity expenses for the wife (or some other deserving woman) and other agreed needs. The amount of expense is decided in the light of the maintainer's financial ability and his social status.

✓ There are two kinds of maintenance:

a) Maintenance of the Wife

The marriage contract entitles the wife to be maintained by the husband.

The wife has priority over the relatives in the question of maintenance. Consequently, if the husband has to choose between maintaining his wife or relatives, he has to give the wife priority over them.

Maintenance of the wife is undertaken in two cases: in the course of married life and in the case of divorce.

i — During married life:

The maintenance of the wife has to be undertaken as soon as the marriage contract is effected. The wife can claim the maintenance (expense) as her right. If the husband is unable to provide it during a certain period the amount should be considered as a debt to be paid by the husband later.

Conclusion The wife is entitled, however, to the maintenance as long as she does not commit *nushūz*, that is if she refuses to obey him, nor leave his house and live somewhere else against his wish and without a reasonable excuse, nor deny him what he is entitled to, nor offend him by bad taste and abuse, nor leave him without an acceptable excuse.

The husband's rights over the wife do not include housework. The husband, consequently, cannot compel her to do it. Her refusal to serve in the house is not to be considered as *nushūz*.

✓ Denial of maintenance:

If, while the husband is able to maintain the wife, he refuses to do so, the wife can take the matter to the legal court. The judge has to order the husband to choose either maintenance or divorce. If the husband refuses to choose either course the judge may, if he can, arrange for the expenses of the wife to be defrayed from the husband's money, and proceeds of his property; otherwise the judge has to divorce the husband even if the latter rejects the divorce. If the woman is unable to bring the matter before the judge she is permitted to refuse to fulfil the marriage obligations.

✓ Inability to provide maintenance:

If on drawing up the marriage contract the husband was found to be unable to provide the maintenance or failed later to do that, the wife could go to court to demand it. If the husband proves unable to provide it, then the judge may decide for divorce, and if the husband refuses to agree to the decision, the judge has then to pronounce their divorce.

ii — Divorce:

If the husband divorces revocably, the wife has the right to be maintained during the waiting period, however long this period may be. But if he divorces her irrevocably then she loses the right to maintenance unless she is pregnant. Maintenance then will continue as long as she is pregnant. The death of her husband stops maintenance completely.

b) Maintenance for Relatives

The relatives who are entitled to get maintenance are the fathers (and upwards in the line of kinship) and the children (and downwards in the line of kinship).

The parents, if financially competent, are required to maintain their children, if the latter are unable to earn their living.

The father has to provide maintenance to his son. If he fails to do so, then the grandfather becomes responsible and so on up the line. If the father and the grandfather and their great-grandfather are dead, the mother will have to shoulder the responsibility. If the mother is dead then her father and mother become equally responsible. If it is the grandmother and the mother-in-law, then the two will share the burden between themselves. If it is the grandfather, then he alone will be liable.

Similarly it is the responsibility of the sons, grandsons and those downwards in the line of kinship to provide maintenance for their fathers, grandfathers, and others up the line if they are able to do so to any extent, and if their fathers, grandfathers and the others up the line are unable to earn their own living. The responsibility for maintenance continues to stand so long as the one in receipt of maintenance expenses is far from being financially independent and still unable to earn one's living.

Maintenance includes everything needed to help the recipient to maintain a decent standard of living, such as housing, clothing, food and education.

5. *Guardianship*

The first consideration in Muslim Law is that people are free and that no tutelage of one over another is allowed.

But man, under certain circumstances, may happen to be unable to look after himself on account of mental retardation or deficiency and therefore, Muslim jurisprudence instituted the system of guardianship which gives authority to the guardians to help minors or mentally deficient wards in the proper management of their affairs as long as they remain in that state.

Those who are in need of guardianship are the young boys or daughters (the minors) whether they are discriminate or not, the insane, the mentally deficient and the imbecile. In the question of marriage the girl, whether a minor or of age, has, according to most scholars, to have a guardian.

a) *The Guardian*

The guardian is the father or grandfather and upwards in the line of kinship. In case of the father's death, the guardianship devolves upon the executor appointed by the father or the grandfather. If there is no such executor, then the guardian will be the competent accredited ruler. No other person can assume guardianship.

In all cases, however, the guardian has to be a Muslim. The guardianship of a non-Muslim over a Muslim minor is in all cases illegal.

b) *The Terms of Guardianship*

It can generally be taken for granted that the guardian's management must in no way be injurious or disadvantageous to those under his care. Some even stipulate that the guardian should promote the

interests of those under his charge. If his proceedings turn out to be harmful to his ward's interests or if they fail to promote his or her interests then they are to be reversed or declared invalid and illegal.

Guardianship is operative for drawing up the marriage contract and for financial transactions and management.

i — The Marriage Contract

The father (and the grandfather and upwards in the line of kinship) is entitled to exercise guardianship over the minor sons and daughters, and over the adult insane of both sexes. But if the child comes of age and then becomes insane, the case will have to be settled by different legal rules, as we shall shortly see.

The mentally deficient male cannot get married except with the father's permission if the father is still alive. But the father cannot act independently in his capacity as guardian in the case of the sane daughter if she is of age. Her permission and acceptance in the choice of a husband by the father, as well as the father's permission and acceptance in her choice of a husband, are required.

The executor is entitled to guardianship over the insane ward, if he or she, after coming of age is still insane and is obliged to get married. In this case, however, the executor has to secure the permission of the competent ruler.

The ruler exercises guardianship over an insane person if insanity befalls him or her after he or she comes of age, and if marriage is imperative. The ruler is also the guardian of the boy in the matter of marriage by force of circumstances. The mentally deficient male cannot get married without the ruler's permission if the father is dead.

ii — Management of Financial Affairs

The financial transactions and arrangements by the minors, the insane and the mentally deficient are invalid.

The father is entitled to be custodian for the money and property of the minors, the insane and the imbecile, even after they come of age. When the father dies he is succeeded as guardian by the grandfather. If the latter dies, then the guardianship goes over to the executor appointed by the father or grandfather, provided the terms of his executorship cover finances. But if those terms fall short of that requirement or if, simultaneously, there is no executor, then the judge or ruler becomes the guardian.

The judge or the ruler exercises custodianship over the finances of the insane and the mentally deficient, if the insanity and the mental deficiency have befallen them after their coming of age.

c) Abrogation of Guardianship

The guardianship is lifted or abolished when and if the mentally deficient and the insane no longer suffer from their disabilities and when the minor comes of age. The sign for maturity can be one of the following three signs: 1) thick pubic hair, 2) ejaculation of semen and 3) the attainment of the fifteenth lunar years of age. The female comes of age when she completes her ninth year.

Thus when the mentally deficient child comes of age and the insane one recovers sanity and the mentally deficient one becomes sensible, guardianship over them is lifted once and for all, no matter whether the guardian is the father or the grandfather; and they can act independently in financial and marriage matters and can live with one or both of the parents. An exception to this is the sane mature virgin; in some cases, particularly marriage, she cannot act independently, but likewise her father cannot act unilaterally if it is a question of marriage; he has to secure her consent also.

6. *Taking Care of the Child by the Mother*

Child care by the mother is a sort of guardianship over the child to bring it up through nursing and love and orderly life etc.

Who has the right to take care of the child? The mother has the prior right on condition that she is a sane Muslim woman who is worthy of being entrusted with the task. She, however, loses the right on her death. If her death takes place while still nursing the child, the child's father has priority over her father, mother or her executor in taking over care of the child. If the father, after he has been entrusted with looking after the child, dies, or if he is a non-Muslim or insane, the child's mother, even if she is married to another man, will have the prior right over the father's executor, the grandfather, the grandmother (on the father's side) and others, until the child comes of age.

Some jurists hold a different opinion on the question of child care in case the two parents die. They suggest that it should then be entrusted to the grandfather. If the grandfather is dead, then the executor of the father or of the grandfather. If there is no executor then it will be the responsibility of the nearest of kin in order.

a) Duration of Child Care

The period during which a child is to be taken care of by the mother is seven years for the girl, after which her father has the right to assume responsibility for her. But in the case of the boy it is agreed that his mother has the right to take care of him for two years, after which the father, has to assume responsibility. Some jurists hold that the mother is entitled to keep both the daughter and the son until the end of their seventh year.

Other opinions on this subject are to be found, but they are not very reliable.

b) Compensation for Child Care

Child care consists in suckling (*irḍā'*), nursing, and other duties to bring the child up with careful supervision and attendance.

c) Suckling

The period of suckling is two years commencing with birth. However, it could be shorter or longer.

The mother is entitled to be compensated for fostering the child. The father has to pay the compensation from the child's money if he has any; otherwise the father pays it from his own money. The mother is under no legal obligation to suckle the child. The mother has the right to get paid for suckling if she asks for payment and if no other woman approved by the father volunteers to do the job. But if such a volunteering woman comes forward, to the satisfaction of the father, the mother loses the right to be paid for nursing even if she chooses to do so.

d) Bringing up and Looking After the Children

What applies to nursing applies also to the bringing up of children. In both cases the mother is entitled to compensation if no other woman is willing to do the job free of charge. If such a volunteer is available, the mother is not entitled to any compensation, even if she shows willingness to undertake herself the job of nursing.

We have dealt so far with the organizational framework of the relationships between husband and wife on the one hand, and those between the children and each of the parents on the other. But for the sake of presenting a complete idea about the Muslim view of the planning of parenthood we still have to discuss the lines which the parents should follow in bringing up their children well, providing them with good education and properly developing their character. What are the broad and main lines of the educational programme recommended by Islam?

II. EDUCATION

In Islam the family is considered to be the initial school for the child. It is, therefore, the duty of the parents to provide the proper family atmosphere for the mental and spiritual development of their children. Hence Muslim texts and traditions on education lay emphasis on the great responsibility of parents to bring up their children well, and provide parents with useful guidelines to follow in this direction.

The great importance which Islam attaches to the education of children can be seen from the following *ḥadīth* (Prophetic tradition or utterance). The Prophet is reported to have said: "God's wrath for anything cannot be greater than when it is for women and children."

1. *The Education of the Child is a Religious Duty*

Islam is absolutely against restricting the parents' role in bringing up their children and against limiting it to procreation and feeding the children to keep them alive. It goes much beyond that and holds the parents responsible for developing the character and the integrated personality of the child by providing him with a sound education. The proper education of the child is not only a nationalistic and humanistic duty, but also a sacred religious obligation, enjoined by Muslim Law and, therefore, cannot be shirked or evaded.

The Prophet said: "May God have mercy upon a servant who lends aid to his child to do good to him, and that is by being charitable to him and by reconciling and winning over and instructing and educating him." Imām 'Alī son of al-Ḥusain Zain al-'Ābidīn says in his well known *Treatise on Rights*: "It is your child's right that you realize that in all matters of this life — good and evil — the child is your descendant and carries your name and that you are responsible for bringing him up well and for instructing him in the knowledge of God and teaching him to be obedient to Him. In this responsibility towards the child you must remember that you will be rewarded for being kind to him and punished for being unkind." He also says in one of his prayers to God on behalf of his children: "And help me educate, correct and be kind to them." Imām Ja'far al-Ṣādiq says: "The child has the right to have his father do three things for him: the proper choice of the mother, giving him a good name and making every effort in bringing him up well."

Education, according to Islam, therefore, is one of the bounden duties of the parents who cannot rightly be relieved of it and cannot rightly evade it.

2. *The Function of Education*

Proper and perfect child education takes care of all the moral and material needs of the child and strikes a balance between the demands of the spirit and those of the body. It aims at the proper physical development of the child by affording him good maintenance and guaranteed living as previously mentioned and at developing his talents and good psychological, mental and emotional traits and at stamping out the evil ones.

This aim cannot be realized except through education which requires a suitable atmosphere, good instruction and a good exemplar to be imitated.

In all this, we have to take account of any changes brought about by the changes of times or place in the process of education; and we must work in the light of the spirit of human progress within the framework of Islam, in reponse to the directions given us by Imām 'Alī b. Abī Tālib who says: "Give your children an education different from yours because they are created for a time other than yours."

Nature of Edu-

3. *The Proper Conditions*

Education cannot produce the desired effect, unless all the prevailing conditions are fit and congenial because, if unfavourable, they often frustrate efforts in this direction. Unfavourable conditions, as is obvious, will in the long run produce bad results.

We, consequently, find that Muslim attitude lays stress on the need for favourable and congenial conditions to be afforded for education to be most successfully carried out.

✓a) The first thing which Muslim texts and traditions emphasize is the choice of a proper mother; because, for having the right children in the family, the proper mother plays an important role. We have already given selected Muslim texts in support of this view or in laying emphasis on the psychological accomplishments and fine qualities which should be sought when choosing the wife.

b) Among other things recommended by Muslim teachings is that conditions of pregnancy must be favourable.

It has been scientifically proved that conditions whether at the time of sexual intercourse when conception takes place, or during

the period of gestation greatly influence the mentality and psychology of the foetus and consequently influence greatly its life, after birth.

In order to provide favourable conditions for pregnancy, Islam starts by considering the sexual act as something pure and as a healthy engagement satisfying sexual desire. Islam also dissociates sex from all the indecent, unclean and inhibitive concepts attached to it as a result of the attitudes of some non-Muslim intellectual schools of thought and religious teachings. Islam, again, very strongly condemns copulation while one is drunk, emotionally upset or disturbed because such mental states greatly influence conception and the embryonic structure.

Among the best admirable proofs of Islam's great concern for providing favourable conditions to pregnancy are the various texts which indicate that the happiness or misery of the child in life is determined during gestation. One of those texts says: "The wretched one is he who was made wretched in his mother's belly, and the happy one is he who was made happy in his mother's belly." Thus Islam instructs the married couple to let the period of gestation be one of tranquility, peace of mind and moral purity so that the embryo may grow in a setting congenial to the development of good aptitudes.

c) In order that children may grow up in a proper and clean atmosphere, Muslim teachings point out that family life and the nature of the relations between husband and wife have profound influence on the mental, psychological and emotional development of the child. Wherefore Islam provides legislations which make it obligatory that the husband and wife get along together in a friendly and co-operative way which acts as an obstruction to the rise and growth of a hostile and unfriendly spirit between the couple, having first implanted in their hearts love and respect for each other.

Once the peaceful family life which is not disturbed by nagging, disputes and hate is established, the appropriate atmosphere for the correct and good upbringing of children becomes possible.

4. *Islam First*

Education, shorn of moral training and sound religious orientation can only provide us with individuals who will prove dangerous to society. Undoubtedly, it is quite impossible to build a strong, sound morally healthy structure without the vital religious objective. It is religion which vindicates moral behaviour and induces the religious to make sacrifices in response to moral motives.

Starting from this principle, Islam urges that the first task which parents must undertake in educating their children is to inculcate in them the religious spirit and to teach them Islam. Parents who fail to undertake this task should be held accountable for the failure of their children in life.

The Prophet is reported to have looked at some children and said: "Woe will be the lot of children of the End of Time to betide them at the hands of their parents." Some said: "Oh Apostle of Allah! At the hands of their parents who are polytheists?" He said: "No, from parents who are believers but do not teach them (children) their religious duties and when they wish to learn, prevent them and get satisfied with them because of little wordly things. I have no responsibility to them and they do not belong to me."

Addressing the father, Imām 'Alī son of al-Ḥusain says: "You are responsible for the good moral education you can give him (your child) and for guiding him towards God."

Imām al-Ḥasan al-'Askarī is reported to have said: "On being amply rewarded by God, the parents say: 'O God! do we deserve this when our actions do not justify it?' They are answered: 'This reward is for teaching your son the Qur'ān, and for enlightening him well on the religion of Islam'."

Imām Ja'far al-Ṣādiq, who lived in a period of intellectual ferment, characterized by the spread of heterodox ideas, foreign to Islam, remarks that careful attendance to the proper teaching of religion to children protects them from falling victim to the disruptive and subversive propagandas. He says: "Hasten to teach your children the Prophetic traditions (*ḥadīth*) lest the antinomians (*murji'ites*) forestall you to it."

We see from the above explanation that religious guidance tops the list of the educational tasks of the parents.

5. *Kindness of Children*

Parents' regard for, and kindness to, the child are among the basic sources of strength which make for a sound personality. The Prophet makes this fact clear in his commandments and in his behaviour towards his, and other Muslims' children.

Wherefore it is one of the basic principles of Muslim education. The Prophet is also reported to have said: "Treat your children with consideration and bring them to be well-mannered." He is also reported to have said: "Love your children and have mercy upon them

and if you promise them anything fulfil your promise to them.” He used to show great loving kindness to his children. History is full of traditions on the subject. He was also kind to all other children. On arriving from a journey, he used sometimes to be met by boys. He would stop for them, and ask for them to be lifted up. Some would be lifted in his hands, and some others onto his back. He would also ask his companions to carry some of them.

To show respect and kindness to children and to avoid making them feel rejected and humiliated is one of the fundamental requirements which Muslim legislation urges people to fulfil very carefully.

One of the things required for showing kindness to children and making them feel accepted and cared for as dignified human beings is to greet children or salute them in every opportunity. This is also enjoined by Islam.

The Prophet would not only return the salutations and greetings of the children, but would himself take the initiative and greet them first. This explains why the traditionalists (scholars of *ḥadīth*) devote special chapters to the subject of commendability of greeting children. These chapters include among other Prophetic traditions, the following:

Imām Anas b. Mālik is reported to have said: “The Apostle of God — upon whom be God’s blessing and peace — once met some children and greeted them as he was hurrying on his way.” It is also reported that it was the custom of the Prophet to greet all people young and old.

Imām Ja‘far al-Ṣādiq is reported to have said on the authority of his family elders that the Prophet said: “There are five things which I will not give up until death... and the greeting of children, which is to become a custom after I am gone.”

6. *Development of the Sense of Truthfulness*

Islam emphasizes the responsibility of the adults for the development in children the appreciation of spiritual values, such as truthfulness and faithfulness to promises. The Prophet is reported to have said: “Love your children and have mercy upon them; and if you promise them anything, keep your promise to them. For they consider you as the only ones to provide for them.” He upon whom be Allah’s blessing and peace — is reported to have said: “If any of you promises his child something, he should fulfil his promise.”

Imām 'Alī is reported to have said: "Lying has no remedy, either in seriousness or in jest. Do not make promises to children if you do not intend to fulfil them."

Imām 'Alī al-Riḍā is reported to have said: "If you make promises to children, fulfil them. They only see that you are the providers of their livelihood. The wrath of God, Most High and Glorious, is never so great as when it is in behalf of women and children."

7. Play

One of the natural tendencies of the child is to play. It is known now that play has a great role in building up the child's personality — physically and spiritually — and in developing in him an aptitude for originality and creativeness.

Islam pays great attention to this pedagogical aspect of child education. This explains why the great Imāms of the Prophet's family enjoin people to enable children to play and make it easy for them to have access to it. Imām Ja'far al-Ṣādiq for instance, is reported to have said: "The boy plays during seven years, learns the scriptures in seven years and learns the licit and the illicit in seven years." He is also reported to have said: "Let your son play for seven years." The Prophet and the prominent Imāms of his family point out to all Muslims that the proper method of education, as expected from the child's parents, is to play with him in order to make him feel self-confident. For instance, the Prophet is reported to have said: "He who has a boy for a child, must behave lovingly towards him." He also said: "May God have mercy upon a servant who lends aid to his child to enable him to do good to him, and that is by being charitable to him, by reconciling and winning him over and instructing and educating him."

Ibn 'Abbās is reported to have said: "The Prophet — upon whom be Allah's blessing and peace — said: 'He who gives joy to his daughter is like one who sets free a slave from among the children of Ismā'īl; and he who gives assurance to his son, is like one who (in his devoutness) weeps for fear of God'."

8. Tenderness and Emotional Satisfaction

One of the most important matters which form a significant part of Muslim educational instructions is the necessity of treating children with affection and tenderness and of making them aware of it so that

they can have what we call emotional satisfaction. In this way we avoid distorting their psychological development. Actually, harsh treatment of children by their parents is a blow to their sense of security, apart from the consequent insult to them personally and injury to their susceptibilities.

One of the traditions showing the behaviour of the Prophet towards children tells us that when a little child was brought to him to be blessed by him or to be given a name, he would place the child on his lap, as a kind gesture to the child's parent. The child, as would happen sometimes, would urinate and thus make some of the people present shout angrily at the child. The Prophet would then say: "Do not interrupt the urination of the boy. Let him go on urinating." And he would proceed his blessing and then give the child a name. The child's parents or relatives would feel happy that the Prophet was not offended. After their departure the Prophet's garment would then be washed.

The Prophet is reported to have said: "Venerate your elders and have mercy on your young." He is also reported to have said: "There is none among us who have no mercy on our young and no reverence for our elders." He is also reported to have said: "Love your children and have mercy upon them"; "He who kisses his child in love will have one good deed credited to him by God; and he who gives him joy will be given joy by God on the Day of Judgement."

Imām Ja'far al-Şādiq is reported to have said: "God will have mercy on a man for his intense fondness for his son." He is also reported to have said: "Kiss your children very often because you gain a rank up in the scale for every kiss."

The Prophetic traditions cited above and other traditions by the Imāms of the Prophet's family on the question of the emotional development and the emotional satisfaction of the child, are only a small proportion of the total. Those traditions are concerned with child's sound emotional development.

But, in this question, Islam warns that limits should be set for emotional satisfaction, because balance and moderation are always the aim of Muslim legislation and guidance. This explains why Islam warns against exaggerated fondness and excessive sentimental sloppiness. Actually such emotional demonstrations lead to negative results, injurious to the interests of the child.

The child must develop, as he grows, self-reliant and independent in his personality, but to treat him with too much fondness and sentimentality would spoil him and emotionally upset him and cause him to develop into a milksop with a weak personality which would break down at the first shock in life. Imām Muḥammad al-Bāqir refers to this significant educational fact when he says: "The worst parents are those who in showing kindness go to the extreme; and the worst children are those who because of parental default, turn dutes."

9. *Equality among Children*

What the child strongly hopes to get and what arouses his joy are the parents' affection and tenderness of heart. There is nothing as effective as the feeling by the child of the parents' affectionate solicitude for bringing tranquility of the soul and the sense of security and safety to the child. When the family has only one child the problem of equality does not arise. But when the family has several children, then the difficult problem for the parents arises, namely, the maintenance of equitable and equal treatment of the children, without favouritism or prejudice.

Some parents commit a great mistake when they show special favour to one of the children, unconcerned about the pressing need for explaining themselves to the rest of the children. Such discrimination may give rise to many psychological and emotional complexes in them, such as the complex of inferiority and inadequacy and complexes of jealousy and vindictiveness. Islam calls attention to this significant educational problem.

The Prophet is reported to have looked at a man who had two children and who preferred to kiss only one of them. He said to him: "Will you not strike balance between them?" The Prophet is reported to have also said: "Be fair in dealing with your children just as you would like them to be fair in dealing with you."

Imām Muḥammad al-Bāqir's attitude towards his children is illustrated by the following saying of his: "In the name of God, I sometimes coddle one of my children, sit him on my knee, show him much affection and praise him very much, but the other children are entitled to get the same favouritism; by doing this I protect the child from the others because they might treat him as Yūsuf's (Joseph's) brothers treated Yūsuf. The Qur'anic Sura of Yūsuf is full of warnings against jealousy among brothers, similar to that of Yūsuf's brothers who, in consequence of that, inflicted great injustice upon him."

10. *Punishment*

In education it is necessary to use punishment for correcting children, when all other methods have failed.

On this important educational question, Islam provides two significant directives.

The first deals with the educational atmosphere.

We note that sometimes the educational problems of the child are treated in a way that leads to more disobedience and irregularity on the part of the child, and this in its turn predisposes responsible people to punish the child. At other times those problems are treated in a way which helps reduce to a minimum the child's impulsive disobedience and weakens his tendency to insubordination. Islam rejects the former way because it is, first, inhuman and secondly ineffectual from an educational point of view. Islam favours the second way.

This is pointed to us by the Prophet who is reported to have said: "May God have mercy upon him who lends aid to his child to do good to him." When asked: "How does he lend aid to his child to be good to him?" He said: "He accepts what the child can offer in his case, and forgives him if in his financial difficulty cannot offer anything, and does not press him and does not treat him inconsiderately."

The above Prophetic tradition shows that the heavy burdens imposed upon the child and the sternness, used wrongly from a psychological point of view, cause him to be intractable to the parent or teacher, and this incurs punishment. The Prophetic tradition shows us that the duties laid upon the child must be within his mental and physical capacity; otherwise the child would be disgruntled and perverse.

The second directive afforded by Islam relates to the method of punishment and correction.

To begin with we notice that the modern methods of education are against corporal punishment except when it is absolutely unavoidable. Corporal punishment should be avoided on principle owing to its harmful effects, emotionally and mentally. That Islam draws attention to this educational fact is clear from a saying by Imām 'Alī al-Riḍā. He is reported to have said to one of his men when the latter came to him complaining of his son: "Do not beat him. Leave him alone but only for a while." This saying shows that the Imām explicitly forbids the beating of children and emphasizes the need for

psychological treatment and pressure instead. He, however, warns that the emotional punishment must be moderate, and that leaving the child alone should only be for a short time, lest the punishment would result in warping the child's psychology and in inducing him to think lightly of such punishment, and to get used to it.

Physical punishment, however, may become inevitable when emotional and psychological methods have failed.

Here, Islam puts restrictions on corporal punishment. The beating of the child, according to Islam, which leaves by its severity any traces on the body (such as red or green or black spots) is illegal and is tantamount to assault. In the latter case the man who inflicts the beating is liable for blood-money.

Islam stipulates also that the kind of corporal punishment allowed for educational purposes must not amount to such beating as would incur the exaction of blood-money.

If the parent or the teacher beats a child and is deemed in consequence to be liable for the blood-money, the blood-money goes to the beaten child.

In the above discussion of the planning of parenthood in Islam we have presented examples of the Muslim educational principles.

May God — Most High — teach us what we do not know and help us to benefit from what we know. He is the most generous One to ask and is our last resort. Praise be to God the Lord of the Worlds.

ISLAM AND BIRTH PLANNING

BY

AMĪNA AL-SA'ĪD

Civilization faces today numerous dangers, prominent among which is the steady population growth witnessed in many countries of the world, which poses a threat to the security and stability of mankind and stands in the way of man's attainment of the prosperity and well-being to which he aspires.

Modern science harnesses a considerable part of its efforts and technical know-how towards satisfying people's increasing needs and wants. Nevertheless, the population explosion, which knows neither surcease nor respite, may end up by destroying or frustrating all the contributions and efforts of science and scientists.

If we could project ourselves into the future and look at the world in which our descendants will have to live, a most dreadful picture would present itself before our eyes.

In the year 2050 the number of the world population will reach 13,000 million, that is, if man continues to reproduce at the rate he does now. This means that the world population would quadruple in a period of eighty years, a most serious, nay, a most alarming prospect.

There can be little doubt that we, in the Egyptian Arab Republic, are doing more than our full share in contributing to this explosion, the consequences of which are so fraught with real danger to the world. Consequently, voices have been clamouring for birth control, as one of the most important means that can stem the tide of this sweeping current and check the devastating evils it would bring in its wake.

People living in countries professing the Islamic faith, however, when presented with a new situation, are always desirous of knowing the position of their religion vis-à-vis that situation and how the latter may affect their faith, whether directly or remotely.

IMPORTANCE OF THE FAMILY IN ISLAM

There is little doubt that the family, in all its ramifications, as well as in all the many, complex relationships binding its various members together, has occupied a prominent place in the Holy Book as well as in the thought and works of the Prophet and the jurists of Islam.

For, in Islam, the family constitutes the bedrock of society while the backbone of the family is marriage, which must rest upon love and affection, co-operation and good companionship. God says in the Holy Qur'ān: "And one of his signs it is, that He hath created wives for you of your own species, that ye may dwell with them, and hath put love and tenderness between you. Herein truly are signs for those who reflect" (Sura 30/21).

Of the many objectives of marriage, the one of most importance is man's procreation of sons and daughters, thereby renewing and extending his own life. √

The Qur'ān sets much store by children, to such an extent that sometimes they are sworn by something holy. God says: "I need not to swear by this soil... or by sire and offspring" (Sura 90/1-3). Sometimes they are referred to as a blessing graciously bestowed upon the parents, as in the following verse of the Qur'ān: "There did Zacharias call upon his Lord: 'O my Lord!' said he, 'vouchsafe me from thyself good descendants, for thou art the hearer of prayer'" (Sura 3/37).

When man attains forty years of age, his invocation to his Lord in the Qur'ān is: "And prosper me in my offspring" (Sura 46/15).

The child is regarded as a sacred trust in the hands of his parents to be surrounded with care and affection, to be guided, educated and prepared for life. The Prophet is reported to have said: "The right due to the child from his father is for the father to teach him writing, swimming, archery, and to provide him with nothing but what is wholesome." He also said: "To leave your heirs rich is better than leaving them dependent upon people's charity."

These are but a very few instances of Islam's concern for the family, which makes it but natural that Muslims — and perhaps others as well — should seek to find out Islam's attitude towards birth control, since according to science, it (birth control) perhaps offers the best solution to the fearful problem of population explosion (a new-old problem).

As a matter of fact, a number of Muslim jurists, both formerly as well as recently, have concerned themselves with some of the reasons

that either turn people away from procreation completely or at least lead them to reduce it. Among these reasons, the following may be named:

1. The woman's marked propensity for one pregnancy to follow close upon another — too exacting for her to sustain.
2. Either of the parents being afflicted with a disease that may be transmitted to their offspring, causing affliction or misery.
3. The endangering of the health and safety of the woman as a result of too frequent pregnancies.
4. Inability of the family to meet life's demands, and their lack of the material means required for raising the children.
5. Protection of the woman's beauty, for undoubtedly, too many pregnancies, together with their attendant hardships, tend to mar it.

THE ATTITUDE OF RELIGION

We may well ask here: If one can adduce any of the above reasons for birth planning, is one justified, from the religious standpoint, to undertake such measures as would achieve that end?

Ahmad Sharabassy, a professor at Al-Azhar University, Cairo, answers that question thus: "It is understandable from the texts of the Muslim Law that if there is a need necessitating the adoption of such planning, the Muslim canon law authorizes it, through legitimate methods which should cause no harm or injury, inasmuch as their use is confined to the occasion incurring them and is discontinued once the occasion ceases to exist. Further, this planning is to be carried out on an individual voluntary basis, neither by compulsion nor by obligation."¹

Though we have no Qur'anic text or Prophetic tradition affording a definitive opinion on this matter, nevertheless Muslim jurists and religious scholars have not remained inactive, but have continued to explore and actively seek the truth, as was the case in ages of progress and intellectual alertness.

The interest of the people has always been the guiding light for scholars and thinkers among men of religion. This interest is to the legislator synonymous with concern to draw benefits and drive off harms, due note being taken of the Law's intents.

¹ Ahmad Sharabassy, *Al-Din wa Tanzim al-Usra* (Religion and Family Planning), (Cairo, 1966), p. 57

THE 'AZL ANALOGY

A great many of our jurists have allowed birth planning by analogy with what was known in the time of the Prophet as 'azl.¹ 'Azl (coitus interruptus) is practised by the husband to prevent fertilization when performing the copulatory act.²

EVIDENCE IN SUPPORT OF AUTHORIZATION FROM THE SUNNA (TRADITION: PROPHET'S ACTS AND SAYINGS)

As is well known, the Sunna consists of the acts and sayings of the Prophet. To support their views on the permissibility of birth control, jurists drew analogies from a set of Prophetic traditions, Sunnā, which appear to allow 'azl. Of these traditions, the following may be quoted:

We read in the *Two Ṣaḥīḥs* (*Ṣaḥīḥ* of Bukhārī and *Ṣaḥīḥ* of Muslim) that Jābir said: "We used to practise coitus interruptus during the time of the Prophet while the Qur'ān was being revealed." "The Prophet", adds Muslim, "came to know of this, but he did not forbid us (doing it)." It is thus clear that the Prophet recognized and authorized the practice of 'azl, and he would have prohibited it had it been interdicted by religion.

In Muslim's *Ṣaḥīḥ* also, on the authority of 'Usāma b. Zaid: A man came to the Prophet (blessings be upon Him) and said: "O Prophet of God, I practise 'azl with my wife." The Prophet asked: "Why do you do that?" The man answered: "Out of consideration for her child." The Prophet said: "If it were harmful, it would have done harm to the Persians and the Byzantines."

In Abū Dāwūd's *Sunan*, on the authority of Abū Huraira: "The Prophet said: 'Coitus interruptus is not to be practised with a woman without her consent.'" Another proof of the permissibility of 'azl, if the woman is willing.

In the tradition related by Bukhārī and Muslim on the authority of Abū Sa'īd: "We took female captives and practised coitus interruptus with them. We asked the Prophet his opinion on the matter. He said: 'Surely you will do it (three times). No soul fated to come into being until the Day of Judgement but comes into actual being!'" His thrice-repeated 'surely you will do it' is an admission of a practice having been recognized at the time.

¹ M.S. Madkūr, *Naẓrat al-Islām ilā Taḥdīd al-Nasl* (Islam and Birth Control) (Cairo), p. 28.

² Sharabassy, *op. cit.*, p. 58.

It was related that a man came to the Prophet saying: "O Prophet of God, I have a maid, with whom I practise coitus interruptus and I do not like to have her conceive. However, I am a man who wants what other men want. The Jews claim that coitus interruptus is a lesser form of *wa'd*¹. The Prophet said: 'The Jews lie, if God wished to create him (a human being) you would not be able to turn Him away (from His purpose)'."

A *hadith* is reported by Abū Sa'īd, as follows: "We set forth with the Prophet on the raid against the Banī Muṣṭaliq, and we were in favour of *'azl* then. We asked the Prophet concerning this; he said: 'There is no reason why you should not do it. God has written down (preordained) everything to be created till the Day of Judgement'."

Commentators have disagreed as to the meaning of 'There is no reason why you should not do it', but the majority explain it as 'no guilt attaches to you if you practise *'azl*'.

To these traditions may be added what has been reported about Rifā'a b. Rāfi'. He said: "Umar, Al-Zubair and Sa'd were sitting with me as well as some other companions of the Prophet's. They were discussing *'azl*, 'Alī said: 'There is no harm in it.' A man said: 'They claim that it is the lesser *wa'd*. 'Alī answered: 'There can be no *wa'd* until the seven prenatal stages have been completed, these being: first a strain of clay, then a drop (of seed), then a clot, then a lump, then bones, then flesh and finally a creature apart'. 'Umar said: 'You speak rightly, may God give you long life'."

'Alī derived these seven stages from God's saying: "Now of fine clay have we created man: then we placed him, a moist germ, in a safe abode; then made we the moist germ a clot of blood: then made the clotted blood into a piece of flesh; then made the piece of flesh into bones: and we clothed the bones with flesh: then brought forth man of yet another make — Blessed therefore be God, the most excellent of Makers" (Sura 23/12-14).

We have added the foregoing account ('Alī's) to the above-quoted traditions, because the scholars hold the view that if a companion of the Prophet's utters a judgement, allowing or disallowing certain matters, concerning which reason has no say, then that judgement shall have the same force as a tradition of the Prophet's.

¹ *Wa'd* is the practice of burying alive female-born infants, to avert hunger and dishonour. The Jews regarded *'azl* as a destruction of life, like *wa'd*, a view rejected by the Prophet since the embryo would not have been formed yet.

VIEWS OF THE FOUR SCHOOLS OF JURISPRUDENCE

If we now turn to the great Islamic schools of jurisprudence, we shall see that they all recognize and authorize the practice of 'azl (coitus interruptus). In other words, they sanction birth planning and see nothing in it counter to religious law.

In discussing the rules of conduct to be observed in the company of women, Imām al-Ghazzālī, a Shāfi'ite, says: "Scholars in the four schools (then he names them) have disagreed as regards whether 'azl is allowed or disfavoured. As we see it, the correct (opinion) is that it is permissible."¹

Fundamentally, the Ḥanafīs in the Ḥanafite School, recognize 'azl and approve of it as a means of contraception. They differ, however, as to whether the consent of the wife is to be obtained, and whether 'azl will be allowed if she refuses. The question in the schools is not whether 'azl is permissible or not, but whether it is conditional upon the wife's consent or not.²

The Ḥanbalī jurists tend on the whole to regard 'azl as allowable, although they make the allowance dependent upon the wife's consent, if asked to give it.³

Jurists of the Mālikī Schools affirm the permissibility of 'azl subject to the wife's approval.

We also have the Zaidite Sect, followers of Imām Zaid b. 'Alī Zain al-'Ābidīn b. al-Ḥusain b. 'Alī b. Abī Ṭālib, widespread in Yemen. Their writings affirm the permissibility of 'azl if the wife approves. Imām Yaḥyā b. Zaid went further, and authorized 'azl as a contraceptive method. In other words, he openly authorized the adoption of contraceptive methods (*Kitāb al-Baḥr al-Zakhkhār*, vol. III, pp. 80-81, first ed. 1948).

If we then turn to the Ja'farite Shī'ites, followers of Imām Ja'far al-Ṣādiq (died in 148 H.), and widely spread in Iraq, Pakistan, Syria and Afghanistan, we shall see that their books openly declare that the practice of 'azl as a contraceptive is sanctioned, provided the wife agrees to it in a general way when the marriage contract

¹ Al-Ghazzālī, *Ihyā' 'Ulūm al-Dīn* (The Revival of the Religious Sciences) (Cairo), vol. 4, pp. 51-52.

² Madkūr, *op. cit.*, p. 48.

³ *Ibid.*, p. 51.

is drawn up, regardless of whether she confirms her specific consent later or goes back on it.¹

The Ismā'īlite Shī'ites headed by the Agha Khan, whose followers are found mostly in Pakistan, follow the example of the Ja'farite Shī'ites in the matter of 'azl, for we read in *Da'ā'im al-Islām* (vol. II, p. 210): "The Prophet forbade the practice of 'azl with a free-born woman without her consent."

If we turn next to the Ibāḍite Sect, who are followers of 'Abdullāh b. Ibāḍ al-Tamīmī (died in Baṣra in 85 H.) and are now found in Oman in the eastern part of the Arab Peninsula as well as in North Africa, we see that their books also authorize 'azl, with the wife's consent. They declare that 'azl is permissible to avert birth of children, for fear of having too many of them, and to protect the suckling baby from harm. Herein lies the clear proof that they allow 'azl to prevent conception.²

Hence it becomes abundantly clear that 'azl is authorized if there is good reason for it, and what is considered to be good reason, according to the opinions of former times, is the prevention of harm, the abatement of a critical situation and the sparing of life. The Holy Qur'ān says: "And hath not laid on you any hardship in religion" (Sura 22/78). By hardship is meant distress because of a too heavy burden. God also says: "God wisheth you ease, but wisheth not your discomfort" (Sura 2/185), and: "Throw not yourselves with your own hands into ruin" (Sura 2/195).

To be sure, there are a few reported traditions which prohibit, or seem to prohibit, 'azl. But these apply only to specific cases, as for instance when the wife does not consent to it on valid grounds, or if the married couple, both financially competent and personally able to bear the requisite responsibilities, have no children, or if 'azl is detrimental to the health of one or both of the partners, or if the motive behind 'azl is a malicious one, such as dislike of offspring or fear of procreating female children.

Dr. Ahmad Sharabassy, an Azharite professor, feels that prohibition of 'azl was probably instituted in the early days of the preaching of Islam when the Muslims were few in number, but that it was superseded by traditions recognizing and allowing it, thus

¹ See *Kitāb al-Rawḍa al-Bahiyya — Sharḥ al-Lum'a al-Dimashqiyya* (Cairo), vol. 2, p. 68.

² *Madkūr, op. cit.*, pp. 54-55.

abrogating the former ones. Be that as it may, there are those who declare that the traditions forbidding 'azl are either 'weak' or untidy.¹

MODERN METHODS

'Azl or coitus interruptus was the simple crude method adopted by the ancients to prevent conception or pregnancy. We, in the modern world, have discovered other means to achieve the same end.

What is Islam's attitude towards these novel methods?

In his above-quoted book, Dr. Ahmad Sharabassy sums up the views of both ancients and moderns saying: "Since the 'azl method is sanctioned by Muslim Law in case of necessity, as shown by the Prophet's tradition and by leading juristic opinion, any other comparable method is to be dealt with in like manner, provided it is not harmful to the married couple or to any other besides them, and provided the end in view is not abortion, forced birth or the final elimination of childbirth or the permanent stoppage of procreation, but rather a means for separating one pregnancy from another by a longer interval every time, if and when there is cause for such wider spacing.

"Other forms of contraception were dealt with by the jurists of old, who allowed them on analogy with 'azl. For instance, Ibn 'Ābidīn, quoting the author of *Al-Baḥr*, a jurist of the Ḥanafite school, says that the woman was permitted to block her uterine aperture to stop the seminal fluid from getting into her uterus in order to prevent conception. The author of *Al-Baḥr* laid as a condition, however, the husband's consent."²

Al-Shubramāllisi, a Shāfi'ī jurist, is of the opinion that it is permissible to use drugs to deaden the sexual urge, but not to eliminate it.

Having commented on abortion through the taking of drugs, al-Zarkashī says: "All that we have said applies to the taking of drugs after ejaculation; there is nothing, however, against taking a contraceptive before ejaculation, for instance."³

Commenting on the subject, Dr. M.S. Madkūr, head of the Islamic Law Department in the Law School in Cairo University, has this to say:

¹ Sharabassy, *op. cit.*, pp. 71-72.

² Sharabassy, *ibid.*

³ Al-Ramlī, *Nihāyat al-Muḥtāj*, vol. VIII, p. 416.

“Muslim Law authorized the taking of contraceptive pills by any wife who wishes to do so to prevent pregnancy to safeguard her health, to be in a better position to tend and raise her children, in deference to her husband’s wishes, to postpone pregnancy until the lactation period is over, or for any other reason, in her, or in her husband’s, opinion, warranting contraception, provided, however, that such pills have been medically approved as effective and declared harmless to the reproductive organs, in such a way that if the wife were to stop taking them in order to conceive again, she would resume her former reproductive function unimpaired. Care must be taken that such pills are not released on the market except after thorough testing in medical laboratories.”¹

Al-Azhar Fatwā Committee holds a similar view, declaring in one of its pronouncements:

“The taking of contraceptive drugs temporarily is not forbidden in the Shāfi‘ī opinion, which opinion the Committee has adopted, seeing that it contributes towards the easing of people’s hardships and difficulties, particularly if there is cause for worry from too many pregnancies and childbirths. The Qur’ān says: ‘God wishes you ease, but wisheth not your discomfort’ (Sura 2/185); and ‘And hath not laid on you any hardship in religion’ (Sura 22/78). Taking a drug to prevent contraception permanently, on the other hand, is prohibited by religion.”²

Prof. Shaikh ‘Abdul-Majīd Salīm, Muftī of Egypt, supports this view, saying: “What may be understood from the text of the Ḥanafite jurists is that it is permissible to take certain measures to prevent pregnancy, such as ejaculation outside a woman’s private parts, or the woman placing an object to block her uterine aperture to prevent man’s semen from getting into it. The principle originally, according to the Ḥanafites, was that neither of the married couple was allowed to take any such measure without the other’s consent; later, however, they allowed a man to practise ‘*azl* without his wife’s consent if he feared for the child to be prevented during his lifetime under the corrupt influence of the times, or if there is another such excuse. By analogy, the woman may block her uterine aperture without her husband’s consent if she has valid grounds for doing so.”³

¹ *Sharabassy, op. cit.*, pp. 81-82.

² This *fatwā* (legal opinion) was pronounced on 24 Jumāda II, 1372 A.H.

³ *Madkūr, op. cit.*, p. 84.

The noted professor, Shaikh Ḥasan Ma'mūn of Al-Azhar University declares: "At no time has Islam worked against man's interest. As I see it, there is nothing from the standpoint of Islam's canon law against considering birth control to be adopted where needful, provided this is done with the free approval and knowledge of the people and in the light of their own special circumstances, and provided the methods used to achieve that end are legitimate."¹

ABORTION AND STERILIZATION

There now remains the question of abortion and sterilization.

In the case of abortion, there is a consensus of opinion that it is interdicted after animation.²

According to the Prophet, animation takes place in 120 days, that is four months after conception.³

The jurists state that a woman who aborts is to pay what is known in juristic parlance as the *ghurra* — a sort of indemnity — and the same applies to any other person who aborts her, even if it is the father. Abortion in this case is a sin and a crime, because it is the destruction of a human life and the murder of a person.

Yet abortion is allowed for a cause, as for instance, when the woman is known to experience hardship in delivery and doctors are decided that her pregnancy if allowed to continue, will be injurious to her health. In that case, abortion is not only permitted but mandatory, particularly if the mother's life is in jeopardy if not performed; the principle invoked here being the choosing of the lesser evil, for the death of the foetus is a lesser evil than his mother's, since she is the root and the foetus the branch.

So far for abortion of the foetus after animation.

As to abortion before animation, jurists are disagreed here. Some rejected it, such as al-Ghazzālī; others, such as some Ḥanafites, are of the opinion that it is permissible, although there are some among the latter who deem it as disfavoured, if carried out without an excuse. One of the excuses in this respect for authorizing abortion before animation is the drying up of the mother's milk as a result of pregnancy at a time when the husband is unable to hire a wet nurse to suckle the baby, to save its life.

¹ *Ibid.*, p. 85.

² *Ibid.*, p. 93.

³ Ibn Ḥazm, vol. XI, pp. 35-40.

When we come to sterilization, we shall find that there is no clear-cut text either in the Qur'ān or in the Prophet's tradition forbidding it. But the Muslim general public regard it as opposed to religious principles and as such forbidden by Muslim canon law. That is if there is no need for it, occasioned by, a psychological or mental disorder or the presence of an incurable venereal disease which has been conclusively proved to be transmittable through heredity.

In point of fact, Islamic Law enjoins that in such cases sterilization is imperative, as a safeguard against the birth of defective or ailing offspring. Consequently, jurists decided that a wife's request for divorce should be granted if the husband happened to be suffering from a physical defect or from a dread disease such as leprosy, or from a disease which would be transmitted to the nearer and even to the more distant offspring.¹

This is then Islam's view on this problem — a problem causing great concern and anxiety to the human race and particularly to the more effective among us. It is a view which betakens a deep and clear insight into the affairs of men and a great broadmindedness and sympathy in dealing with life problems.

Islam sanctions contraception or birth control, for a shorter or longer period, as the case may be, as long as the interest and well-being of the family and of society are the contemplated aim.

It is not true, as some wrongly suppose that Islam encourages unchecked multiplicity because of a tradition of the Prophet's which says: "Marry among yourselves and beget children, for you will hereby multiply." In all likelihood this was said in the early days of Islam, when the Muslims were few in number and the Prophet wished his community to grow numerically in strength.

But, on the other hand, it is the Prophet who said conclusively and unequivocally: "The most gruelling trial is to have plenty of children with no adequate means." He also it was who, to demonstrate that there is little to be gained from mere superiority in numbers, said: "The nations will soon gather together to fall upon you as people would fall upon a trencher to eat." Someone asked if that would be because of their small numbers at that time, and he replied: "No, you will be numerous at that time; but you will be scum and rubbish

¹ Madkūr, *op. cit.*, p. 95.

like that carried down by a torrent, and [God will take fear of you from the breasts of your enemy and cast enervation into your hearts." He was asked the meaning of enervation and replied: "Love of the world and dislike of death."

Clearly, it was not mere numerical superiority, which is worthless, and only like the scum or the foam tossed about by the waters and of no use. The Prophet is not after large numbers unless these are fit from a physical, intellectual and progressive point of view. If on the other hand, large numbers serve only to cause trouble and distress to the family and to society, thwarting them from achieving self-sufficiency, [materially and spiritually, they would certainly prove to be a handicap in the path of progress, unacceptable to the Prophet who would certainly warn us against it.

In conclusion, let us bear in mind God's words in the Qur'ān: "Neither by your riches nor by your children shall you bring yourselves into nearness with us" (Sura 34/37).

For indeed, it is not ample means or a large progeny which enhances a Muslim's position in God's sight; he gains in importance and worth before God only if he uses his wealth to promote the general welfare and to ensure that his children, be they many or few, are good enough to contribute to the building up of society and to helping it along the path of progress and prosperity.

ISLAM AND FAMILY PLANNING

BY

MOHAMED ENNABLI

Our meeting today to discuss the problems facing us in the contemporary world is occasioned by our genuine love for the human species and concern that this species should lead a decent life. We are supposed to co-ordinate our efforts, especially the more enlightened ones, for the purpose of helping solve problems of this age which are many, overlapping and involved. This complexity of the problems requires circumspection in handling them. The efforts are organized for the purpose of first alleviating the lot of men, and secondly, to offer to lead them to progress in the different fields of life in a determined effort to raise by degrees the level of social life to a lofty plane.

One of those problems is the disproportion between human needs and world resources. Scientists and specialists have noticed that the graph representing the increase of the world population tends to go up sharply, whereas the one representing the growth of resources and production is either level or rising slowly. As time passes, the disparity becomes sharper and more alarming, and threatens the world with starvation, poverty and even death.

Therefore, the pooling of efforts to meet the threat is the more necessary. These efforts must be exerted in the following directions:

1. Agriculturists and other experts must concentrate on providing the world with sufficient food supplies by increasing food production.
2. All countries and governments must co-operate very closely to introduce a better and more equitable distribution of the earth resources.
3. We must have enough control over the rate of births to be able to restore the necessary balance between human needs and human potentiality for reproduction.

Although the first plan is being met quietly by specialists, and although international co-operation is on the move, albeit slowly to start with, thanks to the efforts of the United Nations, yet the wheel is turning and moving forward. But the third plan remains the most complicated one, because it is directly concerned with man's private life and to his customs, traditions and beliefs which inevitably influence his choice of alternatives. Finding, therefore, the right thing and explaining it to people in such a convincing way that induces them to turn away from their conventional ways are the cornerstone of the purpose for which we are here convened.

To be sure, scholars, particularly the religious ones, have different views on this problem. But we hope that by the end of this conference we shall have arrived at a definitive conclusion and at confidence-inspiring findings for which we hope also to provide ways of propagation and support so that they may have the desired effect in Muslim societies.

Since the general rules for legal investigation are like milestones of the truth in a labyrinth of debate, I would like to begin by emphasizing the following principles:

1. Islam is a universal religion. As such, it has to develop along with the developing human society so as to provide it with radical solutions for human problems and must not evade the problems and assume, ostrich-like, that they do not exist.

2. Islam gives more weight to our present concrete situation than to the expected situation in the future, in the sense that the state of human beings now in existence, if considered reflectively, will determine our attitude to the increase in population, although not yet in existence.

3. The teachings of Islam in essence have the aim of elevating the status and standard of humanity and of enabling man to occupy the proper place which makes him master of the world. It also aims at making tomorrow worthier for humanity than today, and today better than yesterday. Islam combats all that stands in the way of progress in this direction; and naturally so, because such handicaps militate against the aims of Islam. Guided by these principles, we are going to examine the question of family planning in the light of Islam, and give it its due of serious consideration.

In the early days of Islam, Muslims used to ask the Prophet about some of the methods with which they were familiar for the

purpose of temporary contraception. Before we proceed to the core of this question let us present two fundamental principles which, in our opinion, will enable us to get a comprehensive view and a more careful exposition of the subject.

First: *Principle of Generation and Existence* — Fertilization is the first factor in the development of the embryo. It takes place as a result of the union of the ejected seminal germ with the woman's ovum. Both together make the life-germ which is the origin of the embryo. God refers to this when He says: "Let man then reflect out of what he was created. He was created of the poured-forth germs, which issue from the loins and breastbones" (Sura 86/5-7). Some commentators on the Qur'ān believe that God refers here to the loins of man and the breastbones of woman, which means that the origin of the embryo cannot be formed from the semen only, nor from the ovum only, but from the union of both in "a secure lodgement". Thus if the spermatozoon is barred from uniting with the ovum, fertilization will not take place. Also without fertilization, the life-germ which is the origin of the embryo, will not be formed. If the male uses such contraceptive obstructions such as 'azl or the sheath, or if the woman uses one of the devices to bar semen from reaching the uterus, the act in this way does not constitute an act of violence against a living being.

The absence of either the spermatozoon or the ovum is tantamount to the ejection of semen into an "insecure lodgement".

Second: *Development of the Embryo* — It seems from what has already been said above that with the fertilization of the ovum by the semen begins the first stage in the development of the embryo which is the stage of the life-germ (*nutfa*). This stage lasts for forty days. Then follows the second stage which is the stage of the clot (*'alaqa*) which lasts also for forty days. Then follows the stage of the lump of flesh (*mudgha*) which lasts also forty days. At the end of these three stages of 120 days the embryo is formed and endowed with a soul or spirit (*rūh*). The three stages are explained and defined by a tradition in the *Ṣaḥīḥain*. In this tradition the Prophet says: "The germ of every one of you is concentrated in his mother's womb in the form of a drop for forty days; then he becomes a clot of blood for the same period; then he becomes a piece of flesh for the same period; then the angel is sent to him to ensoul him."

THE LEGAL RULING ON 'Azl

By the process of analogical reasoning every device which bars semen from uniting with the ovum can be considered as akin to 'azl. Since 'azl and other contraceptive devices, such as the isolating bag or sheath used by the man and the isolating device used by the woman and the pills prescribed by physicians have the same purpose, they must fall under the same legal verdict. In no place does the Qur'ān explicitly forbid 'azl, nor does it forbid the temporary suspension of pregnancy. The Prophetic traditions, however, signify that 'azl is permissible. According to the *Ṣaḥīḥain* (two compilations of sound traditions), Jābir is reported to have said: "We used to practise coitus interruptus during the time of the Prophet while the Qur'ān was being revealed." In his *Ṣaḥīḥ*, Muslim adds to it: "The Apostle of God came to know of this but did not forbid us (doing it)". The Prophet, therefore, approved of 'azl. If 'azl were forbidden by the Law, the Prophet would have specifically prohibited it. There is also the tradition related by Rifā'a b. Rāfi' in which he says: " 'Alī, Zubair, Sa'd and other companions of the Prophet came to see 'Umar. While discussing 'azl, 'Umar said: 'There is no objection to it.' Another said: 'It has been claimed that it is the same as infanticide, or the burial alive of a girl (*maw'ūda*).' Then 'Alī said: 'It cannot be a case of infanticide, unless the sufferer has gone through the seven stages; first an extract of clay, then a life-germ, then a clot, then a lump of flesh, then bones, then the bones are clothed with flesh, then it grows into another creation.' Upon which 'Umar said: 'To be sure'."

Actually no one would say that there can be a case of infanticide of the kind prohibited in the Qur'ān except after the completion of those stages and after the foetus has come into life or being. If we consider this foetus as a sufferer of infanticide then the Muslim jurists will find no objection to forbidding abortion after animation. The jurists find support for their position in a Prophetic tradition related by Aḥmad and Abū Dāwūd on the authority of Abū Sa'īd al-Khudrī who said: "The Jews claim that 'azl is the minor infanticide. The Prophet said: 'The Jews lie. If God wished to create him (a human being), you would not be able to turn Him away (from His purpose)'."

The jurists find support also in the Prophetic tradition related by Jābir who said: "A man came to the Prophet — upon whom be God's blessing and peace — to ask him his opinion regarding his slave girl whom he did not wish to be pregnant and thus stop serving

him. The Prophet said: 'Practise coitus interruptus with her if you wish! What is preordained for her will certainly befall her'."

This latter Prophetic tradition clearly allows 'azl. Any careful examination of those traditions would show that 'azl is allowed, especially when there are compelling reasons for practising it and when public welfare requires it.

With the survey and examination of those traditions completed, let us turn to explain the rulings of the Muslim juristic schools on the suspension of pregnancy temporarily.

THE HANAFITE SCHOOL

The basic rule of the Hanafite school is to allow 'azl for contraception. The Hanafite, however, differ on the question of whether the practice of 'azl does or does not require the wife's approval. In his commentary on *Fath al-Qadir*, Kamāl b. al-Humām says: "The religious scholars as a whole, hold 'azl to be allowed. Some of them hold it in disfavour because of Judāma's tradition. The correct thing is that it is allowed." He then quotes the traditions dealing with 'azl and says: "It can clearly be seen that these traditions allow 'azl. Ten companions of the Prophet are reported to have approved of it. Those companions are: — 'Alī, Sa'd b. Abī Waqqāṣ, Zaid b. Thābit, Abū-Ayyūb, Jābir, Ibn 'Abbās, al-Ḥasan b. 'Alī, Khabbāb b. al-Aratt, Abū Sa'īd al-Khudrī, and 'Abdullāh b. Mas'ūd." He goes on to say: "A consideration of the Prophetic traditions would disqualify Judāma's tradition. The fact that many traditions are for allowing 'azl is an indication that the dissenting tradition was well-known at the time." He then relates what Imām 'Alī said in the presence of 'Umar and of the companions of the Prophet regarding 'azl. 'Alī then denied that 'azl was a case of infanticide.

THE MĀLIKITE SCHOOL

In Dasūqī's *Commentary on Dardīr's Commentary*, Mālikite jurists ruled in favour of 'azl as a measure to prevent pregnancy on condition that the approval of the wife, whether young or old, must be secured. Qurṭubī, who is a Mālikite, agrees with this, and gives it more force by saying: "The sperm by itself cannot be recognized as the criterion for a decision and is not the object of a juristic ruling if the woman prevents it not from reaching the uterus, before getting lodged there. The sperm then would have no more significance in this case than if

it has remained in the loins of the man." He, therefore, sees no objection to disposing of the sperm even if it has already reached the uterus. The important thing here is to prevent it from getting lodged in the uterus. If Qurṭubī finds no objection to the expulsion of the semen even after it has reached the uterus, it is the more reason that he should find it more justifiable to dispose of it before reaching there.

THE SCHĀFI'ITE SCHOOL

In the course of al-Ghazzālī's discussion of polite manners in associating with women he says (in a shortened form) in essence: "The religious scholars differ on the question of *'azl* as to whether it is to be allowed or to be an object of disfavour. There are four lines of thought in this respect:

1. Some are for unqualified allowance.
2. Some are for unqualified prohibition.
3. Some allow it, subject to the wife's approval. Without her consent it is not allowed.
4. Some believe that it is permissible with a slave girl but not with a free-born woman.

In our view, the correct thing is that it is allowed."

Then al-Ghazzālī proceeds to explain the difference between "disfavour" as against "allowance". According to the views of those who hold *'azl* as disfavoured, he says: "The idea of disfavour is applicable for negating a prohibition, for negating forbearance and for departure from virtue. The meaning intended here is the one applicable to the third possibility, namely, departure from virtue. We said, that there was no disfavour involved only to mean 'prohibition' and 'forbearance' because to confirm negation or forbiddance can only be done on the basis of a text or a textual analogy, and there is not a text or a textual analogy." Then he says: "*'Azl* is neither like abortion nor like infanticide because in the two latter cases there is a crime committed against an already existing being. The principal cause of existence is the injection of the sperm into the uterus and not its availability in the male's organ. The child is created not of the sperm of the man alone. The woman's ovum is an equally essential factor in the formation of the human being."

Al-Ghazzālī's above-mentioned account is accordant with the scientific medical view, namely, that the life-germ is the fruit of the

union (fertilization) of the sperm with the female ovum. Therefore, the principle of existence cannot be established without the interaction between the two. One of the most interesting points relating to 'azl in al-Ghazzālī's discussion of the reasons for 'azl and their variety is his account of the motives for 'azl. According to him they are five, including the preservation of the woman's beauty and her physical appearance so that she can continue to be a source of pleasure and enjoyment; sparing the woman's life from the ravages of childbirth; fear of embarrassment resulting from the increased number of children; and the likelihood that financial exigency might induce one to work too hard for earning more money or tempted to become involved in shady deals for that purpose. The less one is embarrassed says al-Ghazzālī, the more one is encouraged to be religious and God fearing.

THE HANBALITE SCHOOL

In his book *Al-Mughnī*, Ibn Qudāma al-Ḥanbalī says: "The practice of 'azl for no need is disfavoured but not prohibited." He goes on to say that to allow and permit the practice of 'azl is supported by a group of companions of the Prophet and the companions of the companions (*tābi'ūn*). 'Azl is approved by Mālik, Shāfi'ī and others of independent thought. In his work *Zād al-Ma'ād*, Ibn al-Qayyim quotes the traditions which permit 'azl and then says: "They explicitly permit 'azl." He then says: "The view that 'azl is allowed was held by ten of the Prophet's companions." He gives their names.

It is clear from the foregoing brief presentation that the majority of the juristic scholars permit 'azl as a method for preventing pregnancy. Some of them like al-Ghazzālī, the Shāfi'ite Imām, and Yahyā, the Zaidite Imām, affirm that 'azl with the intention of temporarily suspending pregnancy is unquestionably permissible. Also many of the Prophet's companions and their followers permitted 'azl, on the strength of genuine traditions which are confirmed by various authorities, especially the Imāms or exponents of the juristic schools. This is principally because Islam is adaptable to the interests of the community at all times without harm or inconvenience. It is in agreement with the liberality of Islam, which enables the individual to organize the procreation of children for his own good. This method of control cannot possibly be opposed to the aims contemplated by Islam, as long as the control is in the interests of humanity as a whole for the preservation of the human species.

ISLAM AND BIRTH PLANNING

BY

SHAIKH IBRĀHĪM AL-DASŪQĪ MIR'Ī

AND

SHAIKH KHALAF AL-SAYYID 'ALĪ

Reproduction is the natural means for the preservation and endurance of the human species on earth. It is also, in the Islamic view one of the essential objectives of marriage and one of its greatest attractions. "Now, therefore, go in unto them with full desire for that which God has ordained for you" (Sura 2/187), says the Qur'ān, which, as interpreted by Qur'anic scholars, is a command for seeking and getting what God has made consequent upon marriage, namely, offspring and the satisfaction of natural desire.

Islam is the religion of mankind as a whole. It calls upon man and woman to worship the one God, and to let His word — the word of Truth and Justice — prevail throughout the ages for the good of mankind and the welfare of the human race. On this consideration, it expects its followers to comprehend its laws, spread its message, and be stalwart in their support and defence of the faith. But how does God in His wisdom bring about the fulfilment of His divine schemes, and how does right guidance come about? The only way for both is through the instrumentality of the virtuous traditions and precepts of the good life from one generation to another to the end of time.

Thus the sacred trust is bequeathed to posterity through successive waves of inheritors of truth, with the purpose of safeguarding righteousness, emancipating man and cleansing the earth of discord born of ignorance and perverse passion. This can only be achieved by a nation of godly men and women, guided by truth and justice, who, if they succeed, would secure the happiness, security and safety of mankind. "Ye are the best folk that hath been raised up unto mankind. Ye enjoin the just, and ye forbid the evil" (Sura 3/110).

ISLAM ENCOURAGES BUILDING UP A FAMILY

Since procreation is one of the major factors in the creation of the world population, and since it is through marriage that this procreation and the preservation of the human species are achieved, the Lawgiver, to attain these ends, urges people to get married.

God said: "And marry those among you who are single, and your good servants, and the handmaidens" (Sura 24/32).

In defining what the prophets are sent for and in praising them, God says: "Apostles truly have we already sent before thee, and wives and offspring have given them" (Sura 13/38). This is regarded as token of His special grace and favour.

He commended His trusted servants, who, intent as they are upon obeying His will, pray Him saying: "Our Lord! give us in our wives and offspring the joy of our eyes" (Sura 25/74).

The Prophet said, as reported by Ibn 'Abbās on good authority: "Marriage is part of my tradition. Whoever likes my religion, let him follow my path."

FACTS THAT MUST BE KNOWN

A. God Almighty first created man out of a lump of wet clay, then He made his offspring out of a strain of contemptible water. After He had fashioned man He breathed into him of His spirit. Thus all humanity, both male and female, of whatever race or tongue, all have one and the same origin. They are firmly tied to this earth upon which they live, for it is their abode in this present life, the scene of their activity, and the resting-place of their remains after death till the Judgement Day. "From it have we created you," says the Lord, "and into it will we return you,... forth a second time" (Sura 20/55).

B. God endowed men with unlimited energies, to help him fathom and discover the secrets of the universe and enable him to unearth the buried treasures of the earth. Thus man became the means of the divine Providence in developing the world and in tapping its resources and turning them to advantage. With the abilities God endowed him with and the phenomena of nature which He unfolded before him to make him His regent on earth, became the true inheritor of the earth. "He hath spread the earth as a bed, and hath traced out paths for you therein, and hath sent down rain from Heaven, and by it we bring forth the kinds of various herbs. Eat ye, and feed your cattle" (Sura 20/53-54).

God raised man above all his other creatures, recognizing his special status in relation to His angels, and apprised the angels that they were inferior to him in respect of knowledge and learning, with which He provided him in order to demonstrate an important aspect of the divine order of things, and a major proportion of divine miraculous works and mysteries in the creation, and in order that man might live out his life, as predestined for him, on this earth and do his appointed duty in populating and developing it to his own good. "He hath raised you up out of the earth, and hath given you to dwell therein" (Sura 11/61).

C. Consequently, man is not like the rest of the creatures on this planet. Having been signalized by the gift of reason, and singled out in early life with countless marks of favour, man must in consequence exert himself to earn his livelihood, regulate his life and accept responsibility for all his deeds — whether good or bad. "And whatever is in the Heavens and in the Earth is God's, that he may reward those who do evil according to their deeds; and those who do good will He reward with good things" (Sura 53/31).

D. Another fact which must also be known is that people's sustenance which is preordained for them on this earth belongs to God alone, whether it is to be found deep down below or on its surface. "And no one thing is there, but with Us are its storehouses; and We send it not down but in settled measure" (Sura 15/21). God says also: "And the Earth have We spread forth, and thrown thereon the mountains, and caused everything to spring forth in it in balanced measure" (Sura 15/19). The phrase 'balanced measure' refers to the fact that livelihood and sustenance upon which depends the life of human beings, together with the essentials of life generally, invested by God, are mated out in 'balanced measure' and with accuracy. In another verse God says: "All things have we created after a fixed decree" (Sura 54/49). Even water, upon which life depends is included in this calculation and is subject to apportionment; the balanced measure. God says: "And we send down water from the Heaven in its due degree, and we cause it to settle on the earth" (Sura 23/18).

E. Hence, human procreation has had to submit to strict, well-devised legislation, and man alone, being the Lord of this planet, was expected from the general law of procreation and multiplication applicable to all the other living creatures. Alone, of all beings he was marked out by a sexual relationship based on a legal contract;

an established and fixed rule to control and regulate the union, in marriage, of male and female, not to be flouted and infringed under pain and severe penalty. The Qur'ān says: "And who restrain their appetites, save with their wives, or the slaves whom their right hands possess: for in that case they shall be free from blame. But they whose desires reach further than this are transgressors" (Sura 23/5-7).

F. The human species follows an established and decreed pattern in procreation. The female does not give birth to her baby except normally nine months after conception with one child only in most cases. Her fertility is for a fixed period only, after which she becomes unfit for reproduction. Some women are sterile, unable ever to have children. Moreover, the period prior to the male's and female's attainment of the fertility age is long, unlike the rest of the animal world. All these are God's universal laws, which function in accordance with His divine providence and inscrutable wisdom for creation and existence. "Our Lord is He who hath given to everything its form and then guideth it aright" (Sura 20/52). In other words, one of God's purposes in creating man and regulating his reproduction for him is that the human species should populate the earth. There are clear facts which must be impressed upon our mind, so that we may, in the right light, visualize Islam's attitude towards birth planning.

Another fact worthy of note here is that 75 per cent of the globe is covered by seas and oceans and that the greater part of the remaining 25 per cent is desert and mountains, either uninhabitable or unproductive.

When we consider, or ponder, birth planning, our experience shall always be within the matrix of the universal laws prescribed by God. The subject of birth planning is not new to Islam or Islamic jurists, for out of original sources Muslim jurisdiction drew rulings and view on this momentous subject, and those are such that are capable of directing all affairs of life along the right path in order to ensure the welfare and prosperity of mankind. When the question of birth planning was first raised, some saw in this exercise a potential danger, about to threaten the Islamic faith with subversion. This suspicion and alarm, however, were occasioned by ignorance of the true facts of the Islamic religion or of a faulty understanding of its tenets and rules. Islamic jurisdiction reaped two important benefits from the ventilation of the question of birth planning:

1. A re-examination of a subject that has long been buried in the pages of ancient books and tomes, uncared for. So little has been

the attention paid to it over the years, that people when rudely shaken into wakefulness, imagined that the Islamic jurisprudence was in crisis, with this frightening problem at the doorstep, never faced earnestly and seriously before.

2. The revival of faith, in so far as this problem is concerned, that Islamic jurisprudence is competent to deal with all problems and meet them, not excluding this problem and other serious ones, at its hands of the jurists primarily concerned with this affair.

PHILOSOPHY OF PLANNING FROM THE RELIGIOUS STANDPOINT

Religion is for planning in everything. An orderly universe, from the religious point of view, is one of the most important pieces of evidence for the proof of the existence of God, and also an indirect pointer to the real need for religion. We read in the Qur'ān: "Blessed be He in whose hand is the Kingdom! and over all things is He potent: Who hath created death and life to prove which of you will be most righteous in deed; and He is the Mighty, the Forgiving! Who hath created seven Heavens one above another. No defect canst thou see in the creation of the God of Mercy" (Sura 67/1-3).

Orderliness should be the basis of all activities just as regularity is the basis of all acts of worship. Examples of this are many and near at hand, such as the times of prayer, fasting, pilgrimage, proportions of charity, and the personal status regulations, with clearly defined duties and responsibilities. No religion can possibly exist without orderliness and regularity.

Love arising from a heartfelt tender and conscious sentiment, with a mutual feeling of responsibility, is the chief end of the family and the pivot round which revolves life inside the family. The Holy Qur'ān says: "And one of his signs it is, that He hath created wives for you of your own species, that ye may dwell with them, and hath put love and tenderness between you. Herein truly are signs for those who reflect" (Sura 30/21).

In dealing with the subject of family planning, we consider as our point of departure that the family relationship must rest upon love rather than upon hatred and discord. This is obvious; but this love requires that the family should not be burdened with more responsibility than it can truly bear, for the parents, so burdened, would be thwarted in their natural duty to satisfy their urge for love and their other instinctive needs. For it is love of one's own

family as a whole which actuates man to try and bring up his children in an atmosphere of loving kindness and care, spiritually and materially. Consequently, the size of the family should be large to the extent that the father would find himself unable to bring up his children properly, and care for them as duly necessary. It is from this angle that planning can be a reflection of love, solicitude and mercy.

The parents' capacity for raising a family is no different (from this angle) from the case of a car, which must surely break down if it is made to carry more passengers than its load. Material standards are reliable here; any deviation therefrom only results in certain loss or disadvantage.

From this point of view, the nation is but a cluster of families joined together by a comprehensive system. It must have a focal point of guidance to direct and regulate its affairs. Since we live in a limited area of the earth, with limited present and potential resources, the rate of population increase should not exceed the rate of economic growth and development; otherwise we would find that life would always be in a state of constant disruption and deterioration. Nor should the two rates be equal, for we among the nations would be stagnating while the rest of the world would be forging ahead around us. In the circumstances, we have no recourse, as dictated by reason, religion, good planning and faith, but to keep the rate of economic growth in excess of that of population increase. This can only flow from a genuine parental love in the family, and from a deeply felt responsibility for the children.

THE STATE AND PLANNING

Part of the responsibilities laid upon the state, is its responsibility to plan and to offer health facilities and education services besides the huge military responsibilities which devolve on it. It is understandable then that the state should have its say in the matter of planning, and that responsibility in this field should not be that of the family alone for an obvious reason, namely, that the state bears a considerable part of the family responsibility in the field of public services and that it further provides opportunities for work in the sector of production. Hence this joint responsibility in its local setting is part of the larger one in a wider setting, this is explained in the Prophet's saying: "Every one of you is a shepherd, and every one of you is responsible for his flock." Responsibility, therefore, presupposes participation in planning.

THE RULES OF NECESSITY

Is planning inconsistent with religion?

Some people are chary of planning, in the belief that it is contrary to the will of God. This and similar other attitudes are matters which are not to be treated lightly or with ridicule, but rather with understanding, candour and logic.

Family planning, as such, does not run counter to the teachings of religion. Planning and order are two key concepts of religion in all things. Thus, good planning consists in keeping the size of the family consonant with the state of its economy in the nation or society as well as with the state and level of civilization therein. Society should not be weighed down by the many burdensome needs and requirements which it cannot possibly satisfy. If these conditions change, then we have to reconsider the matter once more as regards the size of the family.

If, for instance, huge petroleum deposits are discovered in the desert, or if it becomes economically possible to desalinate sea water and make use of it in developing vast areas of waste land and desert and, if it turns out then that the size of the population is less than that needed for development, the scientific attitude to adopt in that case would be to increase the size of the family as a means for eventually satisfying the needs of the society, in its new situation.

It is thus evident that just as planning means longer intervals between pregnancies to relieve the stress and strain resulting from unduly large families, so does it also mean the enlargement of the size of the family if there are more resources available and if there is a growing demand for more people to help meeting the needs of development. Such planning may be achieved by various methods, including sterilization, which does away altogether with the natural capability for reproduction in either of the two partners or in both of them, either by the use of special drugs, or by means of an operation or any other similar method yielding the same result, such as, birth control in the sense just mentioned. There is a vast difference between planning in the above sense and control in the sense of complete stoppage of child bearing after a certain number of children, not to be exceeded in the family. The basic principle in the call for planning is love and care of the children. With the love sentiment, as a starting point, we can discuss the question of planning, first from a religious

standpoint, and secondly from other considerations relating to certain aspects of life.

HOW DID THESE FEARS ORIGINATE?

Some people are suspicious of the call for birth planning. This feeling of distrust may be attributed to the following:

1. The call for planning is contrary to the belief in God's Providence. Our faith requires us to believe in fate and predestination, in the sense that both good and evil are predetermined, and held in store for us.

2. It is contrary to the belief in divine beneficence, i.e., God guaranteeing sustenance to all living creatures: "There is no moving thing on earth whose nourishment dependeth not on God" (Sura 11/6); "The Heaven hath sustenance for you and (it containeth) that which you are promised" (Sura 51/22).

3. Fear lest family planning be a form of covert or disguised *wa'd* (infanticide), which was prohibited by God in the following verse: "Lost are they who, in their ignorance, have foolishly slain their children" (Sura 6/140); "Kill not your children for fear of want" (Sura 17/31); "And when the female child that had been buried alive shall be asked, for what crime she was put to death" (Sura 81/8-9).

THE FIRST QUESTIONS: PREDESTINATION

Let us first take the question of fate. We know that reproduction like all other functions, falls under definite natural laws, especially the law of cause and effect. We have no ground for believing that fate is irrevocably bound up with this law, going along with it whichever way it goes. No one with the least modicum of sense or learning ever claimed that this was so. Often times, a man may decide on a certain course of action and attempt in every possible way to attain his objective; he may, however, for one reason or another, find that his aim has failed to materialize or that perhaps something may have stood in the way of his attaining that objective. What has obstructed his way? It is fate, which we must believe in and submit to. However, faith in fate does not prevent one at all from using the means most conducive to the attainment of the contemplated end. In certain circumstances the means may be available but the end cannot be achieved. Here we

should realize and believe that the explanation of the failure of achievement can only be in terms of fate and predestination. Many a time, when sexual union takes place between a married couple, no conception occurs, although the couple are most anxious to have children. God says: "And He maketh whom He will to be childless" (Sura 42/50).

Fate is not discerned except after the act. Nevertheless, it should not be taken as a pretext for inactivity or remissness. It is our responsibility and ours alone to manage our own affairs in the best possible way and undertake to do whatever is apt to serve our interests best. We should always exert ourselves to the utmost to improve our conditions, not remitting in our efforts in this direction. Great is the difference between fate and our prevented conception of it.

THE SECOND QUESTION: GOD, THE SUSTAINER

While God guarantees sustenance to His creatures, He orders, nay urges, man to earn his living with diligence, thus making him instrumental in the acquisition of livelihood. This struggle for survival takes precedence in the divine order over the enjoyment of God's bounty. God says: "Traverse then its (the earth's) broad sides, and eat of what He hath provided" (Sura 67/15).

Invocation of God's blessings and favour are subsequent to man coming out in search of sustenance. "And when the prayer is ended, then disperse yourselves abroad and go in quest of the bounties of God" (Sura 62/10).

If a man were to refrain from work, in the belief that God would provide him with sustenance, and starve in consequence, he would be committing a crime against himself and against society and would have no one to blame except himself. God's laws in His universe are not so ordered as to make the skies rain gold or silver for mankind. We may quote Caliph 'Umar's remark in this connection: "No one of you should sit idle and do nothing to earn one's living, contenting oneself with the invocation: 'Lord, give me sustenance,' and knowing full well that the skies rain neither gold nor silver." He also said: "He who places trust in God is he who deposits a seed in the ground, and then hopes for the best."

THE THIRD QUESTION: THE CALL FOR BIRTH PLANNING IS A CALL FOR INFANTICIDE IN DISGUISE

The Holy Qur'an has spared us the trouble of refuting this plausible and perhaps deceptive argument. The *wa'd* or infanticide

that was prohibited at the time was a murderous act committed against a newborn child, brought into the world, after having fulfilled all the stages of its prenatal growth. "For when the birth of a daughter is announced to anyone of them, dark shadows settle on his face, and he is sad. He hideth him from the people because of the ill tidings: Shall he keep it with disgrace or bury it in the dust? Are not their judgements wrong?" (Sura 16/58-59). This is the type of *wa'd* that God prohibited. God also warns: "And that ye slay not your children, because of poverty" (Sura 6/152). Those guilty of such murder, God condemned to prohibition. He calls them ignorant and misguided: "Lost are they who, in their ignorance, have foolishly slain their children" (Sura 6/140).

RELIGION NOT OPPOSED TO PLANNING

One of the established principles of Islam is to watch over peoples' interests, to facilitate matters for them, relieve their distress and remove hardships from their path. God says: "God wisheth you ease but wisheth not your discomfort" (Sura 2/185); and "He hath not laid on you any hardship in religion" (Sura 22/78). The Prophet said: "This religion is firm, therefore go into it gently..." He said: "The religion of Islam is free from narrow restrictions; anybody who tries to be very strict in matters of religion must have his own purpose defeated. Therefore, be on the right path, as near to the truth as possible and hopeful in your morning course, your evening course and during your night journey."

One aim of religion is to build up a strong, free society. This, however, cannot be achieved except under certain political, economic and social conditions which are conducive to the society's advancement by providing it with the requisite resources for life and guaranteeing its freedom together with protection against tyranny and aggression from oppressors or resources of power. The nation must keep on striving until it attains that degree of excellence and dignity which it aspires to. It has earnestly to seek or work out solutions which are apt to free it from problems blocking its way or retarding its progress. Among such problems are the following:

THE PROBLEM OF POPULATION INCREASE OR THE POPULATION EXPLOSION

In the light of present facts, this problem deserves intensive study and calls for immediate and thorough solutions. The nature of

the religion we profess makes it imperative for us to meet this problem and thus rid ourselves of the calamities of privation and spare ourselves the humiliation of want. This also would shatter the arrogant designs of those whose aim is to bring about the humiliation of the developing nations by letting them go hungry, so long as they refuse to grovel before them and bow to their will. Some of the measures which may be used in dealing with overpopulation are:

1. To step up economic production in all areas and to reduce consumption.

2. To expand programmes of reclamation and full exploitation of the land and to redouble efforts towards the utilization of the food and mineral resources in seas and rivers, and at the same time, the harnessing of technology to make full use of available waters.

3. To transfer people from overcrowded areas to other less crowded ones if these are more extensive and of greater productive potentiality, and also better suited for the settlement of the transferred people, and for the land and for profit from its greater productiveness.

4. To regulate births and restrain procreation in order to maintain a correct balance between population and resources, thereby safeguarding people from famines and starvation.

We have already stated that Muslim jurisprudence has the attitude of encouraging work, personal endeavour and the earning of one's livelihood, and also the tapping of natural resources and the reclamation and development of waste or fallow land. We have shown that such actions are most pleasing in God's sight.

If we contemplate nature—its secrets and bounties—and compare it with man's nature and characteristics, we will perceive a most amazing harmony between the earth's and man's gifts. They appear as two separate forces; one negative and the other positive, interacting together. Thus if man does not allow his gifts or talents to interact with the gifts of nature, the good talent in both would remain unproductive and unexplored. Therefore, to fill the earth with civilized life, and to exert efforts in utilizing the earth's resources and exploring the riches it enfolds are, in point of fact, what religion teaches where necessary. The same applies to migration from densely populated areas to the sparsely populated ones. This is something which religion also approves and calls for, as long as this does not cause undue hardship or distress to the migrants and as long as it does not undermine

their religious faith or lead them to neglect any of their religious responsibilities, and provided also there is in the new lands they seek ample space and means to satisfy their needs and to enable them to lead decent and honourable lives. "Traverse then its broad sides," says the Qur'ān, "and eat of what He hath provided" (Sura 67/15). This is a demonstration that a believer is not to be embarrassed if he leaves his native land in quest of a livelihood. Similarly, the verse "O my servants who have believed! Vast truly is my Earth" (Sura 29/58), shows that there is ample space in this world for migrants who leave their land to try their fortunes if necessity forces them to do so. This matter, however, requires first a general agreed policy, to be adopted by states and governments for organizing such migration.

THE FAMILY IN ISLAM

The family is the basis of society. Islam laid strong foundations for the family, by regulating it and building it up into a sound, strong structure, with the noble aim and the lofty ideal of establishing a well-integrated society, considering that the family constitutes the first cell of that society. Islam did not so glorify the individual as to grant him all his desires, nor did it so neglect him as to let his identity be completely submerged into the larger social body. It sought rather to integrate both the individual as a unit in the family, and the family as a unit in society. It granted each of them certain rights over the other. Thus, the family owes the individual certain obligations, and consequently, the individual owes the family certain others, while both owe duties towards society, and reciprocally society owes duties to both. Hence, we should join our forces and unite our efforts for the safety of society and the safety of its separate units. Islam's insight into this aspect was such that it bestowed upon the sacred interest of the nation all the attention it deserved. Hence, where the circumstances of the family are such that they tend to undermine society or debilitate the nation by handicapping it with problems it can very well do without, Islam steps forward to avert causes of trouble. Thus, for instance, it counsels abstention from marriage in the case of a man who lacks the ability and the means to shoulder the essential obligations and necessary duties of marriage. A man who lacks material means certainly cannot carry out the responsibilities of married life nor can he satisfy its legitimate needs. God said: "And let those who cannot find a match live in continence till God of His bounty shall enrich them" (Sura 24/33).

The Prophet said: "O young men! Those of you who can support a wife, should marry, for marriage keeps you from looking at strange women and preserves you from immorality; but those who cannot should take to fasting, for it is a means of suppressing sexual desire."

OBLIGATIONS OWED BY PARENTS TO THEIR CHILDREN

Once marriage takes place, it becomes the duty of each of the married couple to carry out their commitments towards their children. The children are the fruit of marriage, and the child is an extension of the parents' lives and the fulfilment of their heart's desire. It is a trust which must be cherished with all love and care. The child — this trust placed in our hands — must be trained, instructed and educated; he must be provided for; he must be fortified against hunger, ignorance, disease, backwardness, weakness and degradation. He must also be trained to grow healthy and strong, and taught to engage in the practice of serious and blameless activities of life. Lastly he must be taught the principles and rites of religion and life's practical concerns. A tradition of the Prophet's says: "The right due to the child from his father is for the father to teach him writing, swimming and archery and to provide him with nothing but what is wholesome." He also said: "It is a sin great enough for man to leave his dependants uncared for." In another *hadith* (tradition) related by Ibn Mālik, the Prophet advises: "To leave your heirs rich is better than leaving them dependent upon people's charity." The Prophet also says: "Every one of you is a shepherd, and every one of you is responsible for his flock." And also: "God will ask every one of those entrusted with the task of protecting others, whether he has protected or neglected them; even He will ask him in this respect about his own family."

THE PARENTS' FONDNESS OF THEIR CHILDREN

Notwithstanding the fact that procreation is the end of marriage and the love of child is innate in man's nature, Islam's view of procreation varies according to its effects upon society. If children turn out to be a bulwark of society and a constructive force in it, then Islam would not be an obstruction in the way of their coming into the world nor against their multiplicity, since their existence would prove of great value and advantage to society and to the nation as a whole. But once the child or the numerous offspring become an encumbrance

to society and an oppressive burden to the parents, causing them hardships and strains and landing them in all sorts of difficulties, then Islam sees nothing untoward in preventing the child's birth or seeking to avoid too many children for whatever reason. There are various reasons justifying the adoption of the above policy, among which the following may be named:

1. The wife's marked disposition to have repeated pregnancies, one to follow close upon another, in which case she normally overstrains and overtaxes her physical strength. Here, Muslim jurisprudence is in agreement with medical science that any harm which may be incurred, by even a single pregnancy, must be averted, especially when the woman is too weak to sustain the stress.

2. Fear for the health and safety of the woman getting worse and less secure because of a disease which may be aggravated or prolonged as a result of repeated pregnancy.

3. Fear lest distress and severe hardship resulting from numerous progeny drive the father to contemplate seeking illicit gain, and consequently gets himself into evil ways and shady spots. "God desireth not to lay a burden upon you" (Sura 5/6).

ISLAM'S VIEW OF MULTIPLICITY OF CHILDREN

Islam does not think much of a multitude that is infirm and feeble; it sets no store by a high birth rate as such, nor is it fit to be taken pride in by the Prophet. On the contrary, Islamic jurisprudence looks with disfavour upon a multitude if bereft of vigour or stamina, as is attested by the Prophet's saying: "The nations will soon gather together to fall upon you as people would fall upon a trencher." Someone asked if that would be because of their small numbers at that time, and he replied: "No, you will be numerous at that time, but you will be scum and rubbish like that carried down by a torrent, and God will take fear of you from the hearts of your enemy and cast enervation into your hearts." He was asked the meaning of enervation and replied: "Love of the world and dislike of death."

This account indicates that numerical strength, permeated by factors of debility and flabbiness is ineffectual and of no good. Such factors can have their effect on the physical structure, as well as on the moral structure. Infirmary of purpose can be the outcome of cowardice and miserliness, as well as of physical weakness. A nation of weaklings

is of no use or value, like a nation deprived of valour and of liberality and open-handedness.

True, religion urged people to procreate and multiply, thereby contributing to the nation's growth, development and strength; at the same time it urged them to safeguard this numerical strength from weakness lest it become like the scum of the torrent.

HOW TO OBTAIN A STRONG POPULATION

This may be achieved by regulating births in such a way as to insure for the offspring health and energy and preserve the nation's vitality. Islamic jurisprudence, which laid down general regulations to safeguard the life of the individual and that of the community and made them binding on all for this purpose, based them on certain fundamental principles, among which are:

1. Temporary enforcement of contraception so that the mother may suckle her baby for the full term of lactation. Islamic jurisprudence fixed the lactation period at two complete years. "Mothers, when divorced, shall give suck to their children two full years, if the father desire that the suckling be completed" (Sura 2/233). By preventing pregnancy during this period, the woman will have a respite and will have a chance to recover her strength, and be able in the meantime to have some time which she can devote, with care and diligence, to her child, and raise him on good pure milk, which has not been affected by what the Prophet named as *ghaila*¹: "Which has the same effect as when a horseman is overtaken by an opponent and thrown off the horse."

2. Preservation of pregnancy altogether, if either or both of the partners are afflicted with an incurable or chronic disease, transmissible to the progeny or offspring. If the married couple refuse to undergo a sterilization operation, then the guardian has the right to separate them in pursuance of the rule that the guardian should obviate every risk or hazard to which the individual or the community as a whole may be exposed to.

Perhaps, some might claim that birth control on the basis of this method of preventing pregnancy in this proposed way was not touched upon by Muslim jurists. In correction, we would like to refer them

¹ *Ghaila*: The mother's milk when pregnant, believed by the ancients to be harmful to the suckling baby.

to the writings of Shams al-Dīn al-Ramlī al-Shāfi'ī in his work *Nihāyat al-Muhtāj*, vol. VIII, p. 240,¹ where they will find a basis for regulation.¹

There now remains to consider two things which may cause constraint, resulting from one's inability to bring up one's children properly or care for them, or perhaps adversely affect one's health or cause one such nervous tension as make one unable to endure the strain and stress of one's responsibilities and obligations towards one's family. In such cases, is one permitted to seek to organize and regulate one's offspring and limit one's family to a size more in proportion to one's means and capacity, on the strength of the principle that the aversion of constraint is, in Muslim Law, sufficient justification or excuse for disregarding obligations?

We have already stated our opinion on the matter, namely, that birth control, designed to protect individual interests and to raise the living standards of the individual and of society can have nothing contrary to religion, for these objectives are religious in essence.

The great master al-Ghazzālī believes that to prevent childbirth is allowed, without any disfavour attaching to it. To prohibit it, there should be explicit texts or unmistakable analogies in support; but in fact there is no text or precedent [to be used here as a criterion. We, for our part, feel that allowance is fundamental, as in the case of abstention from marriage as such, or, for that matter, from sexual intercourse after marriage, or of preventing insemination after intercourse. All this is permissible, and there is nothing against it unless it goes counter to what is a better course of action. Let contraception then (through the method of coitus interruptus or any other like method) be allowed for the same reason as is abstention from marriage or from sexual intercourse.

'Azl (COITUS INTERRUPTUS) AS A MEANS OF CONTRACEPTION

It is generally agreed that 'azl (i.e. the prevention of the man's seminal fluid from reaching the woman's uterus by discharging it outside when ejaculation is felt to be approaching, to prevent insemination), was practised as a means of contraception by the Arabs and others in pre-Islamic times. It was practised at the time of the Prophet,

¹ From a discussion by the late Shaikh Maḥmūd Shaltūt in *Islamic Jurisprudence and Birth Planning*.

and he was asked his opinion about it. In the following outline, we shall give his opinion in the light of tradition (the Prophet's acts and sayings):

1. The following tradition is reported on the authority of Jābir b. 'Abdullāh, who said: "We used to practise coitus interruptus during the time of the Prophet. The Prophet came to know about it, but did not forbid us."

In another version, the report says: "We used to practise 'azl while the Qur'ān was being revealed." The implication here is that if the practice had anything contrary to the Muslim Law, it would not be sanctioned; verses would have been revealed to prohibit it, for the period was still a period of legislation, and revelation was still in progress. The fact that the Prophet did not prohibit it when he heard of it is an acknowledgement of its permissibility.

2. Imām Aḥmad, Muslim and Abū Dāwūd related on the authority of Jābir that a man came to the Prophet and said: "I have a maid who serves us and waters our palm-trees. I consort with her and do not like to have her conceive." The Prophet said: "Practice coitus interruptus with her if you wish. What is preordained for her will certainly befall her." From these two traditions it may be concluded that the Lawgiver endorsed the practice adopted by the Muslims for contraception.

The Prophet's words "Practise 'azl with her if you wish" signify permission. Consequently, 'azl, as a means of contraception, was a generally recognized practice, used by the members of the community including the companions of the Prophet, while revelation was still in progress. The Prophet was not only aware of the practice, but recognized it, all of which furnishes incontestable proof of its having been authorized by religious law.

REFUTATION OF THE ALLEGATION THAT 'Azl is Wa'd (INFANTICIDE)

In the *Sunan*, a report relates that a man said: "O Prophet of God! I have a maid, with whom I practise coitus interruptus and I do not like to have her conceive and I am a man who wants what other men want. The Jews claim that 'azl is a lesser form of wa'd." The Prophet said: "The Jews lie. If God wanted to create him (a human being) you would not be able to turn Him away (from His purpose)" — related by al-Tirmidhī and al-Nasā'ī.

Muslim in his *Ṣaḥīḥ*¹, on the authority of 'Āisha, wife of the Prophet related the following of Judāma, daughter of Wahb, who said: "I was in the Prophet's presence along with others. They asked him concerning 'azl. He said: 'That is infanticide (burial of a child alive) in disguise'." This is the tradition adduced as an argument against 'azl. Some even claim that it was a rescission or abrogation of the order of permissibility. So much for what is recorded in the *Ṣaḥīḥs*.

Master al-Ghazzālī cited the above tradition in the chapter on marriage in his work *Iḥyā' 'Ulūm al-Dīn* (Revival of the Religious Sciences). By way of comment thereon, he said: "There are also reliable accounts reported in the *Ṣaḥīḥ* concerning permissibility. The word 'covert' in the phrase 'covert *wa'd*', has the same connotation as in the phrase 'covert polytheism', and this would presuppose disfavour rather than interdiction. 'Alī condemned it saying that no *wa'd* (infanticide) could be involved except after seven, that is, after it (the foetus) has passed through all the seven stages of foetal development, and he quoted the Qur'anic verses on the stages of creation as proof: 'Now of fine clay have we created man. Then we placed him, a moist germ, in a safe abode... Then brought forth man of yet another make' (Sura 23/12-14). He next recited the verse: 'And when the female child that had been buried alive shall be asked for what crime she was put to death' (Sura 81/8-9); 'Umar who was present, said: 'You are right, to be sure'." Then Imām al-Ghazzālī goes on to say: "As we see it, permissibility is right. Disfavour, on the other hand, applies for the negation of prohibition, the negation of impeccability and for disregard of virtue. It is disfavoured in the third sense, as, for instance when we say that it is disfavoured of a man who sits, idle in the mosque, without occupying himself with either prayer or remembrance of God." He then adds that 'azl is unlike *wa'd* (infanticide) or abortion because in the latter two cases the act is a crime against a being already in existence.

Another evidence from which permissibility of birth planning can be inferred is that the Qur'ān, in allowing plurality of wives, enjoins that marriage is to be restricted to one wife, if it is feared that justice cannot possibly be done equally to all wives. "And if ye still fear that ye shall not act equitably, then one only; or the slaves whom you

¹ *Ṣaḥīḥ* (literally: genuine, authentic): a noted collection of the traditions (*ḥadīths*) of the Prophet, compiled by Muslim, ranking second in importance only to the *Ṣaḥīḥ* compiled by Bukhārī.

have acquired: this will make justice on your part easier" (Sura 4/3).

It is reported that al-Shāfi'ī explained: "This will make justice on your part easier" to mean that, it will be easier for you not to have a multiplicity of children or a large family, from which one would draw the conclusion that al-Shāfi'ī considers that the Qur'anic Law tends towards disfavouing the multiplicity of offspring. The restriction of the number of wives to one for fear of inequitable treatment symbolizes a desire to limit the number of offspring, and therefore, family planning for reducing the size of the family to manageable dimensions is implied in the general sense of the verse.

This view is supported by a saying ascribed to 'Alī, and reported by al-Qudā'ī in *Musnad al-Shihāb*. 'Alī is reported to have said: "A small family is one of two states of well being while a large family is one of two states of want." This saying, although considered "weak" as regards its chain of authorities, is substantiated by actual facts.

In his interpretation of the question, al-Fakhr al-Rāzī said: "... it will be easier for you not to be in want, or 'ā'il¹, poor. For a man with a smaller family will have less to spend, and will not be in want."

Al-Kisā'ī says: "The forms of the verb 'āla and ya'ūlu are used to denote the state of reduction to poverty as well as that of having a large family." Al-Azhari says: "This supports al-Shāfi'ī's opinion in his interpretation of the verse."

OPINION OF THE RELIGIOUS LEADERS REGARDING BIRTH CONTROL

The question of birth regulation came up early in the first period of Islamic jurisprudence. Later, it became a subject of discussion and scrutiny by Muslim jurists throughout the successive periods, with every jurist expressing his own opinion thereon, according to the evidence available to him and his personal intellectual endeavour, and discretion. The juristic approach to this question varied. Some viewed it from the standpoint of the individual's interest, some from that of the interest of society, and some others still from the standpoint of both individual and society, thereby indirectly demonstrating the flexibility of Islamic mental attitude and its freedom from pietism and

¹ 'Ā'il is commonly applied to a man with a large family (*ā'ila*: family); it can also mean "impoverished". The root word is 'āla: to have to feed, has to provide for.

rigidity. Consequently, juristic opinion may be summed up as follows:

The Ḥanafites maintain that contraception is permissible, subject to the wife's approval, who has as much right to the child as her husband. Al-Kamāl b. Hammām observes, in his *Hāshiyat Fath al-Qadīr*, that 'azl is allowed by the great majority of religious scholars, although some place it among the disfavoured actions. Then he adds: "But permissibility is the correct thing", and supports this view with relevant traditions, observing that these clearly indicate the permissibility of 'azl, especially because they were reported on the authority of ten of the companions: 'Alī, Sa'd b. Abī Waqqāṣ, Zaid b. Thābet, Abū Ayyūb, Jābir, Ibn 'Abbās, al-Ḥasan b. 'Alī, Khabbāb b. al-Aratt, Abū Sa'īd al-Khudrī, and 'Abdullāh b. Mas'ūd. It is, therefore, clear that the Ḥanafite School allows 'azl, and, as is repeated, allows it even without the wife's consent, if there is a risk that the child will suffer moral perversion in life. This is from the social point of view.

We have already stated the opinion of the Shāfi'ite School when we cited Imām al-Shāfi'ī's Arabic interpretation of "This will make justice on your part easier" (Sura 4/3).

HANBALITE OPINION

In his work *Al-Mughnī*, Ibn Qudāma says: "'Azl is disfavoured because it reduces the number of offspring and deprives the woman from deriving pleasures from the sexual act, unless there is need for it. If, however, a man practises 'azl without need, the act is disfavoured but not interdicted." He then states that to relax the law for the practise of 'azl or to allow it is endorsed by a number of companions and followers of the Prophet, as well as by Mālik and al-Shāfi'ī and by the men of independent thought, on the strength of the Prophet's traditions. A study of Ḥanbalite juristic opinion will show that they allowed 'azl, although they made it subject to the wife's agreement and permission.

THE MĀLIKITE OPINION

Their jurists affirm the permissibility of 'azl to prevent pregnancy subject to the consent of the wife, whether old or young. Al-Qurṭubī, a Mālikī, confirms this (Vol. XII, p. 8) by saying that the drop (of seed) or the sperm is not a thing in actual fact, and therefore, no wrong is done by the woman if she expels it, unless it is already lodged in the woman's uterus. It is for all intents and purposes, as though

it is still in the man's loins. Thus he allows the expulsion of the sperm subsequent to its having reached the uterus, but prior to its implantation therein, and, with greater reason, if it does not reach it. It is clear that the wife may get rid of the sperm by any method, without the risk of committing an offence, so long as the sperm has not become lodged in the uterus, after impregnation.

Al-Shawkānī, in his *Nail al-Awtār* says that among the circumstances which occasion 'azl are fear for the life of a suckling baby from pregnancy during the suckling period; avoidance of multiplicity of children; avoidance of having any children at all; fear that a slave-wife may conceive and that her child will be a slave. After this enumeration, he adds that there is no disagreement among scholars concerning the allowance of 'azl, provided the consent of the freeborn wife is obtained in advance, because she is a partner in the conjugal life.

Al-Maqrīzī cited a Friday sermon delivered by 'Amr b. al-Āṣ, governor of Egypt, on behalf of the caliph 'Umar b. al-Khaṭṭāb, in which he said: "Beware of four circumstances which cause trouble after ease, straitened circumstances after comfort, and humbleness of status after dignity... Beware of numerous offspring, of lowering your status, of squandering your means and of indulging in gossip."

On that occasion, 'Amr b. al-Āṣ was speaking in his twofold capacity: First as a statesman, judiciously perceptive of the ends and objectives of state policy and fully cognizant of the requirements of society; and secondly as a religious head and jurist, who had joined the companions of the Prophet, of his own accord and out of careful consideration. Consequently, what he used was based on a true understanding of the spirit of Islam. This sermon of his may be regarded as a state proclamation to which no one demurred, although many in the audience were, like him, companions of the Prophet and just as well-versed as he was in matters of religion. Here, we note first that he admonishes against large families, as if he were trying to anticipate the problem of an unchecked population growth before it could get out of hand. He was, as it were, calling for family planning.

'Amr b. al-Āṣ regarded 'large families' as one of four things which would lead to distress and trouble after contentment and ease, to want and poverty after affluence and comfort, and to degradation and lowliness after honour and dignity. Then 'Amr cautioned against lowering one's status, which may be taken to correspond to lowering one's standard of living, in our common parlance.

We shall content ourselves with this exposition of the attitude of Islamic jurisprudence to birth control. From the above it may be seen that the general tendency is towards controlling births, for longer or shorter periods, rather than increasing procreation, to safeguard the children's future and to provide for their needs, physically, educationally and socially. These are things that Muslim Law does not reject but rather affirms, especially when the interests of the community are at stake. These regulations must fall, however, within the framework of the two basic juristic principles, which highlight the noble ends sought after by religion, namely, 1) prevention of harm is more deserving of consideration than the obtainment of advantages, 2) necessity is cause for allowing things already prohibited.

Having dealt with *'azl* and with all other analogous measures whose object is the prevention of pregnancy, we might as well state the opinion of the jurists regarding forced childbirth and abortion and regarding sterilization in so far as they are related to birth control.

ABORTION BEFORE AND AFTER ENSOULMENT

In Ḥanafite works, forced childbirth is permitted after conception and before the embryo begins to take shape (differentiate), which as a rule, takes place 120 days after conception, but it is disfavoured if carried out without cause. The Ḥanafites argue that among the excuses for forced childbirth are the drying up of the mother's milk as a result of pregnancy, and the father having no means for engaging a wet nurse to suckle the baby, whose life is feared to be in real danger as a consequence. Accounts speaking of forced childbirth as something unreservedly allowed were understood by some to apply rather to cases with good cause, on the score that the semen, after it reaches the uterus, is regarded as something designed for life and therefore in possession of life, and must be dealt with on this consideration. Al-Kamāl b. Hammām asks whether forced childbirth is allowed after conception. His answer is that it is approved so long as the foetal organs have not yet begun to take shape. In another passage it is stated that this (development stage) can only take place after 120 days. What was meant by "the taking of shape" was animation or ensoulment.

The Mālikites say that it is forbidden to expel the semen already in the formative stage even before the elapse of forty days, as reliably reported authoritatively. But it is also said to be disfavoured. If,

however, animation takes place, then it is unanimously agreed that forced childbirth is prohibited.

THE SHĀFI'ITE OPINION

They disagree about forced childbirth before animation, i.e., before the first 120 days of pregnancy. But when animation takes place, it is prohibited, and 'azl is not analogous owing to the marked difference between 'azl and forced childbirth. In 'azl the spermatozoon, just discharged, cannot immediately be endowed with animation, whereas, when it is lodged in the uterus, it begins to develop and take shape, as something having life.

To sum up then we can say that there is no disagreement among the jurists that abortion after animation, that is, after the fourth month of pregnancy, in the absence of valid grounds to the contrary, is forbidden and interdicted. They ruled that in that case a wordly penalty is incurred, and that the woman who aborts after the animation stage must pay what is known in juristic parlance as the *ghurra* (a form of indemnity or blood-money), and the same penalty applies if the child is aborted by any other person, were he even the child's father. Some jurists even prescribed penance on top. Since jurists have prescribed a penalty as well as a compensation for abortion after animation, abortion must therefore be regarded as sinful and a crime, in violation of the aims and purposes of religion.

However, if there is unquestionable evidence from reliable sources that the continuance of the foetus alive, even though animation has been ascertained, would bring about the death of the mother, the principles of Islamic Law in this case is that the course of the lesser evil is to be followed and that the foetus should be disposed of, the idea being that the mother is not to be sacrificed for the baby, because she is the originator and her life is an established fact. It is, therefore, unreasonable that we should sacrifice her for the sake of a foetus whose life has not yet become established. The abortion of the foetus is taken in this case to be a measure employed in order to spare the life of the mother.

The *ghurra* is equivalent to 5 per cent of the full blood-money (*diya*) which, as estimated by jurists, is one thousand dinars or ten thousand dirhams. The *ghurra* to be paid for the female foetus is the same as that for the male.

STERILIZATION AND RULES

The sterilization of one or both partners to prevent reproduction permanently, is interdicted by Islamic Law, unless there are good reasons for it, as for instance, when one or both partners are afflicted by an incurable psychological, mental or a venereal disease, which has been conclusively proved to be transmittable through heredity. The Law in this case requires that sterilization should be effected to prevent the procreation of unhealthy or deformed offspring, who will suffer untold misery condemned to eventual death. But more than that, the jurists recognized the wife's right to ask for divorce if the husband is afflicted with a dread disease, such as leprosy or elephantiasis, which can be transmitted to the offspring. For the prevention of harm must take precedence over the obtainment of good. The Fatwā¹ Committee at Al-Azhar ruled that the taking of a medicine to prevent conception permanently is interdicted except in cases of necessity, as in the case of either partner or both being afflicted by a disease capable of being transmitted to the children and grandchildren.

CONCLUSION

We shall content ourselves with our foregoing exposition as regards the standpoint of Islamic Law concerning birth control. From the above we may conclude the following:

1. Birth control by the adoption of contraceptive means — of whatever sort or form and for shorter or longer periods — with a view to checking birth increase and reducing consequential responsibilities, by reason of medical, social or economic evidence is a course of action which religion does not forbid and which it does even enjoin if necessity demands it.

2. The duty of educating people and instructing them as to religious rules, so that every individual and every family, when about to decide a question, may not, through ignorance, be dubious or confused or filled with uncertainty engendered by the conflicting opinions and seeming contradictions between the social and the religious standpoints.

3. The offspring are a trust in the hands of the parents, with rights and duties owing to them. Islam views failure in the fulfillment of these rights and duties as an act of treason to the nation as well as a

¹ Fatwā: formal opinion in Islamic jurisprudence.

crime against the children, against society and against religion. The Prophet said: "It is sinful enough for a man to leave his dependants derelict."

4. If we grant that it is the right of the parents to have recourse to devices for contraception, by some method or another to escape hardship and distress, then contraception, as far as the nation is concerned, is not prohibited, as long as it has the effect of warding off a disadvantage and inducing an advantage.

5. The raising of the standard of living in the country is, as ominously revealed in the latest statistics, one of the means for meeting the situation arising from the fearful population explosion.

In one of its official statements in 1962, the United States gave out that the population of the world reached 3,125 millions, that it was increasing at an annual rate of 62 millions, and that consequently the world population would reach 6,000 millions in ten years. The statement adds that ten million people die of starvation every year and that half of the world population lived at a bare subsistence level. Obviously, the causes of death by starvation and of the low standards of living for half the human race arise from the fact that resources cannot possibly keep up with the rate of population increase.

The statement says that if this steady increase were to continue unchecked, more than half of the world population would be reduced to the lowest subsistence level. It also says that a provisional remedy might be effected through the redistribution of resources and wealth, not only on a local state level, but also on an inter-state level. There can be no escape from this impending peril except by birth control and by the inculcation of this idea through a world-wide campaign.

The United Nations agency, the Food and Agriculture Organization (FAO), issued its annual report for the year 1962, with most alarming facts. The report says that the world produced in the current year less than it did in the previous year, owing to the 3 per cent population increase as contrasted with the 1 per cent production increase. In other words, the per capita increase in productivity dropped by one per cent. Furthermore, by the year 2000, the world population will reach the 6,000 million mark, with a rate of increase in Africa reaching 200 per cent, in the Middle East 250 per cent and in Latin America 300 per cent, which makes it imperative that production should be boosted by 100 per cent in Africa, 150 per cent in the Middle East and 200 per cent in Latin America. If the population increase

in these areas continues as it is, the larger part of the population in these regions will face the possibility of starvation before the end of the century, and there would be no way of escape from the imminent peril except through birth control. These are facts which must be taken seriously into consideration and appreciated correctly. We live in a world stumbling into one stifling crisis after another, with dire consequences. The human race was afforded a unique supreme opportunity, but it failed to turn it to account through ineptitude and shortsightedness. This opportunity was the discovery in our times of atomic energy which assumed mighty proportions, with infinite possibilities for use in the service of the welfare, happiness and prosperity of all nations.

This age should have tried to foresee the needs of the future. The millions of people in the various nations on the march, lifting their hands begging for food; their births are doubling, the death rate is dropping and their pressing needs and short supplies are growing. These teeming millions of the human race, in need of bread should have been presented with the following question: How can their needs and wants be met and what course should be followed to achieve that end? But alas this question has never been posed seriously.

Crises surged forward, not only in the so-called the underdeveloped or developing countries — in Asia, Africa and South America — with all their hungry millions. There were crises too in the developed or advanced countries, which could offer but little security for the future to many of their people, after the independence of the colonial people, and the consequent contraction of the area of exploitation. This anxiety for the future is probably reflected in the recurrent unrest of students in advanced countries. These countries which were previously able to find outlets for their surplus energies and enterprising youth in distant colonies and through monopoly of trade and industry, are unable now to promise their youth a secure future. The youth realize that their own countries have little to offer to satisfy their wants and fulfil their aspirations. As for the youth in the developing countries, the situation is definitely much worse. We must keep in mind, however, that what was considered a luxury in the previous century is now regarded as a necessity.

Following the discovery of atomic energy, there arose two alternatives before the modern age. Unfortunately, man settled for the wrong one, namely, atomic energy for war, inventing instruments of destruction, squandering man's resources, and engaging in an arms

race. This choice on the part of modern man is the tragedy of our times, and the spirit of violence, anarchy, wanton destruction and evilness — the prevalent mood of today and perhaps of tomorrow — stems from this misguided choice. If a dark future looms ahead before mankind, it should be blamed on the adoption of this ill-advised course.

SCIENCE NEEDS FAITH

Science which was able to split the atom and to discover atomic energy, like a genie released from his long confinement, rushed headlong in utter recklessness along the path of destruction. Science now stands sorely in need of religious faith, which can act as a check and a sobering influence, with enough power to direct man's actions towards the welfare, prosperity and peace of man. This faith is the inner voice that inspires individual and collective behaviour and helps purge souls from evil passions and reckless impulses. Faith is the stronghold within whose precincts man can find peace and security. If this hectic world, now held tight in the grip of an armament craze, had only listened to the voice of sanity allowing itself to be led by divine guidance, it would have chosen the path most conducive to brotherly love and world co-operation, with a guarantee of a high standard of living to all and sundry. If the world had the proper moral sense and the religious conscience, it would devote knowledge and all its potentialities and possibilities to secure sustenance and food to the millions of mankind, by cultivating deserts, exploiting seas and producing at low cost the necessaries of a decent life.

If scientists would follow the path of truth and sanity and foster the cause of peace and world security, they would economize considerably in effort, material resources and powers for production, all to the good of mankind. The bad distribution of wealth on the international level, and the prostitution of riches for armament production are two important factors which account for the lowering of the standard of living and for the perils looming ahead. Do you know that mankind's expenditure on weapons alone is more than 130,000 million dollars annually? To make an atom bomb aeroplane costs as much as the price of 2,705 tons of wheat; a jet as much as the price of 100,000 tons of sugar; and a nuclear rocket submarine as much as the price of 55,000 tons of the best quality meat.

The report of the Geneva Conference for the Non-Proliferation of Nuclear Arms, which published these horrifying figures, states

that 10 per cent of what is expended annually on weapons, a sum estimated at twelve billion dollars, would be sufficient to finance all development schemes in the underdeveloped countries, and would be adequate to resist successfully all the attempts of imperialist powers to hedge us round with all manner of devices and designs for the purpose of coercing us to toe the line and submit.

We have to demonstrate to people that the Islamic Law is progressive, having at no time or place refused to listen to reason or rejected any action which would serve the interests of Muslims and relieve their distress or ameliorate their lot. "God wisheth you ease, but wisheth not your discomfort" (Sura 2/185). God speaks the truth and guides us aright.

ISLAM AND PLANNED PARENTHOOD

BY

SHAIKH MUḤAMMAD AL-MUBĀRAK AL-'ABDULLĀH

Praise be to God, Lord of the Universe, and blessings and peace upon our Master, Muḥammad, the Messenger of God and the Seal of the prophets and upon his companions and those that followed in their footsteps to the end of time.

Islam is the religion of primal nature with which God has endowed man. It does not clash with man's instinct or temperament; its aim is only to treat and rectify, taking into account, however, the native traits, instincts and innate inclinations with which man was endowed.

No wonder. For Islam is the handiwork of God, Who perfected the making of all things and Who knows His creatures best. For "Shall He not know who hath created? for He is the Subtil, the Cognizant" (Sura 67/14). How right God is in these words: "Set thou thy face then, as a true convert, towards the Faith which God hath made, and for which He hath made man. No change is there in the creation of God. This is the right Faith, but the greater part of men know it not" (Sura 30/30).

In the Islamic view, the nation is a community of human beings consisting of small units or families. Consequently, whether the nation is strong or weak, advanced or backward depends wholly on the corresponding condition of the family.

Islam has a supreme objective, consistent with an underlying wisdom of utmost importance, in establishing the family and in being concerned about its welfare, namely, the preservation of the human race through procreation and the creation of a good and pure Islamic community, living a life of mutual aid and interdependence. To achieve that end, i.e., procreation, Islam encouraged marriage for procreation, basing the conjugal relationships upon complete cooperation and enduring loving kindness, peace and stability, tranquility and reassurance, love and sincerity, endeavour and equity.

God says: "O men! fear your Lord, Who hath created you of one man (*nafs*, i.e., soul) and of him created his wife, and from these twain hath spread abroad so many men and women. And fear ye God, in Whose name ye ask mutual favours, and reverence the wombs that bore you. Verily is God watching over you" (Sura 4/1); and: "And one of his signs it is, that He hath created wives for you of your own species, that ye may dwell with them, and hath put love and tenderness between you. Herein truly are signs for those who reflect" (Sura 30/21).

Since the establishment of the family has the supreme purpose of the attainment of peace, affection and mercy as well as the procreation of offspring for the preservation of the species rather than sensual enjoyment alone, Islam does not countenance the destruction of offspring through abortion or sterilization. It does not even allow birth control without necessity.

As to the terms "family planning" or "planned parenthood", the meaning from the linguistic standpoint is the regulation of parenthood or births, rather than their limitation or reduction, for to regulate a thing means to streamline it or channel it into a straight course, be it narrow or wide. Today, however, "family planning" is understood by some people to mean the limitation or reduction of births by regulating the frequency or incidence of pregnancies, that is, by having pregnancy occur, say, once every three years or every four years which would naturally lead to a reduction of births. This usage of the term is a creation of modern civilization, introduced but recently, and is capable of loose interpretation.

Muslim jurists have been concerned with this question in their discussions of Islam and the time of the companions or the Prophet's close associates. In dealing with it in their works, however, their object was not to set a limit for births, which people were not to overstep or in other words, to prescribe the maximum number of children which people were not to exceed. This restriction is discounted by Prophetic traditions (acts and sayings of the Prophet) as well as by the spirit of Islamic jurisprudence. For Islam favours that this world be both sufficiently populated and civilized; it advocates the increase of manpower in the service of human progress and advancement, and the consequent increase in the power and prestige of the nation. The jurists' object, therefore, was simply to frame rulings to cover the unusual cases of certain people who, for one reason or another, do not want children.

As they saw it, disinclination to procreate finds concrete expression in the adoption of contraceptive methods right from the start or by abortion or forced childbirth during pregnancy.

Contraception as practised by the ancient Arabs was practically confined to two methods: 1) 'azl (coitus interruptus), to avert pregnancy, and 2) *iksāl*, which is intercourse without ejaculation, and a variant of 'azl. In the lexicon *Lisān al-'Arab* it is stated: *aksal* is said of a man who practises 'azl to avoid having a child. A *ḥadīth* relates that a man asked the Prophet saying: "There are some of us who have intercourse and stop short (*yuksil*) of ejaculation, should they perform the ritual washing? The Prophet replied, in the presence of his wife 'Āisha, "I certainly do that with this woman and then we have a bath."

They did not use drugs, vaginal douches, filaments, barriers or any of the various contraceptive devices or contraceptions recently discovered to prevent conception temporarily or permanently. Later jurists allowed the use of such devices, and others which may be discovered from time to time, provided that this use may not do actual harm to the couple or either of them or cause permanent sterility and the destruction of fitness for procreation. For instance, it is stated in the commentary of Ibn 'Ābidīn on *Sharḥ al-Durr*, as quoted from the author of *Al-Nahr*, that a woman is allowed to block the orifice of the uterus to prevent the seminal fluid of the man from getting into the uterus, as a contraceptive means.

They held different views regarding the rules for averting conception temporarily from the start of the intercourse. Some of them declared this sort of contraception to be permissible like for instance, Jābir b. 'Abdullāh, one of the Prophet's companions who, as the two *Ṣaḥīḥs*¹ is reported to have said: "We used to practise coitus interruptus during the time of the Prophet while the Qur'ān was being revealed." Another version of the same report runs as follows: "We used to practise coitus interruptus during the time of the Prophet, the Prophet came to know about it but did not forbid us." Muslim, the famous compiler of traditions, also related on his (Jābir's) authority the following: "A man came to the Prophet and said: 'I have a maid who serves us and waters our palm-trees. I consort with her and do not like to have her conceive.' The Prophet said: 'Practise coitus interruptus with her if you wish! what is preordained for her will

¹ Two authoritative collections of *ḥadīth* compiled by Muslim and Bukhārī.

certainly befall her.’ The man went away and came back some time later, and said: ‘The maid is pregnant.’ The Prophet said: ‘I said that what is preordained for her will certainly befall her.’ ” Included in this group the two Imāms, Shāfi‘ī and Mālik. In his book *Zād al-Ma‘ād*, Ibn al-Qayyim says: “The relaxation of the law in favour of ‘*azl* is reported to have been authoritative by ten of the companions of the Prophet: ‘Alī, Sa‘d b. Abī Waqqāṣ, Abū Ayyūb al-Anṣārī, Zaid b. Thābit, Jābir, Ibn ‘Abbās, Al-Ḥasan b. ‘Alī, Khabbāb b. al-Aratt, Abū Sa‘īd al-Khudrī and Ibn Mas‘ūd. Then he adds: “It is the view of Mālik, Shāfi‘ī, the people of Kūfa and the greater majority of religious scholars.”

Among those who also declare it to be permissible is Imām al-Ghazzālī. In the second book of his work *Iḥyā’ ‘Ulūm al-Dīn* (The Revival of the Religious Sciences), in discussing the rules and manners for intercourse, he writes what we may sum up as follows: “It is not good manners that the man should practise ‘*azl*, nor for that matter, that he should wander from the proper place of intercourse to another. If he practises ‘*azl*, the case is disputed by theologians in respect of whether the practice is allowed or disfavoured, along four lines of thought. Some allow it unreservedly, some others forbid it categorically, some others still declare it to be allowed if practised with the woman’s consent, and some others also declare it to be allowed in the case of a bondwoman but not in that of a free born woman. What is correct in our opinion is that ‘*azl* is allowed, although there is a better course to follow; we say it is not disfavoured, in the sense of prohibition or freedom from sin. To establish forbiddance there must be a textual evidence or an analogy based on a textual evidence, and in this case there is neither the evidence nor the analogy. There is only a text which can be used to infer allowance from it, which is abstention from marriage or from coition, or avoidance of impregnation — all of which may be adopted, although there is a better course to follow.” Then he (al-Ghazzālī) says: “If you say that ‘*azl* is not to be disfavoured inasmuch as it is a means for averting the birth of a child, then it is more likely that it should be disfavoured on account of the intent motivating it, for it can only be motivated by an evil intent, tainted with strains of covert polytheism.” To this my reply would be that the intents motivating ‘*azl* are of five varieties:

1. In the case of concubines, to safeguard property against the concubine becoming entitled for manumission if she gives birth to children.

2. Preservation and maintenance of the woman's beauty and her healthy body for continued enjoyment, and safeguarding of her life from the labours of childbirth, which also is not forbidden.

3. To escape being embarrassed by a large family and to guard against overtaxing oneself in earning a living or against being tempted to fall into evil ways, which also is not forbidden, for to avoid embarrassment and straitened circumstances helps one to be pious and devout. True, it is a mark of excellence to place complete trust and confidence in God's providence, as declared in the Qur'anic verse: "There is no moving thing on earth whose nourishment dependeth not on God" (Sura 11/6). Nevertheless, we allow ourselves to depart from the norm of excellence and leave the worthier course, by exercising providence and foresight, and by saving money, although this may seem to contradict the principles of resignation to God's will. And we do not regard this as forbidden.

4. Fear of having female children, who, as is commonly believed, bring disgrace upon the family, and especially upon parents who will have to marry them off, in the same way as was the custom of ancient Arabs.

5. The refusal of the woman to allow sexual intercourse because of squeamishness or of an exaggerated sense of cleanliness, both of which are unorthodox and also in conflict with the tradition of the Prophet and the usage of the faithful.

Some hold that contraception is to be disfavoured if there is no need for it, as given by Ibn Qudāma, the Ḥanafite, because it would have the effect of reducing the number of children, a result which cuts across the Prophet's injunction on marriage and procreation in his tradition which says: "Marry among yourselves and multiply, for I shall make a display of you before other nations on the Day of Judgement." This is reported by Abū Bakr b. Mardawaih in his commentary, and by 'Abdul-Razzāq in his manual.

Others also declare contraception to be prohibited by law, and these include Ibn Ḥazm, as stated in *Fath al-Bārī*, and a certain group of scholars, who think that contraception, if allowed, would put an end to procreation and lead to the extinction of the species. They rest their views on two traditions of the Prophet's, one of which says: "He who does not marry for fear of a large family is none of us." And the other in answer to a question about 'azl as related by Judāma

bint Wahb in the *Ṣaḥīḥ* of Muslim, says: "That is infanticide (burial of a child alive) in disguise."

Sterilization on the other hand was not discussed by the companions of the Prophet apparently because it was thought to be a *prima facie* case for proscription. Later, however, Muslim jurists were unanimous in prohibiting it. Al-Bijarmī says that according to the Shāfi'ī scholars, sterilization is prohibited. But Shaikh Shaltūt, rector of Al-Azhar University, decided in favour of allowing it in case of necessity, such as the case of one or both of the couple suffer from a disease which is apt to be transmitted by heredity to the children and grandchildren. Abortion and forced childbirth are unanimously agreed to be prohibited after animation, during the seventh stage of foetal development, as the Qur'anic verse: "Now of fine clay have we created man; then we placed him, a moist germ, in a safe abode; then made we the moist germ a clot of blood; then made the clotted blood into a piece of flesh; then made the piece of flesh into bones: and we clothed the bones with flesh: then brought forth man of yet another make. Blessed therefore be God, the most excellent of Makers" (Sura 23/12-14). This is in the fourth month of pregnancy.

Not only was it interdicted, but it was regarded as a crime, incurring the payment of a *diyya* (blood-money) if the foetus was born alive and then died, or the payment of a *ghurra* (indemnity) which is equal to a tenth of the *diyya*, if it was stillborn. It was related that Rifā'a b. Rāfi' said: "Some of the companions of the Prophet, 'Alī, al-Zubair and Sa'd, were once in the company of 'Umar. They were discussing *'azl*, 'Alī said: 'There is nothing wrong with it'. A man present in the company said: 'They claim that it is the minor form of *wa'd*'. 'Alī said: 'It cannot be a case of *wa'd* unless the foetus has completed all the seven stages: first as a strain of earth, then as a sperm, then as a clot, then as a lump, then bones, then flesh, then as another being'. Whereupon 'Umar said: 'You are right, may you be long preserved'."

'Alī derived these seven stages from the already quoted verses from the Chapter of al-Mu'minūn, in the Qur'ān.

Abortion before animation, is maintained by some scholars to be permissible, in the belief that the foetus prior to that stage has no life and that, on that score, abortion cannot be interdicted or criminal. Others who hold that it is interdicted by religion on the basis that the foetus has life, include al-Ghazzālī, who says: "This (i.e. *'azl*) is not the same as abortion or *wa'd*, for the latter are crimes committed

against a being already in existence. The first grade of existence is that the semen should get into its place, fuse with the egg and get ready to receive life. To disrupt this is a crime which becomes the more serious as the substance passes from one phase into another and attains completion at separation."

I was asked in the Sudan my opinion about birth control. My answer was that parental love of children and filial love of parents are inherent in human nature; it is an ingrained trait imparted by God as is evidenced by the verse: "Fair-seeming to men is the love of pleasures from women and children" (Sura 3/14).

The Arabs, moreover, are, as a nation, noted for their love of children and of the multiplicity of children. They hope, through their children, especially if they are large in number, to acquire prestige and protect themselves and their property. On this subject of pride in the multiplicity of the clan countless quotations can be cited in prose and verse, as in the ode of 'Amr b. Kalthūm in which he praises his clan in the following terms: "We have so populated the plains that they are too narrow to hold us, and the seas we have filled with sails." Another poet, al-Farazdaq says: "Would that you saw me with my sons, like unto lions, sullenly standing guard around me." And a third, al-A'sha, satirized Ibn 'Ulātha, saying: "No, your numbers fall far short of theirs — prestige is to the more numerous".

Islam as the religion of nature and of civilization, has worked in harmony with these normal dispositions and healthy instincts. As already noted, it urges prolific procreation. The Prophet, as stated by al-Ṭabarānī in his work *Al-Kabir* on the authority of Ma'qil b. Yasār, is reported to have said: "A black woman if prolific is better than a beautiful woman if sterile. I verily will make a display of you, even of the weakling who at the door of Paradise will be told to enter, but would say: 'O God, and my parents?' He then will be told: 'Enter Paradise along with your father and mother'." Another Prophetic tradition reported by Abū Dāwūd and al-Nasā'ī says: "Marry the prolific affectionate woman, for I shall make a display of your multiplicity before the nations." And yet, the Prophet took the necessary precautions to ensure the general welfare of the community. He strongly advised that the aim was the selection of good offspring in body and soul, and gave each spouse the right to break the marriage contract, if he or she is discovered to be afflicted with a contagious disease, liable to imperil the health or life of the couple, or that of the children. The Prophet warned against suckling or nursing during

pregnancy, because this, as was believed, would sap the health and stunt the growth of the child. It is related that the Prophet said: "Choose where you deposit your sperm for the line of descent is conductive." He also said: "Marry outside your kin and kith. Otherwise you get puny children; and avoid marrying a brainless woman, for her children are waste."

One of the general principles of Islam is the aversion, or warding off, of harm. Pregnancy and birth will be of no benefit if they are to cause harm to the mother, the father, or to both parents, or to the society or to the state as a whole.

Moreover, Islam, being the faith for all mankind, all-embracing, eternal and suitable for all times, places and conditions, and adaptable to different aspects of social development, has taken into consideration the special circumstances of certain people whose countries have difficulty in coping with overpopulation, or whose resources are too limited to meet the demands of ever increasing numbers and are, consequently, threatened by unemployment. The Prophet said: "Verily, there will come a time in this world when one is congratulated for one's light burden (of children) as one is congratulated today for being the father of ten." We are told in the lexicon *Lisān al-'Arab* that the Prophet, was in the habit of making frequent use of the following invocation: "O God, I seek refuge in you from the most gruelling trial." He was asked: "And what is the strain and stress of ordeal, O Prophet of God?" He said: "The most gruelling trial is to have plenty of children with no adequate means." Al-Hākim also related that 'Abdullāh b. 'Umar told him that he heard the Prophet say: "The most gruelling trial is to have plenty of children with no adequate means." On the authority of 'Abdullāh b. 'Abbās we have the following version: "To have large families is one of two types of poverty, whilst to have small families is one of two types of riches." Imām Abū Ḥanīfa advised his pupil, Abū Yūsuf, saying: "Do not marry until you know that you can satisfy all the woman's needs. Beware of preoccupation with women before acquiring knowledge, for you would only be frittering away your time and overburdening yourself with children and a large family, and large families are a source of constant anxiety and worry." Commenting on the verse: "And if ye are apprehensive that ye shall not deal fairly with orphans, then, of other women who seem good in your eyes, marry but two, or three, or four; and if ye still fear that ye shall not act equitably, then one only; or the slaves whom ye have acquired: this will make justice on your

part easier" (Sura 4/3); Shāfi'ī said that the verse was to be taken as a warning against over-large families. Those whose means are too restricted to allow them a multiplicity of children must concentrate in their interest on religious education and on the dissemination of knowledge and science among men and women, so that the common people may realize that it is unprofitable for one to have too many children if one lacks the wherewithal to bring them up properly, and thus make them a source of delight to the parents and an asset to the nation and not a heavy burden on both the family and the nation. There can be no advantage in giving birth to children who are invalid, disabled, weak-minded, and handicapped; and there can be no good in the multiplicity of children, if this is attended by physical, spiritual, intellectual or moral deficiency. The Prophet condemned numbers when attended by weakness, frailty and disruption, when he said: "The nations will soon gather together to fall upon you as people would fall upon a trencher." Someone asked if that would be because of their small number at the time, and he replied: "No you will be numerous at that time; but you will be scum and rubbish like that carried down by a torrent, and God will take fear of you from the breast of your enemy and cast enervation into your hearts." He was asked the meaning of enervation and replied: "Love of the world and dislike of death."

The Prophet warned against nursing a baby from a pregnant woman's milk, saying: "Do not kill your children under false pretencies for the suckling of the child while the mother is pregnant has the same effect as when a horseman is overtaken (by an opponent) and thrown off the horse."

In another genuine tradition, the Prophet is reported to have said: "A strong believer is better and more beloved to God than a weak one, in every good activity, be eager to get what is beneficial to you, and look for help from God and do not weaken, and if anything untoward befalls you, never say: If I had done this or that, this or that would have happened; but say: It is God's will and what He wills shall be done, for 'if' is the prelude to Satan's work." The Prophet warned against the suckling of a baby with the milk of a pregnant woman, and said, as reported by Abū Dāwūd, on the authority of Asmā' bint Zaid: "Do not kill your children in secret, for *ghail* (suckling with a pregnant woman's milk) will overtake the horseman and fling him off his horse." The *ghail* is also to have sexual intercourse with the suckling woman, and to get her pregnant. The result will be the

weakening of the suckling baby and the physical impairment of the expected one. Implicitly, the tradition indicates clearly that to make measures to obviate pregnancy during the suckling period is permissible.

But the countries with enough room for a multiplicity of offspring and with sufficient natural resources to meet the consequent additional needs, such as some Arab and Muslim ones, cannot be in the same position as many other countries not so fortunate. But still we cannot argue that the world population used in the past to increase at a slow pace, and that there was a constant balance between the rate of births and the rate of deaths.

Today, in the heyday of science and progress in the fields of medicine and pharmacology, a great many deadly diseases and epidemics have been wiped out, with the consequence that the birth rate now exceeds by far the death rate. Moreover, the material demands of everyday life are constantly increasing, thereby widening the gap between the potential and the actual resources on the one hand, and the explosive populations of the world on the other, threatening the world with universal famine. This is undeniable; but at the same time we must bear in mind that the continued exposure of the human race to all sorts of devastating war tends to upset this balance and do away with this equilibrium. And wars are only natural, in the sense that they are occasional from time to time by the working of natural cosmic laws, interminably in action. God says: "And were it not for the restraint of one by means of the other, imposed on men by God, verily the earth had been utterly corrupted. But God is bounteous to His creatures" (Sura 2/251). Some people have tended of late to wink at the ills of the present civilization, material as well as moral, and to pay scant attention to the unexploited parts of land and sea which can profitably be exploited. To put the lid on it, some countries still destroy the surplus of their food and grain products.

There is nothing discreditable to us if we try to increase our offspring under circumstances favourable to the procreation of healthy, fit and good progeny; well equipped, physically and psychologically, to repel aggression and help us to defend ourselves and our homelands, and then work for strength and prestige, and also for the expansion of development which can only be achieved through the instrumentality of enlightened minds and assiduous work. I am fascinated by the ironical words of the late Shaikh Maḥmūd Shaltūt in his *fatwā* (juristic opinion) in this connection: "The fare which God has pro-

vided for His servants on the surface, and under the surface, of the earth cannot be short of their need, and the need of their offspring, however populous and however long-lived, unless of course they miss the straight path of divine wisdom and miscalculate the size of the fare in relation to the number of feeders."

But how can the earth be too short on supplies to meet the needs of people and the needs of their offspring, however multitudinous they may be, and however big the excess of births over deaths may be, when this multiplicity itself is a gracious gift from God, like His other gifts of continued procreation and good things? God Who says: "God too hath given you wives of your own race, and from your wives hath He given you sons and grandsons, and with good things hath He supplied you. What, will they then believe in vain idols? For God's boons they are ungrateful!" (Sura 16/72), gives hereby notice that He is committed to this promise and He guarantees its fulfilment, as indicated by the following verse: "There is no moving thing on earth whose nourishment dependeth not on God; He knoweth its haunts and final resting place: all is in the clear Book" (Sura 11/6). Abū 'Abdullāh al-Imām al-Ṣādiq reports that the Prophet said: "He who renounces marriage for fear of exigence has a poor opinion of God," in allusion to the Qur'anic verse: "And marry those among you who are single, and your good servants, and the handmaidens. If they are poor, God of His bounty will enrich them. God is all-bounteous, Knowing" (Sura 24/32).

Therefore, by purposeful planning for improving the progeny, with ability to bring up the children well, and through adopting our plans to suit circumstances and exigencies of individuals, we shall be able to reconcile the traditions which call for multiplicity of offspring with those which call for their restriction, with the help of God Who grants us success and guides us to the right path.

REMARKS ON SOCIAL ORGANIZATION AND ITS DIFFICULTIES

BY

MAHMOUD EL-BEJI

Muslim society in the greater part of the Muslim world today suffers, in the matters of cultural values, from two complexes which have to be treated in various ways.

FIRST COMPLEX

Muslims suffer first from fear to take the initiative in any social or intellectual field under the influence of ideas and teachings of their predecessors, and consistently resisting every revolutionary trend which they fear to be a threat to their cultural heritage through what they call innovations or new-fangled ideas. Such a strictly conservative attitude is expressed in various ways, in the actions of Muslims on the whole who find it quite satisfying to cling in point of fact only to the crust rather than to the core or essence. This is the attitude of Muslims generally and of a majority of Muslim Shaikhs, or theologians, particularly.

SECOND COMPLEX

The second complex has grown with the young generations as a result of interaction with modern life, with its quantity — rather than quality — mindedness, based on figures, quantities, scientific techniques to control in a mechanical way social relationships in the society as a whole and individual relationships within the family and with other individuals outside. What is accepted by those who suffer from the first complex is being strongly rejected by people with the second complex, and vice versa.

It has, therefore, become necessary to bridge the gap between the two opposed parties and to try to guide the rising generation away

from the strictly authoritarian attitudes and from slavish conformity to ancestral points of view and mentality as a step towards an accommodation with other extreme. It has also become mandatory to do away with all the negative unhelpful attitudes prevailing in both camps today. The conservative elements, on the one hand, cling to their standards and concepts and refuse to compromise, and the liberal elements, on the other, who are largely the younger generations and the educated and the semi-educated, refuse to have their day-to-day behaviour under strict rules and rigid teachings of religion. Thus, the two sides, the traditional and the liberal, are committed to two irreconcilable positions.

While the conservative elements would not discuss family planning affairs on account of their religious associations, the liberal elements on the other hand go to such extremes that they refuse even to be bound by marriage laws and go to the length of allowing themselves to have mistresses in preference to wives, or to live an adulterous life.

The way out of this tie-up in Muslim society is not to bring forward arguments derived only from the Qur'ān and the genuine Prophetic traditions, nor simply to warn people against evils, harms and agonies which could result from close adherence to antiquated norms and traditions and against the fearful consequences of overpopulation in the foreseeable future, such as shortage of water supply and foodstuffs. The way out of it, in my opinion, is a kind of a campaign of indoctrination, if necessary, and by all means, of illumination and persuasion, which stands a good chance of success, and is 80 % inducive, rather than imposed.

If you tell the dyed-in-the-wool conservative that Islam calls on him to provide it from your loins with strong heroic soldiers who would defend it and gain glory for their parents, tribe and nation, and that Islam is not in need of the weak and the feeble; and if you tell the committed and rebellious liberal that, by leading a bachelor and licentious life, he does harm to his society and degrades his religion, and on the external level, in the long run, weakens the social solidarity of the community and may, on a larger scale, expose the country to serious disadvantages vis-à-vis the enemies; if you tell them all that, you will undoubtedly be in a good position to convince both of them of your point of view regarding family planning, the bringing up of children and the shaping of human character. This conviction can be accomplished without severely lecturing at them, giving them

orders or patronizing admonition, and without unduly interfering in their private affairs.

The conservative does not accept that external considerations, however serious they may be, should limit his sexual freedom and his relationship with his wife, because he imagines that his sexual desire, the satisfaction of which may be his only source of delight, is being circumscribed or thwarted. The liberal elements do not tolerate being the slaves of a monotonous, humdrum life which requires them to forsake a delightful and exciting life for a colourless one in which they restrict themselves to one mode of behaviour and one wife. In some countries where people, both Christian and Muslim, observe their religious teachings, the prevailing system rests on some kind of unfair balance which, as claimed, is meant to preserve the species and avert the dangerous contradiction and slow suicide. The reluctance of the younger generation to start families and to establish family relationships is counterbalanced by the eagerness of the unsophisticated older generation to have families and more children and willingly bear the consequent responsibility.

Thus people of average, low and even of little or no income pay comparatively a large amount of tax, crippling in its effect. Therefore, it has become inevitable that we must reconsider not only the number of children and how we beget them, but also the system of distributing the resources among all people. On the top of our list of problems is a side, but nonetheless concrete, issue, namely, how to counteract the aversion among young people to marriage and to cleanse the conjugal relationships from sin and adultery.

It is my belief that if family corrective education or breeding does not take those side issues into consideration it will, in good faith, fall into a social error which will leave its effect on societies with moderate differential between births and deaths and between population increase and food production.

The African citizen who lives in the depths of his vast forests and on extensive fields may bluntly argue that polygamy and the plurality of children are his guarantees of productivity and that he has not heard of co-operatives for services, and marketing or delivery of his crops. How can we convince him of the necessity of family planning and of family corrective education or breeding.

The African citizen may also bluntly tell you that because of his fear that some of his children may be carried off by death he cannot but continue to beget children, to make up the leeway.

CONDITIONS FOR CORRECTIVE EDUCATION

The study of various mentalities and of the religious heritage leads one to believe that one's faith in the necessity of corrective education depends on several guarantees of security regardless of whether religion allows or disallows planning. Those guarantees of security are:

1. Relief from fear of children's death.
2. Freedom to choose one's mode of life, with no exposure to compulsion.
3. Conviction of the citizen that productivity does not depend on the number of children.
4. Self-defence is not exercised by relatives alone.
5. Prestige for the citizen does not result from the large number of relatives around him.

In this connection, I would like to recall a story about a certain Persian emperor who received an Arab delegation for important negotiations, and asked which one of the delegation was going to be the spokesman. They pointed out a black man, who, the emperor was told, was the noblest, the emperor was intrigued to find out why the black man was the noblest, and he was told that: "If he is provoked, forty swords will be provoked in the hands of ten sons, ten brothers, ten paternal uncles and ten maternal uncles."

Serious remedial steps should be taken to change this mentality in order to replace the prestige brought about by one's relatives by a prestige achieved through work and thought.

FAMILY PLANNING IN THE QUR'ĀN AND SUNNA

BY

DR. HUSEYN ATAY

Islam has two basic principles, one of which explains its nature and the other defines its aim. The former shows to what extent Islam is in harmony with human nature, and shows in definite and clear terms that Islam is the religion of pure nature. This former principle lies also at the root of Islam, a fact which prompts us first to inquire about the true nature of this great religion. But I would say that Islam, by virtue of its rules and laws, devised to meet social and moral problems of man, is very much in harmony with human nature. This may explain why the Muslim felt adequately provided for legally and culturally, in no need for secular laws to organize conduct and for intellectual ideals such as the rights of man and for other similar ideologies, especially when Islam, in its vigour, was the order of the day, fully understood and obeyed. Islam rests on well-laid foundations and sound principles which have surely enabled it to become permanently established and stabilized, depending as it does on congruity with man's constitution and nature. Moreover, they are practicable and realistic to the extent that the healthy Muslim, as a member of the Muslim society, can apply them quite easily.

Man, as a living creature, has to submit to the laws of nature in his birth, growth and old age and death. As to his birth, the Qur'anic verse which says, among other things: "And into whose womb we breathed of our spirit" (Sura 66/12), points to the fact that He is the source of life. In addition, He has made the children of Adam superior to the other living creatures. Being conscious of his superiority, man has aspired to establish communication with the source of the eternal power, in the hope that through this communication he would attain immortality. But as all living creatures are destined to die one day

at the end of their course on the earth, man, being one of them, knows that the same fate awaits him. He, therefore, makes every effort to perpetuate himself in life. This, as is obvious, he cannot achieve, because the Creator injected the principle of development and change in His creation, so that a baby grows into a youth, a man and finally into an old man when he has to give up the ghost, and cease to take active part in the rough and tumble of life. Such is human nature and such is its prescribed course which God embodied in His divine law. God, however, favoured man by allowing his traditions to be carried over at his death, through the perpetuation of his successive progeny and the endurance of the human species, even though, as God tells us, the physical existence of the individual is not immortal. We know that man's span of life when considered from the individual's point of view is not long. But it is long, if viewed as being conterminous with that of mankind of which it is also an extension. There is also another side to God's creation, which is the arrangement of animate creatures into pairs, male and female, so that when they mate or marry they make it possible for the species to endure.

Islam considers the satisfaction of man's eagerness for marriage as a natural and legitimate exercise, and the laws given to the descendants of Adam and Eve are expected to be obeyed for this purpose. Hence the teachings of Islam for marriage are not meant to be too hard to apply, or far in excess of human capacity to carry out, but rather to be easily applicable and useful as a guide in matters of religion, especially insofar as marriage is concerned, with the idea of making them instrumental in encouraging and stimulating this very eagerness.

The second fundamental principle defines the aim of Islam as the preparation of the Muslim for the happiness of this world and that of the hereafter. It is a dual happiness, linking the two worlds. In Islam, according to the Islamic theory, the Muslim who is happy in this world will also be happy in the next. But what is happiness in this context? It is not easy to tell, because it is almost impossible to give a definition of human wordly happiness to be acceptable to all. In one sense, the way to wordly happiness is not straight-forward, and, in another, it cuts across the way which man has to follow for happiness in the next world. In fact, the two ways are opposed to each other, and the more man seeks to meet his wordly needs and gratify his desire, the more obstacles will he encounter in the way of achieving happiness in the other world. But we can reach a definition of human

happiness if we consider it in terms of man's achievement of what he wants. For we can say that if what man sets out to achieve is modest and not too ambitious, his resulting happiness and pleasure will be commensurate with the achievement. There is, in other words, a direct relation between happiness and pleasure on the one hand, and the achievement of both on the other. If man, therefore, aims at getting an occasional object, then the resulting happiness and pleasure will only be occasional and evanescent, in the sense that as soon as the object is overtaken by change, the resulting happiness and pleasure will change and disappear accordingly. By this general rule, and by the rule that man's sound body and sound mind induce him to realize something more lasting and substantial, man will be induced to realize something timeless, and lasts forever. The realization of the lasting or timeless aim gives the human being maximum happiness. It follows that man has at the same time to think of his continuance through the continuity of his species. If he attains this continuance in addition to the realization of timeless objects, he will have attained lasting and maximum happiness. Otherwise his happiness will only continue during his lifetime. In order, therefore, to remove all fear of becoming extinct man has to attain immortality on two fronts and not one.

It is noticed that man has been able to find for himself two ways in which he can be engrossed and thus have his attention diverted from the question of immortality and the threat of extinction; first, to accept inwardly the fact that he can be perpetuated through the perpetuation of the human species; and second, to try always to be in close proximity to God by abstracting himself from the material existence and taking up godly manners as prescribed by God, which is the source of life.

Islam, however, condemns man's entire preoccupation in the quest of the first aim which limits his interest to material things, and causes him to sink in the scale of humanity. Islam also condemns his concentration on the second objective, namely, the quest of pure spiritual life, to the exclusion of material things, because this may frustrate man's efforts to play his appropriate role in life. Islam takes the middle way by requiring man to aim at the continuance of his species, while, in his capacity as God's regent on earth, aiming at winning God's favour by obeying Him, and be very close to Him. Consequently, Islam encourages man to get married and reproduce children for the future generations satisfying, in the process, his natural urges. It forbids the suppression of the human capability to reproduce

children, and deprecates man's ingratitude to God expressed by withdrawal from the world and denying himself the enjoyment of God's boons.

God secured the continuance of life by means of the laws of life. Having imbued man with the desire to multiply by reproduction, God made the marital bond a strong one by providing man and wife with the needed natural energy to carry out their marital function, as human beings. In spite of the fact that man can multiply arithmetically and geometrically, God introduced into the essential laws of life the principle of elimination and balance. In the animal kingdom, an animal of a certain species is not necessarily required to beget an animal of another species. Animals, for instance, in certain periods of the year feel an outburst of internal urge to set about doing something to multiply by reproduction. Consequently, they become sexually excited. Man's desire to satisfy the sexual instinct, can at any time, within a certain age, be aroused. Though it is a human instinctive desire, yet it can be subjected to man's will. Since man's will is strong enough to control the impulses of nature and to direct them in a proper way, man is given, in addition to the rational faculty, a revealed law to regulate his life, in association with other people. Since there is much in common between human beings, Muslim Law is meant to apply to them all. However, God endowed man with reason in order to enable him to apply the rulings and teachings of religion within the limitations of his age, place and circumstances. In other words man is able by means of his intelligence and reason to fill in the gaps in Muslim Law, where rulings to meet certain cases are lacking.

We have already mentioned that Islam is a religion of pure nature in complete harmony with natural laws. Man, therefore, has to take note of this congruity. In regulating human life Islam does not adopt laws which are opposed to natural laws. Muslim Law, therefore, aims at helping man to act in accordance with the laws of nature, without conflict, and to guide him in making use of them. Let us now discuss Muslim rulings and regulations relating to the multiplication of human beings by reproduction.

Muslim Law derives from two basic sources: the Qur'ān and the Sunna. But it has a third source which is *qiyās*, the logical process of analogical inference.

FAMILY PLANNING IN ISLAM

We know that the Qur'ān contains verses which deal with the way how the family is to be constructed and rulings relating to the institution of the family and the management of its affairs. The establishment of this institution was made by God to conform to certain rules according to the varied origins of society and its individuals. Marriage and the structure of the family are made by divine will, an integral part of human life in the same way as instincts and natural bents are integral in the life of other living creatures. Thus the normal human being, is constrained by his nature to respond to the call of marriage. God says: "O men! fear your Lord, Who hath created you of one man (*nafs*; soul), and of him created his wife, and from these twain hath spread abroad so many men and women" (Sura 4/1). This noble Qur'anic verse shows that to multiply by reproduction is an essential aspect of human nature. The same verse shows not only that God created human nature in conformity with natural laws but also that these laws are in harmony with the divine directional law, as embodied in the Qur'ān. Man differs from other beings by having a will which, nevertheless, must comply with the noble Muslim Law. This divine Law tells the Muslim about this human nature, his makeup, reproduction and how to marry and with whom. God says: "Forbidden to you are your mothers, and your daughters, and your sisters, and your aunts, both of the father and mother's side, and your nieces on the brother and sister's side, and your foster-mothers, and your foster-sister, and the mothers of your wives, and your step-daughters who are your wards, born of your wives to whom ye have gone in: (but if ye have not gone in unto them, it shall be no sin in you to marry them); and the wives of your sons who proceed out of your loins; and ye may not have two sisters; except where it is already done" (Sura 4/23).

In this way Muslim Law gives to the Muslim a list of the persons to whom he can or cannot get married and with whom he can or cannot constitute a family. It is clear that his choice of wife is restricted. In no way is he allowed to get married to a heathen or an infidel. On this, God says: "Marry not idolatresses until they believe; a slave who believeth is better than an idolatress, though she please you more. And wed not your daughters to idolaters until they believe; for a slave who is a believer, is better than an idolater, though he please you" (Sura 2/221). After establishing the family on a solid basis, Islam forbids anything which may undermine it, particularly

adultery. The Qur'ān also forbids the man who seeks marriage to choose his wife from among those who violate the principles on which the family is founded, by committing subversive acts like adultery. God says in the noble Qur'ān: "The whoremonger shall not marry other than a whore or an idolatress; and the whore shall not marry other than a whoremonger or an idolater. Such alliances are forbidden to the faithful" (Sura 24/3).

The believer who submits to the Muslim Law must have a distinctive characteristic to mark him off the rest of creatures, which is that his family rests on two persons: the wife whose feminine nature helps her to be satisfied with having one man without feeling any privation or prejudice, and the husband who is naturally not hindered from having sexual relations with more than one woman. Man claimed this natural sexual function to be his prerogative; but he abused it for the sake of satisfying his lust. The Qur'ān recognizes this right of man because of the natural difference between the physical constitution of the woman and that of the man. This right, however, is not granted without restrictions. Actually holding man and woman to be equal, in spite of their different natural constitutions, does injustice at least to man. In view of man's different physical nature he can have more than one wife, and consequently many children, though marriage is not intended only for begetting many children, but it also carries with it the achievement of happiness for both husband and wife. Actually this quest for marital happiness constitutes one of the basic objectives of Islam. The woman is not merely a vehicle or a medium for 'incubation'. She is rather entitled, equally with her husband, to the common family happiness. To achieve this, however, requires that each of the married couple should shoulder his or her responsibilities, including mutual understanding and sympathetic feelings. This is why Islam in certain cases regards marriage almost as a duty, and, in others, it prohibits it, and this, no doubt, is an attempt by Islam to organize the family and to ensure its happiness.¹ The person, therefore, who is able to meet the requirements of marriage, including the payment of a dowry from his money and the defrayed of the wife's expenses, is urged to get married, particularly if he fears to be tempted into vice. The opposite rule must apply to the person who knows that by getting married he is bound to do great

¹ Badr al-Mutwalli 'Abdul-Bāsiṭ, *Muḥāḍarāt fī Uṣūl al-Fiqh* (Lectures on the principles of *fiqh*), vol. 1, p. 35.

injustice to his wife; his marriage is, therefore, prohibited.

It can be seen, from the above discussion, that in Islam the organization of the family and the strict application of the restrictive rules of marriage are essential, and that conditions for the establishment of the family must first be satisfied before the embarkation on family life.

FAMILY PLANNING AFTER MARRIAGE

We understand from the expression "family organization" or "family planning" that it is an attempt to provide the family as the nucleus with the social, economic, educational and health requirements to enable it to develop properly and to rise in the social scale. Since the family is the nucleus of the society, it must be our primary concern and we must take all measures to ensure strong and healthy children. In fact neither the husband nor the wife wants to have a sickly child, because it is not only the child that suffers but also the family as a whole. But the husband and wife are prohibited to beget children if both are medically unfit for that. However, as soon as they get rid of their disease or health disability, the prohibition will be lifted. Besides, if either of the married couple decides to stop begetting children, the other must sympathetically discuss the question with him (or her) and try to reach an agreement. And, in certain unfavourable circumstances, if the married man refrains from begetting children by his wife, he will then be acting in his own right.

According to Muslim juristic opinion regarding equality (*kafā'a*), any prospective couple must be equal in respect of social status. Otherwise either of them can demand separation by divorce. But if they beget a child or children they automatically lose the right of separation in the opinion of some jurists. This suggests that the disparate or incompatible partners in marriage, should naturally show disinclination to have children.

In any case divorce is the most hateful of all things permitted by Islam. It is certainly most hated of God because it leads to the disintegration of the family, and consequently to the stoppage of procreation.

The Prophet's companions who did not wish to have children by their slave girls did first consider the future social standing of the children. Hence consideration for the social status of the child may

restrict the liberty of married people to have children.¹ Moreover, since children also affect the father's social status, he would not like to have his name carried by an unwanted child.

As to the economic conditions of an intending couple, God says: "And marry those among you who are single, and your good servants, and the handmaidens. If they are poor, God of His bounty will enrich them. God is all-bounteous, Knowing. And let those who cannot find a match live in continence till God of His bounty shall enrich them" (Sura 24/32-33).

God, actually, strikes a balance between one's married life and one's economic conditions. In the two Qur'anic verses just quoted above, God says: first that those who mediate to facilitate and arrange marriages should be responsible believers, and should see to it that the intending husband and wife in each case should be freeborn, or the male and the female slaves of freeborn people. Both groups are permitted by God to get married even if they are poor. We must point out, however, that God addresses family chiefs and leaders by saying: (And marry). He is ordering them not to get married but to facilitate the marriage of those for whom they are responsible.² It does not matter if those in their charge are poor, because God will enrich them. God says: "And if ye fear want, God, if He please, will enrich you of His abundance" (Sura 9/29). It is to be noted here that the verse does not justify abstention from marriage because of poverty, nor does it guarantee future richness. The Qur'anic words (enrich you of His abundance, if He please) is not a definite promise to enrich.³ Consequently, we can neither consider marriage as a source of poverty and misery, nor consider bachelorhood as a source of richness and pleasure.

The point we wish to draw attention to is that there is a legal ruling recommending the marriage of poor people. It does not, however, make it mandatory that all poor people must get married. It only urges those responsible for the poor bachelors, in their capacity as guardians, agents, patrons or relatives, to arrange for their marriage. Their poverty would not then be a handicap because those in charge

¹ Hadith Ibn Ghaziyya in *al-Zarqānī 'alā al-Muwaffā'*, vol. 3, p. 79.

² Muḥammad b. 'Alī al-Shawkānī, *Fath al-Qadīr*, vol. 4, p. 46.

³ Aḥmad b. Muḥammad al-Munīr al-Sikandarī, *Al-Inṣāf fīmā Taḍammana al-Kashshāf min al-I'tizāl* (Adjustment of Information Regarding the Mu'tazilites in al-Kashshāf) (Egypt, 1966).

of them will come to their help. God's promise, in the above mentioned Qur'anic verse, to enrich them does not mean that poverty is an inescapable condition all the time, because God may have mercy on the poor and enrich them. It is an urge to the guardians or those who have the care of the poor to assist, and an exhortation to the poor to gird up their loins and work hard to become prosperous and shake off their poverty. But the imperative form of the verb 'marry' does not necessarily mean that the guardians are under a legal obligation to get their charges married, inspite of their poverty. If the matter was so, no poor man would have remained unmarried at the time of the Prophet.

We also know that we cannot compel girls of age to get married against their will. And those responsible for them are not duty-bound to get them married. But they are encouraged to do so by the Qur'anic verse, so that people know that to get them married is a good and commendable thing to do.¹ Their failure to do so, however, is not considered a sin in Islam. Because if it were a sin, many of those who were living at the time of the Prophet would have been sinful. Actually such people are, even today, neither culpable nor sinful for failing, or refusing, to get married.²

The Qur'anic verse number 33 of Surat al-Nūr which was revealed in connection with people who are responsible for their own marriage and have full freedom to do that, refers to the relation between a person's marriage and his financial circumstances. It does not permit the marriage of poor young people who cannot earn their living and are, consequently, unable to meet the cost of marriage, and who, because of marriage, will bring upon themselves great financial distress, with no relief from their rich parents and relatives who are supposed to look after them. Such poor young people must abstain from vice until their material and financial situation improves and until God favours them with His blessing and renders them prosperous enough and contented.

The Prophetic traditions relating to the subject discussed above confirm the Qur'anic verses dealing with it and elucidate their meanings clearly beyond the least doubt or ambiguity.

¹ Abū Bakr al-Jaṣṣāṣ al-Rāzī, *Aḥkām al-Qur'ān* (Rules of the Qur'ān), vol. 3, p. 319.

² *Ibid.*

There is, for instance, a Prophetic tradition relating to those people who cannot get married. This tradition is reported on the authority of 'Alqama who said: "While I was walking with 'Abdullāh in Minā we met 'Uthmān. We were talking to each other, when 'Uthmān said to him: 'O father of 'Abdul-Raḥmān what do you say if we marry you to a young slave girl, in the hope that she will remind you of your bygone days?' 'Abdullāh answered: 'What you say puts me in mind of the Prophet who said to us one day: "O young men, those of you who can support wife should marry, for marriage keeps you from looking at strange women, and preserves you from immorality; but those who cannot, should take to fasting, for it is a means of suppressing sexual desire"'.¹

This tradition, like the Qur'anic verse cited before, correlates marriage with financial capacity. It deals with the marriage of those who have the necessary wherewithal and urges them to get married.

We must note here that both the Prophetic tradition and the Qur'anic verse do not make the least reference to a very crucial question, namely, childbirth and multiplication of children. They only refer to marriage in the context of its being a means of protecting morals, preserving chastity and banishing adultery. Both, at the same time, call upon people who cannot get married, and thereby keep themselves from temptation, because of their financial handicap, to seek refuge in fasting and worship. The important point here which both the Prophetic tradition and the Qur'anic verse emphasize is the maintenance of good morals and chastity.

In the verse 21 of Surat al-Rūm God makes it very clear that **He** created both male and female from the same stock in order that man may find quiet of mind and comfort with the woman, and that **He** put love and compassion between husband and wife, and make each share the other's feelings of worry and pain, all of which are the prime agent and principal factor in ensuring man's and woman's happiness and sense of security. Probably, some people still do not see or glimpse the real meanings and objectives embodied in the Qur'anic verses 32-33 of Surat al-Nūr and verse 21 of Surat al-Rūm. The truth of the matter is that Islam, in essence, is a system which aims at laying foundations and bases in harmony with man's nature and constitution. And one of man's legal and natural rights is to make use of

¹ Al-Bukhārī, *Ṣaḥīḥ*, vol. 6, p. 117; al-Jaṣṣāṣ, *op. cit.*, vol. 3, p. 320.

the natural capabilities of making him enjoy quiet and comfort, to have lofty morals, and to keep away from vice. Therefore, no one of those who respect and esteem Muslim Law can be right in accusing man of being under the influence of psychological and physical human lustful drives.

Each of a legally married couple has the natural and legal right to fully satisfy his sexual desire and to enjoy its reciprocal pleasures. This is the fundamental fact enshrined in Qur'anic verses and the tradition. Sexual relations which are prohibited in Islam are the illegal ones.

Both the Prophetic tradition and the Qur'anic verse are, therefore, referring to the natural and legal rights of both husband and wife in enjoying a happy married life and in satisfying their sexual desires, without any reference to childbirth and reproduction.

Actually they are not contradicted by the first Qur'anic verse of Surat al-Nisā' which says that human beings were created out of a single being and that God created its mate of the same kind, and spread from the children of them both, many men and women.

Actually the reference here to multiplicity of men and women is accidental, considering that this multiplicity is incidental to the state of natural sense of security and peace of mind, a natural result of married life. Moreover, God endowed woman with tenderness of heart for her to be affectionate and devoted to her child, the fruit of marriage. The mother's loving care, affection and devotion to the child are essential for bringing the child up well, in preparation for the achievement of a decent place in society. The husband and wife find great comfort and reassurance in the fact that their children will succeed them, carry their names and perpetuate their memory.

FAMILY PLANNING

In the above discussion we have tried to point out the necessary requirements and conditions which must be met before we start to establish a family. It has become clear that we must have the objectives and the foundations of the family distinctly determined in the first place. In other words, there is the need for drawing up an orderly plan for the structure of the family. This makes it obligatory to study and understand the basic and fundamental rules of Muslim Law pertaining to matrimony. Such a task is in any case enjoined by God. In this way married people come to know their individual and reciprocal rights and their duties towards their families and society.

The duty of the married couple towards the community is to increase its number through procreation, because the community cannot grow and multiply, and consequently, become strong except through marriage, and indeed every society can be strong only when it has the capacity and the power to resist hostile nations and compete with other societies in the political, social and economic fields.

There is no doubt that in family planning we do not have to discuss the everyday activities of the husband and wife, such as cooking, washing and other insignificant things. Family planning is meant to discuss the number of children that the family should have. In this connection we find that some people rely on some of the Prophetic traditions to support their claim that the happiness of the family, which leads to the happiness of the society, cannot be achieved except through the increase of the population and hence through begetting as many children as possible.

Let us first examine the Prophetic traditions which are cited by those who claim that many are the advantages and benefits of increasing the members of society through procreation.

Ma'qil b. Yasār is reported to have said: "A man came to see the Prophet and said: 'I slept with a woman of position and from a rich family but she is sterile. Can I marry her?' The Prophet forbade him. The man came to the Prophet again, and a third time but the Prophet continued to forbid him and said: 'Marry the prolific woman, for I shall make a display of your multitude before other nations'."¹

Some find in the latter part of the above-cited Prophetic tradition support for their argument in favour of multiplicity. But they do not examine the whole tradition or understand its implications. Consequently, they try to show that the Prophet meant in his tradition to urge multiplicity without reservation.

We wish first of all to show that those people's inference from the tradition is wrong. They do not understand the motives behind the tradition. The case with which it deals is that of a man who wishes to marry a sterile rich woman of high standing and great influence. It seems that his real motive is to make use of her influence and wealth. Consequently, the man was feeling uneasy and worried as to the lawfulness of his project. Failing to convince himself of the legality or soundness of his plans he found it necessary to seek permission from

¹ Al-Nisā'i, *Al-Sunan*, vol. 6., p 65; Abū Dāwūd, *Al-Sunan*, vol. 1, p. 473.

the Prophet for his own comfort and reassurance. If this had not been the real situation the man would not have sought such permission. A great many people got married without consulting the Prophet or seeking his permission. The Prophet came to know of many marriages after they had been concluded. He is reported to have corrected a mistake which had been made in a certain marriage after its conclusion.¹

The Prophet understood the man's circumstances but could not allow him to marry just for the sake of self-satisfaction and ease, from purely selfish motives.

In fact the Prophet mentioned four things for which a man should look in a woman to whom he wants to get married: wealth, good family, beauty and piety. He, however, preferred piety to the others and recommended marrying the pious woman.²

It is obvious from the above that the Prophet did not see that wealth, beauty and family in the choice of a wife should prevail. But though he did not give permission to the man because of his real motives, he would not have objected to the marriage or even annulled it if the man had got married to that wealthy but sterile woman. Therefore, those people who argue for the unrestricted multiplicity of the progeny base their arguments on the outward meaning of the latter part of the Prophetic tradition.

The truth of the matter is that the Prophetic tradition in question has an outward meaning and a real one which indicate the real reason for its enunciation. The outward meaning points to the desirability of multiplying the numbers of the nation. But its inner meaning aims at making people realize that they should not marry sterile women. This latter meaning has the force of a textual injunction, and it is the one taken as authoritative by the exponents of jurisprudence.

Therefore, we can say that the multiplicity of progeny or of the nation is not the basic point of the Prophetic tradition. Its basic point is the disallowance of marriage to an infecund woman. We might here make out that this Prophetic tradition may imply that marriage

¹ Al-Mughīra b. Shu'ba is reported to have said: "I asked for the hand of a woman in marriage during the time of the Prophet. The Prophet said: 'Have you had a look at her?' I said: 'No!' The Prophet said: 'Have a look at her; it is more worthwhile that you should be known to each other.'" See al-Nisā'i, *op. cit.*, vol. 6, p. 69-70.

² Abū Dāwūd, *op. cit.*, vol. 1, p. 472.

to a fecund woman is desirable and is to be recommended for procreation. If we hold this implication to be sound, the real purpose of the tradition will not be affected. We shall later deal with the question of the sterile woman and with the fact that she is not prohibited from getting married. Anyway, the objective aimed at in this tradition and others to follow, on the question of multiplication for increasing the community, is the creation of a sound attitude of mind.

On the other hand, we find that the Prophet reproached his companions who used to spend whole nights in devotion, to fast months on end, and abstain from marriage. He urged them to change their ways and to follow the right way, the one he chose for himself. He told them that marriage was one of his normative legal practices and that those who would not follow his normative legal practices could not claim to be his followers.¹ There is no doubt that what the Prophet told his companions carries an admonition and a warning. This, however, does not mean that those who did not marry must of necessity be regarded as having gone astray or have become renegades. We must add that some of the Prophetic traditions dealing with the question of boasting of multiplicity are not without dubiousness as a shade of uncertainty.²

Still with respect to the above discussion, we may add that it is possible to interpret the Prophetic tradition regarding the multiplicity of his nation to mean multiplicity in quality as well as in quantity. This interpretation and the differences of opinion about it is similar to those relating to the case of the extension of age in the following tradition, the Prophet said: "Charity does away with adversity and gives lease on life."³

In this connection we may well wonder whether this lease on life affects the span of life or only the concentrated good achievements regardless of whether the span is long or short. We agree with those who understand the nation's multiplicity referred to in the Prophetic tradition to mean qualitative increase. In the early days of Islam every single tradition to the number of the Muslims was equal in value to ten additions from among those who lacked quality. God says: "But they who held it as certain that they must meet God, said: 'How Oft,

¹ Al-Bukhārī, *op. cit.*, vol. 6, p. 116.

² A. al-Suyūṭī, *Al-Jāmi' al-Ṣaḡhīr* (The Short Comprehensive Compilation), vol. 2, p. 43.

³ *Ibid.*

by God's will, hath a small host vanquished a numerous host! and God is with the steadfastly enduring' ” (Sura 2/249).

The Muslim world today is suffering not from lack of people but from lack of great and able men. Though the early Muslims were small in number, they were able to conquer the world and to spread Islam. Now the wheel has turned in the reverse direction and our need now is not just to multiply but to bring up this multiplicity properly.

We know that the conditions of life at the time of our Prophet were not less straitened than they are today. In spite of this, people were living then in a society in which each tribe boasted of multiplicity. But though they then needed more and more men, God forbade them to boast of their number. He says: “The desire of increasing riches occupieth you, till ye come to the grave” (Sura 102/1).

Since the Prophet foresaw what conditions would prevail later and realized that the process of procreation would not solve the Muslims' problems, he left it to the individual to choose for himself, whether to have or not to have children. The only contraceptive method known at the time was *'azl*, coitus interruptus. The Prophetic tradition regarding this method shows that *'azl* prevents fertilization. It was allowed, though children, according to Islam, are the joy of life. God says in the Qur'ān: “Wealth and children are the adornment of this present life” (Sura 18/46). He also says: “O ye who believe! Verily in your wives and your children ye have an enemy: wherefore beware of them. But if ye pass it over and pardon, and are lenient, then God too is Lenient, Merciful” (Sura 64/14-15). God, therefore, orders us to be prudent since our children can be a source of either good or evil. If this is the case, then it will be in our interest to give prior consideration to the problem. When the parents think that children will bring joy into their life, they may have them. But if they realize that such a child will bring worry, trouble and misery to them they must not have children. Islam has no aim but to spare the parents certain untoward developments which cause trouble to them, and consequently, to their society.

We are here considering the parent's happiness and not the child's. This seems *prima facie*, to be a sound thing to do, because, naturally, the throes of childbirth and the onerous responsibilities for the upbringing and the education of the child falls on the parents. However, their burdens and responsibilities demand prior consideration on their part for securing the well-being and happy future of the

child, as much as it lies in their power. Definitely the guilt of bringing a child into a life of misery and privation is that of the parents. It is wrong to have a child who, in the future, will wish he was not born. This is a serious problem which requires careful examination. Because God provided His regent upon earth with the will to shoulder the responsibility for choosing whether or not to have children. There is no doubt that God, Who for the sake of maintaining justice and order and of defending the sound institutions and principles, authorized His regent in certain cases to destroy oppressive tyrants, allows *'azl* in order to prevent the fertilization of the ovum. Suppose, just for the sake of argument, that *'azl* was prohibited, would not this mean that these who do not wish to be sinful and do not want to have children are going to avoid having sexual intercourse with their wives? In other words, must there be a correlation between the sexual intercourse and procreation? Does it mean that those who must not get children are forbidden to have sexual intercourse? Does it mean that those who can have children must exercise the sexual function? It is impossible to find a single person who thinks that he is duty-bound to do the sexual act just in order to have a child. It follows, therefore, that if sexual intercourse is not enjoined by religion, then it is left to the individual's wish. Consequently, the sexual intercourse and *'azl* would be permissible.

The wish to have or not to have children is not a new problem for the individual and society. It is an old one, but we cannot tell when it began. It is certain, however, that people were aware of it at the time of the Prophet. Let us now cite the Prophetic traditions which support the two opposite views.

The Prophetic traditions which support the view that parents are free to have or not to have children, or, to use the expression of those days, the view that *'azl* is legal and valid, are as follows:

Ibn Muḥairiz said: "Both I and Abū Şirma went to see Abū Sa'īd al-Khudrī. Abū Şirma asked him: 'O Abū Sa'īd, did you hear the Prophet — upon whom be Allah's blessing and peace — mention *'azl*?' Abū Sa'īd said: 'Yes, we accompanied the Prophet in the expedition against Banī al-Muṣṭaliq and captured a number of the noblest Arab women. Having been away from our homes for a long time, we longed for pleasure on the understanding that we should practise *'azl*. We, however, said: "How can we do that without consulting the Prophet." When consulted, the Prophet said: "There is no reason why you should

not do so. No soul fated to come into being till the Day of Judgement but comes into (actual being)'''.¹

Although there are different versions of this account by Abū Sa'īd al-Khudrī, yet all of them agree that 'azl is permissible.

It is related, on the authority of Abū Sa'īd al-Khudrī, that a man came to see the Prophet — upon whom be Allāh's blessing and peace — and said: "I have a maid and I practise 'azl, and I do not like her to conceive. However, I want what men want. The Jews describe 'azl as smaller infanticide (burial of a child alive) in disguise." The Prophet said: "The Jews lie. If God wishes to create anything nobody can turn Him away (from His purpose)."²

Jābir is reported by Ibn Thawban to have said: "We said: 'O Apostle of Allāh! We used to practise 'azl, but the Jews claimed that 'azl is small infanticide.' The Prophet said: 'The Jews lied. If God wishes to create him (a human being), nothing would stop Him from that'."³

On the authority of Abū Huraira who said: "Allāh's Apostle — may Allāh's blessing and peace be upon him — was asked about 'azl. They said: 'The Jews claim that it is small infanticide.' He said: 'The Jews lie'."⁴

Jābir is reported to have said: "A man came to the Prophet and said: 'I have a maid who serves us and waters our palm trees. I consort with her and do not like to have her conceive.' The Prophet said: 'Practise 'azl with her if you wish. What is preordained for her will certainly befall her.' After some time the man returned and said: 'She has conceived!' The Prophet said: 'I told you that what is preordained for her will certainly befall her'."⁵

Jābir is reported to have said: "We used to practise 'azl during the time of the Prophet. The Prophet came to know about it but he did not forbid us."⁶

Jābir is reported by 'Aṭā', to have said: "We used to practise 'azl while the Qur'ān was being revealed. Ishāq added: Sufian said: 'If

¹ Muslim, *Ṣaḥīḥ*, vol. 4 (Cairo: Ministry of Education), pp. 157-158.

² Abū Dāwūd, *Sunan*, vol. 1, p. 501.

³ *Al-Tirmidhī*, vol. 5, p. 74.

⁴ Al-Baihaqī, *Al-Sunan al-Kubrā*, vol. 2, p. 270.

⁵ Muslim, *op. cit.*, p. 160.

⁶ *Ibid.*

this were something to be prohibited, the Qur'ān would have prohibited us (doing it)'." ¹

Anas b. Mālik is reported to have said: "A man came to the Prophet and asked about *'azl*. Allāh's Apostle said: 'If the semen out of which the child is formed were to be spilled on to a rock, God would produce a child, or a child would be produced out of it'." ²

Ibn 'Abbās was asked about *'azl*. He called a maid and said: "Tell them." She looked rather shy. He said. "It is that. As for me I practise it (*'azl*)." ³

Both Sa'd b. Abī Waqqāṣ and Zaid b. Thābit used to practise *'azl*, ⁴ and also Abū Ayyūb al-Anṣārī, ⁵ Mālik b. Anas, Khabbāb b. al-Aratt, Ḥasan b. 'Alī, 'Alqama and 'Abdullāh b. 'Abbās's companions. ⁶

Sa'īd b. Al-Musayyab said: "The Helpers (*anṣār*) had no objection to *'azl*." ⁷

Abū Ja'far al-Ṭahāwī says that these and other similar Prophetic traditions show that *'azl* was not held in disfavour. He adds that when they asked the Prophet about *'azl* he did not command them against it, but said: "It does not matter if you don't. It is destiny." Abū Ja'far takes the Prophet's words to mean that if God had destined that a child should be created nothing would stand in the way; because God would then cause some of the liquid (semen) to reach the proper place and the child to be would then be conceived. If God, however, had decreed that no child should be created out of the liquid, then it would make no difference whether the semen reached its proper place or not. ⁸

Those who dislike *'azl* cite in support of their position the following Prophetic traditions:

Judāma bint Wahb is reported to have said: "I was among others in the Prophet's audience when he was heard saying: 'I offered to prohibit the suckling of a baby during the mother's new pregnancy, and I considered the Greeks and the Persians and found that they

¹ *Ibid.*

² *Tartīb Musnad Ibn Ḥanbal*, vol. 16, p. 220.

³ *Al-Zarqānī 'alā al-Muwaffā'*, vol. 3, p. 79.

⁴ *Al-Baihaqī, op. cit.*, vol. 7, p. 231.

⁵ *Al-Zarqānī 'alā al-Muwaffā'*, vol. 3, p. 79.

⁶ Ibn Abī Shaiba, *Muṣannaf* (Compilation), p. 32 b.

⁷ *Ibid.*

⁸ *Al-Ṭahāwī, Sharḥ Ma'ānī al-Āthār*, vol. 3, p. 34.

used to suckle their babies during the mother's pregnancy, without this doing any harm to their children.' Then they asked him about 'azl (coitus interruptus), and he said: 'That is infanticide in disguise'.¹

Asmā' bint Yazīd said: "I heard the Prophet say: 'Do not kill your children under false pretences, for the suckling of the child while the mother is pregnant has the same effect as when a horseman is taken (by an opponent) and thrown off the horse'."²

It is related on the authority of Sa'īd b. al-Musayyab that Abū Bakr and 'Umar looked upon 'azl with disfavour, and used to command people to have the ritual bath after the act.³

It is related on the authority of Sa'īd b. al-Musayyab that some men from the Migrants (*muhājirūn*), including 'Uthmān b. 'Affān and others deplored 'azl.⁴

Some people, on account of the above-cited traditions, believe 'azl is objectionable.⁵

Ibn Ḥazm concludes that 'azl is to be disallowed, when viewed in the light of two general and fundamental legal rules: the first is that the primary assumption in all things is that they are allowed, and this is the only argument in support of those who hold 'azl to be permissible. The second rule is that if allowance is the primary assumption, then disallowance or prohibition comes later. Therefore, to maintain that 'azl is prohibited means that this prohibition is subsequent to the allowance and supersedes it. It also means that the tradition reported by Judāma bint Wahb, confirms the prohibition of 'azl and is, therefore, of a later date, and has the effect of abrogating all the other traditions which allow 'azl as primarily envisaged. Ibn Ḥazm goes further than that and says that the other traditions are spurious, except that of Jābir, which, although regarded as genuine by Ibn Ḥazm, was passed by without comment from him.

It seems that Ibn Ḥazm, in impugning those traditions, is prompted by a prejudice or a preconception, which militates against moderation. First he developed his contention and then proceeded to prove it. Consequently, he rejected or interpreted those traditions which did not support his opinion and accepted the others.

¹ Muslim, *op. cit.*, vol. 10, p. 71.

² Al-Baihaqī, *op. cit.*, vol. 7, p. 231.

³ Ibn Abī Shaiba, *op. cit.*, p. 33a.

⁴ *Ibid.*

⁵ Ibn Ḥazm, *al-Muḥalla*, vol. 10, p. 70.

In his discussion of *ghaila* (sexual intercourse with the wife during lactation) al-Sindī says that the Prophet — may peace and Allāh's blessing be upon him — was inclined to prohibit *ghaila* on account of the harm it was thought to cause the baby. But he changed his mind when he was certain that no harm would come to some people. This means that in certain cases the Prophet decided certain matters according to general normative principles, and particulars were always considered as to whether they fit in with these principles of universal application.¹

In his explication of the tradition reported by Judāma regarding *ghaila*, al-Nawawī says that the tradition implies the allowance of *ghaila* because the Prophet did not comment against it. He then gives the reasons which led the Prophet to leave out forbidding it. The tradition suggests that the Prophet used to consider cases within the context of situations and events obtaining at the time, and encountered by him.²

By comparing and contrasting the traditions in the first section which allow *'azl* with those in the second section which disallow it, we can elicit or derive ideas such as the following:

1. Al-Ṭahāwī suggests that the Prophet may have used the phrase "That is infanticide, in disguise" in as much as the case was bound up with the Jewish law, in the absence of any revealed ruling abrogating it. When, however, the Apostle of God realized that the Jews were misrepresenting the case by claiming that *'azl* was a 'minor infanticide'; he pointed out to his people the Jewish falsehood, and a revelation explaining the matter was made to the Prophet in the following two Qur'anic verses, one is: "Now of fine clay have we created man", and the other: "... then brought fourth man of yet another make" (Sura 23/12-14). Thus the Prophet was apprised of the time when the life-germ becomes endowed with life. Before that the life-germ is not alive.³

The validity of Ṭahāwī's explanation is hard to know. However, it can be said that he based his contention on assumption rather than on concrete evidence. His opinion that *'azl* and forced childbirth are allowed before the life-germ goes "into another creation" has still to be supported by other proofs.

¹ Al-Nisā'ī, *op. cit.*, vol. 6, p. 10.

² Muslim, *Al-Ṣaḥīḥ : Sharḥ al-Nawawī*, vol. 10, p. 16.

³ Ibn Hajar, *Fath al-Bārī*, vol. 6, p. 249.

2. Ibn Ḥazm tries hard to deduce a ruling different from al-Ṭaḥāwī's. He claims that the prohibition of 'azl is valid and that the traditions opposed to it are rescinded.

3. A third opinion can be got by reconciling the first two opposed sets of opinion, namely, that 'azl is disfavoured rather than prohibited, an opinion held by 'Abdullāh b. 'Umar and others.¹

Muslim scholars, thinkers, jurists, and theologians have done a remarkable job in their attempt to remove the prima facie differences and contradictions in the rulings, and in trying to fit them into a consistent system, free from disorder and disarray. These efforts, greatly significant as they are, should, in our opinion, have left some of the partial and secondary rulings unco-ordinated and irreconciled in order that they might be applied to future cases of different conditions and times.

FORCED CHILDBIRTH

The most important problem with which we are here faced is that of forced childbirth. This problem is one of the most serious ones involved in family planning in respect of birth control. Since forced childbirth is in many respects more serious than 'azl, it lays a greater responsibility; because, whereas 'azl does not go beyond the prevention of the sperm from reaching the uterus, abortion destroys the ovum after it has become fertilized and already on the way leading to the emergence of the human being. The arguments for and against 'azl which we have previously reviewed makes it obvious that forced childbirth is prohibited.

About two years ago, before I thought of writing a paper on this problem, in a discussion with Dr. Hasbi Aq Yaloz, I explained to him the process of creation as described in the Qur'anic verse: "Now of fine clay have we created man" (Sura 23/12). I suggested that God tells us that the process of creation is in two cycles. The first is that of natural matter with animal life. This cycle has six stages:

First Stage: This is the stage explained in the Qur'anic verse: "Now of fine clay have we created man" (Sura 23/12). This means that man is created from the natural power in the parent's blood which is generated by plant and animal food.

¹ Al-Shawkānī, *Nail al-Awṭār*, vol. 6, pp. 208-211.

Second Stage : Is the stage of making man a small moist germ (*nutfa*) in a safe abode.

Third Stage : Is the stage of making the moist germ a clot. Al-Ṭabarī comments that the moist germ goes back to its original nature by becoming blood.

Fourth Stage : In this stage the clot is made a piece of flesh.

Fifth Stage : Is the stage of making bones in the piece of flesh.

Sixth Stage : Is the stage of clothing the bones with flesh.

Here the six stages are completed. In each of these six stages life or vitality is that of natural matter or, in other words, it is the natural vitality of the mother, and the incipient embryo has no life of its own yet. Following the completion of the first cycle, God causes the second cycle to begin.

Concerning the second cycle, God says: "Then brought forth man of yet another make" (Sura 23/14). This means that the stuff which has a natural life becomes a human being endowed with human life. In this cycle the creation is not like that of the first cycle. God says: "And when I shall have fashioned him and breathed of My spirit into him" (Sura 15/29). By making him complete, God means giving him the natural human form, and then by breathing into him of God's spirit he is made into a full human being. Man, therefore, is made of two essential elements, the one material and the other divine. The latter is the human spirit. Unless spirit is breathed into this man, he does not become a human being.

At this point of our discussion, Dr. Hasbi suggested that before the life-germ goes into the second cycle and consequently, into another creation, abortion and forced childbirth can be undertaken and no sin is committed thereby.

But on examining source-material on the subject of birth control, I found that 'Alī b. Abī Ṭālib and Ibn 'Abbās allowed 'azl on the basis of what may be gathered from the Qur'anic verses quoted before. They even went to the length of extending the period during which 'azl may be allowed to the point just before the quickening; before the life-germ goes into another creation. Their interpretation in this way was accepted by some of the less strict and independent scholars and thinkers, more tolerant and open-minded, such as Abū Ja'far al-Ṭahāwī.

'Azl, therefore, can be divided into two kinds: One is practised before fertilization by using a condom or a barrier which bars the sperm

from fusion with the ovum; the other is practised after the fertilization but prior to the quickening, which means the barring of the spirit from uniting with the natural matter. But when the spirit is breathed, this natural matter will assume human personality, subject to the system of law applicable to a fully grown person. Hence we can conclude that 'azl is allowed without exception; but for abortion, there must be an acceptable, good reason. The mere wish devoid of justifiable reasons, to have forced childbirth is not a justification. Some Muslim jurists, however, considered that certain conditions and situations may be regarded as good reasons for forced childbirth and, therefore, it is possible for jurists to stretch a point and allow it for certain situations and circumstances not obtaining during their lifetime. 'Azl was allowed in the past, in its old form; and now it can be practised by the use of certain pills, medicines or devices to make it foolproof and free from hazard, harm of health disorder.

'Ubaid b. Abī Rifā'a al-Anṣārī is reported to have said: "The companions of the Prophet — may peace and God's blessing be upon him — discussed 'azl before 'Umar b. al-Khaṭṭāb, and they differed about it. 'Umar then said: 'If you, the good people of Badr, differ, how much so will your successors do?' When two of those present were noticed whispering to each other, 'Umar said (to them): 'What is going there?' One of them said: 'The Jews claim that 'azl is the minor infanticide.' 'Alī said: 'It does not become infanticide except after the seven stages are passed as mentioned in the Qur'anic verse: "Now of fine clay have we created man"' (Sura 23/12). Then 'Umar said to 'Alī: 'You are right; may you live long!' 'Umar is said to have been the first in Islam to say that."¹

In this, 'Alī maintains that there can be no infanticide before animation, because a thing without spirit is inanimate and if buried, cannot be buried alive. Abū al-Waddak is reported to have said that when some people asked Ibn 'Abbās about 'azl he gave an answer similar to that of 'Alī.² From this ruling on 'azl we can deduce that a pregnant woman may get rid of the sperm before animation takes place. Some of the later Shāfi'ite jurists, however, ruled that this is forbidden, which creates a problem for those for whom 'azl is allowed without exception.³

¹ Al-Ṭahāwī, *Mushkil al-Āthār*, vol. 2, p. 373.

² *Ibid.*

³ Ibn Ḥajar, *op. cit.*, vol. 6, p. 249; *Al-Zarqānī 'alā al-Muwaffa'*, vol. 3, pp. 79-80.

It becomes clear from the above that the jurists' forbiddance of the expulsion of the sperm before animation conflicts with the views that 'azl is allowed without exception. It follows that those who consider expulsion before animation as permissible must not hold 'azl to be disfavourable or prohibited.

CASTRATION

We have yet to consider and discuss the question of castration and its significance in family planning. There is no connection between forced or voluntary castration mentioned in the Prophetic traditions on the one hand, and modern methods of sterilization which, physicians claim, can temporarily stop reproduction, on the other. The main idea behind castration was to enable the castrated man to lead a life of celibacy, or to remove the natural need or capacity for marriage. Some people stifle the sexual urge by engaging in physical exercises, by renunciation of sensual pleasures, abstention from women together with self-discipline and mortification. In this way, they think, they would be able to gain favour with God. We, however, have shown that this is a wrong belief. This practice at the time of the Prophet was called *tabattul* which means complete ascetism, by renouncing marriage and by living a simple continent life. The Prophet forbade this mode of life. Others sought castration in the literal sense of the word, namely, castration by undergoing a surgical operation on the genital organs for the sake of suppressing completely sexual potency or desire. But whereas people who followed the ascetic practice could go back to normal life, those who resorted to surgical castration lost all hope of regaining their virility.

The Prophet forbade both celibacy and castration. He regarded both to be the same thing. This was clear from what the Prophet said to 'Uthmān b. Maz'ūn in answer to the latter's question regarding *tabattul* (the extreme celibate and ascetic way of life). In commenting on the Prophet's answer, Ibn Abī Waqqāṣ, who related the Prophet's answer, says: "The Prophet rejected celibacy, for 'Uthmān b. Maz'ūn, if he had allowed it we would have castrated ourselves."¹

Those people who led an ascetic life by disengaging themselves from wordly things, taking refuge as a remedial measure in physical training, and by taking an oath not to get married, were forbidden to

¹ Muslim, *op. cit.*, vol. 9, p. 179.

do so by the Prophet. He also denied castration to those who sought to rid themselves of sexual ability in order to lead a life of celibacy. He urged those who were financially unable to get married to take refuge in fasting, because fasting weakens the desire for women.¹ Castration, as we have said at the beginning of this paper, is opposed to human nature. But temporary sterilization which is not implied in the Prophetic traditions and which allows the sterilized to resume his married life later on, may in our opinion, be, at least, an open question.

CONCLUSIONS

Family planning is an old human problem. When a man faces it and seeks solutions for it, he has to give up certain needs and bear hardships for the sake of averting greater hardships. Religion, which is, among other things, mainly concerned with man and human society, provides some fundamental principles and rulings for solving the problem. The Sunna (the way of the Prophet and his companions) which is the second source of Muslim Law, provides more secondary rulings on this subject. But whereas Prophetic traditions offer rulings permitting family planning and organization at times they are opposed to such planning and regard it illegal at some other times.

We suggest that it is more reasonable that no precedence should be given to either of the two rulings on *'azl* over the other, nor should we regard one as superseding the other. The two rulings should be left side by side, leaving the final choice to the discretion of the individual or to the state, with more freedom to be given to the individual to follow the course of his own choice because circumstances change, and may give rise to different needs and consequently require different rulings. We must avoid adopting a rigid fundamental ruling which leaves no latitude in our thinking for all the other derivative legal rulings.

We can deduce from the style and tone of the traditions of the Prophet that they were the product of the Prophet's use of his individual discretion in reaching a verdict on the subject and not part of direct revelation from God, though it must be said that the Muslim is in duty bound to obey both. The Prophet used to give, on different occasions, rulings based on his understanding of the Qur'ān and in the light of the true aims of Muslim Law. This means that we do not have

¹ Al-Bukhārī, *op. cit.*, vol. 6, p. 118.

to apply one and the same ruling on every occasion regardless of changed circumstances.

The exponents of jurisprudence are of the opinion that a ruling which has been adopted by unanimous agreement of the jurists must not be subject to *ijtihād* (the use of individual reasoning for deducing legal rulings). We, however, believe that all kinds of unanimous rulings must be subject to reconsideration in the light of changed times and conditions.

Therefore, any of the decisions and rulings of today must not be made with a view to the future and must not be binding on all individuals. The door of subjecting such decisions and rulings to the exercise of individual reasoning in reconsidering them in the light of new circumstances must be left open. Those decisions must not amount to more than their being mere opinions or recommendations. Individuals must be given the freedom to apply or not apply them.

THE MUSLIM VIEW OF FAMILY PLANNING

BY

SULLAM AL-TAWFIQ SJAMSUN

INTRODUCTION

The Republic of Indonesia lies athwart the equator and consists of more than ten thousand islands, small and large. It has a population of 120 million people of whom 95 % are Muslims.

Indonesia was declared independent on August 17, 1945, following the war of independence which lasted from 1945 to 1949. The war cost the country many freedom fighters, including scholars, young men and women, in addition to soldiers of the national Indonesian army, joined by secular as well as religious leaders and by the majority of able-bodied men of the nation, from all walks of life.

Latterly, following independence, Indonesia started to carry out a Five-Year Plan of reconstruction during the new regime, led and directed by General Suharto. Among other things, the projects of this plan include religious education, intellectual development and moral regeneration, all approved by the Advisory Council.

The reconstruction and development programme for the first Five-Year Plan, therefore, is an attempt to achieve a society, sufficiently progressive in body and mind in accordance with the five principles adopted by the government, which are not at variance with the teachings of Islam. Each of these five principles has as support one of the Qur'anic verses. The principles are:

1. The oneness of God.
2. Humanism, just and humanitarian.
3. The unity of Indonesia.
4. Popular (democratic) government, consultative and parliamentary.
5. Social justice for all.

Within the framework of the Five-Year Plan of reconstruction and development, there is a programme for family planning, followed by the state, government and people. The objective is to create a family to be happy, physically and spiritually, intellectually and morally, for the happiness of both parents and children.

The implementation of the above-mentioned family planning programme is voluntary and not compulsory, in the sense that the national government and the local popular organizations encourage people and enlighten them towards planning their family at home if they choose to do so, and to follow this up with medical instruction and training in private and governmental hospitals.

Since the greater majority of the Indonesians is Muslim, there has been for sometime a great deal of questioning on the part of the Muslims as regards ways and means for family planning, within the framework of Islam, to be carried out in the most desirable way without doing violence to the Islamic Law now in force. Therefore, we shall now attempt to give a survey of the views of the Indonesian religious scholars on family planning — the views which the government has adopted as the basis for a national plan.

The presentation of those views, in my opinion, is important, because it gives a comprehensive picture of the role which is being played by the religious scholars in advising people and helping the government to carry out their programmes, including family planning, successfully.

THE INDONESIAN RELIGIOUS SCHOLARS' VIEW OF FAMILY PLANNING

As already mentioned, 95 % of the Indonesian people are Muslims, and the religious scholars, in their capacity as spiritual leaders, wield great influence and command respect in the spheres. People refer to them in serious matters of religion or in matters on which Islam can give rulings on everyday questions, particularly family planning.

Before an account is given of the Muslim view of family planning I must say a few words about the state of Indonesian Muslims.

The Muslims of Indonesia are followers of orthodoxy in Islam, the Sunna, which is based on the Qur'ān, the Prophet's Sunna (tradition), consensus of opinion and analogical reasoning. They also belong to one of the orthodox schools, but mostly the Shāfi'ī school.

Since the fundamental source of Muslim rulings is the Qur'ān, we must clearly understand the meaning of its verses which bear upon the process of creation, closely connected with family planning. God says: "And I have not created the djinn and men except that they should worship me" (Sura 51/56). The djinn and men, therefore, were created to worship God and to be pious and God-fearing. The true Muslim then is eager to be obedient to God by submitting to His orders and observing the rules He laid down in the Qur'ān and by refraining from doing what is disallowed or prohibited. He must eschew vice and corruptive acts and never challenge God by defying His commands. In all that he does, the Muslim has to strictly follow the behests of the Qur'ān and to ponder its meanings in the light of the Prophetic Sunna and *fatwās* of the religious scholars, because, in fact, man is the most honoured of God's creatures. God says: "And now have we honoured the children of Adam" (Sura 17/70). So man and humanity have one aim which is the achievement of happiness in this world and of bliss in the hereafter. God also says: "And some say, 'O our Lord! give us good in this world and good in the next, and keep us from the torment of the fire'" (Sura 2/201). He also says: "Goodly is the country, and gracious is the Lord" (Sura 34/15). In order to attain the desired happy life one needs the efficient suitable methods in all fields: economic, social, cultural and otherwise. Consequently, man has to prepare and equip himself for the following methods in all fields of life, and God has supplied man in this wide world with the staple materials needed for this worthy aim, warning him at the same time that death, life and man's livelihood are in His hands. Man, however, must not think that God's providence in these respects should impede or discourage him from carrying out his duty imposed by Islam, to work for his living.

Family planning, therefore, is consistent and not at variance with religious teachings of Islam, the aim being the achievement of happiness for man, in body and spirit, and for the family, including of course, parents and children. Moreover, it is voluntary and provides ample scope and enough flexibility for mothers to take care of their children, to bring them up well and to develop their character in accordance with virtue and goodness.

Indonesia has its own peculiar problem: overpopulation, particularly in the two islands of Java and Bali. If family planning is not adopted and the population continues to grow there will shortly be shortage of space for them. In addition to implementing the

programme of family planning, the government has moved people from the overpopulated islands to the less populated ones of Sumatra, Kalimantan, Sulawesi, West Irian and other islands. The most serious problem which faces this society is whether Islam permits the adoption of family planning. Or, in other words, what are the views of the religious scholars, to whom the Indonesian people refer for guidance, on family planning? This is what we shall attempt to answer.

But before I speak about whether Islam permits or prohibits family planning let me first try to present the Muslim view of the family in a changing society.

THE MUSLIM VIEW OF THE FAMILY IN A CHANGING SOCIETY

Islam, fourteen centuries ago, laid down the firm foundation of principles to cover all aspects of life and those principles, based as they are on the Qur'ān and the Prophet's tradition, spread in this world in every direction. In spite of the changes which have been affecting Muslim societies, every Muslim shares with his other Muslim brothers the same political opinions and feelings, because the fundamentals are always the same, fixed and inalterable. The same thing applies to the family. In the following short discourse I shall try to present the Muslim view of the family in a changing society.

The males are the managers of the family with all its affairs, and the leaders among its members. After marriage, a member of the family may continue to live, with his wife or her husband, in the house of the parents, or in a separate house. In the choice of a wife for a son, the father plays an important role, subject to the conditions embodied in the Prophet's tradition which says: "A woman is taken for wife, for her wealth, beauty, status and piety. Take the pious woman for wife. Do not fail." The dowry for the wife is equal to that given normally to another bride of equal status or as agreed between husband and wife.

The age of marriage is defined as that when a person comes of age, or when a person is mature enough to be of independent thought. It is the minimum requirement.

Marriage in Islam is firmly established on faith and piety. The marriage contract cannot be dissolved except for valid legal reasons. The revocable divorce allows the husband to resume married life with the wife, but the irrevocable divorce does not permit him to restore his wife except after her marriage to another husband and after her divorce, or her release by his death.

Islam allows the man to get married to more than one wife but not without strict conditions. To be legal, marriage, according to Islam, has to meet all the prerequisite conditions, the marriage contract, the guardian's agreement, the dowry, the two witnesses and the special formula. Not all the legal schools of Islam insist on all these conditions.

That is the system of marriage in Islam. This system and the questions consequent upon it, such as those of inheritance, rights, liabilities, duties and the mutual responsibilities of husband and wife, are things which do not change with the change of society. This was the case in the past and it is still at present, and will be so in the future. The principles calling for family co-operation, however, are not limited to the immediate members of the family but extends even to the neighbour. They differ from other principles prevailing elsewhere.

ISLAM AND FAMILY PLANNING

Islam, as we have mentioned above, permits family planning provided the wife is allowed by her husband to practise it. Permission for family planning is based on the following grounds:

- 1) A sufficiently long and organized interval between one pregnancy and another, with regularity.
- 2) The desire to avoid pregnancy for the sake of being spared a certain possible harm and hardship, and for the sake of averting any danger to the pregnant woman's life.
- 3) Death of the foetus and the mother or either of them.

To allow a suitable interval between one pregnancy and another gives a good respite and affords a better chance for child care, and for bringing up children properly, inculcating in them the spirit of Islam and a high standard of morality. Family planning therefore, cannot be justified for fear of poverty, because this is inadmissible in Islam. The Lawgiver also prohibited limiting the offspring, but allowed birth to be regulated.

ISLAM AND FORCED CHILDBIRTH

In Islam forced childbirth in the form of abortion is absolutely prohibited.

The foetus is in complete formation when it is 120 days old,

after quickening. Abortion is permissible before that time limit, and for compelling reasons such as the saving of life.

In Indonesia, abortion without medical justification is a criminal act, punishable by law.

ISLAM AND STERILIZATION

Sterilization is prohibited in Islam, if it is permanent; but it is allowed for a limited time, as when one is living in the country of an enemy (*bilād al-ḥarb*) or engaged in fighting or faced with a trying situation.

ISLAM, SOCIETY AND RECONSTRUCTION.

Islam lays upon Muslims, wherever they happen to be, the duty to avail themselves of every opportunity to exert themselves in the work of development and reconstruction, according to the obtaining circumstances, and with readiness to their means or resources whenever circumstances change. They find their strong support in their commitment to God, their covenant with their people and their identity with the world. They are ordered to work for development and reconstruction piously and in good faith. They must co-operate in promoting integrity and in fighting vice, because the aim of development and reconstruction is to achieve contentment, materially for this world and spiritually for the hereafter.

ON BIRTH CONTROL

BY

DR. LUTFI DOGAN

Praised be Allāh, the Lord of the worlds who says: "And one of his signs it is, that He hath created wives for you of your own species, that ye may dwell with them, and hath put love and tenderness between you. Herein truly are signs for those who reflect" (Sura 30/21). Peace and blessing be on His chosen Prophet Muḥammad and all his kin and companions.

I begin this talk with a brief consideration of the family vis-à-vis society, because both are closely correlated.

The family consists first of all of husband and wife. On their compatibility and co-operation depends the happiness of married life, which in its turn rests upon the mutual desire of both husband and wife to live with each other, and be ready to bear reciprocal responsibilities. With the help of God, they will procreate children, to be beneficial to the society, and all together will add a new cell in the social body.

The family is not only the foundation stone of society but also a miniature society in its own right, which is a basic constituent of the nation and a bulwark in its structure. The structure will therefore, be sound and healthy, so long as the component parts, the families are themselves sound and healthy to start with, for it is a regenerate nation, consisting of such families which can attain to the heights of glory or its lofty aims and achieve signal progress. Conversely, it is a degenerate nation which sinks into backwardness and decline. There is also the fact that the family is the source from which the society is supplied with its language, beliefs, customs, traditions and the like. Hence the great importance of the family in the society. The strength, weakness, happiness and misery of the nation depend on the state of the family. The family, therefore, has to undertake its full responsibilities and duties in order that the society remains good and healthy. If the family performs the duties required of it and follows the rightful

way enjoined by Islam, the society will be happy and far from miserable, strong and not weak. All virtues, resulting from right upbringing and education and from instruction and discipline, will flourish in the family. If the family neglects its duties and its responsibilities and the education of its young, as urged by Islam, society will decline and will be in disarray.

Who in the family, therefore, is primarily responsible? Those responsible, undoubtedly, are the husband and the wife together, because society expects the family to provide it with fit progeny and good generations. Hence it is the duty of the parents to feed and clothe their children and to bring them up well so that the children will be self-reliant and able in the future to live independently, without expecting any parental help or assistance from society. We all know that the motive to marriage is not only to preserve the species and to satisfy sexual desires but rather to supply society with strong happy and good members who, in their turn, would establish better and strong families.

We notice that the conditions of the new life in our society today have changed. All parents have come to feel the need for a generation well brought up and as good as possible. This desire impels the parents to offer their children to the society in accordance with a pre-conceived plan. We all realize what the parents are concerned about. They always ask: What will the future of our children be?

The answer to their question lies with us.

Let us think of the life of a family which suffers from poverty, misery, hardship and ignorance because of being unable to properly bring up the children owing to insufficiency of financial resources and multiplicity of children, in the first place.

The above reasons make it imperative that the family should try as best it can to have a provident plan for limiting the number of its children. This does not mean at all that there should be no children and no species to be preserved, or that the sexual instinct for the satisfaction of which marriage is ordained by God should be suppressed. Our outlook on the family is something different, viewed from the angle of the family's ability and competency to rear children rightly and produce future generations of the requisite quality and fitness. In case the family is able and competent in this sense, then the way is open; otherwise, when unable and incompetent, the family must have recourse to planning and control.

If we consider Islam from this angle we find that it is exceedingly interested in the family and its affairs and gives it great attention, by having laid down definite rules and basic teachings which can secure prosperity, happiness and decent life for the family. Perhaps, one of our most serious social problems is the education of boys and girls within the family, prior to education at the school and before education from society. It is the responsibility of the parents to see to it that their children's conduct in society is decent. They are also, to a great extent, responsible for protecting them from moral and social perversion and corruption. One of the marvels of Islam is that it drew attention to this fact fourteen centuries ago. The Prophet said: "Every child when born is the child of nature, and it is his parents who turn him into a Jew or a Christian or a Magian." Our noble Prophet meant to say that the parents were responsible for bringing up, educating, training and protecting their children. God says in the Qur'an: "O believers, save yourselves and your families from the fire..." (Sura 66/6). The Prophet also said: "Teach yourselves and your people to do good and educate them." He also said: "Attend to your children, and bring them up to be of good manners." One of the duties of the head of the family towards his wife and children is to do what he can to ensure for them their needs, including lodging, food, clothes and education. God says: "God will not burden any soul beyond its power" (Sura 2/286). He also says: "And such maintenance and clothing as is fair for them, shall devolve on the father. No person shall be charged beyond his means" (Sura 2/233).

These bases and rules which Islam has established inculcate that the family should contribute to society according to its physical and financial capacity. But a Prophetic tradition which says: "Marry among yourselves and beget children, for I shall make a display of you before other nations on the Day of Judgement," means in all intents and purposes, that parents should bring up their children to be virtuous, physically and intellectually strong and of firm belief in God and his Apostle. Also the Prophet says in another tradition "A believer who is strong is better than a believer who is weak." There is also the well known saying: "The sound mind is in the sound body."

All the foregoing Prophetic traditions and sayings urge that we should provide the society with believing and educated individuals, fit for achieving happiness in this world and deserving bliss in the hereafter. The Prophet used to love those who were educated, devout

and good, and he was the first to fight poverty and ignorance. Islam laid a duty upon every Muslim, male or female, to seek knowledge, and laid a duty upon the rich to pay the alms-tax (*zakāt*) to the poor.

We all know that Islam provides for the individual a system of values for his life, and a drawn-up plan for society. Also Islam does not overlook the case of family planning, albeit with conditions alluded to in some Prophetic traditions.

The subject, however, is not new to us. It was discussed before, as the sole purpose of achieving one single aim, namely, the welfare and happiness of society. Some Muslim scholars maintained, however, that Islam does not admit of family planning and they supported their claim with some pieces of evidence. But the great majority of the religious scholars and the companions of the Prophet argued that on the strength of Prophetic traditions relating to *'azl* (coitus interruptus), family planning is permissible in Islam.

The method of *'azl* was applied during the lifetime of the Prophet. It was followed by his companions and he did not command them against it, nor did he prohibit it. If *'azl* were taboo, God would have confirmed that by revelation. This is the consensus of opinion among the Muslim savants.

Such Muslim scholars who hold that family planning is permissible quote as their support the Prophetic traditions dealing with *'azl* to be mentioned later. On the basis of these traditions the supreme Advisory Council on religious affairs in the Turkish Republic issued on 19th December, 1960, a *fatwā*, number 538, which says: "Although *'azl*, or coitus interruptus, as a means for birth control was disfavoured by some of the Muslim scholars and of the Prophet's companions, yet a number of the Prophet's scholar companions considered it lawful, among whom were: 'Alī b. Abī Ṭālib, S'ad b. Abī Waqqāṣ, Zaid b. Thābit, Abū Ayyūb al-Anṣārī, Khabbāb b. al-Aratt, Abū Sa'īd al-Khudrī, Jābir, al-Ḥasan b. 'Alī, and 'Abdullāh b. Mas'ūd, and, in deference to their views, by all subsequent scholars. But the use of means or ways for contraception is conditional upon the wife's consent. This condition, however, sometimes does not apply because of war, travel, or because of fear that the child will not be brought up as a Muslim....."

All this makes it clear that the practice of *'azl* which aims at preventing fertilization was followed during the period of the Prophet and his companions. All those companions knew of the practice and they resorted to it whenever the need arose. Therefore, since the

Prophet and his companions permitted the practice of *'azl*, there should be no reason why we should not practise similar modern methods which have been approved by medical science. *'Azl* and similar methods, however, must not cause harm to the health of the husband and the wife, nor adversely affect their enjoyment of life or matrimony.

Let me now give some of the traditions of the Prophet about *'azl* and some of the religious scholars' comments on them:

1. We were told by Yaḥyā b. Sa'īd on the authority of Ibn Juraij who was told by Jābir: "We used to practise *'azl* during the time of the Prophet."

2. Jābir is reported to have said: "We used to practise *'azl* during the time of the Prophet and while the Qur'ān was being revealed."

3. Abū Sa'īd al-Khudrī is reported to have said: "Once we captured some female captives and practised *'azl*. We asked the Prophet about it and he said: 'Surely you will do it (three times). No soul fated to come into being till the Day of Judgement but comes into (actual) being.'" This tradition is related by Bukhārī in his chapter on *'azl*.

4. On the authority of Ibn Muḥairīz who said: "Both I and Abū Ṣirma went to see Abū Sa'īd al-Khudrī. Abū Ṣirma asked him saying: 'O Abū Sa'īd, did you hear the Prophet — may peace and blessing be upon him — mention *'azl*?' Abū-Sa'īd said: 'Yes, we accompanied the Prophet — may peace and blessing be upon him — in the conquest of Banī al-Muṣṭaliq and captured a number of the most noble Arab women. Having been away from our homes for a long time, we longed for pleasure with the understanding that we would practise *'azl*. We, however, said: How can we do that without consulting the Prophet who is with us. We then asked the Prophet — peace and blessing be upon him — who said: "There is no reason why you should not do so — no soul fated to come into being till the Day of Judgement but comes into (actual) being"'. "

5. On the authority of Abū Sa'īd al-Khudrī who said: "When *'azl* was mentioned before the Prophet — may peace and blessing be upon him — the Prophet said: 'Why should no one of you do that (He did not say: no one should do that). There is no soul created but God creates it'."

6. Jābir is reported to have said: "A man came to see the Prophet and said: 'I have a maid who serves us and waters our palm-trees. I consort with her and do not like to have her conceive'. The Prophet said: 'Pratise 'azl with her if you wish! What is preordained for her will certainly befall her.' After a while, the man came to the Prophet again and said: 'The maid has conceived.' The Prophet said: 'I have told you that what is preordained for her will certainly befall her'."

7. On the authority of Jābir who said: "We used to practise 'azl during the time of the Prophet and the Prophet came to know about it but did not forbid us."

8. Usāma b. Zaid told Sa'd b. Abī Waqqāṣ that a man once came to the Prophet — may God's blessing and peace be upon him — and said: "I am practising 'azl with my wife." The Prophet said: "Why do you do that?" The man said: "Out of mercy for her child (or children)." The Prophet said: "If that (practice) were harmful it would have done harm to the Byzantines and the Persians."¹

The above-mentioned Prophetic traditions, and others we have not mentioned, but relating to the question of 'azl, clearly show that 'azl is permissible. Ten companions of the Prophet², 'Alī, Sa'd b. Abī Waqqāṣ, Abū Ayyūb, Zaid b. Thābit, Abu Sa'īd al-Khudrī, Jābir, Ibn 'Abbās, Al-Ḥasan b. 'Alī, Khabbāb b. Al-Aratt and Ibn Mas'ūd, held 'azl to be permissible. Ibn Ḥazm says: "'Azl is clearly reported as permissible by Jābir, Ibn 'Abbās, Sa'd b. Abī Waqqāṣ, Zaid b. Thābit, Ibn Mas'ūd — may [God be pleased with them — this is the correct thing."

All this shows, however, that those learned predecessors differed among themselves regarding the ruling on 'azl. Ibn 'Abd al-Birr says: "Religious scholars are agreed that 'azl cannot be practised with a free woman without her consent, because normal sexual intercourse is one of her rights to have and to exact and 'azl is not part of the normal intercourse. This agreement among the religious scholars on the question as stated before is reported by Ibn Hubaira. The Shāfi'ites are known to deny that the wife has the right to sexual intercourse and that she can insist on it and exact it. In this connection, there is a well-known debate among the Shāfi'is as to whether 'azl can be lawfully practised with a free woman without her consent.

¹ Muslim, *Ṣaḥīḥ* (Cairo, 1330 A.H.), vol. 4, p. 157.

² Ibn al-Qayyim al-Jawziyya, *Zād al-Ma'ād* (Cairo: Maṭba'at Miṣr, 1928), vol. 4, p. 16.

Al-Ghazzālī and others say that such practice is permissible, which is the correct thing, recognized by the later leaders of thought. The three legal schools — the Ḥanafites, the Mālikites, and the Shāfi'ites — are agreed that 'azl cannot be practised with a free woman except with her consent, but can be practised with a slave girl without her consent.

Accordingly, 'azl appears to be an established method for the prevention of conception, and it is allowed for this purpose, meaning of course that family planning in this way is a lawful thing, subject to the wife's consent. Further than that we cannot go, for fear of trespassing on the private preserves of the husband and wife. But the practice cannot be carried out except with the joint consent, and, therefore, family planning depends on the mutual agreement of the married couple. Moreover, we resort to 'azl and similar contraceptive methods for fear of failing to bring up the child and for fear of depriving him of food, clothes, education, health and better life. Every Muslim must bring up his children in accordance with Islamic principles, and to inculcate in them faith, love of knowledge and virtue.

BRIEF STUDY OF FAMILY PLANNING IN ISLAM

BY

SHAIKH ABDERRAHMANE DOUKKALI

DISCOURSE ON FAMILY PLANNING IN ISLAM

It is worth our while to be informed of the conclusions arrived at by scientists and leading religious scholars about a problem which is engaging people's minds at present, and for the investigation of which conferences and symposia are being held. The more the population on this earth increases, the wider the scope of man's intellect should grow to tolerate theories that do not contradict the spirit of religions. Here, thought and opinion are to be allowed complete free scope, for the purpose that, through intellectual activity, it would be possible to discover all that is adaptable to various phases of life, varieties of culture and civilization, and divergent ways but conducive to the good and progress and welfare of mankind.

Here we notice that the question of family planning is a bone of contention now as before. In this question, circumstances determine what is advantageous, but our religion because of this indeterminateness, entrusts this and other comparable questions to men of thought, discernment and sane judgement to ascertain what constitutes the national interest.

If we are to give an opinion regarding *'azl* (coitus interruptus) or birth control or family planning, we shall try first to answer the following question: Is it permissible to prevent conception in certain cases or in all cases? Before we answer that question, however, we would like to define what is meant by family planning, with reference to the children and parents on the one hand, and the nation as a whole on the other.

To begin with, the scholars of Islam or perhaps only a certain group among them, regarded the child as belonging exclusively to

the father. Among the upholders of this view is Imām al-Ghazzālī. Some of the group, however, maintain that the child belongs to the father and the mother, conjointly, a view held also by the Ḥanafites. A third group regards the child as belonging to the parents as well as to the nation as a whole, with the parents having priority, a view supported by the Shāfi‘ites and Ḥanbalites as well as the majority of the followers of the other schools. Lastly, a fourth group regards the right of the nation to the child as the stronger one. This last view is supported by a group of traditionists.

Al-Ghazzālī takes it that the prevention of conception is permissible and is not held in disfavour, on the score that forbiddance cannot be effective unless based on a textual proof or on an analogy drawn from a textual proof. No text for this purpose is to be found, nor is there an original authority on the question. There is, however, a fundamental rule, the rule of allowance, in the absence of an explicit forbiddance or disfavour, from which an analogy may be drawn, as in the case of renunciation of marriage at all, abstention from sexual intercourse in marriage or option to practise coitus interruptus, all of which are allowed, and the only thing against them is that they contravene the rule of preference, where the more preferable course should have priority over the simple preferable one. It follows, by analogy, that to prevent conception by the practice of ‘*azl* or any other similar method, is allowed, in the same way as renunciation of marriage or abstention from sexual intercourse in marriage are allowed. Al-Ghazzālī’s proof of his view is furnished by the reported statement of Jābir b. ‘Abdullāh who said: “We used to practise ‘*azl* during the time of the Prophet while the Qur’ān was being revealed.”

The second opinion, that of the Ḥanafites is that the prevention of conception is permissible provided the wife’s prior consent is obtained, for both parents equally share the rights to the child. This, with the Ḥanafites is the basis, although later scholars of that school declared that contraception was permissible if either the husband or the wife desired it. Others of the same idea thought that it should be permissible even if the parents felt anxious about the future of the child if born into corrupt and troubled times. This is based on the fundamental principle which allows changes in the rules to suit changes in social, economical and political circumstances.

It is unavailing to examine and trace all opinions and texts related to the question of birth control. We have already cited some of these texts, especially those of Shaikh Maḥmūd Shaltūt.

But our own candid opinion is that Islam seeks to achieve a strong and not a feeble populous community. Medicine, as is well known, authorizes contraception to prevent harm to the wife or, for that matter, to the nation as a whole, especially such major harm as might easily result from uncontrolled freedom in reproduction.

The Islamic Law does not approve of a weak, sapless community however multitudinous. Indeed, we have a conclusive proof that the Islamic Law looks with contempt on such a multitude of weaklings, for it is related that the Prophet said: "The nations will soon gather together to fall upon you as people would fall upon a trencher to eat." Someone asked if that would be because of their small numbers at that time, and he replied: "No, you will be numerous at that time; but you will be scum and rubbish like that carried down by a torrent, and God will take fear of you from the breasts of your enemy and cast enervation into your hearts." He was asked the meaning of enervation and replied: "Love of the world and dislike of death."

The above account demonstrates that mere multiplicity, if not coupled with other sources of strength, is useless and futile. Just as weakness may be physical, so may it also be moral. And just as weakness is caused by cowardice or unliberality, so is it also caused by physical weakness. A nation that consists of enfeebled citizens is just as worthless as one devoid of the virtues of courage and largeheartedness.

Islam which urges procreation, to increase the numbers of the community and consolidate its strength, also enjoins that this nation be safeguarded from weakness and from being devoid of worth, like the scum of the torrent.

Islam which urges people to ensure the freedom of bodies from disease, enjoins them to seek medical attention (as is stated in the traditions of the Prophet), warns against infectious diseases, orders the annulment of a marriage if it appears that one of the partners is afflicted with a disease which frustrates the object of marriage, or by a dread disease, such as leprosy or elephantiasis, for instance, and forbids the suckling of a baby during lactation, as stated in the saying of the Prophet: "Do not kill your children under false pretences, for the suckling of the child while the mother is pregnant has the same effect as when a horseman is overtaken (by an opponent) and thrown off the horse."

If Islam wants the nation to be free from disease, and seeks to provide people with a decent livelihood in peace and security, it would

surely urge family planning if therein lies the way for securing a livelihood for all people, enabling the state to provide education to all children and restore health to the ailing, and finally ensuring the happiness of all members of the nation.

← This serious social problem, which poses a threat to the nation and causes concern to the state, must be viewed with concern and objectiveness. All governments are responsible for the welfare of their peoples, for providing schools, establishing hospitals, building and maintaining homes and for paying the salaries and wages of all employees, and for spending on patients. They are also responsible for maintaining law and order and preventing all that may cause loss of life, corruption of morals and the spread of poverty and wild lawlessness.

In conclusion, Islam aims at building up nations to be strong and cohesive, where justice and prosperity prevail, and where the means of livelihood are secure in peace and comfort. "And now, since the Law was given, have We written in the Psalms that 'My servants, the righteous, shall inherit the earth' " (Sura 21/105).

HISTORICAL REVIEW ABOUT CONTRACEPTION IN ISLAM

BY

DR. 'ALĪ SHA'BĀN

There is nothing in the Qur'ān for or against contraception. In the early days of Islam it was felt necessary to increase the number of Muslims, and desirable, at the same time, to have strong progeny.

Islam calls for the provision of protection for both parents and offspring against the hazards of reproduction on the basis of the rule that no one should be required to do anything beyond his capacity. God says: "God will not burden any soul beyond its power" (Sura 2/286). A mother should not be made to suffer because of her child, nor should he to whom the child is born be made to suffer because of this child. This concern for the health and life of the mother was so important from the early days of Islam that even abortion in the early weeks of pregnancy was allowed if pregnancy or childbirth was thought to be seriously harmful to the mother's health. Prolonged periods of lactation were also advisable. This is a relatively safe method of contraception and so we can say that this is an indirect call for the suitable spacing of childbirths in Islam. God says: "We have commanded man concerning his parents. His mother carrieth him with weakness upon weakness; nor until after two years is he weaned" (Sura 31/14). Almost the same meaning is repeated in another Qur'ānic verse which says: "Moreover, we have enjoined on man to show kindness to his parents. With pain his mother beareth him; with pain she bringeth him forth: and his bearing and his weaning is thirty months" (Sura 46/15).

These two verses are to be taken to mean that the duration of complete lactation is two years but it can be shorter if it causes suffering to the mother, and in this case wet-nursing can be resorted to. This

shows again how Islam is keen on ensuring safety from the hazards of reproduction and childbirth.

A proof of this is furnished by the Prophet's tradition, reported by Asmā' bint Yazīd, which says: "Do not kill your children in secret, for, by Him who has my soul in His hand, killing by *ghail* (pregnancy during lactation) is like overtaking a horseman and throwing him off his horse."

This means that pregnancy during lactation would produce weak children, which shows that the practice of contraception during lactation is encouraged.

After the spread of Islam in different parts of the world there appeared a great many physicians who paid special attention to the question of contraception and contraceptive methods. The attention which the great medical experts of the Islamic world, such as Ibn Sīnā and Ibn al-Baiṭār, gave to contraceptive techniques and instructions is really considerable. Contraceptive medicines were various and countless in the lands of Islam. The practice of contraception was as much a cultural characteristic of Arabian and Islamic civilization as it was of the Egyptian civilization.

Throughout the Middle Ages, Muslim physicians instructed people on contraceptive measures, and thus the Islamic Persian physician Abū Bakr al-Rāzī (born near Teheran about the middle of the 9th Century), the greatest clinician of Islam and perhaps the greatest physician of the Middle Ages, gave illustrations of the different methods of contraception in his book *Al-Ḥāwī*, a book which constantly forces itself upon the attention of any investigator into the history of contraceptive medicine. He says in Chapter 24:

"Occasionally it is very important that semen should not enter the womb, as when there is a risk to the woman in pregnancy. There are several ways of preventing its entry. The first of them is that the man at the time of ejaculation withdraws from the woman so that the semen does not reach the uterus. The second way is to prevent ejaculation, a method practised by some. A third method is to apply to the uterus before intromission a tampon or a certain spermicide at the uterine aperture, which, either plugs the aperture or expels the semen and prevents conception, such as pills, pessaries, suppositories of cabbage, colocynth, tar, ox gall, animals' ear wax, elephants' dung and limewater. These may be used alone or in combination."

'Alī b. al-'Abbās al-Majūsī, one of the three greatest physicians of the Abbasid Caliphate, wrote a treatise called *Kāmil al-Ṣinā'a*

al-Ṭibbiyya (The Perfection of Medical Art) in the second half of the 10th Century, in which he wrote as follows:

“The medicines to prevent conception, although it is unprofessional to mention them so that they may not be used by certain women of ill fame, are nevertheless, to be prescribed unavoidably to women with a small uterus or to those of them suffering from a disease which would render gravidity so dangerous that the patient might die during childbirth. Apart from these women in such cases, the physician should never impart contraceptive information to women nor should he ever prescribe medicines to destroy the sperm or medicines for inducing abortion, except to trustworthy women, inasmuch as all these medicines kill the embryo and expel it out of the uterus.”

Ibn Sīnā, the most famous scientist of Islam and of his time, was born near Bukhara in 980 A.D. and died in Hamadhan in West Persia in 1037 A.D. His account of contraceptive technique written in his *Al-Qānūn fī al-Ṭibb*, vol. II, p. 579, is excellent for that period, and his technique clearly excels in rationality those of many later writers.

Certain views of considerable importance set forth in *Al-Qānūn* are worth mentioning. In a chapter on the prevention of conception Ibn Sīnā states:

“The physician is sometimes obliged to prevent pregnancy in a woman with a narrow pelvis to whom childbirth would be dangerous, or in women who are suffering from a weakness in the bladder.”

Contraception in the Islamic world was known to be practised solely on medical grounds. Economic, social and other grounds, were rarely mentioned.

The attitude to contraception in the present century is diverse in the various Islamic countries. Apart from the universal sporadic use of contraceptives on a personal basis, organized attention to the matter as a population problem is also varied. In certain countries, such as Kuwait and Saudi Arabia, contraception is advised only on medical grounds. In other countries where there is a threat of population explosion there are vigorous and organized efforts to avert this explosion. This is the case in such countries as Pakistan, Egypt, Turkey, Tunisia and Iran where a questionnaire was used to clarify certain points on the problem (see Appendix). The efforts for family planning organized in Egypt, where the population explosion is a national

problem, neutralizing the efforts for improving the social standard of living, are an interesting example in this line.

More than thirty years ago, on 29th January, 1937, the question was raised by the press in Egypt, and the Muftī of Egypt was asked to give a definite opinion from the religious standpoint about the attitude of Islam to contraception and abortion in their medical and social aspects. His answer can be summarized as follows:

1. The married couple may take necessary measures for contraception both for medical and social reasons. The consent of both parties is not necessary.

2. Before the elapse of the first 16 weeks or so of pregnancy, measures can be taken, or drugs prescribed, to induce abortion, if no risk to the mother is involved, and for reasonable grounds.

3. All Muslim Imāms unanimously agree that it is disallowed to have abortion or forced childbirth after the end of that period.

After this important pronouncement from one of the Imāms of Islam, a symposium was sponsored in the same year by the Egyptian Medical Association to discuss the matter from its various social, legal, religious, demographic and medical aspects. For the first time in an Islamic country, grounds for the induction of abortion and non-medical grounds for contraception were discussed. Although the rate of yearly increase of population was lower than it is today because of the higher child rate of mortality at that time, yet the problem of the increase of population was appreciated. At that time the problem was not sufficiently realized even in many European countries where contraception was against the law. Earlier in 1927, Dr. Maḥfūz was one of the early Islamic authors to write in his book of *Gynaecology and Obstetrics* a chapter on directions on contraception and ways to prevent pregnancy. The seminar of the Egyptian Medical Association sparked off a campaign of efforts towards family planning. A few years later a society for Population Studies started to take part in the field and a few family planning centres started to give family planning services.

The question of family planning assumed a nationwide magnitude in 1954 when a Supreme Council of National Services was established. In 1961, President Nasser, called in the National Charter for family planning and said that the problem of the progressive growth of the population is the most considerable obstacle facing the Egyptian people in the struggle for raising the standard of production to an

efficient and steady level. The problem, it was stated, deserves the monopoly of the best scientific efforts for its solution.

In February 1966, the Supreme Council for Family Planning and its Executive Body started work. It started with 1,991 centres in February 1966, which were increased to 3,030 by December 1970. The net increase of population, 22.4 per 1000 in 1969, dropped to 19.6 per 1000 in 1970.

The policy of the different Islamic countries for family planning is not of the same nature at the present moment. In some countries it is governmental, in others, the work is done by voluntary organizations. In the countries where population growth is not a problem, the instructions for the prevention of conception are purely medical, whereas in the rest they are in the form of practical measures against the population increase.

The role of religious opposition also varies. In some countries, there is not such a problem, although the Imāms do sometimes object to the concept of family planning on an individual basis. Abortion in most of the Islamic countries is only legalized on medical grounds, and in the early weeks of pregnancy. But in the last few years in some countries, such as Morocco, Tunisia, Iran and Turkey, the grounds for it have been broadened. The evolution of family planning programmes has taken some years to draw away from the prenatalistic policy. In the main, the programmes are recent, and most of them are supported by international funds from IPPF, WHO, and Population Council and Ford Foundation, etc.

The method of contraception in current use varies in various Islamic countries. The pill is the most popular method in most of them. Usually it is the women who resort to contraceptive means. In Turkey, coitus interruptus and the condom are frequently used. Sterilization is seldom resorted to. In some countries, as in Turkey, it is illegal. Post-partum programmes and mobile teams have been to a limited extent resorted to. The application of the IUCD is only allowed as a rule by medical personnel.

The reported decrease in the rate of population growth in some of the Islamic countries having a national programme is difficult, to ascribe it solely to the programme. In the matter of research, considering that there are at present efforts by universities and research institutes, stronger and central material co-operation is needed for this vital problem. In conclusion, I plead for a unanimous policy: the strong co-operation of the Islamic countries, with more international efforts towards the solution of this vital problem.

APPENDIX

QUESTIONNAIRE

1. What is the population of your country?
2. What is the rate of increase of population?
3. How many women are of childbearing age?
4. When was family planning started in your country?
5. Is family planning a governmental or voluntary undertaking?
6. Is there a religious opposition to family planning?
7. Is abortion an illegal act?
8. On what basis is religion opposed to abortion? Qur'ān? Ḥadīth, etc.?
9. What are the popular methods of family planning in your country?
10. Are there any side-effects or complications and what are they?
11. Are there evident effects of family planning so far?
12. What are the financial sources? Governmental? Foreign organizations, etc.?
13. Are the family planning efforts medical, social, religious, or combined?
14. Is there any post-partum programme in your country?
15. Is there research into reproductive biology?
16. Do men in your country use contraceptive methods?
17. What is the situation vis-à-vis sterilization from the popular and the religious points of view?
18. Are family planning centres governmental?
19. Are these centres solely for family planning, or are they combined?
20. What is their number and how were they created?
21. Is a medical prescription necessary to obtain oral tablets from a pharmacy?
22. Can paramedicals apply the loop?
23. Is there still a place of old methods, and what are they?

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ISLAMIC ATTITUDE TOWARDS VARIOUS METHODS OF CONTRACEPTION

BY

RAFI ULLAH

I realize the importance of the gigantic task entrusted to me. The issue of the 'Islamic Attitude Towards Family Planning' being a controversial one, its opponents do not miss any opportunity to exploit it and oppose it on one pretext or another. Since they cannot deny the lawfulness of 'azl in Islamic Law, their main target is some new methods of contraception. No doubt the methods of contraception in early Islamic periods were limited but the Muslim jurists in every age have treated this issue in a way that gives us sufficient guidance to be followed for the adoption of new methods.

Some fifteen years ago, the problem of unplanned parenthood, although immediate, was less visible and so the Muslim religious scholars received it with mixed feelings. While the enlightened ones favoured it, most of the others opposed it on various grounds. However, now this problem, especially in the underdeveloped countries, has become so glaring that even the most conservative of the Muslim religious scholars are now openly in favour of it, and hence the general tendency of opposition has abated. This aspect of the problem has already been discussed in this conference by worthy fellow-scholars in great detail and I need not go into this further. However, by keeping in mind the discussion of these learned scholars, it can safely be said that the day is not far away when the consensus of our religious scholars will be brought to believe that the objective of planned parenthood is the enrichment of human life and not its restriction and impoverishment and that, by assuring greater opportunity to each Muslim it will free him to attain his individual dignity and reach his full potential, which is of vital interest to both family and nation.

CONTRACEPTIVE METHODS IN EARLY ISLAM

The only known method used in early Islamic periods is generally known as 'azl. Usually it is translated as coitus interruptus or the withdrawal method. With this method, the semen, despite the act of intercourse is destroyed outside the womb of the woman. This method was until recently, the most popular contraceptive method throughout the world, but it is still practised on a somewhat large scale. Even today, it is in use in technically advanced countries like the U.S.A. as well as in the underdeveloped countries which do not have the same access to the new methods.¹

In the early Islamic period it was somewhat justified to translate the word 'azl into 'coitus interruptus', although it was considered synonymous with birth control. Later on, the word 'azl took the shape of a popular term in the Islamic jurisprudence and came to have wider signification. It was not confined to mean only coitus interruptus. Keeping in view the various definitions of the term by the Muslim jurists in various ages, we see that they, whenever a new method of contraception came into practice, used to include it in the definition.

SEWING UP THE WOMB OF A WOMAN

For example, soon after the early Islamic period a new method came to the knowledge of the Muslims. This method was the sewing up of a woman's womb. The Muslim jurists did not oppose this new method but accounted it similar to 'azl, which is permitted, as in the following clear words: The obstruction of the mouth of the womb of a woman is allowed as is the general practice among women.²

ABORTION AND THE USE OF MEDICINES

Medical science has been growing and developing day by day, with the result that abortion is now an easy affair, adopted for birth control purposes. This question was put before the Muslim jurists and they readily permitted it with some qualifications, as in the following words: "Yes it is allowed before the different parts of the body are

¹ Clyde V. Kiser, ed., *Research in Family Planning* (Princeton University Press, 1962), p. 381.

² Ibn 'Ābidīn, *Hāshiyā* (Cairo, 1324 A.H.) vol. 2, p. 289.

differentiated, and they only begin to take shape one hundred and twenty days after conception.¹

Similarly the attitude of the Muslim jurists was not changed when they came to know of the use of the medicine designed for this purpose. After the introduction of contraceptive methods they now usually define the term as: "The ruling for *'azl* covers the use of medicines for birth control purposes on a temporary basis. It also covers the expulsion of the embryo before animation, inasmuch as the purpose in all the cases is the same, i.e. birth control, and God knows better."

This is not all. More and more perfect contraceptive methods are being invented from day to day. Sterilization is one of such new methods. All these methods are similar to represent something like treatments of a certain disease and our celebrated jurists, keeping this fact in mind, allowed them, like *'azl*. However, the opponents of planned parenthood do not appreciate the rulings of these jurists and are therefore, vehemently opposed to them. I had a chance to discuss the attitude of Islamic Law towards these new methods, especially sterilization, with some of the religious scholars and came to the conclusion that their objection was mostly occasioned by lack of information. Therefore, I shall elaborate on this point more fully.

STERILIZATION AND ABORTION

As there are in Islamic Law clear instructions declaring abortion as permissible, subject to certain conditions being satisfied, I shall not touch on this topic but shall concentrate on sterilization. However, before going into the details of various methods of sterilization and its definition I would like to say a few words about its importance. All the contraceptive methods mentioned above require some degree of knowledge for the proper understanding of the precautionary measures. However, it is unfortunate that a great proportion of our masses are still illiterate and the only means which gives promise of effective planned parenthood is a simple method easy for use by the illiterate masses. The experts have come to the conclusion that sterilization can best serve this purpose.

In no other contraceptive method, do we find any detailed reference in the Islamic Law, except perhaps, the following solitary

¹ *Ibid.*

and cursory reference in the Qur'ān: "And He maketh whom He will to be childless ('*aqīm*)" (Sura 42/50).

The word '*aqīm*' in this verse means a person who does not beget children and is unable to conceive. Imām Rāghib al-Iṣfahānī defines this word as follows: "The original meaning of the word '*uqm*' is dryness which refuses to receive or absorb. In woman, it means barrenness: the inability to receive the sperm of the male."

Keeping in view the foregoing verse of the Holy Qur'ān, the religious scholars, by way of analogy, argue that when God, for some purpose with His sublime reason and wisdom, can create people impotent and barren, then there should be no objection, if out of sheer necessity and public interest, others are sterilized. They further observe that had it been dangerous for humanity in any way, Islamic teachings would have forbidden it in clear terms.

OBJECTION TO STERILIZATION

As I have already pointed out, most of the objections of the opponents of sterilization are due to lack of information. They consider it a sort of castration, which is illegal in Islam.¹ Actually castration and sterilization are two different things. In castration either both testicles are removed or crushed. It is generally performed on animals like horses and bullocks. The animal is thus rendered incapable of sexual intercourse and of breeding. Sterilization is quite different. The testicles are not touched at all and they continue to perform their natural function. The man remains capable of sexual intercourse. There is neither decrease in the quantity of semen at the time of discharge nor is the quality of his pleasure in any way affected. The only result of sterilization is that the semen can no longer cause pregnancy, for lack of sperm. These operations are performed by surgery and other methods. By the surgical method, the tube along which the sperm passes is cut and in other methods this tube is clipped or its passage is blocked by an injection known as a silicon stopper.

Another objection which carries some weight is that by sterilization a person loses his ability to become father forever, which is clearly against the teachings of Islam and the function of nature for preserving the species. Some time back this objection used to carry more weight than now, as de-sterilization was not possible. However,

¹ Al-Shawkānī, *Nail al-Awṭār* (Cairo, 1961), vol. 6, p. 110.

inspite of this weighty objection, most of these critics did not see any harm in allowing it for persons suffering from incurable mental, psychological and sexual diseases especially if these illnesses are infectious and by way of inheritance can pass on to the offspring. But now the reversibility of all the sterilization methods has become possible and new methods have been invented which require no operation at all. I would like here to point to a simple method which is being adopted in Pakistan on an experimental basis.

DR. JHAVAR METHOD

So named after its inventor Dr. Jhavar of Bombay (India). In this method the tube along which the semen passes is not cut by any surgical method, as is the case in the Dr. Lee method, but instead it is clipped, thus blocking its passage. This clip can be removed at will, and the function of the tube can be easily restricted. Some fifty cases of this method have been performed in Lahore (Pakistan) on an experimental basis. I do not know the technical details of the silicon stopper, but as a layman, I know that in this method, silicon is injected into the tube to block the passage of the semen, and if later de-sterilization is wanted, this blocking is removed by an operation.

VIEWS OF RELIGIOUS SCHOLARS ON STERILIZATION

No one can deny that Egyptian religious scholars of the present age were the first to discuss the permissibility of family planning, in details, and earned the gratitude of all the Muslims of the world. I was personally so impressed by their discussions of that issue that I developed a strong desire to go and meet all these scholars. They have not left the question of sterilization unattended. I have before me a scholarly work of Shaikh Aḥmad Ibrāhīm of Egypt, who after discussing the various aspects of sterilization gave his verdict in the following terms:

“Are not the results of celibacy, coitus interruptus and other preventive measures of the same nature? There is no definitive injunction prohibiting them. In the same manner I do not see any religious objection to sterilization because it is also a treatment to avoid bearing children in keeping out the element that produces them in a manner generally accepted. This is not a crime against a living

being. The case is crystal clear. There should be no hesitation in sanctioning it and blessing it with approval.”

Similar views have been expressed by other Egyptian religious scholars notably Dr. Ahmad Sharabassy of Al-Azhar University, Cairo, who has discussed the religious aspect of sterilization in greater detail.¹ Much as I would like to have quoted here some of his scholarly observations, but I have already taken a great deal of your considerably precious time.

In the light of the above discussion it is clear that reversibility of sterilization has become an established fact. Any sterilized person can de-sterilize himself at will at any time. Not only this but medical experts are optimistic that the day is not far off when temporary sterilization will be possible merely by the use of medicines, like, for example, the sterilization of milk. In this way, sterilization becomes like one of the many old methods permitted by the Muslim jurists. In my opinion, by permitting abortion, they have gone a step further towards sterilization, as abortion is more complicated and dangerous than sterilization. I believe that had these jurists had the latest knowledge of sterilization before them, they would have had no hesitation in reformulating their following definition of *'azl*:

“The ruling for *'azl* covers the use of medicines for birth control purposes on a temporary basis. It also covers the expulsion of the embryo before animation, and temporary sterilization, since the purpose in all these cases is the same, i.e., birth control and God knows better.”

The Muslim jurists have done their duty as excellently as possible by permitting all the contraceptive methods invented from time to time and have thus provided a guiding line to posterity in this field. Now it is up to the religious scholars of the present age to see how they accept this challenge and treat temporary sterilization as one of the contraceptive methods allowed in Islam.

¹ See *Islam and Family Planning* (Cairo, 1969).

DISCUSSIONS ON
ISLAM AND PLANNED PARENTHOOD

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THE CONVENTIONAL TERM “FAMILY PLANNING”, OR “PLANNED PARENTHOOD”

Mahasin Saad

Dr. Sharabassy began his paper by preferring the use of the words ‘family planning’ to ‘planned parenthood’. What concerns us here is not simply what is pleasing to the ear, but the provision of services to those in need. We are agreed that the basis of the subject of family or birth planning is individual choice. In my opinion the use of the term planned parenthood is more accurate because planning is the sum of decisions taken by the husband and wife about their children, that it is, as a decision, connected with the family as the nucleus.

Bint al-Shāṭi

I agree with the colleague Mrs. Saad that the matter is closely linked to the parents and that thus it is more accurate to speak of it in this relation than in relation to the family, because it comes within the framework of what is permissible for the parents now and what was permissible for them in former times in the way of the right to act freely in this regard.

Sahnoun

Mr. Dasūqī stated that the word “limitation” (*taḥdid*) has a special sensitivity and that it has been misunderstood. And whenever a word is misunderstood, we are compelled to replace it with one which is not misunderstood. But this is not right. If we believe that this is something endorsed by religion, there should be no need to amend the word and replace it, either by ‘parenthood’ or ‘planning’ or ‘limitation’ or any other word. But if we believe that the word is not appropriate, and that it is unacceptable, then we should not choose some other word and say that Islam approves it.

Dasūqī

Mr. Sahnoum referred to our being compelled to change the technical terms so as to make people accept them. I think that we in this conference in particular are fully determined that there are two things: planning and limitation. Under 'planning' comes the prolonging of the period between pregnancies by one means or another. As for 'limitation' what the generality of people understand by it, and what it is widely used to mean in our environment, is preventing by one means or another the ability to go on procreating.

Sharabassy

Mrs. Saad and Bint al-Shāṭī' find it favourable to use the word 'parenthood'. I used the phrase 'family planning' in its place, and indicated the reason for this usage, which is that our Islamic countries even today use the term 'family planning'. For example, when I suggested the use of the term 'planned parenthood' to some officials in Egypt, they wondered what was meant by it, and said: "It is family planning". I have used the term because of its prevalent use among Muslims.

I would add a personal opinion and that is I approve of the term 'family planning', and my approval is based on the papers I have read, the debates I have listened to and the wish expressed by the conference for the formulation of a definition for family planning. 'Family planning' is of wider signification than 'planned parenthood'. I have all respect for the view that from the point of view of organization and planning in practice, the matter is the concern of the parents, but there is planning for the family, which precedes the stage at which they become parents. We say: "We wish to fit our young boys and girls to bear family responsibility in the future, and this is part of the wider responsibility towards family and relatives."

Shafei

We should preferably define accurately 'family planning', and I should like to suggest to you this definition: "Family planning is that the couple, by mutual agreement and without compulsion make use of lawful and reliable means, capable of guaranteeing for them the control of the times of pregnancy and childbirth, by way of delaying or accelerating, to suit their health, financial and social circumstances and their location."

Sharabassy

I support Dr. Shafei's position. He has tried to get us to start at the beginning, whereas we want to reach the end without defining the starting point. We learned in Al-Azhar that judgement on something is derived from the way in which we conceive of it. From Dr. Shafei's remarks I understood that we have not yet agreed on the concept which we wish to have of family planning. I earnestly wish we could agree on what it is we mean, so that we can proceed on our way rightly and correctly.

Haqqi

I liked Dr. Shafei's definition of 'family planning' and especially when he said: "... by way of delaying or accelerating," although this follows actually from the definition; otherwise there is nothing wrong with it. But the fact is that all parties concerned with planning consider only the delaying and not the acceleration. When 'family planning' or 'planned parenthood' is mentioned to people the first thing that springs to mind is birth control.

It is this in particular which repels many people for reasons of belief and otherwise.

Huzayyin

I should like to add few points to what Dr. Shafei said.

1. By 'family planning' is absolutely not meant to reduce the population. There is not a country in the world which accepts a reduction in its existing population.

2. What is meant by 'family planning' is planning the increase. Sometimes this requires an increase in the population. In this case programmes are drawn up for such an increase, and for raising the rate of increase. In other special situations the family planning centres must be concerned with increasing the population, and these centres also have the obligation to help an infertile wife who comes for help. But the basic principle is that these centres should help those who come to them of their own choice. Neither the state nor any other body can compel people to plan spacing the births of children.

Mahasin Saad

I wish to emphasize that family planning is twofold: first, planning of birth, and second, treatment of sterility. Wherever services are

provided for family planning those in charge aim at providing facilities for dealing with both aspects. But since the world is suffering from a population explosion the great majority is not so much suffering from sterility as from a plethora of children. In other words the birth control side usually preponderates over that of sterility.

Samarrai

I should like it to be understood among the members (at the conference) that birth control is only a small part of what is meant by family planning. This has a wide meaning and embraces care for the expectant mother, investigating what might be an impediment or difficulty in childbirth and also child care for not a brief period after parturition, as well as the treatment of sterility. Therefore, the term 'family planning' does not render the meaning desired if we take all these things into consideration. Perhaps the term 'planned parenthood' is more precise and more comprehensive.

But neither of these terms renders the meaning of the corresponding English expression 'planned parenthood'. The English expression implies taking precautionary measures in relation to the family, while the Arabic expression denotes the organization or planning of something already in actual existence.

Mr. Dasūqī stated that he understood 'family planning' to mean the lengthening of the period between births. The fact is that it also includes birth control.

Shafei

The family programmes carried out by governments or organizations concerned with this subject include:

1. Making people aware of the advantages of family planning in accordance with the previous definition.
2. Providing the medical and social services necessary for practising family planning to any one who wants them.
3. Providing lawful and safe means, to be used for family planning by any one who so desires.
4. Prosecution of scientific research to arrive at the best means for use in family planning by any one who wants them.

We place emphasis on personal freedom in using or not using methods for planning purposes, and also on the need for the operation

of accelerating pregnancy for those who stand little chance of having children, and on the operation of delaying pregnancy for those who want to do this for health or economic reasons. We should also like to state that we have in mind here the husband and wife, i.e., the nuclear or basic family.

As for family planning the intention is that it should be carried out between husband and wife, in a lawful manner, and for reasons of their own, with no compulsion on or by either of them and by mutual agreement. I believe that there is no possibility for disagreement on this definition, as it gives the husband and wife complete freedom to handle their own affairs. Each of the spouses, as a human being, has the right to enjoy complete freedom, so long as the means they use are lawful and safe. It remains for those in charge and concerned in family affairs to ascertain the legitimacy and safety of the means. For the organizations concerned and for governments it is sufficient to continue research into the nature of the means, their legitimacy and their safety.

Abu Maizar

The subject put forward for discussion is a general human problem. I have noticed that our respectable *'ulamā* have tended to concentrate exclusively on the negative aspects and conditions prevailing among Muslims, although Islam is a religion for the whole world and its tolerant law system suits all mankind and it is a guide for Muslims and others in all the affairs of life on the basis that it is a religion of nature. What I should like to see is for the members of the summarizing committees and the debaters to take into consideration the positive meaning of the attitude of Islam to family planning, and not to be content with merely the negative aspect.

Mahasin Saad

It has become clear from the studies presented to the conference that Islam is not opposed to family planning.

Dr. Sharabassy stated that family planning was based on *ijtihād* (the exercise of individual judgement) and logical deduction and not on texts. I should like to remind him that a lot of what is implemented in the Islamic world today is based on *ijtihād*. Why, therefore, does he single out for mention family planning in particular, as being connected with the creation of a unified and severe law? It has not come

to my knowledge yet that any country which has preceded us in adopting family planning has adopted a rigid and unified law. It is not in the power of governments or states to decide on and practise family planning. These two things do not depend on the force of legislation but are entirely at the disposal of the will of the individuals concerned in planning their families. The role of governments and states is confined to making available services for planning families, in the same way as provide medical services and the like.

Bint al-Shāṭi'

I cannot imagine that the case is in dispute from the point of view of Islam. If it is confirmed that there are considerations of common good, then it is a matter for God's law. If there is a matter of necessity, then necessity makes lawful things which are forbidden. There is no disagreement between us on this, even though there may seem to be something resembling it.

But a problem as clear as this needs to have the aspects of the common good and necessity confirmed in the way that demographic studies would provide confirmation. I would almost say that we cannot even look into the problem in isolation from such studies.

The studies presented to this conference and the debates on the subject have clarified the various aspects of the subject and revealed its dimensions.

Madkūr

As an individual I have complete faith in the idea of family planning. I also fully believe that the principles and bases of Islam do not prevent the individual by his own choice and free will from planning his family according to the needs of his circumstances. I also believe that those in charge of public affairs are in duty bound to direct the attention of individuals to the rule of religion in its true nature. Among ordinary people there are those who are averse to childbearing, but are afraid that contraception may be sinful. In this case, it is our duty to enlighten them on the rule of religion. This subject was dealt with from old by scholars in jurisprudence, and it is not the case, as Dr. Sharabassy said, that they dealt with it only as from the time of the late Shaikh Aḥmad Ibrāhīm. The books of *fiqh* (jurisprudence) are filled with the comments of the scholars of the various schools on the subject of contraception.

At the same time, however, countries must make utmost efforts to reclaim wide areas of land and develop the plentiful resources in the Islamic homeland. Their efforts in this field should take precedence over all other efforts.

Wā'iz

The contribution of Dr. Sharabassy, which is in your hands, is comprehensive and meets the purpose, and goes right to the heart of the matter. It clearly explains the attitude of Islam to family planning, and indicates the situations in which the public interest might require either an increase in or limitation of the population, without this clashing with the tolerant law of Islam, which law is a mercy and blessing for mankind. Our friends who have commented on Dr. Sharabassy's remarks — such as Mr. Sahnoun and Dr. Madkūr — were not exact in their observations. Dr. Sharabassy did not confine himself to referring to the exercises of individual judgement by the scholars in jurisprudence, but also referred in his study to all the traditions and verses of the Qur'ān on the subject.

Mr. Mekki el-Naciri reviewed the relevant theories on marriage, and finished up with the objective conditions binding on the spouses before the contract of marriage is ratified. His contribution was notably a felicitous one. He referred to a point he considered to be new, that is he considered family planning¹ as something well known in the early days of Islam, and believed that to adopt it now would be a return to that early situation and not an innovation in law.

Sahnoun

I have heard a number of fellow participants, among them Dr. Sharabassy, base their case on texts of *'ulamā*. I should like to draw attention to a very simple point, namely, that before we invoke the texts of these *'ulamā*, and secondary texts, we should go back to texts from the Qur'ān and the Sunna, and derive our judgements from these, and attempt to exercise individual judgement to elicit what is correct as rules and judgements and to issue *fatwās*.

I say this because I know from Islamic history that *fatwās* were promulgated in the service of individual interests. I give a simple example in confirmation. It happened in a certain country during

¹ In Tunisia, Morocco and Algeria a different term is used for family planning: *al-takhtīf* or *al-tanzīm al-'ā'ilī*. (Eds.)

the period of imperialist domination that there appeared a movement of resistance to imperialism. The imperialists gathered together a number of *'ulamā* and made them issue a *fatwā* against the resistance movement. Can we rely on such *fatwās*?

Dr. Sharabassy says that in Egypt in 1936 a *fatwā* was issued. I should like to ask him who was really ruling Egypt at that time. Is it not our duty to study the social and political conditions in Egypt at that time in order to be aware of the real circumstances in which the *fatwā* was issued, and to know if it was issued under pressure, or in the service of the common good?

Speakers have taken the line that birth planning or limitation is not allowed except for the common good. I wonder if today there is a general interest for Muslims in such planning and limitation. The answer to my question lies in what is happening, in the way of slaughter and massacre. Are we going to come along and help the Zionist and Crusader attack on Islam, by issuing a *fatwā* which stops the increase in the Muslim population or kills them by means of abortion?

Sharabassy

Mrs. Mahasin Saad has objected to my saying that the subject of family planning rests on *ijtihād* and deduction. This is an indisputable fact. If the question were not that of *ijtihād* and deduction we would not be present here and we would not debate. We are disagreed on the subject, right across, from Ahmād Sharabassy at one extreme to Ahmad Sahnoun at the other. If it were a question of a text, there would be an end of it, and there would be no *ijtihād* on a text. Again, if it were that of unanimity, already in existence, we would not be gathered together, to attempt at least a collective *ijtihād*.

Ever since the beginning of the conference you have been saying that the subject is based on collective *ijtihād*, and Mrs. Mahasin Saad never objected to the attempt to reach a unanimous decision of this kind. In saying that the subject is based on *ijtihād* I am not far from what — in my opinion — those venerable scholars and elders were agreed on.

Dr. Madkūr has found fault with me for saying that the latter-day jurists maintain so-and-so, while all the time the books of jurisprudence are full of opinions against contraception. I think the best answer to that is that my paper and my summary included the opinions of Imām Shāfi'ī, Imām Abū Ḥanīfa, Ibn al-Qayyim and others.

However, I based myself on recent *fatwās*, which I invoked and mentioned the year of issue of each *fatwā* in order to rebut a suspicious view which attaches to many men of religion in our country, namely, that they only speak out when the state speaks, and that they only follow its lead. I wanted to put forward proofs that there are Egyptian *'ulamā*, to whom suspicion does not attach, and about whose competence there can be no doubt, who began to discuss this subject from 1936 and were conscious of their responsibility. The late Shaikh Aḥmad Ibrāhīm himself had no connection with politics, but dedicated himself exclusively to *fiqh*. He was considered a contemporary jurist, in the real meaning of the word *fiqh* or jurist. He spoke in terms above our level. When we come to the subject of sterilization we shall see that he anticipated us all. Therefore, I have mentioned these examples to rebut the suspicion that myself and others like me are only rubber stamps of the state or government.

Mr. Ahmad Sahnoun has reproached me for not "confining myself" to the Qur'ān and the Sunna in my inferences. Even if I had failed to invoke what was deduced from the Qur'ān and the Sunna, that would have been regarded by him as equally reproachful. However, I began my paper by setting forth the traditions I had not dealt with in my summary, in the belief that he had read them. I should like to take up the defence of the reverend *'ulamā* whom he almost stigmatized as rubber stamps of Politicians in their time. I do not believe that Imām Shāfi'ī, who spoke on this subject, was a rubber stamp nor was Imām Abū Hanīfa a yes-man when he said that many children are a trouble and a vexation to the mind, without any fear from the Caliph. Nor, for that matter, do I believe that Ibn al-Qayyim was a rubber stamp. There is no possibility for making accusations against those whom I have mentioned and quoted from them. To say that they were compelled to issue *fatwās* is an injustice to them. This remark of Mr. Sahnoun may be true of some, but it is not true of those I have mentioned.

The Egyptian *'ulamā* who issued *fatwās* from 1936 to 1953 were not taking sides with anyone when they did so, since at that time there was not in Egypt any call for family planning, either collective or individual. I remember that the first attempt at family planning came from the American University in Cairo, and that its proponent was Dr. Maḥmūd Tawfīq Ḥafnāwī. In the mid-fifties, he gave a lecture on the subject, when he himself was connected with some international organizations. I had mentioned that ordinary people generally think

ill of something coming from abroad, and that it was necessary to give the matter a touch of local flavour and identity if we wanted to convince people of it. At that time we resisted Dr. Ḥafnāwī's plan. I personally wrote a criticism of it and published it in the magazine of the *Muslim Youth* in Cairo, because Dr. Ḥafnāwī acted cautiously and did not set limits to the subject like the ones we set nowadays. He was calling for collective birth control, and for its imposition on people. But in 1956 Shaikh 'Abdul-Majīd Salīm found no one to oppose him when he pronounced his *fatwā*.

We should consider a pronouncement by Shari'a scholars to be a representation of their personal understanding of the matter. It will be remembered that, on the first and second days of this conference I said that, I did not like the conference taking upon itself a competence in issuing *fatwās* which it did not possess, and suggested at the time that our discussions, debates and ideas should be an expression of our own opinions and not of Muslim 'ulamā. There may be those who are like us, or there may be people more competent. We are a group of Muslim scholars gathered together for each to express his opinion in the hope that these opinions will be the first step to distilling an opinion on a problem which we feel, preoccupies all of us even though we are not agreed on all the details.

Najjār

Personally I would say that doubt about the 'ulamā and their knowledge in the absolute sense is not agreeable because the basic thing in all cases is to have trust and confidence until the opposite is proved. Doubt should be in all cases a scientific doubt which leads to sound positive knowledge, and should not be a kind of doubt which seeks merely to invalidate, to refute and deny. Only the former kind of doubt is acceptable. The only way in which to prove the reliability of men and their soundness of judgement, or to declare them trustworthy or otherwise is to base oneself on sources which are well known to Muslims. In this way the Muslims established a method for proving the reliability of traditions or otherwise, a method they used likewise in literature, history and the evidence for these. Hence the only thing we can rely on to accept evidence attributed to 'ulamā is carrying out a study in order to declare them reliable or not. This is something which no one would deny. For this reason we cannot accept the impugnation of 'ulamā simply because they live in the shadow of this one or that one.

Sahnoun

First I should like to apologize for something I said which some took it to be as an attack on the 'ulamā. What I meant to say was that we should base ourselves on the original sources of Islam, the Qur'ān and the Sunna. But if we wish to adopt the opinion of some one of the 'ulamā we should investigate him carefully and scrutinize the circumstances in which he issued a *fatwā*. Such a procedure of inquiry does not detract from the worth of anyone. For example, Abū Huraira was criticized for the overabundance of his reported traditions and he was declared to be in error. Who among the reporters of tradition was not carefully examined to test what was to his credit and what was a debit in order to ascertain his credibility? Professor Sharabassy stated that he was quoting Shāfi'ī and Abū Hanīfa and others. God forbid that I should discredit any of the 'ulamā.

Samarrai

There is a health motive for family planning as well as a wish to prolong the period between pregnancies, I believe that religion sanctions this motive.

Alaoui

I should like to comment on what Mr. Samarrai said on the subject of Islam and family planning. I should like it to be understood that Islam allows regulation of the interval between pregnancies as is gathered from the Qur'anic verse: "Mothers, when divorced, shall give suck to their children two full years if the father desire that the suckling be completed" (Sura 2/233). However, we may not go beyond what the Qur'ān authorizes.

Birth regulation of this kind meets the purpose. If, to the period of the 2 years, we add the length of a pregnancy, 9 months, and the months for rest and recovery, we shall have made the period between one pregnancy and the next 3 years.

Nor should we forget that among the factors making for equality in, and fitness for, marriage is the woman's ability to bear children and to endure the pains and hardships of childbirth. Therefore, if the woman marries only at 20 or later, and the period between pregnancies is 3 years then she will not give birth to more than 4 or 5 children. This is a perfect planning of births, or of the family, as some people prefer to call it.

In the traditions of Prophet Muḥammad about *'azl*, coitus interruptus, there is what may indicate that he frowned upon it in a well-known case, to which several of the colleagues, who have written on the subject, have referred.

If Muslims were to take interest in other subjects related to the family and society, such as economic growth, organization and development they would be spared the trouble of searching for means of dealing with this phenomenon, whether it is sterilization or birth control.

Collective limitation of births is quite unauthorized in Islamic Law. I said this in a radio talk in Morocco some years ago, before the convention of this conference. If states, associations and organizations would help Muslims in matters of bringing up and educating their children and developing their economies as much as they try to help them in sterilization and birth control, Muslims today would be in no need of following these tortuous methods which openly fly in the face of the teaching of Islam.

I should like to draw attention to the fact that an all-round Muslim education and upbringing is sufficient guarantee for ridding Muslims of the illegitimate births which are seen in hospitals, in our countries as in others. Hence we see why Islam prohibited fornication and adultery and made the punishment for it as severe as stoning to death. The intention of this was to cleanse Muslim society of moral evils. Our greatest misfortune is that we have moved away from the teachings of Islam.

Dasūqī

On the subject of the common good, which we have mentioned, we wished to draw attention to the fact that a good reason or necessity may require that a thing be permitted at one time and not at others. Ordinary circumstances and circumstances of necessity each have their own rules. We have already indicated that judgement on a certain issue will vary according to whether or not there is a sufficient cause. If necessity makes us have recourse to planning, then it will be adopted. If God causes the doors of His plenty and abundance to be thrown open, then planning results in multiplicity and not in underpopulation.

Shaikh Mubārak dealt with the tradition of the Prophet on marriage and procreation. Here we should like to draw attention to

the fact that he said in the second half of the tradition: "make a display of you", which, in this context refers to quality and not to quantity. These days the world is one in which what count are science and power; it is not a matter of numbers.

Balogun

As far as family planning is concerned it is clear that there are points of agreement and points of disagreement among members of this conference. But the differences which exist are not on fundamentals.

As far as the Qur'ān and the Sunna are concerned, there are some who say we should concentrate on these; but it should be pointed out that we must not emphasize one part of a text rather than another. God says: "Wealth and children are the adornment of this present life: but good works, which are lasting, are better in the sight of thy lord as to recompense, and better as to hope" (Sura 18/46). Some concentrate on the first part of the verse so as to emphasize the desire to multiply children, and forget the second part which mentions "good works which are lasting". Ignorant and uneducated children are not of the "good works which are lasting". But if we perfect their upbringing and education they will be of the "good works which are lasting".

Haqqi

I believe that most of those present have agreed that contraception is not forbidden in religion. This does not mean that religion enjoins it or encourages it. They have also agreed that it is a personal question and that every family and each parent has the right to decide in this matter according to what suits their interest and their particular circumstances. This being the case, why is it that higher authorities, locally and internationally, do not intervene in many of the personal questions which confront the family daily, which are no less important than birth control and family planning?

If there are organizations which supervise family planning, their function should be merely advisory, on methods which may be used which agree with the nature of those who use them, without promoting such methods, and publicizing them as sometimes happens these days.

As a doctor, I think that any one who wishes to use contraceptive or family planning devices should be made aware of their harmful effects as well as their advantages.

Hathout

As far as getting married is concerned and the prophet's saying: "Those of you who can support a wife should marry", I should like to draw attention to the fact that ability to get married is a relative thing. A man may be totally unable to get married or he can get married but unable sufficiently to provide the wherewithal for the children. In this case I believe the best thing for the husband is to come to an agreement with his wife to use a method which puts off having children for a while. In this way he will have satisfied the sexual urge, delayed having children and at the same time preserved decency and chastity. It may be that in the use of contraception there is something which preserves his religiousness and saves him from lapses.

Beji

I should like to present to you one of the practical means of family planning used in Tunisia which has had the agreement of those responsible and of the young. This is stipulating that there must be a medical examination before marriage for the contract of marriage to be complete. If it appears that the health of the couple allows them to get married they will be free to do so. I should like to see a law which penalizes the marriage registrar who draws up and completes the marriage contract before it is proved that the woman has been medically examined and proved to be fit to have children and is not likely to be in danger as a result of pregnancy.

Shamsuddin

Mr. Naciri has made poverty an impediment to marriage. In the Sharī'a we have no text which asserts that. Nor is it a condition for the husband to be rich. The question of ability to provide for the family is a matter of dispute in *fiqh*. No standard opinion has been reached among the Muslims on it. It is, therefore, left to the individual believer to follow the school of religious thought he thinks best in this matter.

Shaikh Mubārak considered that the basic aim of marriage is simply to beget children, although, Prophet Muḥammad has said that the sexual satisfaction is one of the objects of marriage.

Mr. Beji has spoken for obliging a couple to have a medical examination to decide their fitness for marriage. There is no support

for this obligation in the Sharī'a. But there is no objection to their being made aware of the desirability of such a course of action so that they may be encouraged to have a medical examination.

Sahnoun

Mrs. Amīna Sa'īd has referred to the tradition of the Prophet related by Usāma b. Zaid, which says: "A man came to the Prophet and said: 'O Prophet of God, I practise coitus interruptus with my wife'. The Prophet asked: 'Why do yo do that?' The man answered: 'Out of regard for her child'. The Prophet said: 'If it were harmful, it would have done harm to the Byzantines and the Persians'." What is intended in this tradition is not coitus interruptus but the *ghaila*, pregnancy during lactation. Imām Muslim says the tradition is reported by Judāma bint Wahb of Asad.¹

Dasūqī

In discussing the verse of the Qur'ān: "Mothers when divorced shall give suck to their children two full years" (Sura 2/233). Some colleagues said that coition in the nature of *ghail* is not allowed, i.e., that the man must not approach the woman in the period of lactation. This is, of course, hard on both the man and the woman and, therefore, the only way out of this is the use of contraceptive measures during lactation.

Shamsuddin

It seems to me that Mr. Naciri is arguing for banning coition during lactation so as to lengthen the space between pregnancies. This is not warranted in the Sharī'a, and there is absolutely no evidence for it. Therefore, there is no objection to normal marital intercourse with the use of contraceptive barrier.

Mahasin Saad

The habit of breast-feeding for two years is no longer widespread these days. Most women nowadays do not suckle their children for two years. In the Sudan it is noted that the death rate among

¹ Muslim, in his *Ṣaḥīḥ* sets forth the tradition under the heading of the permissibility of *ghaila* (coition or pregnancy during lactation and not *'azl*). But the tradition referred to by Mrs. Amīna Sa'īd is not the same as the one referred to by Mr. Sahnoun. See *Ṣaḥīḥ* of Muslim, vol. 4, pp. 161-162, Cairo ed., 1330 A.H. (Eds).

babies weaned before the ninth month is increasing, especially among poor, uneducated families. I should mention also that pregnancy may occur during the period of breast-feeding in such families.

Dasūqī

I have a comment to make on what my colleagues have said on the Qur'anic verse: "Mothers, when divorced, shall give suck to their children two full years" (Sura 2/233). Some have said that we must be bound to this extent only in prolonging the period of breast-feeding. What we believe and conclude from this verse is that Islam merely opens the door for us to take the path which suits our health and life.

Mrs. Saad said that breast-feeding for two years has become uncommon. The fact is that the verse, of the Qur'ān just mentioned only refers to the maximum period of feeding. There is no obligation or commitment in this. The baby may be weaned before this. Feeding may also be prolonged till the completion of two years.

Shamsuddīn

Mrs. Saad has said that breast-feeding for two years is uncommon these days. In Shī'a Islam the matter is left to the woman, who does not have to breast-feed without payment, unless this is specified. She can ask for payment for breast-feeding. The subject of breast-feeding is mentioned in the Qur'ān as something allowed, in the sense that a woman is free to do it or not.

Mubārak

Dr. Omran stated that there are some who see contradiction between those Islamic texts which call for family planning and those which call for the multiplicity of children. We Muslims see no contradiction in this between the texts, and what contradiction those people think they see is only apparent. The traditions which seek reduction of births, such as the tradition on *ghail* and the tradition reported by Jābir, had the purpose of improving the offspring by good upbringing and education, taking into account the individuals' circumstances and needs. As for those traditions which call for multiplicity of children, these sought to take into account the circumstances which require strength, growth and prosperity. These are many. Among these traditions there is one which I have not heard anyone

quote here. The Prophet is reported to have said: "Verily, there will come a time in this world when one is congratulated for one's light burdern (of children) as one is congratulated today for being the father of ten." This tradition may be by way of foretelling us of what will happen in our own day, and could be considered to be a miracle of the Prophet's and does not indicate any requirement either for the multiplicity or paucity of children. It may also be a denial, and in that case should be considered to be calling for multiplicity. It may also be an expression of approbation, and as such it is considered to call for few children. The fact of the matter is that the tradition was a reference to what will happen.

At all events what I conclude from all that has been said is that Islam does not countenance any action to reduce the birth rate simply out of fear of poverty, whether taken by states or individuals. When taken by individuals, Islam no doubt approves of it in cases of necessity, in appreciation of their exigencies, for helping them get out of their difficulties, and for the improvement of the offspring to such a degree that they will be worthy of being made a display of.

Mahasin Saad

Mr. Mubārak has stated that family planning was allowed in Islam if the intention is to improve the offspring and to give them a proper upbringing. He has thus defined the attitude of Islam to this particular question. This is what we are aiming at in the family planning movement.

Sharabassy

Some colleagues have spoken of Malthus' theory on birth control. I would mention that Ibn Khaldūn spoke of the same theory.

Some have considered the tradition: "Marry among yourselves and beget children..." to be a weak one, whereas we should not rely on considering it as such. It is true that it is a *mursal* tradition¹ and that is lower in rank than the *marfū'* tradition,² but we have quoted

¹ The *mursal* (sc. "let loose"). So called because the person who related it did not identify the companion of the Prophet who first related it.

² The *marfū'* or traced tradition, relates to an action or saying of the Prophet, whether related first by a companion or a follower, and whether or not its chain of transmission is complete or not.

it thousands of times. If we now go back and consider it to be weak, we shall be contradicting ourselves.

We should reconcile the tradition with family planning. I have reviewed this subject in my book,¹ and mentioned in the book the *ḥadīth* referred to by Shaikh Mubārak.

Samarrai

Shaikh Sahnoun has stated that China, with a population of 650 million people has not had recourse to family planning. May I remind him of a phrase of Chou En Lai, who said: "In order to preserve women and children and to bring up the rising generation in a way which will lead to the wealth and prosperity of the nation we affirm that appropriate family planning is a desirable thing."

Nazer

Western societies wish that they had family planning measures similar to those applied in China. If measures such as these were applied in all other parts of the world the problem of overpopulation would be solved.

¹ Ahmad Sharabassy, *Religion and Family Planning* (Cairo, 1965), translated into English as *Islam and Family Planning* in 1969 by the Egyptian National Society for Family Planning.

FAMILY PLANNING AND SCIENTIFIC AND DEMOGRAPHIC STUDIES

Karmi

Members of the conference recall that I was the first to draw attention to the need for scientific and demographic studies of family planning and the position of the family in both of the Arab and the Islamic worlds.

The question before the conference is Islam and family planning. We have heard the opinions of Islam from the experts in *fiqh* and leaders in religion, but we have not heard the scientific opinion. For this reason I proposed from the beginning that a detailed study be made of the position of the Muslim family in the world, with regard to size, education, economics, development and health. In front of me now I have another booklet, given to me very kindly by Dr. Omran, which discusses the advantages of family planning for health. The health aspect is very important, because the nation cannot be sound of body and mind unless the family is in a healthy condition.

Cillov

The Muslims in Turkey constitute 99% of the population of 37 million. Turkey is a secular state, according to the constitution. I am an economist-demographer by profession, but not, I am sorry to say, an expert in religious affairs.

The population of Turkey is increasing at a very high rate, 27 per thousand, and the birth rate is 40 per thousand, the highest ratio in Europe. We notice that in Turkey as in other developing countries there is a close relationship between economic growth and population increase. The families with many children do not benefit from the economic and social prosperity enjoyed by the country.

In 1963 Turkey began the era of economic planning. The aim of economic growth at present is the development of the country's resources and the preservation of the standard of living of the population, or the attainment of a desirably high standard of living.

However, the effectiveness of an increase in the economic well-being of the family is restricted by the rapid population growth, especially among the poor and illiterate.

I believe that this applies also to the state of current progress in other Islamic countries, for as a result of population increase, especially in rural districts and large towns, economic and social problems arise on the solution of which depends the possibility of soundly-based economic growth.

Starting from the concept of the close relationship between growth and population increase, in Turkey we have begun, since 1965 to implement a law for family planning, which allows the family, simply by its own choice, to plan for births and to define the number of children in accordance with its wish.

Since that time demographic research has been carried out to solve the problem of the aversion of families to planning, and to find out the factors which influence this tendency. I should like to put before you the results of the research I carried out in Istanbul on 500 married women, who visited hospitals to learn about contraceptive methods. I noticed that the families which cling to Islam desire to limit the number of their children after having a certain number of them. Research also showed that 165,000 women annually risk their health and lives in Turkey through resorting to primitive abortion methods. This is because they do not have either the opportunity or enough courage to take the necessary precautionary measures. My research went on to the relationship between their wish to understand and practise contraceptive measures on the one hand, and their religious beliefs on the other.

The Turkish society believes that Islam is one of the most tolerant and humanitarian of religions. Therefore, I believe that Islam does not object to the families taking to family planning to serve their interests. However, I look forward to the initiative and help of the Imāms and the Muftīs among men of religion and to their decisions on this subject.

Families with limited resources and incomes suffer more from having too many children than do better-off ones. Therefore, as I said previously, the potential for economic growth is linked to finding solutions for the problems of these families. My Turkish colleagues at the conference will be talking of the position of the higher Islamic bodies in Turkey on the adoption of family planning. But we need the help of the *'ulamā* and the leaders of opinion in the whole Islamic

world. I must say also that I was struck with admiration for what I heard this morning from prominent Muslim *'ulamā*. Nonetheless, gentlemen, we need an assertion of one clear opinion instead of more debate, and we need to say frankly that Islam endorses family planning.

Mahasin Saad

I should like to comment on what Shaikh Mubārak said about family planning in the Sudan, and here I hope that you will allow me to be somewhat provincial. He said that to have children is something which the mind and heart cherish. I should like to tell you that the family planning centres in the Sudan are crammed full with those who are suffering from too many children, and are seeking help for health and financial reasons, or more important, for psychological reasons. Relations between husband and wife have begun to deteriorate through having too many children. As for the fact that the area of the Sudan is one million square miles, this does not justify prolific procreation. The potential of the state—which is responsible for providing services — is unable to cope with meeting the needs of the population. Hence there is unemployment, and many are unemployed. The state, in the person of the president, has come to realize this. There is a great deal of discussion and talk these days of the high birth rate, of ignorance and of disease.

Bint al-Shāṭi'

Someone like me is neither competent, nor ought to speak on the subject of population studies. This is not my speciality. But when I was looking at such studies, I was having in mind — whilst listening to statistics and following what is being published on overpopulation, and in particular the high density of population in the Muslim countries — some Muslim countries which do not have overpopulation, but, although wealthy, are still backward, even more backward than we are in countries which suffer from overpopulation and economic crises. This makes it plain that the question is not completely tied to the density of population.

I also had in mind that there is something tantamount to population limitation in the massacres which Muslims suffer in the Philippines, in Pakistan and in the Middle East. These massacres have the effect of reducing overpopulation, and we need something

to make up for them. We have with us here people from the heroic Algeria who know that they offered up more than one million martyrs to save the honour of mankind in the battle for liberation. We want them to make up for this million. As the scholars in *fiqh* have said, the question is related to necessity, and varies in its nature with change of time and place, and also as between peoples.

Shamsuddin

I pointed out yesterday, and I repeat today, that I do not want the subject of the world population explosion to be thrust onto our own particular problem.

We are dealing with our own problems on the basis that we are Muslims belonging to a Muslim world, although we have love for all people and good wishes towards them. What we are concerned with here and what we are looking for is confined to the Islamic world alone. What I say on law, by virtue of my interest and specialization, relates to the Islamic world alone.

Shafei

All who have dealt with the population problem have looked at it from the angle of the number of individuals, whereas it does not stand forth in a clearly defined form unless there is a comparison made between population, on the one hand, and economic resources and economic production on the other. There can be no problem unless the balance is disturbed between productivity or rate of economic growth, and population. Dr. Sharabassy and Mr. Dasūqī referred to this question. But Dr. Sharabassy did not give it any more attention than he did to any of his other Ten Commandments, whereas it is of extreme importance. For it is impossible to study population and population problems without considering production. Dr. Omran presented to us an account of agricultural production; but this is only one part of the total production. Consideration must also be given to industrial production, and even cultural productivity. In fact, the whole national production must be looked at and it must be compared with the size of the population in order that the population problem be brought out and defined. If it is clear that productivity is lagging behind population increase, then there is a problem, otherwise not.

Omran

Dr. Bint al-Shāṭi' asked about the population studies which we have. There are few complete population studies, but they are adequate for forming an opinion on overpopulation in each of the Muslim countries. But we have details on only some of these countries. In my study I produced a table of the Islamic countries of Africa, Asia and Europe. The table covers population, birth rate, death rate, rate of population increase, the time needed for population to double. I added to this the national income, and national productivity for each country, as well as the numbers of those under 15. I made a comparison between the rate of growth of national income, on the one hand, and national production and the rate of population increase on the other. I explained this and I do not know why my explication did not attract Dr. Shafei's attention.

Sharabassy

Dr. Shafei expostulated with me for not giving due attention to linking productivity with population. In fact I expatiated on this subject in a way which was not expected of me, as it is not my speciality. Nonetheless, I said in my study that it is not right that we should confine ourselves, in dealing with overpopulation, to attempt to reduce the numbers of offspring with the means we know and those we shall come to know, but that every effort must be made to double production, continue the search for the treasures of the earth and develop agriculture and industry and world co-operation so as to distribute surpluses and capacities and exploit everything which can be exploited towards the happiness of mankind.

Naciri

The distinguished gentlemen who are discussing the problem of large populations and large families, and are striving to regulate this matter in relation to legitimate births are neglecting a very important and significant point, namely, the illegitimate birth rate. They are totally uninterested in resisting this tide of permissiveness which is sweeping over the whole world, including the Muslim world. This is deplorable. I should like the conference's recommendations to include one drawing the attention of those concerned with family planning to the need for efforts to be made to prevent promiscuity, and to stamp out permissiveness which is bringing upon us the problem of foundlings and illegitimate births.

Laraqui

We are here in a country whose area is half a million square kilometres, and whose population is 15 million, according to the latest census of July 1971. 47% of the population are under 15, and 50% under 20. Morocco is, therefore, a young country. We are fully aware of this problem, and we are using all possible means to prepare youth and to give them the best possible education. For youth is the weapon for the future.

The birth rate in Morocco is 48 per thousand, and the death rate is 17 per thousand. Therefore, the rate of population increase is 31 per thousand. I should also like to mention that Morocco needed 130 years to reduce the death rate. The result of this phenomenon was that the death rate fell and births remained as they were. This is the problem which gave the specialists in economics and development no possibility to stop the gap resulting from this difference, so that productivity might keep pace with the population explosion.

In Morocco we have instituted some laws which we regard as being avant-garde. We have formed a supreme Population Commission under the chairmanship of the Minister of Health. One of its members is the Minister for Social Affairs. At regional level we have formed regional committees.

We have allowed medical (not social) abortion, i.e., abortion when the woman's health is in danger, and we have made the wife's approval essential. Abortion is part of public health activities. We also now have a large number of integrated family planning centres, and we shall soon have a national centre which will undertake the direction and management of family planning, as a normal part of the activities of hospitals and maternity homes.

We look upon family planning as a preventive measure which comes under public health services. The object of it is to deal with problems, especially humanitarian problems relating to family planning which allows us to control births and protect the mother and child simultaneously.

We know that some sister countries do not put family planning under the heading of care of public health as we do, and maybe this policy fails sometimes.

We here appreciate the human dimensions of this problem which basically is a problem of awareness, upbringing and so on. Therefore, we are trying to take on this great task, in order to reach all classes

of society, and help them to be aware of the problem, and enable them to choose for themselves the means they wish to use.

Finally, we regard family planning as part of economic development and a means for the liberation of woman. She is our wife, our sister or our daughter and we should take care of her health and her beauty, which is her treasured possession. If we do not look after her beauty, we make of her merely a vehicle for procreation.

Samarrai

There are many reasons for family planning most of which have been mentioned by Dr. Omran, they are realistic, not poetical or theoretical. A perceptive person, with understanding, will be able to appreciate them easily. Some colleagues have refused to consider these factors to be justifications for family planning in the way understood by medical doctors. There is, however, another important reason which I should like to add to these, which is connected with the person of the mother, and related to her health. My colleagues specialized in medicine will understand this reason, but not the non-medical ones. For it seems to non-doctors that the mother after going through the experience of childbirth is less exposed to danger than the pregnant woman. The facts are the exact opposite of this. The second and third deliveries may be easier than the preceding one, but it is certain that the prolific woman, who has delivered and has had many children, is liable to all kinds of harm, which sometimes may lead to death. Therefore, there is a health cause for family planning besides the wish to lengthen the interval between pregnancies. I believe that religion endorses this cause.

Hathout

Mr. Karmī has asked for scientific studies of the family. I had prepared for this conference a study of women who have had many children and of the characteristics of childbirth. In preparing it I adopted the simplest of procedures. I studied 3000 successive births in the maternity hospital in Kuwait, and divided them into groups: a group who had had 5 children, a group who had had 6, a group who had had 7 children and so on. I also observed the behaviour of the respective mothers. What Dr. Samarrai said became obvious to me: to have many children brings with it a number of complications.

I had another aim, in preparing this study, namely, to present a model for preparing a scientific study. The reason for this is that the

concept of scientific research is not sufficiently clear to some people. We have still not settled on the real meaning of scientific method in dealing with problems, in the way that the early Muslim scholars did. I should like to reassure Mr. Karmī that there are many studies like mine and those of others. However, we suffer from one other defect, i.e., that those of us with scientific qualifications and able to carry out scientific research lack interest in religion and knowledge of religious teachings. Moreover, those who know the bases of religion and the Shari'a in detail may not have a clear conception of the means of dealing with things scientifically.

Haqqi

If there really is a population explosion in many Muslim countries, the ignorance prevailing in many of them still kills tens of thousands of children, and the death rate for children still remains high in relation to other countries. We should, therefore, research into ways of raising the standard of living and the level of knowledge for the peoples of these countries at the same time as research is going on into teaching the use of methods of family planning for those who want it. We should also research into the distribution of wealth between the different Muslim countries, bearing in mind that the Muslim world is not responsible for the world population explosion and that it is not a duty for Muslims to reduce their numbers in order to raise the living standards of others.

Huzayyin

Demographic policy is the special preserve of the state. Every state is free to define its own policy. On the basis of what we have learned of the situation in Morocco, for example, the population doubles every thirty years or a little less. Therefore, it may be right for the state to think of doubling the population in, say, 50 years, so that this may keep in step with its potential and its ability to provide services and plan for growth.

THE CENTRE FOR DEMOGRAPHIC STUDIES AT AL-AZHAR

Nazer

Many of the members of the conference have referred to the necessity for scientific studies of Muslim society as well as of the Muslim family. Others have spoken of the possibility of Al-Azhar's taking on the task of preparing these investigations through a centre for demographic studies, now under discussion, with a view to setting it up within Al-Azhar in co-operation with the United Nations. I have received a telegram from the United Nations agency, in its capacity as one party to this project, in which it asks to be allowed an opportunity to address the conference on the matter. The telegram reads as follows:

"Rabat Hilton - Rabat

For Dr. Isam Nazer, Medical and Administrative Director, IPPF-Middle East and North Africa Region.

The recent consultations with the government of Egypt indicated that Egypt is interested in the project proposal submitted to the United Nations Fund for Population Activities (UNFPA) by Al-Azhar for the establishment of an Interregional Population Research and Study Institute.

The UNFPA is in principle interested in the project. Al-Azhar suggested that the project components might include the research granting capability so designed to enable Al-Azhar to co-ordinate research on population of Muslim communities; the facility for translating documents into all languages spoken by Muslim peoples; the production of literature on population patterns and its distribution; the training programmes for formal or informal education of Muslim students at Al-Azhar; and a library.

Recent conversation with the Minister of Wakf in Cairo confirmed the above and indicated his willingness. UNFPA will mention in the IPPF Rabat meeting that the discussions regarding the possible project are underway and welcome suggestions from the conference

participants regarding the scope and work programme of such an institution if you deem appropriate. The agenda might provide for a short statement by Heneidi, Operations Officer-Africa, Near and Middle East, who is participating in the conference as an observer on behalf of the UNFPA in which he would mention Al-Azhar's request."

I am happy to have Mr. Heneidi with us, in his capacity as the official in charge of the programme for demographic studies for the region of Africa and the Middle East. Allow me to invite him to put before you the message of the United Nations. That is if you deem it fit that Mr. Heneidi should be given the chance in the agenda of the conference to give a brief statement to set out the application of Al-Azhar to the Fund.

Heneidi

For a long time now the problem of the growth of numbers side by side with the diminution of resources has been a headache to the householder, for his living as well as to governments, striving as they do to increase the national budget. But the great worldwide interest in the rapid increase of the world population, in proportion to the available resources and supplies, is of recent origin, and is traceable to the galloping rate of increase in world population since 1900.

On the turn of the century, the world population reached the mark of 1,700 million people. This figure jumped to the mark of 2,500 million in the Year 1950. In the period between 1950 and 1970, the figure jumped to 3,600 million. Out of this, about 2,500 million live in areas where income is low.

Perhaps the forecasts of experts on the possibility of the world population becoming double what it is by the end of the present century may shed light on the bewildering problem facing the developing countries which, so far, in spite of developmental activities for economic growth now in progress, have not been able to meet the needs for a decent life. Undoubtedly, the likelihood that the world population will double, when it will be insistently necessary to feed, house, and educate such a huge number of people and to provide for them opportunities for work, is no cause for comfort, especially when we consider the present situation in which millions of people suffer from malnutrition, meagreness of educational and medical services, and widespread unemployment.

The United Nations views, with understanding, the plight of the poor peoples, and has drawn up schemes of unprecedented dimensions

with the object of assisting the governments concerned to raise the standard of living of their peoples and to build up strong and stable economies, in virtue of which such peoples will be self-reliant. But, in the meantime, the United Nations has been faced by another challenge greater and more serious, and this has made it necessary for the United Nations to have as an objective the promotion of development efforts on the largest scale, so that the amenities of modern civilized life may be provided widely to all human beings alike in the possibly shortest space of time, and the standard of living on the face of this earth may be improved.

On this score, it appears that the demographic programmes have become essential factors working for the success of such efforts, and for this very purpose: the United Nations Fund for Population Activities has been established, with the express aim of lending assistance to the developing countries to enable them to put into effect demographic projects and to expand the scope before the United Nations agencies working in this field.

This Fund was founded by the Secretary-General of the United Nations in 1967, in response to the resolutions of the General Assembly, and of the economic and social organization in this direction. This opened the way for governments, bodies and individuals to give contributions and thus make it possible for joint efforts, international as well as national, in the field of demography and population problems.

In fact, the family of the United Nations has for a long time now recognized the close relationship subsisting between the population growth and development operations. In the past, the United Nations used to provide assistance in this direction in the framework of its other commitments, and used therefore, to include in its programmes and those of its agencies, certain demographic aspects in the context of such programmes as are related to work, agriculture, education and health.

The fund for demography serves as a contributory executive factor, in providing the required means for financing demographic activities already in existence, by carrying out certain major demographic projects of recent origin, working towards the co-ordination of the United Nations efforts, and informing governments of the variety of assistance which may be lent in the field.

In addition, the fund took on an important task in co-ordinating the various programmes of the United Nations, and those which it is the duty of subsidiary, governmental or private agencies to implement.

Today, the Fund provides funds for 400 projects in 61 countries, members of the United Nations. The forecast is that the number of these projects will grow in the next few years.

The proceeds of the Fund from donations and contributions in 1971 amounted to something like 25 million dollars, with the expectation that in 1972, the amount will go up to between 40 to 45 million.

The rate of population growth in most of the Islamic countries is on an average about 3%, and probably more, as against 0.8% in Europe and about 2% for the whole world. The fact that there is lack of scientific researches and information on the problems of population in the Muslim countries only emphasizes the pressing need for diligent efforts to be exerted in this field. Al-Azhar University in the Arab Republic of Egypt has envisaged the possibility of its undertaking a useful role in co-ordinating demographic researches and studies and training workers in the field of demographic activities, in view of the fact that Muslim countries are far apart in their geographical locations.

Such studies may serve as a source for fundamental information and are apt to assist experts in planning in all the aspects of social and economic development.

Al-Azhar believes that there is real need for studies to be performed with the objective of determining the basic factors which govern the level of the individual's income in the contemporary Islamic societies, the level of individual productivity in these societies, the standard of education and other aspects common to Muslim societies. Besides, there is the need for providing trained workers to carry out demographic schemes, through education and training on an official and unofficial level.

In the light of all these considerations, Al-Azhar University applied to the United Nations Fund for Population Activities for financial and technical assistance towards the establishment of a common regional centre for studies and researches to meet the needs of all the Islamic countries in the world.

You all know perhaps that the students in Al-Azhar number about 30,000, representing 71 different Islamic nationalities. Besides, Al-Azhar University is the oldest among the universities of the world. The University will celebrate its millennial anniversary in the first half of the year 1972. This is apart from its successful work during the last ten years in expanding its spheres of activity and service, to include the secular branches of knowledge, together with the religious ones. It

comprises now colleges of medicine, engineering, law, economics, commerce, agriculture etc. Although primarily it is concerned with cultivating basic religious attitudes, it is now going ahead with training in modern sciences in addition.

The United Nations Fund for Population Activities realized that Al-Azhar University was in a position to undertake the proposed international endeavour and, acting on this belief, sent a mission to the Arab Republic of Egypt, where discussions took place with Dr. 'Abdul-'Azīz Kāmil, Minister of Religious Foundations. The outcome was an agreement that the Fund would consider the possibilities for the establishment of the proposed centre within Al-Azhar. The Minister expressed the willingness of his government for this centre to be accommodated on its territory, stressing at the same time the readiness of the government to support the establishment of this joint international centre for demographic researches and studies.

The proposed centre, as envisaged by Al-Azhar University, should perform such services as the following:

1. A programme of higher studies to be prepared for the instruction of the graduates of the various colleges in the demographic changes in the Islamic societies. Such a programme will provide for courses of study abroad, assistance to colleges, and the rearrangement of the curricula to give room for programmes of study concerned with training requirements both in the short and in the long terms, including a programme for formal training with a diploma degree in Islamic demographic trends.

2. A special budget for the centre for financing research work, with the purpose of encouraging inter-state joint researches, and other researches within Al-Azhar. Since the centre will be entrusted with relevant activities and researches and with their co-ordination it will be in consequence responsible for the publication and distribution of research papers and other literature on demographic activities.

3. To be able to publish the result of researches and demographic material of common benefit to all Islamic societies on a world scale, arrangements will be made for the establishment at the centre of a translation unit to have the relevant information and findings published in all the languages of the Islamic peoples in the various parts of the world.

4. The centre will furnish advisory services to the Islamic states in the areas of administration and operational research, organization

of demographic projects, evaluation, and other activities relating to population and demography as the need arises.

5. In addition, the centre will arrange courses of study, seminars and conferences in all parts of the world, which would provide opportunities for Muslim scholars, savants and experts to meet together to discuss questions of population and development and to try to find solutions for them.

The United Nations Fund for Population Activities, realizing as it does the importance of the establishment of such a centre for demographic researches and studies, has agreed in principle to support this project, and would welcome any views on the matter by members of this conference, and any suggestions towards the drawing up of a programme of work for the centre, on the nature of training and on the kinds of fields of activity and problems which it would be advisable to tackle as a priority.

The Fund will be pleased to have your suggestions which we hope will be sent directly to head office in New York.

Bint al-Shāfi'

On the topic for today we should have heard colleagues who are experts in population studies. Here we have Mr. Heneidi, the U.N. representative to tell us about the plan for setting up a centre for population studies at Al-Azhar. In the course of his presentation we understood that agreement has been reached on setting up this centre. What, then, is required of us, now that Al-Azhar has agreed and correspondence is finished. I am simply asking so that we may know what is required of us at this time.

Shamsuddin

This centre — of which Mr. Heneidi has spoken, and which will be set up by agreement between the U.N. and Al-Azhar — should undertake those population studies which define the extent of the interest for every Muslim country. Moreover, Islamic bodies of Muslim experts should supervise it. These people should constantly co-ordinate their work with the major Islamic institutions in the Muslim world. Although we have great faith in anything relating to the U.N., we believe that the researchers should be Muslims. We have complete faith in Al-Azhar but we believe that it should be the religious rather than the secular side of Al-Azhar which makes the agreement. I

say this about the religious and secular sides although I do not like the usage of these terms because Islam is all life.

The experts, after completing their researches, must agree with recognized religious bodies in the Islamic world in order to confirm that anything they promulgate is in agreement with the provisions of the Shari'a.

Madkūr

If there is already an agreement between al-Azhar and the U.N. on the proposed centre what is required of us here? Are we asked to endorse the proposal or record our cognizance of it, saying simply that we are apprised of it? As for binding Al-Azhar to accept this idea, this is not what this conference has met for and it has no competence to interfere in the matter. And as for setting up a centre for population studies themselves, without linking this up with the subject of family planning and Islam's view thereof, we have nothing to do with it, either. For we make no correlation whatever between family planning and density of population, because God is the Provider. In the earth there are adequate wealth and resources for all mankind. We have only discussed family planning and our complete support for it from the aspect of its being conditional on the individual's freedom and choice alone.

Sahnoun

I do not think that the subject of the centre which it is proposed to set up was on the agenda of this conference. I am afraid that continuation of a debate on it will prevent discussion of other subjects. I will say frankly, too, that when the subject was brought up I had a suspicion that the only object was to divert the conference into another direction, in order to discuss a new idea. I apologize for this, and I propose that we discontinue discussion of the project and leave it to the U.N. to invite the 'ulamā to another conference, to be held within the precincts of Al-Azhar, to discuss the subject.

Heneidi

I said in my address that there was agreement in principle on the project, and agreement that Al-Azhar would be the seat of the centre and that Al-Azhar would co-ordinate the activities, research and studies relating to the Muslim world.

Dr. Bint al-Shāṭi' and Dr. Madkūr wondered what was required of us. The only thing required of us, as scholars representing countries of the Muslim world, is that we share in thinking about what work this centre can take on. Since the centre will be enjoying the benefit of international money, it must embrace in its studies and activities the whole Muslim world. But it is Al-Azhar and the U.N. who will set up the organization, draw up programmes and see to their implementation. The centre will have a constitution, a board and a research and training body. But the researcher or expert will be expected to be a Muslim, because the Muslim is in a better position to understand his problems.

I hope that it will not escape notice that the role of the U.N. in the field of development is greater than its role in politics. The budget of the Fund (i.e., for Population Activities) is four billion dollars, and 90,000 experts share in its work. It also trains annually one and a half million people.

Any proposals made by members of the conference on this subject may be regarded as part of the preparation work for it so that it may really be an international enterprise, covering the affairs of the whole Muslim world and not of Egypt alone.

There is no question of the U.N. having seniority over the Muslims. It is simply an opportunity to obtain financial assistance for setting up a centre such as this. The fact is that the Fund receives financial help from all member states of the U.N. It has received help from Tunisia, Pakistan, Iran, Egypt, Indonesia, the Philippines, Morocco and most other states. The Fund at present is sharing in the financing of government projects in Iran, Pakistan, Lebanon, Egypt, Jordan, Indonesia, the Philippines, Thailand and Morocco. Assistance is provided following a request from a government.

Wā'iḻ

So long as the subject has been raised of setting up the centre it is our duty to take an interest in it and debate it. For the project involves an extremely important change in relation to Al-Azhar. While we adhere to keeping Al-Azhar's position as it is in relation to Islamic studies, we wish it to be in touch with the present day life of Islamic communities, and play an active role in giving them direction.

Shafei

Population studies are very necessary. A state following a certain population policy must build its policy on scientific studies. I, for one, therefore, welcome the idea which Mr. Heneidi has put before us, which requires setting up a centre for population studies in the Muslim countries. I hope that the plan will soon be implemented.

I propose that the studies which the centre will supervise will include the study of religious texts connected with population, and the study of sciences and subjects related to population such as medicine, economics, statistics and sociology. Also family planning must be studied, as well as scientific study of the geographical distribution of population, emigration, and the future of populations, not simply in relation to numbers, but also in relation to economic resources.

Sharabassy

I have listened carefully to what Mr. Heneidi has said on the subject of the centre for population studies and on the agreement in principle between him and the Minister for Waqfs and Al-Azhar Affairs in Egypt on the subject of this centre. I believe that this centre dealing with population matters has a particular importance because we have talked at great length about the extent of the need for family planning and the extent of considerations of the common weal which must be required for us to adopt family planning. If we succeed in the studies relating to population and extend their scope along the lines proposed by Dr. Shafei we shall really be able to arrive at the true extent of considerations of the common good and of necessity which do or do not call the adoption of family planning. The presentation of such a proposal to the conference is an opportunity to lay down conditions, or to draw attention to the limitations which must be set round the centre for population studies. I mean that, so long as the proposal has marked a preliminary step forward in principle towards implementation or agreement to implement, we should say what characteristics the centre should have, with regard to its structure, its studies, its experts, its aims and its being remote from outside influences. We should lay down all the conditions and safeguards useful in our opinion for us to reap the fruits of it rather than to burn our fingers with it. I believe that its being set up at Al-Azhar, in agreement with the Minister for Al-Azhar Affairs in Egypt is something which should reassure us as to the soundness of the project. I think

that our discussion should be concentrated on the restrictions, conditions and directives by which we think that those in charge of it should be bound, in the service of Islam and the Muslims.

Dr. Shafei said that the best means of saving these backward countries was international co-operation. I would rather we moderated this phraseology a little to say there is nothing to stop us benefiting from opportunities for international co-operation in this sphere, which means that we should not make international co-operation as the starting point. We must have an independent personality and rely, after God, on ourselves, and not always be a charge on and dependent on others.

Hathout

We have learned that there is agreement already to establish this centre for population studies at Al-Azhar. Perhaps among the advantages of this will be that it will create a link between scientists and the canons of religion on the one hand, and between the jurists and secular studies on the other. We hope that the centre will be attached to the religious section of Al-Azhar, so that it will not be said that its researches will emerge far removed from religious supervision. It would be a good thing if studies at the centre were higher studies open not to graduates of the new Al-Azhar colleges of medicine, engineering and commerce but only to graduates in the Shari'a principles of religion and Arabic language. For it is in this way that no one undertaking population studies would fall into error in relation to religion and would build his studies only on a sound religious basis.

Beji

I understand from what Mr. Heneidi said that there is agreement in principle on the proposed centre for population studies under the supervision of Muslim organizers and experts. We have full confidence in Al-Azhar in its religious and scientific sections. I welcome what Mr. Hathout says, that religion is concurrent with science. The fact is that there is no difference between the religious Al-Azhar and the scientific Al-Azhar. In the scientific Al-Azhar there is religious immunity, enough to induce us to believe that the proposed centre will not only do no harm to the Muslim world, but in fact will be one of the basic elements of strength for the Muslim countries.

Najjār

I endorse the remarks of Dr. Hathout on the centre.

Balogun

The idea of setting up the centre is an extremely important one. It gives us a great opportunity which we must take advantage of. If we do not agree to its establishment, we shall deprive Islam and the Muslims of a great service. The centre will supply us with the basic information we are in such dire need of. We should endorse the project so as to guarantee that it will be set up. We propose that it should have branches in different parts of the Muslim world.

Shamsuddin

We were invited to this conference and with the invitation came an agenda covering the four main themes covered by the studies. It was to be expected that the conference would restrict its studies and discussions to the agenda. Mr. Heneidi then came forward and laid before us the project for the centre which the U.N. proposes to set up in agreement with Al-Azhar. As the scheme falls outside the scope of the agenda I am opposed to the conference taking any decision on it. I am of the opinion that Al-Azhar and those in charge of it should be left free to act as they think fit in the interests of Muslims. There is, therefore, no room for the reservations I put forward this morning about restriction to Muslim researchers and experts. I ask members to revise their attitude to the subject.

Huzayyin

In relation to the centre which it is proposed to set up at Al-Azhar it was my good fortune by the grace of God to be the first one to put his hand to the drawing up of its new constitution. I still have the drafts. In 1960 I was commissioned by the state to draw up a plan for the new organization of Al-Azhar — in co-operation with a colleague now deceased — to link up Al-Azhar in its old form with modern knowledge. I was extremely careful to make sure that the new plan should emerge as a comprehensive and integrated one in the sense that no college should remain in Al-Azhar concentrating on the old-style studies alone and there should be no college which concentrates only on modern studies. I was eager that the Al-Azhar

student should combine together the scientific and religious cultures.

The proposed centre will be set up with a modest start initially, as a unit which will develop into a centre later on, and the centre into an institute.

I agree with Mr. Shamsuddīn that it is not for this conference to counsel Al-Azhar to do anything, nor for it to indicate to Al-Azhar that this centre must retain its Islamic character. This would be an insinuation detracting from the ability of Al-Azhar to look after its own affairs or of the University of Al-Azhar to do so. I, therefore, see absolutely no need to refer to this, but it is my view that the whole matter should be left to Al-Azhar as it is quite capable of looking after its own affairs by itself. We should rest assured that Al-Azhar in its new form is a religious university which is striving to bring together the old and the new, and that it is most careful that any centre set up within its walls should be an Islamic centre which serves the whole Muslim world and not only Egypt. Al-Azhar is a university for Muslims, not for Egyptians. One of the clauses of its (the centre) constitution stipulates in the form we drew it up that pupils and teachers should be only Muslims.

DISCUSSIONS ABOUT FAMILY PLANNING AND INTERNATIONAL CO-OPERATION

Mahasin Saad

Dr. Sharabassy has touched upon the suspicions which have been aroused about family planning, such as describing it as imperialist propaganda and such like. I should like to state that the peoples of the imperialist countries preceded other countries in their conviction of the importance of family planning, and went a long way towards practising it before other countries became aware of it. Moreover, Shaikh Mubārak has explained to us how the Muslims knew of family planning from the earliest days of Islam, and used certain means of family planning. There are, moreover, some Muslim countries, among them backward ones, which use home-made folk medicines and drugs and so on for contraception. The problem, therefore, is not one of an attempt by western countries to impose something on us. In my opinion, our rejection of these countries on the grounds that they are imperialist has given us a dangerous complex from which we are still suffering. We always ascribe our mistakes to imperialism, and justify our rejection of something by saying that it stems from imperialism. We also, if we want to describe something as ugly, say the same thing. But the masses no longer accept this from us.

Sharabassy

With regard to the suspicions referred to by Mrs. Mahasin Saad, she has herself replied to the first of them, by saying that it is the peoples of the imperialist countries who plan their families. I wish we had been occupied with these suspicions by discussing them, scrutinizing them and arriving at a credible opinion regarding them. This would be worthwhile. Here we can decide what we want, recommend or discuss what we please, but convincing the many millions of Muslims outside of this auditorium requires a great deal of effort. The suspicions which she dealt with, I would not say that I hold them, nor do I mention them as actual facts, but I simply described them as suspicions, which may or may not have a foundation. I left it to the

assembly to examine them and arrive at an opinion on their truth. If the suspicion is a fact we have to combat it; otherwise we have to ignore it. So there is no room for objecting that it is the peoples themselves who plan their families in imperialist countries, for the conditions of those people may differ from those of our people.

Haqqi

We all know that there are international organizations concerned with many general matters related to raising the living standards of backward countries, and assisting them in raising their standards in agriculture, economics, social life and the like. It is for every country to ask for help from these organizations, according to its needs and priorities. I hope that we will give due weight to what is more important for us as Muslims, and begin by asking for real help. I hope it will not be understood from what I am saying that I oppose planned parenthood, it is only that I believe we should discuss it along with other subjects which I have mentioned.

Huzayyin

The question has been raised of our receiving aid from international organizations and of the contemplated centre which it is proposed to establish. I am here on behalf of the United Nations and when the United Nations Organization sets up a centre in any region it takes care in choosing its head that he should be someone who has grown up there, imbibed its culture, and who is a follower of its religion. It also takes into account his comprehension of the circumstances and conditions of the region. The U.N. and other organizations, such as I.P.P.F. do not impose any person, nor do they lay down a policy or direct things towards one goal rather than another. They confine themselves to providing services, if and when requested.

The basic principle is that a country should seek assistance for a service to be organized by that country, and if the U.N. should take part in the implementation of the policy towards that service, this should be on the basis of complete agreement with the country concerned. So we should put out of our minds any doubts as to the aims of the international organizations. As members of the developing world we should take advantage of these organizations, and it is our right to do so. There is no justification for an inferiority complex or a phobia, as these organizations perform international tasks, and we have the right to benefit from their resources and potential.

Nazer

As a follow-up to the contribution of my mentor Dr. Huzayyin who is here representing the U.N., I deem it my duty to say a word or two on the International Planned Parenthood Federation (IPPF) which I have the honour to represent and which is honoured by having brought together this distinguished gathering.

The Federation is an organization, not belonging to any government; and has a consultative function for almost all of the U.N.'s specialized agencies. It operates through national associations which are for the most part voluntary associations. At present the Federation includes some 80 associations in all parts of the world. Its activities may be summarized as follows:

1. Providing information to member associations and public opinion on all aspects of population questions and development in the whole world.

2. Assistance in forming national family planning associations in non-member states.

3. Providing technical training for doctors, nurses and social workers in the practical field of family planning.

4. Encouraging and convening world and regional conferences on family planning problems. This conference is an example of this form of activity.

5. Encouraging scientific research in the field of human reproduction, demographic and sociological studies, contraceptive methods, fertility, reduced fertility or infertility, and then the meaning of planned parenthood, or responsible parenthood. The federation activities rest on our faith in the following:

- i. The knowledge of planning of parenthood is a fundamental human right.

- ii. Balance between world population and the sources of national resources is a basic condition for economic development and human happiness.

- iii. Family planning is a sort of preventive medicine for the sake of the mother's health and the children's. In consequence the Federation aims to develop and promote knowledge and practice of contraceptive methods for the whole world, and is especially anxious to encourage the incorporation of family planning into basic services of public health and social reconstruction.

PART FOUR

MUSLIM OUTLOOK ON ABORTION
AND STERILIZATION

BIRTH CONTROL — ITS LAWFULNESS AND METHODS

BY

SHAIKH MUHAMMAD MAHDĪ SHAMSUDDĪN

Before entering upon the subject, attention must first be called to the fact that the discussion deals only with husband and wife, and does not extend to any regime whatever it may be.

LAWFULNESS

Is it allowed by the Sharī'a (Muslim Law) for the couple to restrict their offspring by contraception or not? There is no doubt that according to the Law, it is legal for the couple to restrict their offspring by contraception. The evidence in proof of that is:

- 1) There is no evidence that it is prohibited.
- 2) There are legal traditions and texts which explicitly regard 'azl or coitus interruptus as permissible. Clearly this method of coitus interruptus at the time referred to, in the legal texts, was the only one available for birth control.

In principle, therefore, lawfulness is established. However, it remains for us to find out if lawful birth control is a right vested in the husband alone and he can exercise it even without the wife's consent, or his lawful exercise of it is conditional upon the wife's consent.

It appears from legal evidence that it is the right of the husband. A tradition, reliably reported, says: "It is up to him (the husband); if he wishes he may practise 'azl or if he wishes he may not practise 'azl." It is, however, disfavourable if the husband practises it without his wife's consent, because another tradition reliably reported, says: "I dislike to see this (coitus interruptus) done to a free woman without her consent unless this was one of the conditions of marriage." In brief, birth control through coitus interruptus is legally

permissible. It is the husband's right to practise it though it is dis-favourable when done without the wife's approval.

METHODS

If it is legally permissible to practise birth control by preventing pregnancy then it is also legally permissible to use the methods ministering to it.)

Those methods are of two kinds: the first is related to the husband's practice of birth control, and the second is related to the practice of the wife or to her choice to undergo a surgical operation.

The methods practised by the husband (including coitus interruptus) in the primitive way, or the use of the condom or the barrier to prevent the semen from reaching the uterus, or by taking a drug or a medicine which deprives the semen of its fertility power. These are legally permissible, and there is nothing against them.

In order to be legally permissible, methods related to the wife's practice must be used with her approval. The husband has no right to compel her to take a medicine or use a barrier. Only if the wife approves, a method may be used by her.

We say that those methods are lawful, because there is no evidence to the contrary, and because of the fact, as has just been proved, that coitus interruptus is permissible. Also, there is nothing in the legal evidence to tell us that coitus interruptus is something distinct from other methods.

STERILIZATION BY SURGERY

It remains for us to deal with sterilization by surgery. Is it permissible for the man or for the woman (with her husband's approval) to undergo a surgical operation for the purpose of preventing the wife from getting pregnant, or for sterilizing the husband while preserving unimpaired sexual virility for the man and sexual desire for the woman? Or is it prohibited by the Law? On examining our legal sources on the subject, we have found that there is nothing preventing the husband and the wife from undergoing such operations, because the preservation of the power to procreate is not a duty prescribed by Muslim Law, and is not a marital right. Hence, it is legally permissible to undergo a surgical operation to sterilize both man and woman whether or not it will be possible in the future for both of them to regain their normal state.

This is only my own personal finding, and not a rule in the Imāmī Shī'ite School of Legal Thought. It is so because the question of sterilization has only recently been posed and the exercise of discretion in such legal matters was allowed later in the day, and consequently a definite attitude in this school of thought has not yet developed, and there will not possibly be one until a number of outstanding exponents in matters of Law have had the chance to investigate the question and propound their various individual views thereon, which so far has not been the case, particularly in relation to the question of sterilization because of its recent origin. Therefore, this personal finding of mine should not be ascribed to the Imāmī Shī'ite School of Legal Thought.

ABORTION

It is not permissible for a woman to abort herself whether before or after the embryo receives the spirit (*rūh*) and irrespective of whether both agree or disagree to have the abortion. In all such cases abortion is legally prohibited. It is also illegal for the doctor — or any other person — to administer a medication or to operate for the purpose of abortion.

To be sure, abortion is legal in one case only, and that is when the retention of the foetus or embryo in the uterus threatens the mother's life. In this case, abortion can be undertaken by the wife, and the doctor may cause her abortion either by the use of a medicine or through a surgical operation because legally there is no evidence that a soul should be sacrificed to save another.

LEGAL EVIDENCE FOR THE DESIRABILITY OF MULTIPLE OFFSPRING

Sound and reliable legal texts and traditions indicate that the multiplication of offspring is urged as something desirable. Among such traditions is the Prophet's saying: "Marry, for I shall make a display of you before other nations on the Day of Judgement." Apparently such texts and traditions are meant to apply for all time and for all places. On careful examination, however, we find that they should be subject to two restrictive conditions:

First: The legal recommendation to multiply the offspring must be conditional on the couple being able to provide well for the offspring and for their righteous upbringing in accordance with Muslim

standards. Otherwise multiplicity is not desirable. The authority for this restriction is the same as the authority for recommending multiplicity. The textual evidence just cited, and such like ones, speaks of boasting of multiplicity on the Day of Judgement, but it does not follow that the Prophet only boasts of mere multiplicity; he boasts of its quality.

Therefore, if it becomes almost certain that the parents will be unable to provide for, and bring up in the proper religious way, more than a certain number of children, then multiplicity in this case ceases to be desirable, because here the rule of desirability is transgressed.

Second: The recommended multiplicity of offspring must also be conditional on averting harm to the mother. Even if procreation itself involves harm, desirability is inapplicable.

The proof of the legitimacy of this restrictive condition is that this case may be taken as evidence for the forbiddance of self-inflicted harm, and as evidence that the forbiddance of self-inflicted harm is of greater weight than desirability because the former implies a binding ruling; and, as is the standard legal rule, if two pieces of evidence are in conflict, one implying a binding ruling and the other implying a non-binding ruling, the one implying the binding ruling should be operational and given precedence over the other. Hence the evidence for the forbiddance of self-inflicted harm is made conditional as against the non-conditional evidence³ for the desirability of multiplicity.

STERILIZATION AND ABORTION FROM THE POINT OF VIEW OF ISLAM

BY

DR. MUHAMMAD SALĀM MAKDŪR

'STERILITY' AS DEFINED IN DICTIONARIES

'*Uqm* (sterility or barrenness), as defined in the *Qāmūs* Dictionary, is a defect in the uterus which makes it incapable of conception. The epithet '*aqīm* (sterile or barren) is attached to different nouns; one can thus speak of 'a sterile womb', a 'sterile woman' and a 'sterile man'. One can also describe 'wind' as being sterile, meaning 'non-pollinating'. In the *Miṣbāḥ* Dictionary, '*aqīm* (the sterile one) is the one who does not produce offspring, and the term is applied to both male and female. In the *Munjid* Dictionary the verb forms '*aqama* and '*aqqamma* mean 'to make sterile' or 'sterilize'.

God described one kind of wind as being '*aqīm* (sterile or barren) in the Qur'anic verse: "And in 'Ād: when we sent against them the desolating blast" (Sura 61/41). The "desolate ('*aqīm*) wind" in this verse means the useless wind in the sense that it causes neither rainfall nor pollination.¹ God also spoke of a sterile or barren day in the Qur'anic verse: "But the infidels will not cease to doubt concerning it until 'the Hour' comes suddenly upon them or until the chastisement of the day of desolation come upon them" (Surah 22/55). The 'day of desolation' in this verse means Doomsday or the end of the world.² God also spoke of a sterile woman in His account of the story of Abraham's quest. When the good news was announced to Abraham that a child would be born unto him, his wife Sarah, who had long passed her menopause, was astonished, as is stated in the following

¹ *Tafsīr al-Qurṭubī*, vol. 17, p. 50; *al-Fakhr al-Rāzī*, vol. 28, p. 222; Hasanain Makhlūf, *Ṣafwat al-Bayān*, vol. 2, p. 57.

² *Ṣafwat al-Bayān*, vol. 2, p. 57; *Fī Zilāl al-Qur'ān*, vol. 17, p. 112.

Qur'anic verse: "His wife came up with outcry: she smote her face and said, 'What I, old and barren!' They said, 'Thus saith thy Lord. He truly is the Wise, the Knowing'" (Sura 51/29-30). This means that she came outcrying because she was astonished at the strange news, and smote her face with her hands as is customary in the case of some women.¹

In another place in the Qur'ān, God states that He is the owner of sovereignty Who manages all that He creates according to His will, and grants offspring to whomever He chooses, and denies it to whomever He chooses, thus making him sterile or barren. "God's, the Kingdom of the Heavens and of the Earth! He createth what He will! and He giveth daughters to whom He will, and sons to whom He will. Or He giveth them children of both sexes, and He maketh whom He will to be childless (*'aqīm*); for He is Wise, Powerful" (Sura 42/50-51).

In addition to the three possibilities relating to human offspring, God may also choose that some individuals should remain sterile but He may change His will in respect of certain individuals suffering from sterility, as was the case with Prophet Abraham who was an old man and whose wife, Sarah, was a sterile old woman and had never given birth to a child in youth. In one of the Qur'anic accounts she is reported to have said: "Ah, woe is me? Shall I bear a son when I am old, and when this my husband is an old man? This truly would be a marvellous thing" (Sura 11/72). In one of the Qur'anic narratives he is reported to have exclaimed: "O my Lord! how shall I have a son, now that old age hath come upon me, and my wife is barren?" (Sura 3/40). This divine act of changing a state of sterility into that of fertility is one of the miracles of God, and transcends wordly practices and laws.

Although the Prophet is quoted to have said "Marry the affectionate and prolific woman", yet this is intended merely to guide and counsel, but not to discourage association with sterile women or ban marrying them. There is no instance in the history of Islam whereby marriage to sterile women has been banned, because this would involve embarrassment and hardship to these women. God says in one of the Qur'anic verses: "And hath not laid on you any hardship in religion" (Sura 22/78). Furthermore, sterility is normally not discovered except after marriage and intercourse. In this connection it should be noted that the purpose of marriage is chastity as well as procreation.

¹ *Tafsīr al-Rāzī*, vol. 28, p. 28; *al-Qurṭubī*, vol. 17, p. 47; *al-Alūsī*, vol. 27, p. 13.

Sterility is inability to fertilize or be fertilized. Fertilization depends on the ability of each of the male and the female to produce procreative cells, and the ability of these cells to combine so as to cause conception. Sterility may be due to inability to effect a union between the sperm and the ovum, which is caused by more than one reason, such as weakness in the Fallopian tube, or accumulation of acid secretions in the cervix, thus killing or destroying the sperms, or a certain weakness in the sperms themselves. Sterility may be also due to certain defects caused by hereditary factors like having a parent who has suffered from syphilis or it may be caused by defect in the testicle or ovary resulting from an illness which causes sterility. In addition to these causes, old age and deficient nutrition may also cause sterility. Recent researches have revealed that vitamin E has a direct bearing on such cases, since deficiency in this vitamin is usually followed by sterility in both man and woman. Again sterility may occur after the first confinement following untended miscarriage.¹

With God's power and will, medicine has succeeded in treating certain cases of sterility in different ways, even to the extent of extracting a ripe ovum from the wife and inserting it in a test tube where it is fertilized by a sperm obtained from the husband. Then the fertilized egg is implanted in the endometrial layer of the uterus. Such an operation is not banned by the Islamic Law provided that the sperm used to fertilize the ovum is obtained from the woman's husband.

If medicine has achieved this, it has also succeeded in effecting artificial sterilization for preventing reproduction either temporarily or permanently, by knotting or cutting off the sperm duct (vas deferens) in man, or the uterine tube (Fallopian tube) in woman. Other scientific methods have also been applied to cause artificial sterilization. I will deal with both kinds of sterility, the temporary and the permanent, with a view to explaining the provisions of the Islamic Sharī'a (law) concerning this subject.

Temporary Sterilization

The rules of Islam do not prohibit temporary sterilization provided it does not cause the elimination of the original capacity for procreation, but suspends it temporarily only as long as the person concerned does not want to reproduce. In this case temporary sterilization is only a means of regulating reproduction, and as such is

¹ Ahmad 'Atiyya, 'Uqm, in *Dā'irat al-Ma'ārif al-Hadītha* (Modern Encyclopedia).

legitimate and permissible, as is confirmed by many of the Prophet's sayings and the accounts of the Companions of the Prophet with which I dealt at length in my book, *Islam's Outlook on the Regulation of Reproduction*.

In his account of the Prophet's sayings, Muslim said: "We used to practise coitus interruptus during the time of the Prophet and while the Qur'ān was being revealed. The Prophet came to know about it, but did not forbid us. If this practice had been subject to prohibition, the Qur'ān would have forbidden it." Jābir was reported to have said to the Prophet: "I have a maid with whom I consort and do not like to have her conceive, because I need her to serve me." The Prophet said: "Practise coitus interruptus with her if you wish; what is preordained for her will certainly befall her." The imperative form in the saying does not imply command or obligation because it is followed by the clause 'if you so wish'. The remaining part of the saying indicates that the Prophet, with his intelligence and profound insight, realized what was going on in the people's minds at the time and their fear that this practice might conflict with the requirements of their faith and their reliance on God and that the will of God shall be done. He, therefore, wanted to relieve them of this embarrassment by explaining to them that the adoption of a contraceptive measure such as the practice of external ejaculation (coitus interruptus) would never change the will of God. If God's will decreed the prevention of conception, then their will would meet with His will. Otherwise the woman concerned would conceive, as preordained by God, irrespective of the measures which they might have taken.

It is also reported that a group of the companions of the Prophet discussed the practice of external ejaculation (coitus interruptus) in the presence of Caliph 'Umar. The group included 'Alī, Zubair, and Sa'd b. Abī Waqqāṣ. 'Umar said that there was nothing wrong in this practice, and all those present agreed with him. It is further reported that Abū Sa'īd al-Khudrī said to the Prophet: "O Prophet of God, the Jews say that coitus interruptus ('azl) is infanticide (burial of a child alive) in disguise." The Prophet said: "The Jews lie. Verily, if God wished to create him (a human being) nothing would stop Him from that." It is further related that Ibn 'Abbās, Sa'd b. Abī Waqqāṣ, and Abū Ayyūb used to practise 'azl (coitus interruptus). This practice is only a means of preventing the sperm from combining with the ovum and thus forestall fertilization.

The various schools of jurisprudence dealt with temporary contraception, and most of them were inclined to allow it. For example Imām al-Ghazzālī,¹ a legist of the Shāfi‘ī school of jurisprudence, said: “‘*Azl* (coitus interruptus) is not like abortion or infanticide, because the latter case involves a crime against an existing creature. One of the motives behind this practice is to preserve the woman’s beauty and shape, so that she will continue to be a source of pleasure and enjoyment, and that her life will continue to be safeguarded against the ravages of labour and the hardship resulting from giving birth to too many children.” He further said: “None of these is forbidden; but what is forbidden is the prevention of conception for fear of giving birth to a girl, an unwelcome newcomer in the view of people of perverted natures.” Bījarmī,² another legist of the Shāfi‘ī school of jurisprudence, also said in this connection: “Anything that ruins the original capacity to conceive is prohibited, but prohibition does not apply to that which delays conception without eliminating it entirely. Delayed conception is also not condemned if it is due to an acceptable excuse such as the nursing of a child.” Statements similar or near to the above mentioned sayings can also be found in the books of the following schools of jurisprudence: al-Ḥanafīyya,³ al-Mālikīyya,⁴ al-Ḥanbaliyya,⁵ al-Zaidīyya,⁶ al-Shī‘a al-Ja‘fariyya⁷ and al-Ibāḍīyya.⁸ The schools vary in details on this point but they seem to postulate the need for the wife’s prior consent. Some scholars are reported by Ibn Qudāma to have said that ‘*azl* (coitus interruptus) is not prohibited but is held in disfavour if there is no need for it.

Other contraceptive devices have been invented, through experimentation, for preventing the sperm from reaching the ovum, such as the use of a barrier to block the cervix and thus prevent the semen from being injected into the womb, or through the use of some contraceptive drugs. The books dealing with jurisprudence include provisions which allow the use of these and other similar new devices as long as they

¹ *Ihyā’ ‘Ulūm al-Dīn*, vol. 2, pp. 51-53.

² *Ḥāshiyat al-Bījarmī ‘alā al-Iqnā’*.

³ *Ḥāshiyat Ibn ‘Ābidīn*, vol. 2, p. 411; *Al-Hidāya wa al-Fath*, vol. 2, p. 494; *al-Badā’i’*, vol. 2, p. 433.

⁴ *Ḥāshiyat al-Dasūqī ‘alā al-Sharḥ al-Kabīr*, vol. 2, p. 266.

⁵ *Muntahā al-Irādāt*, vol. 2, p. 227.

⁶ *Al-Baḥr al-Zakḥkhār*, vol. 2, p. 80.

⁷ *Al-Rawḍa*, vol. 2, p. 68.

⁸ *Al-Nail wa Sharḥuhu*, vol. 3, p. 126.

do not harm or injure the body or ruin the native capacity for conception. According to *Hāshiyat Ibn 'Abidīn 'alā Sharḥ al-Durr*¹ in the Ḥanafī school of jurisprudence, which is based on *Ṣāhib al-Baḥr*, a woman may block the cervix in order to prevent the semen from reaching the uterus and thus prevent conception. *Ṣāhib al-Baḥr*, however, said that this should be subject to the husband's permission. Shabrāmālassī, of the Shāfi'ī school², distinguished between permanent and temporary contraceptive devices. The former, he said, have been banned, whereas the latter are allowed, like 'azl. Ramlī of the Shāfi'ī school, quoting Zarkashī, said in this connection: "There is no objection against the use of contraceptive measures, such as the devices used beforehand for preventing the union of the sperm and the ovum."

The above-mentioned contraceptive devices are simply of the nature of temporary sterilization. The provisions applying to them would equally apply to such medical operations as would cause temporary prevention of conception in such a manner as would make it possible to restore the ability to conceive when desired, such as the knotting of the vas deferens or the Fallopian tube.

Permanent Sterilization

Permanent sterilization is to treat husband and wife, or one of them, in such a way as to prevent procreation or the prospect of procreation finally. If there is a pressing need for this, such as a mental or sexual disease, medically confirmed to be irresponsive to treatment or transferable through remote or direct hereditary factors, then permanent sterilization is permissible. One can even say that the rules of the Islamic Sharī'a (law) does not ban such a measure but actually requires it, as a preventive measure against the birth of deformed and puny offspring which would lead a life full of psychological complexes, disorders and agonies. The late Shaikh Maḥmūd Shaltūt, a former rector of Al-Azhar University, gave the following formal legal opinion: "Permanent prevention of conception is permissible only if the married couple, or one of them, suffers from a hereditary disease... if this results in limiting offspring or depriving some individuals thereof, it nevertheless averts a greater evil, which is the production of offspring afflicted with malicious and incurable diseases. To avert evils has priority over acquisition of benefits."

¹ Vol. 2, p. 412.

² *Nihāyat al-Muḥtāj* and annotations, vol. 8, p. 416.

As regards permanent sterilization which ruins the original capacity for conception without the need to do so, there is, to our knowledge, no provision allowing it either in the Qur'ān or the Sunna. On the contrary, there are certain provisions which imply that this measure is opposed to the aims of the Islamic Sharī'a regarding marriage, and is incompatible with human nature which God has created in both males and females and decreed that it should be based on the parents' feelings of paternal and maternal love.

Furthermore, the former scholars of jurisprudence advocated that permanent sterilization should be forbidden and interdicted. Bijarmī, for example, said: "It is forbidden to use a device which would cause the elimination of the natural capacity to conceive." The rules of Muslim Law, however, indicate that permanent sterilization should be prohibited when there is no real need for it, because to be deprived completely of the ability to reproduce, involves a positive harm, condemned by the Lawgiver and is forbidden by the Prophet who said: "No harm and no harassment."

It is obvious that reproduction can be achieved in large or small numbers of offspring. Islam seeks to have fit and useful generations which both parents and the state can provide with such good upbringing and education as would make the nation come up to the expectations of the Prophet.

It may be argued that the interest of the parents may require sterilization after having been satisfied with a number of children born to them. To this we reply that the prohibition of sterilization when there is no need for it, whether before any childbirth at all or after the birth of the required number of children applies. In both cases sterilization involves disadvantages, antithetical both to the purpose of legislation and to the real interest of the parents, who may possibly lose their children, either all at once or severally. How would they feel, having experienced the blessing of parenthood, if both or one of them were to lose the reproductive capacity? Will they not suffer great anguish and psychological torment when they realize that they cannot recover their loss? The sentiment of motherhood or fatherhood may arise in them or in the one who has lost the reproductive capacity — but they will have no possibility for achieving this, and they will rue the irreparable loss they have brought upon themselves, but only too late.

Suppose that a woman, in spite of her perfect condition of health seeks sterilization either voluntarily or at her husband's request. What

would she do if her husband died or divorced her? Would not this be injurious to her interests? Men may refrain from marrying her with her sterility, which is a veritable defect and drawback.

Some scholars of jurisprudence have stated that sterility in a man is a defect which entitles the wife to seek divorce on its basis. Other scholars have expatiated on the natures of the defects which in their opinion justify separation between husband and wife. They are of the opinion that every defect in either husband or wife which results in sterility or which is repulsive to the other partner justifies separation. These scholars include Shuraiḥ, al-Zuhri, Abū Thawr, and Ibn Taimiyya. Ibn al-Qayyim said that he who perceives the purpose of legislation will not lose sight of the wisdom behind this statement.

Sterility is thus one of the defects which justify separation. Ibn al-Qayyim even stated this explicitly and substantiated his statement by a quotation attributed to Caliph 'Umar who is reported to have said to a sterile man who married a woman: "Tell her that you are sterile, and give her the choice (either to remain married to you or to be separated)."

In point of fact, the justification for separation on grounds of sterility should be the view of all the schools of jurisprudence which maintain that separation is justified whenever it is confirmed that the continued association of marriage is disadvantageous to the wife alone, as is held by Muḥammad b. al-Ḥasan, or to either of the married couple, as is held by the majority of scholars. Sterility is one of the defects which normally make it impossible for the wife or the husband to continue their married life without causing harm to her or to him. This is confirmed by the scholars' statement that the defects are those which defeat the purposes of marriage, and that the ability to reproduce is one of the important purposes of marriage.

These are the provisions governing temporary or permanent sterilization, necessarily or unnecessarily. In our foregoing discussion, we have come to the conclusion that temporary sterilization is permissible, because it is merely one of the methods used for regulating reproduction. We have also concluded that permanent sterilization is permissible only in cases of urgent need when sterilization achieves a benefit and wards off an evil.

Concerning permanent sterilization in cases where there is no special need for it, we maintain that it is forbidden and that it is inconsistent with the aims and rules of Muslim Law, and is contrary

to the interests of the individuals themselves, although they may not be aware of this fact.

We have shown that precautionary measures in the way of contraceptive devices to regulate birth rate, including temporary sterilization, are legitimate. Since these measures are legitimate and achieve the desired purpose, why should we need resort to the illegitimate method which causes its practiser definite loss and repentance later.

ABORTION

According to the *Miṣbāḥ*, a she-camel or a woman is said to "abort" (*ajhaḍat*), when she suffers a miscarriage. *Al-ijhād*, according to *al-Qāmūs*, is a miscarried foetus, or premature expulsion of a foetus fully developed but without life. This has been the common usage of the term adopted by the scholars in their books on jurisprudence; but on the whole they tend to use the term 'miscarriage' instead of 'abortion' although the Shāfi'ī scholars tend to use the term abortion more frequently.

Legal experts define abortion as the deliberate expulsion of the foetus from the womb prematurely and artificially without the presence of any need for such an action. Experts in legal medicine define 'abortion' as the premature coming out of the foetus at any time during the months of pregnancy.

When dealing with abortion, scholars refer to religious and secular verdicts. Concerning religious verdicts relating to what is allowed or disallowed by religion, the various books on jurisprudence are unanimous in forbidding abortion after animation, i.e. after the completion of the fourth month of pregnancy, unless abortion is badly needed on the grounds that necessity knows no law. Before animation, however, the scholars' views differ and vary in the details concerning 'allowance'¹, 'disfavour'² and 'prohibition'³. Ḥaṣkafī,

¹ According to legists, "allowance" means granting freedom of choice between doing a thing or not doing it. An allowable action may be defined as that which is not entitled to reward whether done or not done.

² According to legists, "disfavour" has several meanings. It may mean "to forbid" but without absolute certainty. It may also mean the consequence of a disliked action. A disfavoured action is none which legists advise that it should be avoided, but no absolute certainty or obligation is involved.

³ "Prohibition" is a definite legal order to refrain from doing something. A prohibited act is one which we are legally ordered to avoid, and the order implies certainty and obligation.

of the Ḥanafī school of jurisprudence¹ states that a woman is allowed to abort before the completion of four months of pregnancy even without her husband's consent. Commenting on this statement, Ibn 'Ābidīn, the Ḥanafī scholar, basing himself on Ṭaḥṭāwī and *Kitāb al-Nahr*, said: "Is abortion allowed after conception? Yes it is, unless an embryo is already formed and this does not happen except after one hundred and twenty days."

By embryo formation they must have meant animation, otherwise they are wrong, because embryo formation takes place before the end of this period.² This is stated in *Fath*.³ The statement, as it stands, implies that abortion before the elapse of the specified period is permitted without being subject to the husband's permission.

Ibn 'Ābidīn, quoting the author of *Khāniyyah* who is a Ḥanafī elaborated on the prohibition of abortion during the specified period, by adducing in the way of analogy, the case of a man who, while observing the rites of pilgrimage breaks the eggs of the birds of game, and who thus destroys the source of game. If a man who commits this offence is held accountable and subject to secular penalty, the least that could be said about a woman who practises abortion without excuse, is that she has committed a sin. The lightest kind of sin is that which is the object of disfavour. Accordingly abortion in this period is held in disfavour. The prohibition of abortion, however, should not apply to cases where there is a valid excuse such as the interruption of lactation after conception, or feeling of debility or inability to endure pregnancy, or inability to deliver naturally and the need to undergo a Ceasarean Section operation particularly if this recurs.

¹ *Kitāb al-Durr* on the margin of *Hāshiyat Ibn 'Ābidīn* (Cairo: al-Maymaniyya Press), vol. 2, p. 411.

² It may be said that the formation of an embryo does not mean animation. It does not take place after 120 days but within 40 days as from the beginning of conception. It takes place when the fertilized ovum reaches the stage referred to in the Qur'ān as the embryo stage: "O men! if ye doubt as to the resurrection, yet, of a truth, have We created you of dust, then of the moist germs of life, then of clots of blood, then of pieces of flesh shapen and unshapen, that We might give you proofs (of Our power!). And We cause (one sex or the other) at Our pleasure, to abide in the womb until the appointed time" (Sura 22/6). The embryo stage is the stage when formation takes place. This develops further until it reaches another stage, as is explained in my book, *The Embryo and the Relevant Provisions in Islamic Jurisprudence*. Hence according to this view, abortion is permitted before the elapse of 40 days as from the start of conception.

³ Al-Kamāl b. al-Hammān, *Fath al-Qadīr* (Muṣṭafā Muḥammad Press), vol. 2, p. 495.

Ibn Wahbān, the Ḥanafī scholar, is reported by Ibn ‘Ābidīn to have said: “The presence of a valid excuse permits abortion before the expiry of the first four months, such as the interruption of lactation after conception and the inability of the father to hire a wet nurse, which inability may lead to the death of a child.” Basing himself on *Dhakhira* he is also reported to have stated that if a woman wished to resort to abortion before animation, then this action would be an object of disfavour, because the semen after being ejected into the uterus would develop into a living organism, and would thus acquire the status of a living creature. Referring to permission, he said: “Allowance of abortion is perhaps dependent on the presence of a valid reason.”

It can be said that the question of reason or excuse ought not to be a point of controversy and dispute except in the evaluation of the kind of occasion which necessitates abortion. If this represents a necessity, then one can have recourse to the *rule that necessity knows no law*, as well as to the *rule that the greater evil should be warded off by the lesser evil*. The provisions of Islamic Law require that the lesser evil should be chosen. For example, if one of the inevitable consequences of continued conception is to endanger the mother’s life, Islamic Law in this case permits abortion and even requires it as an obligation in order to save the mother’s life, because her life is certain while that of the embryo is still contingent. Furthermore, the mother is the origin or root, whereas the embryo is the branch, and the root is given priority over the branch. Hence Ibn Wahbān’s statement that allowance of abortion is perhaps dependent on the presence of an excuse ought to be a subject of consideration and discussion.

The statements quoted from the scholars of the Ḥanafī school of jurisprudence indicate that there is a view that abortion before the expiry of the fourth month is permissible in all cases, with or without a valid excuse. Some of these scholars maintain that abortion is an inexcusable object of disfavour. Disfavour, as is known, is only one degree removed from prohibition. These scholars restrict allowance of abortion to cases where there is an excuse. Mere feeling of weakness or inability to endure the hardships of pregnancy is considered in their view to be an acceptable excuse.

The scholars of the Mālikiyya school of jurisprudence are on the whole more strict than their Ḥanafī compeers. According to them, as is reliably approved, abortion should be prohibited even during the first forty days. According to another view however, abortion, if carried out during the first forty days, is considered to be an object

of disfavour, but they are all unanimous in prohibiting abortion after animation where there is no valid excuse. Dardīr and Dasūqī,¹ of the Mālikiyya school of jurisprudence, said in this connection: "It is not allowed to expel the zygote formed in the womb, even before the expiry of the first forty days. After animation takes place, abortion is prohibited in all cases." Commenting on Dardīr's phrase "even before the expiry of the first forty days" Dasūqī said: "This is the generally accepted view, but it is also said that abortion before the expiry of the first forty days is an object of disfavour". The indication here is that Dardīr inclines towards prohibition. All accounts of the Mālikiyya school of jurisprudence indicate that there is no provision which permits abortion before animation. Hence, a fortiori abortion after animation is certainly not permissible.

It should be noted that the expression "formed in the womb" indicates that it is permissible to take out the sperm before it is formed into a clot. In other words, it is permissible to dispose of the fertilized ovum while it is still in the uterine tube and before it definitely assumes the form of a sucking clot or gastrula cleaving to the wall of the womb. This is evidence and confirmed by Qurṭubī, of the Mālikiyya school of jurisprudence, who said²: "The sperm is not subject to any legal provision if it is discarded by the woman before it settles inside the womb. At this stage it is as though it were still part of the man in his loins." It is, therefore, explicit that the wife can get rid of the sperm by any means as long as it has not yet settled in the womb, with impunity.

Ibn Rushd, a Mālikī scholar, reports that Imām Mālik recommended atonement or expiation in case the embryo is expelled. However, he does not prescribe atonement as an obligatory measure because of his hesitation concerning what is done intentionally or inadvertently, whereas the recommendation of an atonement should be consequent upon whether a sin has actually been committed or not. It is very likely that the hesitation concerning what is done deliberately or by mistake implies that atonement is recommended in cases of abortion after animation. Ibn Rushd's statement, however, is general and deals with the period before and after the expiry of the first forty days.

¹ *Hāshiyat al-Dasūqī 'alā al-Sharḥ al-Kabīr*, vol. 2, p. 266.

² *Al-Jāmi' li aḥkām al-Qur'ān*, vol. 12, p. 8.

The definition of the term 'embryo', together with that of the stage of conception to which this term can be applied, supports the view that, the term 'embryo' can be rightly applied to the stage after the expiry of the first forty days. Nuwairī says that some scholars applied the term 'embryo' to the stage after animation.¹

Qurṭubī confirms this in his explanation of the Qur'anic verse: "And when you were embryos in your mother's womb" (Sura 53/32). He explained 'embryo' as the infant as long as it is in the womb (belly).² In his encyclopaedia, Bustānī³ defines 'embryo' as 'the infant as long as it is in the womb (belly): It is first a zygote; then it develops into a clot, a lump of flesh (gastrula) and later into an embryo. According to Dr. Najīb Maḥfūz,⁴ the clot is called 'embryo' at the end of the fourth month. In his book, *Human Body*, Dr. Edith Seroll says that the developing organism in the womb is called a small lump of flesh (gastrula) between the third and the eighth week of its life, but is called 'embryo' from the eighth week till the conclusion of the period of gestation.⁵

Some books on jurisprudence, however, assign the term 'embryo' to the organism in the womb as from the stage of impregnation. But Imām al-Muznī quotes Imām al-Shāfi'ī as having said that the term 'embryo', strictly speaking, should be assigned to the stage after that of the small lump of flesh, and its use to denote the prior stage should be understood only figuratively in the sense that the lump of flesh (gastrula) is a prelude to the real embryo. Here is the text of the quotation accredited to Imām al-Shāfi'ī:⁶ "As for the embryo, the least that can determine the embryonic stage is the point where the organism departs from being a clot and a lump of flesh until it manifests an indication or a semblance of being a human creature." We ought to appreciate this quotation because Imām al-Shāfi'ī apart from being a renowned scholar in jurisprudence, is also a language expert and an authority on linguistic expressions and their uses.

Hence we are inclined to support the view that Ibn Rushd's citation of Imām Mālik does not apply to the initial and final stages

¹ *Nihāyat al-Arab*, vol. 2, p. 11.

² *Al-Jāmi' li Ahkām al-Qur'ān*, vol. 17, p. 110.

³ Vol. 6, p. 569.

⁴ *Fann al-Wilāda*, 4th Ed., p. 88.

⁵ Translated by Dr. 'Abd al-Hāfiẓ Hilmī, p. 157.

⁶ *Kitāb al-Umm*, vol. 5, p. 143.

of pregnancy, but to the stage after the expiry of the first forty days when the organism is called 'embryo'.

The Shāfi'ī doctrine is expounded by Bījarmī, a Shāfi'ī scholar, who based himself on Ibn Ḥajar, also of the Shāfi'ī school of jurisprudence. According to him¹, the Shāfi'ī scholars differed as regards the expulsion of the foetus before animation. As to abortion after animation, there is a tendency to prohibit it, in compliance with the views of Ibn al-'Imād and others. Bījarmī also drew a distinction between 'abortion' and 'azl or coitus interruptus, on the grounds that the sperm, immediately after ejaculation, is merely like a lifeless matter not yet ready for life, in contradistinction with the subsequent stage when it settles in the womb and commences to assume the early beginnings of the configuration of the human shape. According to Bījarmī, Ibn Ḥajar's expression 'a tendency to prohibit it' is intended to mean that some Shāfi'ī scholars maintain that prohibition does not apply to cases of abortion before animation, and his expression 'commences to assume the early beginnings of the configuration of the human shape' is intended to mean that prohibition does not apply to the stage prior to the expiry of the first forty days.

Shabrāmalassī confirmed the existence of differences among the Shāfi'ī scholars. In this connection he said: "They differed as to whether or not it is permissible to cause the removal or expulsion of the zygote², or the clot³, after it settles in the womb." He further said that Abū Ishāq al-Marwazī allowed the removal or expulsion of the zygote or the clot. He mentions that al-Ghazzālī included in his discussion of coitus interruptus certain statements indicating that he was more of the view that abortion should be prohibited, and said that "it was more to the point because once the zygote settled in the womb it became ready to assume the semblance of the human shape."

¹ *Al-Bijarmī 'alā al-Iqnā'*, vol. 4, p. 30; also *Hāshiyat al-Shabrāmalassī 'alā Nihāyat al-Muhtāj*, vol. 6, p. 179; and *Hāshiyat al-Rashīdī* thereon, vol. 8, p. 416.

² "The zygote", here is the semen of both man and woman combined together. In medical terminology it is "the fertilized ovum". A reference is made to this in the Qur'anic verses: "He was created of the poured-forth germs which issue from the loins and breastbones" (Sura 86/6-7). Dr. Madkūr has discussed this subject in detail in his book, *The Embryo and the Relevant Provisions in Islamic Jurisprudence*.

³ *Al-'alaqa* in the sense of "clotting" is used in connection with conception as applied to a woman or any other female creature. It also means "cleave to" or "become attached to" or "stick to" as when we speak of a thorn clinging to a dress. Commentators say that a "clot" is coagulated blood formed from the sperm and the ovum.

In another place in *Nihāyat al-Muḥtāj*¹ it is stated that there are two different schools of thought concerning the zygote before the expiry of the first forty days: "Some say that the zygote if got rid of in some way, is not to be regarded, from the legal point of view, as having been aborted or suffered infanticide, while others maintain that it is taboo and that it should not be done". Abū Bakr b. Abi Sa'īd al-Qurāfī is inclined to allow forced birth in between the zygote and the clot, that is to say before either of them begins to take shape in the gastrula stage. Shabrāmalassī quotes al-Ghazzālī as having said that abortion before animation is open to two possibilities: to be an object of prohibition, or an object of disfavour. The possibility of prohibition becomes stronger when abortion is practised after animation. Al-Ghazzālī is further reported to have said: "If the zygote is the result of adultery, then the allowance of abortion may be envisaged. If it is left until it reaches the stage of animation, then prohibition is certain."

After quoting what al-Ghazzālī said in his book *Iḥyā'* he said: "It is presumable that abortion is prohibited in all cases after animation, and allowable before animation." It is apparent, on the strength of the various quotations already made from the Shāfi'ī school of jurisprudence, that some of the Shāfi'ī scholars are inclined to adopt the view that prohibition should not apply to abortion before animation or before the expiry of forty days after the beginning of conception. Some others are strongly in favour of this line of thought. It is thus evident that the Shāfi'ī scholars come very close to their Ḥanafī compeers in their jurisprudence. The detailed discussion of the points of difference on this subsidiary question is the work of the Ḥanafīs, and it looks as if the Mālikī scholars are not very remote from their Shāfi'ī compeers, particularly in view of what we have already surveyed in connection with the standpoint favoured by Imām Mālik, and here explained on the basis of the connotation of the term 'embryo'.

As to the scholars of Ḥanbalī school of jurisprudence, they — as far as I could gather from my studies — deal with the subject in an unqualified general way without going into details. Ibn Qudāma al-Ḥanbalī² says: "If a person hits the belly of a woman and thus causes abortion, he must make amends or atone for his action. So must the

¹ Vol. 8, p. 146.

² *Al-Mughni* (Al-Manār Press), vol. 8, p. 815.

pregnant woman do if she takes a drug and thereby causes abortion.” To stipulate that there should be expiation or atonement in this connection implies that a sin has been committed, and that it is not allowed to resort to abortion. Ibn Qudāma goes on to say:¹ “If abortion occurs when the organism is still in the gastrula stage and if expert midwives testify that it has the dim appearance of human shape, then the expiation will be in the form of a *ghurra*, or an indemnity. If they testify that it would have assumed the early beginnings of a human creature and would have taken shape if it had remained, then there would be two possibilities: the more proper of which is that there is nothing in the organism because it has not yet acquired shape, and hence abortion at this stage, as at the stage of the clot, is not liable for indemnity.”

The statements we have quoted from the Ḥanabalī school of jurisprudence are explicit on the cases where compensation must be made. They, however, are not explicit on the religious verdict as regards allowance or otherwise. Nevertheless, it can be said that the Ḥanbalī scholars are not very different from their predecessors in other schools of jurisprudence. What we have quoted from Ibn Qudāma relates to the case of a woman who disposes of an embryo, and we have explained that the organism cannot be called ‘embryo’ except after the expiry of the first forty days. This means that the verdict concerning the period before the expiry of the fortieth day is various, as is confirmed by his own statement that if a woman gets rid of the gastrula when it is amorphous, then the proper interpretation is that “there is no liability in respect of the organism because it has not yet acquired the proper shape, and hence abortion at this stage, as at the stage of the clot, is not liable for expiation or atonement.” As to the clot stage it is definite that it is not subject to prohibition, and this should equally apply to the shapeless gastrula. In other words, abortion during this period is not subject to prohibition, although, as we have already pointed out, relevant statements are not explicit on this point.

The views of the Zāhiriyya school of jurisprudence are given in *Kitāb al-Muḥallā* by Ibn Ḥazm² where it is stated: “A woman may take a drug or insert something in the womb and thus cause miscarriage. But if she does this deliberately with the intention of killing the embryo, then she is liable for expiation and to the payment of a *ghurra*,

¹ *Ibid.*, vol. 7, p. 802.

² Vol. 11, pp. 35-40.

if the embryo is less than four months old; but if it is more than four months old, then she lays herself open to reprisal or is liable for indemnity as a ransom. According to the Prophet, animation takes place 120 days after the beginning of conception. Hence there is no murder if abortion is practised before then. The statement of Zāhiriyya scholars implies that abortion is not permissible, because if it were permissible then there would be no need for exacting a *ghurra* or requiring expiation for the remission of sin. In another place, however, Ibn Ḥazm says: "If abortion is due to hitting the pregnant woman before the expiry of the first four months, a *ghurra* must be paid; but no expiation; but if abortion takes place after the expiry of the first four months, then both the *ghurra* and the expiation will be required." This may be due to the fact that abortion in this case is not deliberate, but comes accidentally as a result of the hitting.

The views of the Zaidiyya school of jurisprudence are presented in *Al-Baḥr al-Zakhkhār*, one of the standard sources of the Zaidiyya school.¹ "If it is permissible to practise external ejaculation, then it is also permissible to change the zygote, the clot or the gastrula, for prohibition does not apply to something inanimate." Permissibility of abortion before the organism assumes shape is here justified on two grounds: *firstly*, at these stages and before animation, prohibition does not apply because, according to the Zaidīs, the organism is like something inanimate; *secondly*, abortion is considered to be analogous to 'azl or coitus interruptus which is permissible. I (Dr. Madkūr) do not agree that the organism during this period of pregnancy can be regarded as something inanimate, because it has a vitality of growth, albeit different from its life after animation referred to in the Qur'anic verse: "Then brought forth man of yet another make" (Sura 23/14).

The Ja'fari Shī'a and the Ibāḍiyya sects tend to reject the permissibility of abortion at any stage. Some of the Ja'fari Shī'a scholars, for example, insist on the necessity of expiation for abortion even if it is carried out on the embryo at the stage prior to animation. The prescription of expiation implies the presence of sin, but the term 'embryo' may be open to more than one interpretation, as I have already noted. The Ibāḍiyya scholars,² on the other hand, state that a pregnant woman is not allowed to do anything that may cause harm

¹ Vol. 3, p. 181.

² *Kitāb al-Nail wa Sharḥuhu*, vol. 3.

to the embryo or foetus, such as eating or drinking something harmful to it or lifting heavy loads. If she deliberately does anything of this sort while aware of her pregnancy, then she is sinful. The same rule applies to an other who may deliberately cause harm to her pregnancy.

In conclusion it can be said that the provisions governing abortion indicate that it is prohibited by general agreement if it is carried out on the embryo after animation, unless there is a valid reason or excuse justifying it. Concerning abortion before animation and without the presence of an excuse, views differ and range from permissibility and disfavour to prohibition. To sum up the problem admits of four possibilities:

1. Unqualified allowance without the need for an excuse, according to views already quoted from the Zaidī scholars and some of the Shāfi'ī and Ḥanafī scholars. It also reflects the views outlined in the quotations attributed to the Mālikī and Ḥanbalī scholars.

2. Conditional permissibility if there is an excuse, and disfavour if there is not. This represents the view of some Ḥanafī and some Shāfi'ī scholars.

3. Unqualified disfavour in all cases, as is the view of some Mālikī scholars.

4. Prohibition, as is the authoritative view of the Mālikiyya and Zāhiriyya. A similar view is implicit in the statements of the Ja'farī Shī'a scholars, and explicit in the statements of the Ibāḍiyya scholars.

On the question of the stage before the expiry of the fortieth day — the shape-taking stage — I am inclined to favour the second view, viz, permissibility of abortion if there is an excuse, and disfavour if there is not.

But in connection with the period after the first forty days and before the expiry of the fourth month, I am inclined to favour prohibition. After the expiry of the fourth month, there is unanimous agreement that abortion is definitely forbidden except in cases of necessity. I do admire the way of al-Ghazzālī in making the prohibition of abortion in degrees. In this connection, he says: "Abortion is an offence against an existing creature. The first degree of existence is the ejection of the sperm into the womb where it combines with the ovum; its destruction is a sin. When it becomes a clot or a gastrula, the sin connected with abortion becomes grave. When animation takes place and the embryo acquires shape, the sin becomes deadly. The nearer

to animation, the greater the sin involved in abortion, because it can then be regarded as a crime.”

Since the Shari‘a generally permits us to use contraceptive measures for the temporary prevention of conception, then why should we resort to abortion, particularly at the stage after the embryo has settled in the womb and started the process of acquiring shape? I maintain that it is permissible to remove the fertilizing agent before it enters the womb and settles on its wall. According to jurisprudence and medicine, the zygote does not reach the womb except after about a week, as already demonstrated in my book *The Embryo and the Relevant Provisions in Islamic Jurisprudence*. That is why Qurtubī of Mālikiyya school of jurisprudence says in his explanation: “The zygote is not subject to any provision if the woman removes it before it settles in the womb.”

One may accept the view that abortion should be permissible until the stage when the clot begins to acquire shape, i.e. before the expiry of the fortieth day. This is in line with the verdicts of scholars of the various schools. But I do not favour the view that abortion should be permissible after this stage unless there is an urgent necessity.

The Secular Provisions Governing Abortion

Scholars agree that the *ghurra*¹, or the indemnity, should be exacted in cases of abortion performed on the embryo by the mother or by another. They differ, however, in certain details.

The Ḥanafī² legists for example, stipulate that if a person hits the belly of a pregnant woman and causes the abortion of the foetus then the male people of the offending party should pay compensation in the form of *ghurra*. If a woman deliberately practises abortion either by taking drugs or any other means, without her husband’s permission then her male people must pay the *ghurra*; but if abortion is not deliberate or if it takes place with the husband’s permission, then this is not liable for the *ghurra* because no aggressive act is involved. If the pregnant woman orders another to hit her with the intention of causing abortion, then the other woman is not liable for indemnity. This, however, does not obviate liability on the part of the pregnant woman who gave the order without her husband’s permission.

¹ Estimated 5% of the complete ransom or blood-money which is 1000 dinars, i.e. equal to 50 dinars at the present.

² *Hāshiyat Ibn ‘Ābidīn*, vol. 5, p. 410; *al-Hidāya*, vol. 4, p. 153.

The Shāfi'ī scholars¹ maintain that the *ghurra* compensation should be paid every time there is an embryo or foetus involved.

In their judgement on secular abortion, as illustrated by Ibn Ḥazm, the scholars of the Zāhirriyya sect give their views on cases of abortion arising from the hitting of pregnant women, and draw a distinction between the period before the expiry of the first four months and the period after it. In the former case, a *ghurra* is charged, but not an expiation (a form of penalty for the commission of a sin). In the latter case, both the *ghurra* and the expiation are due. As to the pregnant woman who deliberately attempts to kill, and consequently kills, the foetus, after the definite expiry of 120 nights, or if another party deliberately attempts to kill and kills it, while still in her womb, reprisal will be exactable. The rightful person, however, may grant exemption, in which case the *ghurra* is chargeable instead.

The scholars of the Ibāḍiyya sect maintain that if a pregnant woman deliberately causes harm to the embryo, which results in abortion, she has to pay an indemnity. Indemnity may be exacted from any woman who deliberately harms a pregnant woman with a view to causing abortion; from a husband who knows that his wife is pregnant and causes her such harm as may result in abortion; from a pregnant woman who fasts with a view to causing abortion as a result of hunger or thirst; and from a pregnant woman who deliberately carries a heavy load. If a pregnant woman deliberately walks in hot weather and her action leads to abortion, then she has to pay blood-money.

Perhaps it is also useful, or perhaps supplementary to the discussion, to refer at this stage to the fact that the Egyptian Criminal Law prohibits abortion and punishes the offenders irrespective of the stage at which it is committed.² The Egyptian Criminal Law considers abortion a crime, subject to certain conditions specified by the Law. For example, a punishment is inflicted on every one who participates in causing abortion to a pregnant mother, or helps or guides her to carry it out, or conducts an operation leading to abortion. This applies even to the cases where the mother's prior consent is obtained and irrespective of whether the other party is a doctor or a layman.

There is, however, another kind of abortion, called medical abortion, which is practised by doctors for remedial purposes, with a

¹ *Al-Iqnā'* and *Hāshiyat al-Khaṭīb*, vol. 2, p. 130; *Nihāyat al-Muḥtāj*, vol. 7, p. 799.

² Article 26/264 of the Egyptian Penal Code.

view to saving the mother from a definite danger or averting a situation which may imperil the life of the mother in case of continued pregnancy.

Some foreign laws provide for the permissibility of medical abortion. Medical conscience, however, transcends the text of legal provisions and permits abortion in every case where the mother's life is exposed to real danger.

If abortion is not allowed except in cases of necessity, similar to those already cited, it is generally agreed that there is no justification for it on the grounds of fear of poverty or inability to meet the cost of bringing up the children or on the grounds of overpopulation or a high rate of population increase. Such pretexts are neither tenable nor legal, as is confirmed in the Qur'anic verse: "Kill not your children for fear of want" (Sura 17/31). Abortion for this purpose is a heinous crime, and as alternative, parents are advised to exercise self-restraint and take prior precautions such as contraceptive devices which prevent conception only temporarily. As we have already explained, such devices are considered legitimate as long as they are harmless and do not destroy the natural capacity of conception. These devices are many and safe, as confirmed by specialist doctors. The use of contraceptive measures is one thousand times better than remissness in taking such precautionary measures and consequently resorting to abortion.

I neither discourage nor oppose measures for the control of birth rate; but I advocate stimulating the people's consciousness of the legal implications in abortion and in the cases where it is permissible, because a strong believer is better than a lukewarm one.

When prophets expressed their wish to have offspring, they were really after good children. Abraham is reported in the Qur'ān to have said: "O Lord give me a son of the righteous" (Sura 37/100), while Zacharias is reported to have said: "O my Lord vouchsafe me from thyself good descendants." (Sura 3/38). When the Prophet advises reproduction and procreation, he does so within the limits of the parents' ability to provide their children with proper upbringing and guidance in such a way as would benefit the family and society, and thus realize his wish to be proud of his nation, as expressed in his saying: "I shall make a display of you before nations on the Day of Judgement." The feeling of pride here will not depend on the mere presence of numerous neglected citizens, but on the presence of righteous citizens who perform good deeds and who have had proper

guidance and upbringing. Righteous citizens, though limited in number, are better than many wicked citizens. "Twenty of you who stand firm shall vanquish two hundred" (Sura 8/65).

If children are brought up to become good and righteous citizens, beneficial to society and unharmed to it then the nation can centre its hopes and expectations on the new generation; but if they are brought up badly and consequently, become corrupt, then they will be a source of harm and evil to the nation. The Prophet was right in his saying: "The most gruelling trial is to have plenty of children with no adequate means." So was Ibn 'Abbās in his saying: "To have too many children is one of the two forms of poverty, while to have few children is one of the two forms of wealth."

How apt Ibn al-'Āṣ, one of the honourable companions of the Prophet, was when he addressed his troops and the Egyptians saying: "O People, beware of four peculiar qualities which lead to trouble after comfort, to poverty after hardship, and to humiliation after honour and glory." Introducing these qualities, he said: "Guard against the following: having too large families, depression of living conditions, waste and extravagance, and against gossip and idle talk."

Shāfi'ī advises that it is better for a man to marry one woman only so as to avoid having too many children which may cause him financial embarrassment and distress. This is the interpretation he gives to the Qur'anic verse: "And if ye still fear that ye shall not act equitably, then one only; or the slaves whom ye have acquired. This will make justice on your part easier" (Sura 4/3).

Imām Abū Ḥanīfa advised his disciple, Abū Yūsuf, who became chief judge, as follows: "Do not marry until after you know that you can meet all your wife's needs. Refrain from having anything to do with women before you have attained knowledge, lest you should waste your time and have too many children, since too much money and too many children disturb the peace of mind."

The above presentation, inter alia, indicates that Islam is entirely based on tolerance, liberality and latitude, and that it always accommodates; taking people's interests into account. The control of birth and reproduction does not depend on sterilization and abortion, but can be achieved by many other methods which are both legitimate and safe.

What is permissible is clearly defined; so are these things which are forbidden. There are things which fall within the border line region,

and these should be approached with caution and care. It is always just to follow what is right. I pray God, Exalted and Extolled as He is, to guard me from errors and lapses both in word and deed. It is He who is the source of all initiated action and the source of help, and to Him all shall return. It is He who shows us the right path and guides us to goodness and success. If any of the things I have said is wrong, the fault is mine; and I ask God's forgiveness; but if any of the things I have said is correct, it is so because of guidance by God who knows the truth best.

INDUCED ABORTION

BY

DR. HASSAN HATHOUT

“O Prophet! When believing women come to thee, and pledge themselves that they will not associate aught with God, and that they will not steal or commit adultery, nor kill their children, nor bring scandalous charges, nor disobey thee in what is right, then plight thou thy faith to them, and ask pardon for them of God: for God is Indulgent, Merciful” (Sura 60/12).

In February 1971 the Near East Regional Office of the International Planned Parenthood Federation organized in Beirut a seminar on ‘Induced Abortion, A Hazard to Public Health?’ The seminar proved productive of ideas and rich in thought-provoking discussions. The scientific method was observed throughout in the subject presentation, but at the same time, discussion often grew thrilling and heated. It appeared then that the speakers held quite divergent opinions as to the dangers of abortion; indeed there was a strong current in favour of abortion, commending its many benefits, advantages and even the blessings resulting from it, not only for the individual concerned but also for the nation and the world community as a whole. A new life was injected into the seminar when Islam’s attitude to the question of abortion was posed, and a new front of attack, so to speak, was opened in the intellectual contest. None of those attending the seminar, however, were specialists in Islamic jurisprudence; yet the debate grew in animation and intensity, to such an extent that one of the conferees, namely, Dr. Isam Nazer, felt there was a definite need for a special seminar to study Islam’s stand on planned parenthood from all its various angles. It was suggested that the seminar be attended by a select group of leading Muslim scholars in the fields of jurisprudence, medicine, sociology and demographic studies, who would study the question with all objectivity and candour. They would then inform the Muslim community of what the law sanctions and what

it proscribes regarding abortion — a question which is becoming a source of increasing concern and anxiety for the whole of mankind at the present stage of its history. Having put forward the idea of a seminar, Dr. Nazer subsequently worked hard to see it realized. His efforts were crowned with success, having resulted in this present conference, which, it is hoped, will prove of great benefit.

I participated in the seminar, sharing in the study of the question of abortion. I hope today to be able to present my point of view on that question from its medical, social and religious aspects. I certainly am no stranger to the subject, because I meet with it almost daily in my capacity as obstetrician and gynaecologist. Quite a sizeable part of my life has been spent in the study of the human foetus. I have been all along and shall be a believer in Islam, with the firm conviction that Islam is, and should remain, the foundation upon which the life of the Muslim should rest.

Since the object of this conference is to try and conclusively reach an opinion on abortion, we might as well, at first, familiarize ourselves with its proper dimensions and its various phases of development in this world of ours. But before a fully mature opinion can be formulated, we must have a general idea of the conditions surrounding abortion and note what has taken, and is taking, place in other parts of the globe. For the world has been drawn closer together and the barriers separating man from man have been removed as a result of the modern means of travel and the propagation of ideas through media of communication in the way of newspapers, books, broadcasting services and films as well as the spread of ideals of culture and politics. Inevitably, what is taking place in other societies will find its way to ours, particularly as our new generations are far more ready to receive ideas from the rising generations abroad than from their own elders, be they parents or uncles.

At the outset we would like to review the development of legislation on abortion in a number of countries.

DEVELOPMENT OF LEGISLATION ON ABORTION¹

Induced abortion has always been looked upon as a disfavoured practice in all human societies. As early as the dawn of medical

¹ J. De Moerloose, *Abortion Throughout the World*, Features, WHO, No. 3, 1971.

history aborting was taboo. To be sure, its proscription was included in the Hippocratic oath, and, therefore, it has been part of the professional heritage, from generation to generation, up to our own times. The oath comprises a clause to the effect that the physician is not to administer or prescribe a poison, any harmful drug or a medicine to abort a pregnant woman.

Even until very recently, there was a semblance of unanimity on the forbiddance of abortion, excluding cases where continued pregnancy would sooner or later prove hazardous to the mother's life, or cases where it was almost certain that the foetus was seriously deformed or defective.

Then, authorized abortion was thus mainly based on compelling medical circumstances legally recognized, without which abortion would be regarded as a criminal act, punishable by law. Doubtless, many illegal abortions were performed privately or on false pretences — a natural eventuality of both law and people.

But, of late, there has emerged among other things, a strong tendency towards enlarging the area of authorized abortion, not by adopting a wider range of medical justification but by recognizing the legality of grounds other than therapeutic, which make it open to the woman to ask for, and to the doctor to perform, abortion. Whereas previously the term 'legal abortion' was more or less synonymous with 'medical abortion', the grounds for abortion now fall under several headings:

1. Medical
2. Embryological
3. Humanitarian
4. Socio-medical or purely social

1. *Medical Grounds*

Medical grounds cover the conditions under which abortion 'to save the mother's life' becomes unavoidable. These were later enlarged to include the condition of the woman's health. The next step was to interpret health as covering both the physical as well as the mental aspects of life. Lastly the term 'health' was broadened to such an extent that it encompassed the total life situation, and the definition of health given by the World Health Organization (WHO) was adopted. Health is defined by WHO as a 'complete physical

mental and social well-being and not merely the absence of disease or infirmity'. Countries such as France, Venezuela, Cambodia, the Senegal, Pakistan and many states of the USA restrict authorized abortion to the purpose of saving the woman's life, whereas in Ethiopia, Canada, the Argentine, Honduras, Peru, Switzerland and some other states of the USA, abortion is only allowed 'to preserve the mother's life or her health'.

2. *Embryological Grounds*

These aim at preventing the transmission of hereditary diseases as well as the birth of physically or mentally defective children through the embryo having been exposed, while in the womb, to certain communicable diseases and to serious doses of radiation or to chemicals or drugs taken by the mother during pregnancy likely to cause deformity to the child.

These grounds are usually linked with the medical ones, and are recognized as such by the Scandinavian countries, the countries of Eastern Europe, Britain, Singapore, Australia, Japan, Cuba, Turkey, and some of the states of the USA.

The recognition of the validity of these grounds was occasioned by the tragedy of the thalidomide drug, originally produced for alleviating the feeling of nausea during pregnancy, but later discovered to cause serious deformities to the foetus. Only after several thousands of babies, now grown into manhood, came into this world, lacking all or some of their limbs, were the harmful side effects of the drug observed.

3. *Humanitarian Grounds*

In certain countries, law has been relaxed to allow abortion on humanitarian grounds when, for example, pregnancy results from rape, incest or intercourse with a minor or a mentally defective woman. Some countries such as Lebanon and Jordan even tend to view abortion in this case as an act of mercy, to save the honour of the girl and that of her family. Similarly, Columbian law acquits the defendant or reduce the sentence if the grounds for abortion are connected with the question of honour. Here we would do well to call to mind Britain's famous Bourne Case. Bourne was one of the leading obstetricians and gynaecologists of England. He had performed an abortion for a fourteen year old girl who had become pregnant after being raped by a group of soldiers. The 1929 statutory laws did not authorize

abortion unless it was for saving the mother's life. In this case, however, it was obvious that what had occasioned that operation were humanitarian grounds; the Counsel, however, based the defence in this case upon the dangers of childbirth to the girl, on account of her immature physical development and the narrowness of her pelvis. The court accepted the point of the defence and acquitted Dr. Bourne. Thus the case became a notable precedent in the history of British law.

4. *Socio-Medical Grounds*

These grounds are still unrecognized in many countries of Western and Southern Europe, Latin America and Africa. On the other hand, they have become recognized by a few other countries such as Japan, Scandinavia, the East European countries and, quite recently, Britain. Iceland was the first country to recognize the socio-medical motives as sufficient grounds for abortion. As early as 1935 Icelandic law stated that, in estimating the 'danger condition' in the case of the mother, due consideration must be given to fertility, quick succession of childbirths, the period after the last birth, the household duties for so many children and resultant economic hardship, and lastly the ill-health of other members of the family. Iceland was followed by a number of other countries. In 1946 Sweden amended its law, to authorize abortion if it could be conceded that the living conditions of the woman as well as other considerations would make the bearing of children harmful to her general physical and psychological state. In 1956 Denmark, like Sweden, amended its legislation, with the stipulation that the woman's overall life situation should be considered when deciding whether to allow abortion or not, on the understanding that the situation is to include her living conditions both physical and psychological — even when these do not amount to actual sickness or ill-health. Finland followed suit by its 1950 law, and confirmed in 1970. (Fig. 1)

Norway's legislation, in force since 1960, states that any special predisposition of a woman to physical or psychological ailment should be taken into account in performing an abortion. Other factors which also have to be taken into account are her living conditions and any other conditions which might adversely affect her health, and in consequence lead to her physical or psychological breakdown. In Japan abortion is authorized to spare a woman physical exhaustion or economic exigency.

In Britain, the new abortion law enacted in 1967 lays down that in assessing the extent of the possible danger to a woman 'one must

*Abortion Rates in Certain States Per
Thousand Live Births — semi-logarithmic*

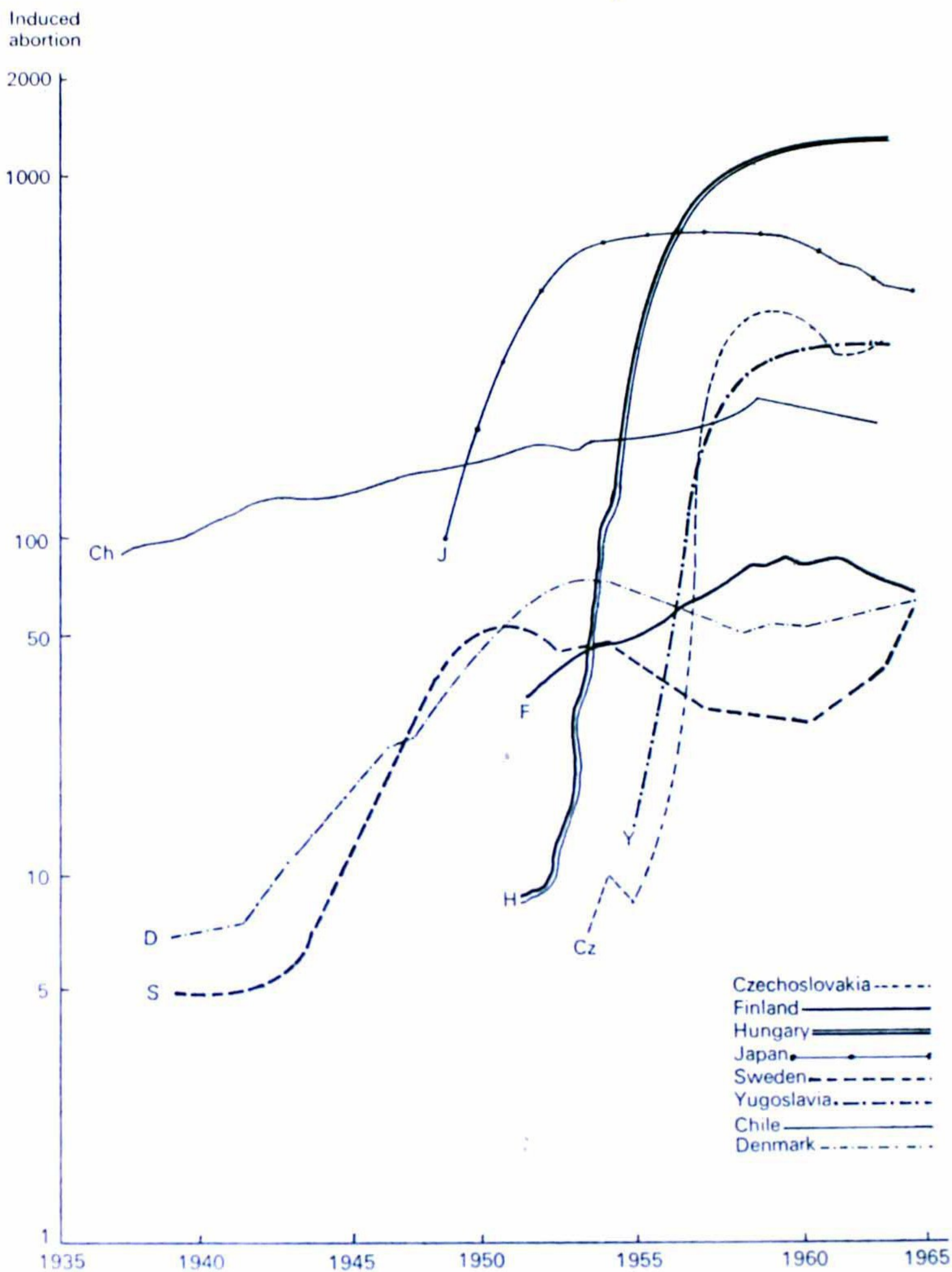


Fig. 1

Source: Abdel R. Omran, 'Epidemiological and Sociological Aspects of Abortion', in I. Nazer, ed., *Induced Abortion, A Hazard to Public Health?* (Beirut: IPPF, 1971).

consider the environment in which she actually lives and that in which she might have to live in the foreseeable future...' The same rule applies in South Australia (1970) and in the state of Oregon (1969). The matter is still under consideration in India¹.

Some states have recognized these grounds in order to enlarge the scope of legislation sanctioning abortion, particularly in the East European states. In Finland's 1970 legislation, as well as in those of Denmark and of East Germany, abortion is allowed if a mother has four children with intervening periods of less than 15 months in between, if the current pregnancy has occurred less than six months from the termination of the previous pregnancy or if the mother (alone or with her husband) has responsibility for five children or more. In Bulgaria, abortion is authorized for a mother who has three children (or even one or two) with the approval of a medical committee; in Rumania to a mother with four children, while in Czechoslovakia, to a mother having three or more children. Abortion is allowed in Denmark without the need for a formal authorization, in the case of four children. In Tunisia (1966) abortion is legal if the mother has already five children and more alive, (and it is the only relaxation for a non-medical reason in Tunisia).

Other social grounds are recognized elsewhere. In Czechoslovakia, abortion is allowed in the case of the husband's death or his infirmity, in that of the break-up of the family, the development of family responsibility on the mother alone, or on account of the embarrassing situation facing a pregnant unmarried mother. In Singapore, economic grounds alone are considered enough justification for abortion.

AGE AS GOOD REASON FOR ABORTION

Certain countries allow abortion if pregnancy occurs before a certain age, on social or humanitarian grounds, or if it occurs after a certain age, on medico-social or medico-embryological grounds. It is allowed in East Germany if it occurs before the age of 16 or after the age of 40; in Finland before 17 and after 40; in Czechoslovakia before 16 and after 45; in Denmark after 38 or if a medical committee decides that the girl has not attained a degree of physical and mental maturity enough to enable her to look after the child. In Bulgaria it is subject

¹ Adopted in May 1971.

to the approval of the two parents if under 16 and is allowed unreservedly if the woman is over 45 years of age.

ABORTION ON REQUEST

This is the terminal point in the general trend advocating the legalization of abortion. For several years now, abortion on request has been gaining strong support, and reached a climax when it was legalized by a number of countries such as Hungary, the Soviet Union, and very recently by three American states: Alaska, Hawaii, and New York. The laws of Hungary and the Soviet Union try to place a few obstacles before permitting abortion, such as the need for the request to be submitted to a committee entrusted with the task of dissuading the pregnant woman from her intention by showing her the possible hazards attending the operation. If the woman still persists, then her request for abortion will be granted, provided the pregnancy has not already been more than twelve weeks old, and provided also the abortion is performed in a hospital. In America, the operation must be performed by a doctor provided the abortion is in the interest of the woman concerned. In addition, pregnancy should not already be older than a certain specified period of time (12 to 24 weeks, in various countries).

Countries also differ as to the granting of similar rights to alien women. Some countries do not impose any restrictions, while others require a certain period of residence prior to abortion.

We do not know if this wave of legalized abortions will sooner or later become the general practice or whether the remaining countries will continue to maintain their own legal restrictions in the face of increasing social clamour and pressure for the legalization of abortion. To this day, the Egyptian penal code (sections 260-264) imposes a heavy penalty for abortion. If abortion is caused by beating or harassment, the sentence is 15 years with hard labour. If, however, it is induced through drugs, the sentence is a three-year imprisonment for both the supplier of the drugs and the woman taking them. If the malefactor is a physician, a surgeon or a midwife, hard labour is added. An attempted abortion, if not conclusive, is not considered a criminal act by Egyptian law.

Kuwait's penal law (sections 174 and 177) states as follows: Anyone causing abortion to a woman, with or without her consent either by supplying her with drugs or other chemicals proved to be

harmful or by using violence or any other means with the intent of causing abortion shall be sentenced to prison for a maximum of ten years, to which may be added a maximum fine of 1500 rupees. If the performer of such an abortion happens to be a doctor, a pharmacist, or a midwife, the penalty will be imprisonment for a period not exceeding 15 years, with a possible fine not exceeding 1500 rupees. No penalty is to be imposed on any person aborting a pregnant woman if the performer has the requisite competency and if he performs the operation with the sincere belief that the action is necessary for the preservation of the pregnant woman's life.

Any pregnant woman who takes drugs or uses violence or other means with the intention of causing her abortion and succeeds in aborting herself, or allows others to bring about her abortion in such a way shall be sentenced to prison for a maximum of five years and shall have to pay a maximum fine of 5000 rupees, or either of the two penalties.

Anyone who prepares, sells, displays or disposes in any way of ingredients likely to be used in effecting abortion, and does so knowingly, shall have a maximum prison sentence of three years and shall have to pay a maximum fine of 3000 rupees, or either of the two penalties.

CERTAIN CONDITIONS CIRCUMSCRIBING INDUCED ABORTION

It is clear that the legislation introduced by many states on abortion is generally moving in the direction of relaxing the restrictive measures, with the degree of relaxation varying from one country to another.

Abortion under the restrictive type of legislation was not restricted in the sense expected. There have always been persons in the medical profession or outside it who were prepared to perform abortion privately in return for a varying fee. Some of these abortionists have made huge fortunes out of their illicit practice. Many of these "underground abortionists" have, while practising their trade, brought about the death of a number of their patients or caused them serious health damage, such as bleeding, laceration, perforation of the womb, infection and other suchlike dangers. Some of the women thus treated have escaped death only to live on with a permanent injury or chronic disease, while others lost permanently the capability of conception or childbirth. The tragedies resulting from this type of abortion, known previously by the name of "criminal abortion" constituted perhaps

the strongest arguments for people advocating abortion on request. Since abortion will take place anyway, they argue, it might as well be performed by skilled physicians, under safe conditions and full medical supervision.

Just as the law is being violated by the use of unorthodox undercover methods, so is it being violated by 'getting round the law'. For example, under the laws permitting abortion on the grounds that pregnancy constitutes a danger to the patient's life or health (physical or psychological), provided that this is recognized as such by two physicians, the problem will be solved by getting two doctors to agree to the need for an operation on medical grounds or on the grounds that the woman concerned is threatening to commit suicide if she is not aborted. In the latter case all the psychiatrist has to do is to write 'suicidal impulse' on her sheet, a threat to commit suicide being regarded as valid grounds for vindicating abortion. Evidently, the majority of these abortions would be performed in private clinics rather than in free government hospitals.

One thing is worth noting, however. It was believed that the legalization of abortion would do away with the illicit abortion practice. But it appears that this was not the case in those states where abortion has become legal. In Hungary, for instance, the number of illicit abortions in 1956, when abortion was made legal for the first time, was around 100,000 to 150,000. After legalization, the figure rose to 160,000 - 180,000 in the sixties, while for 1968 it exceeded 200,000.¹ The same applies to Japan and to other countries, such as the Scandinavian countries.²

It is significant that some of the countries that have permitted abortion in order to ease the pressure of the population explosion by reducing the rate of population increase, or, in other words, the countries which have recognized abortion as a means of birth control, have, as a result, found themselves in a serious worrying predicament. In Japan, for instance, where abortion has been legal since 1948, the birth rate has dropped to 13.5 per thousand. The authorities suddenly

¹ E. Szabady, *Hungarian Fertility and Family Planning Studies*. Sixth Conference of the Europe and Near East Region of IPPF on Social Demography and Medical Responsibility. Budapest, September, 1969, p. 15.

² A. Ingelman-Sundberg, and J. Huldt, Fifth World Congress of Obstetrics and Gynaecology, 1957, p. 785.

woke up to the hard fact of consequent shortage of youth, the backbone of the manpower needed for industry.¹ If to this be added the growing numbers of old people in Japanese society, it will be seen that the ratio of the productive section of society tends to grow less while that of the unproductive section of society (infants and aged people) tends to grow more. This state of affairs would in time lay a heavy burden on the youth of society, and would result in serious drawbacks for Japanese productivity. (Fig. 2)

In Rumania^{2,3}, on the other hand, the legalization of abortion in 1956 has been followed by a sharp increase in the number of legal abortion cases. In 1958 it was equal to one quarter of the number of pregnancies. In 1959 it rose to one third and is still on the increase. The state immediately realized with this aggravation that the matter was getting out of hand, especially when the number of deliberate abortions began to exceed considerably that of births. Under these circumstances, the state retraced its steps, and it was felt that the nation would be committing a kind of suicide, or voluntary extinction. Consequently, Rumania thought better of it and restricted abortion to cases justifiable on medical grounds. It also sought to encourage population growth by awarding compensations and allowances for childbearing and for large families, by granting motherhood leaves with full pay and by exempting large families from taxation. The dilemma facing the state even in such a situation is that the young sector of the society would find itself burdened with responsibility for a disproportionately large number of aged people and children in anticipation.

We would get a clearer view of the 'circumscribing conditions' if we took a look at the English experiment. Since 1929, the law has permitted abortion if pregnancy involves a hazard to the woman's life or health. Ever since the Bourne case and the acquittal of Dr. Bourne, things have proceeded smoothly, with doctors enjoying enough freedom in the fulfilment of their duties or even at times in getting round the law. Nevertheless, in 1967 an amendment was promulgated which authorized physicians to abort a patient if (1) danger

¹ Sir John Peel, *Year Book of Obstetrics and Gynaecology* (Greenhill, 1970), pp. 29-49.

² H. Gille, *Social Demography and the United Nations*. Sixth Conference of the Europe and Near East Region of IPPF, Social Demography and Medical Responsibility, Budapest, September, 1969, p. 9.

³ F. Novak, *The Abortion Epidemic*, *Ibid.*, p. 87.

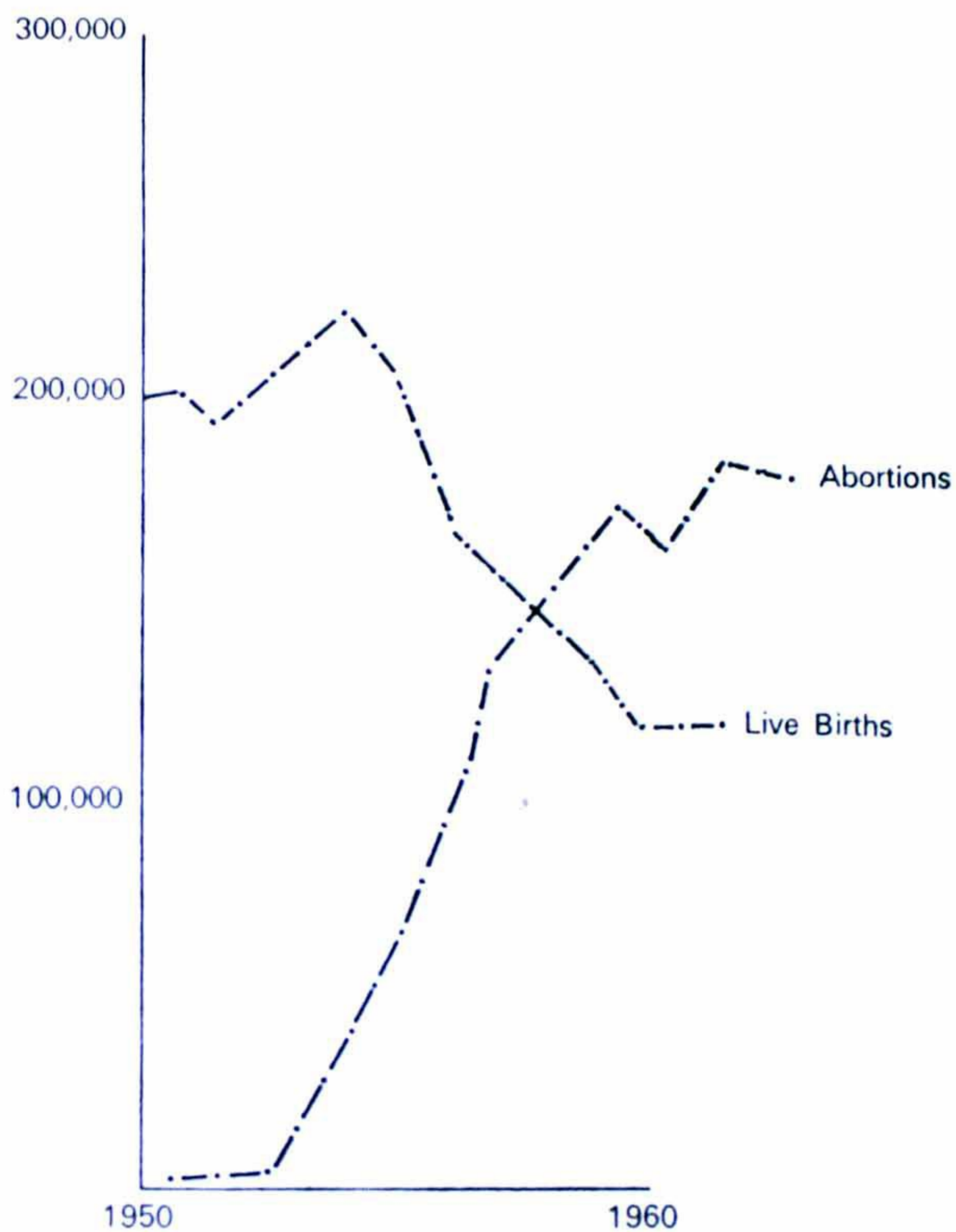
Live Births and Legalized Abortions in Hungary

Fig. 2

Source: J. Peel and M. Potts, *Textbook of Contraceptive Practice* (Cambridge University Press, 1969), p. 207.

to her life through continued pregnancy was greater than that posed by abortion; (2) continued pregnancy posed a hazard to her physical or psychological health or the health of the children of the family (whether her own children, her husband's children, or adopted children); (3) there was a serious risk that the foetus is likely to be born abnormal or deformed. In assessing 'hazard', the law urged that the woman's situation at present and in the foreseeable future be taken into consideration. It was then clear that the legislation was not instituted in response to demands pressed by the medical profession. On the contrary, the fact that new legislation was being contemplated led the Royal College of Obstetricians and Gynaecologists to propose the forming of a committee from the medical and legal profession — more qualified to understand and perceive the problem and its complexities — to formulate a draft for the desired legislation. This proposal was not, however, taken up. Outside pressures intervened to prevent the participation of the professionals in the matter. A widespread campaign was set afoot to mobilize enough public opinion in favour of the permissive legislation enacted in other countries, with the frank plea that a woman should not be forced to carry an unwanted baby. Unwillingness on the part of a woman to carry a baby, it was argued, should be regarded as sufficient grounds for granting "abortion on request".

Dr. Thomas Jeffcoate,¹ the present head of the Royal College of Obstetricians and Gynaecologists, openly declared on the BBC that the 1967 Law was sponsored by a small but well-organized group of agitators, who by insidious propaganda and fact distortion were able to sway public and parliamentary opinion and to stir up emotions by painting fanciful and extravagant pictures rather than by sticking to plain facts and figures. Although statistics for casualties resulting from illegal abortions were available, Dr. Jeffcoate argued, however, that those had been ignored, and grossly exaggerated figures had been cited instead. The press was exploited to brainwash the public, and with funds brought in from abroad, a pamphlet was printed and circulated explaining the new law in prejudicial and subversive terms. When professional groups expressed their willingness to take part in the deliberations on the new legislation, a member of parliament retorted by saying: "We are not here to listen to professional opinion or advice... we are here to legislate." This story,

¹ T.N.A. Jeffcoate, *Abortion: Morals and Medicine* (B.B.C., 1970), p. 30.

told by Dr. Jeffcoate, serves to illustrate the sort of political intimidation which the professions might come up against, and an indication as to the way free and enlightened public opinion might be forced.

The truth is that this law has hardly brought anything significantly novel, other than legalize abortion in the case of a pregnancy which poses a threat to the physical or psychological health of any of the family's children, including even the adopted ones. It will be rather strange indeed, if we are to grant abortion on the grounds that the baby to be born might hurt the feelings of one of his future siblings, be they legitimate or adopted. It was left to the doctor to decide this question. Let us now see what the consequences of these measures were.

In effect, the doctor who was, prior to this legislation, governed by his conscience in deciding whether an abortion was to be performed or not, continued to be governed by that same conscience. So long as the criteria of a man's conscience have not been overruled by the law, a great many specialist doctors will continue to be unaffected by social pressure and to be guided by their own convictions in deciding whether an abortion is to be performed or not. Those, on the other hand, who welcomed the new legislation with enthusiasm and gusto were groups of professional abortionists who used to carry out their practice underground and now could come out into the open. To be sure, the law stipulates that the operation should be performed in an institution recognized by the Ministry of Health, but it does not require that a specialist should perform it. In the case of this group of practitioners, their operations have acquired a legitimacy which they had not previously enjoyed. In fact the very people from whom the legislation sought to protect the society have now come to be under the protection of the law.

A great increase in the number of legal induced abortions followed in the wake of this legislation. (Fig. 3) It was evident that the state had not taken steps to meet this eventuality. In the national hospitals overcrowding, resulting from the pressure of abortion cases, has seriously interfered with the treatment of other ailments, competing for beds, operating rooms and physician's time. It is estimated that half of the doctor's time spent in his clinic and half of that spent in the operation room are in connection with abortion.

Although the assessment of the situation continued to be left to the doctor's conscience, it was nevertheless observed that 40 per cent

*Induced Abortion in England and Wales
1958-1969*

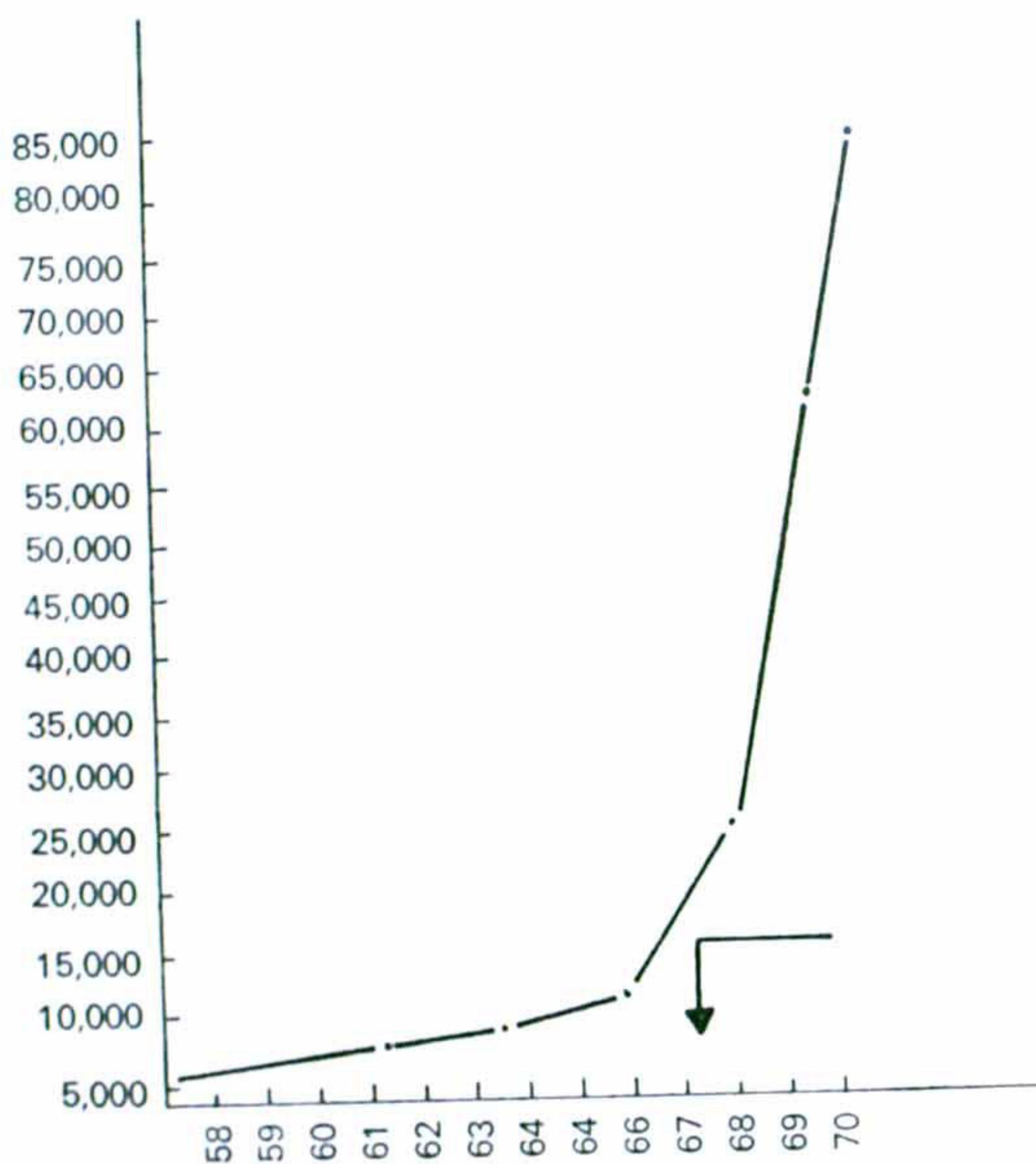


Fig. 3

Source: J. Peel, 'The Abortion Act in Great Britain', *Year Book of Obstetrics and Gynaecology*. (Chicago: Greenhill, Year Book Medical Publishers, 1970), p. 35.

of the abortions were performed in the small number of private institutions against fees, a proportion far in excess of those seeking the services of the same institutions for other ailments, while in the national hospitals only 60 per cent of the operations were performed.

It is worth noting that, of the women allowed abortion, 44 per cent were married, 47 per cent were unmarried girls and 9 per cent were divorcees, widows or separated from their husbands. In other words, the total of pregnancy for extra marital relationship amounted to 56 per cent. One further point is worth noting: the ratio of abortions performed for extramarital pregnancies in private institutions was double that performed in national hospitals.

Medical circles are at pains to show the dangers involved in throwing the doors wide open for abortion. The *British Medical Journal*¹ furnished an analysis on abortion during the first period after the Law was issued, which showed that the death ratio for legal abortion was 3 per thousand, slightly higher than that of deaths caused by childbearing in general (including births and abortions both legal and criminal). It also showed that abortion severely impaired the woman's health for the future, both physically and psychologically. Professor Jeffcoate even went so far as to affirm that doctors would show more kindness in the pitiable case of an unmarried pregnant girl by not aborting her, and by showing her instead the undesirable consequences to which the operation, if performed, would expose her. In his opinion, abortion is not the right solution to this problem, for legalized abortion would only lead to laxity in sexual relationships and to slackness in the use of other contraceptive means. He tells the story of a girl who was aborted only to return a few months later to be aborted again. When the doctor showed his disapproval, she shrugged her shoulders saying: "Can you stop yourself smoking?"

One of the most amusing things I read in one of the medical journals² was a protest against an advertisement appearing in the *English Daily Telegraph* which read: "From Holland — Special for Abortion — Cost of Trip: \$ 105". England had not as yet enforced any restrictive measures against non-resident women. As a result, England became a resort for those seeking abortion. London became

¹ B.M.J., *The Abortion Act*. Findings of an enquiry into the First Years' Working of the Act conducted by the Royal College of Obstetricians and Gynaecologists. vol. 2, 30 May 1970, pp. 529-535.

² B.M.J., *Correspondence*, vol. 2, 5 June 1971, p. 585.

a Mecca for women seeking abortion, and special agencies were formed to organize the whole trip, including admission into hospital, stay in London, and return journey — all for a fixed sum, just like a tour.

Doctors in England whom the law does not force to perform the operation against their conscience are, however, definitely better off than their colleagues in Eastern Europe where abortion is a woman's right, not to be denied. Doctors there are forced to perform the operation unless there are medical grounds against their doing so for, as state officials, they cannot demur at their official responsibilities — a terrible ordeal for those with conscientious natures and far more terrible for men of principle.

MORAL BACKGROUNDS — THE CONCLUSION OF THE PICTURE

The development outlined here for the legislation on abortion, from the wholly restrictive to the permissive, in varying degrees, the most comprehensive of them being 'the right of abortion on request', should not be viewed in a detached, abstract manner. It is part of a picture which cannot be comprehended unless viewed as a whole; otherwise, we would be like the one who recites 'Draw not near unto prayer'¹ and stops there. This movement is but a strand in a fabric, a step along a road, a segment of a whole.

After the First World War, the world was swept by two schools of philosophy or perhaps it would be better to say by two prongs of one and the same philosophy. The first is totally atheistic, denying religion as such and denouncing it as the opium of the people. It purported to assert that the prophets were but social reformers, who, to induce people to follow them, promised them rewards which they could not pay on the spot, but could be deferred to the "Hereafter" when it would be made by a fictitious bank called "Bliss". This philosophy has now spread far and wide, with growing strength until it now commands a following estimated at more than a third of the world population. Its aim from the first has been to empty the spirit of any trace of God and to replace a substitute.

The other prong, on the other hand, moved in the direction of the religious communities, carving its way gradually into the Western Christian World. It began to preach a new doctrine which it called

¹ The Qur'anic verse continues as follows: "Draw not near unto prayer when ye are drunken..." (Sura 4/43).

'the new ethics'. Riding on the wave of scientific progress and the victories achieved by the human brain, it proceeded to extol this brain, urging people to glorify it, to take it as their guide and preceptor and to look upon it as the pivot round which their lives revolved and the authority which should determine their actions and behaviour. What accorded with man's reason was right and what did not was wrong. Having thus succeeded in idolizing reason, it then proceeded to call upon man to refer his heritage to the court of 'reason' to be surveyed and evaluated and then freed from all the foolish and superstitious traditions, already a dead letter or about to be a dead letter. Reason, having thus become the highest authority in man's life, naturally proceeded to select afresh all that accorded with its standards and to discard all that was counter to them. In short, reason was installed as a worshipped deity, to command and forbid, confirming and rejecting at will.

In the swollen wave of brainwashing, people failed to see that their new god was limited and deficient. For mind can only see as far as the horizon, but beyond the visible horizon there exist innumerable other horizons hidden from man's perceptive faculties. Mind, by its very nature, is of imperfect knowledge, the proof being that each new day brings along with it some new aspects of knowledge hitherto unknown. It is as if each new day branded reason with imperfection. If reason believed that knowledge had become complete, then all factories and laboratories would close down and research budgets be stopped. Quite the opposite is true, however, the greatest incentive to scientific research today is man's awareness of the vastness of his ignorance — and how immeasurably vast its extent is.

Reason began to review the old values, replacing them with new ones; it also proceeded to review the 'old ethics' and to replace them with a new system of ethics, more to its own liking. Under the banner of liberty, man began to preach the doctrine of 'freedom so long as no harm is done to others'.

This movement found support from another intellectual trend, namely, the trend preaching the gospel of 'ethics without religion'. Ostensibly, this last stands apart from the movement outlined above, but in reality it tends to have the same effects. The doctrine it teaches is that man can and must love the good for its own sake and hate evil for the harm it does others. Let man love others, be truthful in his utterance, honest in his dealings, faithful in the performance of his duty; let him be of pleasant character and generous nature. Man can

be all this without adopting any religion or adhering to any religious rites or tenets. To reinforce their stand, the advocates of this principle point out that people have always disagreed and always will disagree on the question of religion. The pages of history, specifically Christian history — with their tales of tragedies, horrors and strife all perpetrated in the name of religion — bear witness to that. Religion, the exponents of this movement maintain, is but a means of attaining certain ends. Since those ends are attainable, then all roads leading thereto are equally praiseworthy. This is altogether selfish, and, therefore, reprehensible. But what really matters is that man should be guided by his own conscience. How often, they counter, do we find pious men perform all religious prescriptions and observe all the rites and rituals and yet prove to be cheats, of vindictive nature, corrupt or untrustworthy.

This appeal to virtue drew to it a large number of worthy people, a circumstance greatly advantageous to the movement. The basic idea in all this was that good and evil should have no fixed criterion according to a strict fundamental creed. Thus once the firm rock of creed is shaken, once God's teachings are supplanted by man's conscience, the next step will be easy to take, for the new preceptor is gentle and kind, wild and easy to handle. Man, having discarded the armour of creed, donned instead the loose and easy garments of freedom, and so the question became simply one of time. Moreover, since man has become answerable to his own conscience rather than to God, the chinks in his new armour become countless, though often he may not be aware of them. As a result, man's psychological structure, being subject to change, will loose its moorings. Just as iron can be tempered by fire and made to assume new forms by continuous hammering, so man can also be moulded into new shapes and made to shed the old ones. Predisposition, suggestibility and malleability have always been part and parcel of the human ethos.

The spread of these ideas has led to the loosening of the hold religion has had upon people and the diminution of its role in their lives. Instead of listening in reverence to the teachings of religion, the voice of God grew fainter to the ear; it gradually became a mere echo from the distant past. As the years went by, it became all too evident that the bulk of the western public opinion had become estranged from God, and even grew so bold as to impugn Him. This might be attributed in part to the fact that traditional Christianity outdid

itself in portraying God with physical attributes and spatial dimensions, a picture totally repugnant to man's reason in the age of science. I, and doubtless many others like me were shocked when in 1966 *Time* magazine had the question 'Is God Dead?' displayed on the cover of one of its issues. The crack of doom, it seemed to us, must surely be approaching if such a widely-read magazine could flaunt such ideas. Nevertheless, the magazine continued to air the subject many times over, presenting views both for and against. Nor did the matter seem to produce the shock we had anticipated. The Church, as was only natural, did show some concern by investigating the causes that made people turn away from religion and by seeking ways for redress. Commenting upon some of the Church activities in this field, the magazine published in its 26 December 1969 issue (p. 40) an article entitled 'The New Clergy: Bringing God back to Life'. As is the seed so is the fruit. It is not hard to see how a number of things prohibited in the past have become permissible in the present.

Under the new slogan of the 'new ethics', moral and social standards have suffered a change. Since you do not harm others — and doing harm was given the most superficial interpretation — no guilt or embarrassment need be attached to your actions so long as you do nobody harm. Of the standards undergoing change, one was that of sexual relationships. But on taking a closer look, we find that the new virtue is essentially the old vice. This was followed by a streamlined and all-pervasive spate of sex saturated films, pictures, light and heavy reading matter, books of philosophy, songs, plays, fashion, commercials on radio and television, lectures and even persuasive exhortations on an individual level, a comprehensive, well-co-ordinated movement bent upon a single course and with one object in view.

With enough patience and perseverance all this would grow in time into one huge social tidal wave that would sweep along with it whole communities rather than just isolated groups. These movements, it must be added, left no avenue unexplored in order to achieve their ends.

— A psychology professor in a reputable university warned against sex complexes that might result from sexual repression.

— Bertrand Russell, in a televised talk just before his death, announced his satisfaction at having lived long enough to witness the realization of his idea, for a long time advocated by him, calling for sexual relationship between boys and girls to be revolutionized by the use of contraceptives.

— Even the Church was not immune from this intellectual incursion. A committee, appointed by the British Church Council, in a report on 'Sex and Virtue' denounced sexual exploitation, but blessed sexual relationship in marriage; nevertheless, it rejected the idea of continence before marriage or that of fidelity after it. It also refused to espouse the view of the Gospel regarding adultery, declaring it permissible in certain cases between two willing adults if it formed a perfect fusion of their two beings (*Time* magazine, 28 October 1966, p. 38). The report then urged that unmarried girls be provided with contraceptives and called for more relaxation in abortion legislation. This brings to my mind the words of an English bishop in the fifties, who called on people to abandon the use of the word 'God' for one generation, and declared that he regarded the union in bed of two young people, man and woman, in love, willingly and without compulsion, as a blessing. How far removed this stand is from that of Jesus in the following words: "Whosoever looks at a woman with covetousness in his eyes has committed adultery with that woman in his heart."

No wonder then that these pressures have made themselves felt in western societies, and no wonder too that they have produced an impact on legislation, resulting in the new crop of abortion laws and others, the most recent of which did not regard homosexuality as a criminal act so long as the act was between two male adults, both of them willing.

Under the screen of woman's emancipation, it is urged that since man could practise sex freely, woman should be equally free to practise it, instead of saying 'as unchastity is improper to woman, so is it to man'.

Young men and women were in a scramble, like moths in a rush towards the light. Medical circles began to be disturbed by the mounting number of venereal cases in countries such as England of which it was believed to have been completely rid. The germs causing these diseases appear to have become inured to penicillin and antibiotics. Syphilis and gonorrhoea have also become as rampant as before, in spite of penicillin, except that the age of the diseased now predominantly range from 15 to 25. In 1965, 27 per cent of the girls infected by the two diseases were under 20 years of age. Another exception is that the ratio of infection for females rose above that for males. The infected woman is no longer the prostitute of yesterday but the ordinary girl — a student, a worker or an employee who has

thrown precaution to the winds.¹ In America, Dr. W. Brown of the American Center against Venereal Diseases, declared in 1965 that 650,000 of the American youth under twenty years of age catch syphilis or gonorrhoea every year and that during a one-year period the known cases of syphilis have increased by 55 per cent in New Jersey and 30 per cent in New York city. Similarly Dr. Mackenzie Pollock of the American Health Association announced that casualties have lately been reaching serious proportions and called for a state of emergency.²

A clearer picture of the state of affairs is presented by the birth rates in England and Wales. In Fig. 4, the upper line represents the total number of births, showing a gradual decline over the years, while the lower represents illicit births (births from unmarried mothers), which keeps rising every year and which might end up by representing most births.

It was stated earlier that the abortion statistics in England for the year 1969 showed that 47 per cent of aborted women were married, while 53 per cent were unmarried. The case is not unlike that of Sweden. We asked Sweden's representative at the February 1971 conference, held in Beirut, concerning the ratios of married to unmarried women in say 50,000 abortions; he said that more than half of the girls were unmarried.

All this evidence and all these factors and conditions serve for a moral background and a world climate of opinion which provides a stimulus to a campaign with the slogan "Abortion to every woman unwilling to be pregnant". Thus is revealed the true nature of the pressing need for easily obtainable abortions, not on medical grounds alone, but as a legitimate right such as the natural right to air or water, which married and unmarried women alike have the right to demand.

A LAYMAN'S VIEW OF THE MORAL BACKGROUND

It is perhaps hard to convince one who does not believe in religion at all of the truth of religious assertions. But religion itself, with God's grace, has urged us to seek wisdom and to use religious

¹ T.N.A. Jeffcoate, *Principles of Gynaecology* (3rd ed; Butterworths, 1967), p. 366.

² *Time Magazine*, July 27, 1970, p. 52.

Total Number of Registered Live Births and Number of Illegitimate Births in England and Wales (1955-69)

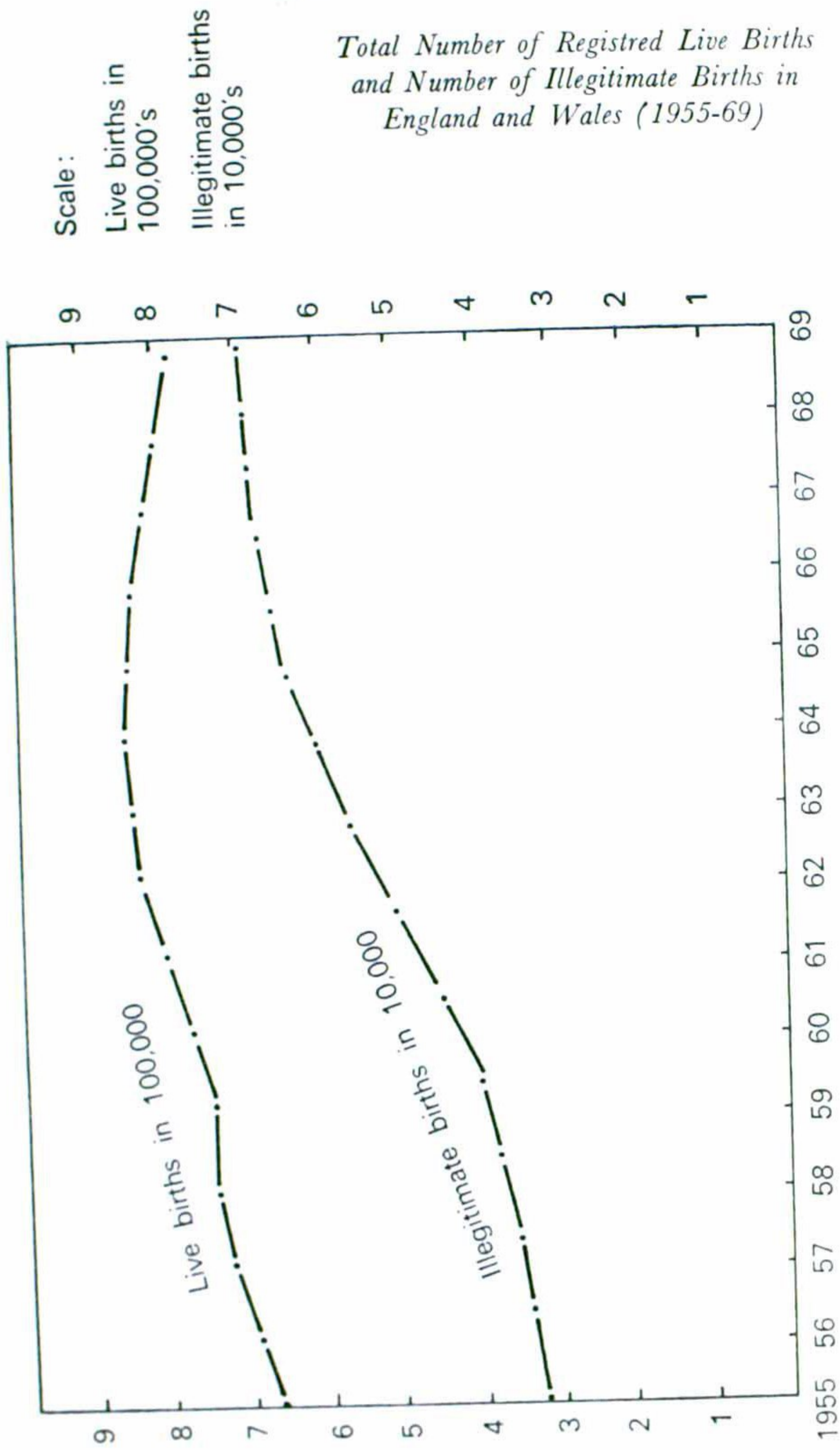


Fig. 4

Source: *Ibid.*, p. 39.

exhortation and friendly and gentle manners in persuasion. In this connection we would like to comment briefly on the contemporary moral situation. We hope that all we are about to state here fits very truly the actual picture without exaggeration. Anyone who will trouble himself to glance at the output of the western press, or the objects of contemporary art, or visit the West with open eyes, keen ears and alert reflective mind will soon be convinced of the truth of what we say.

A scientific and perceptive survey of history from its beginning to the present will reveal the indubitable fact that man occupies the position of dominance on this earth, a prerogative bestowed on him by the process of evolution. Then we look at man's life from its primitive humble beginnings up to its latest lofty stages of civilization. We perceive that man's civilization was sustained and made possible by his ability to control his passions. Without exercising control over his passions, man would not have ascended the heights of moral glory, nor would his endeavours have proceeded far enough along the path of scientific research.

If man were to give his passions free rein, mankind would eventually bring about its destruction, and the destruction of civilization in the process. History furnishes examples of empires which, after reaching the acme of ascendancy, collapsed and fell into ruin because of failure on the popular level to keep passions and other animalistic passions in check. If the contemporary amoral trend were to be allowed to continue, there could be little doubt that our present civilization would be planting into its body the seeds of its own decay and extinction.

We believe in freedom, justice and fair play. We believe that woman, no less than man, should have her due share in all these. Even if we consider the subject apart from religion, we feel we must raise our voices high in praise of freedom, justice and fair play for all, and above all for woman's freedom and her equality to man.

With these slogans as our guide, it appears to us that any association between two people, if it does not result in equal sharing, cannot possibly be considered as based on freedom, justice and fair play. Sex has been practised on the grounds of equality between man and woman. But a cursory glance will show that the sharing between them is far from equitable. Woman is always the aggrieved party. If she lives with a man and then gets abandoned, she is the loser; if she becomes pregnant out of wedlock and aborts, she is again the loser;

if she gives birth to an unfathered child, she is also the loser, regardless of whether she takes the child with her to bring it up, or whether she gives it up for adoption either to private individuals or to the state, no matter how well the child is taken care of. This is contrary to the principles of equality, justice and fair play and is definitely not in keeping with our own concept of woman's emancipation or freedom.

This permissiveness, in terms of pure secular social concepts, is a form of injustice to woman, a kind of servitude and a type of overlordship, not to mention the enjoyment by man of her person in return for no reward or requital in fair play.

Lust is portrayed as a ferocious beast and chastity is held to be unreasonable and unworkable. The idea that chastity is the creation of fancy and is wholly impractical has become firmly entrenched in the mind, in the same way that virginity, not of long ago, was said to be easily lost through bicycle or horse riding or through strenuous physical exercise — an assumption which depreciated its value and made it something of no worth, only to be discarded at will, without fear or shame.

Our Islamic traditions offer several proofs of the West's misguided social morals but the West does not pay any notice to them. In our Muslim societies, including the Christian communities living in them, virginity rate before marriage is practically one hundred per cent, regardless of the marriage age, which proves that the maintenance of virginity until marriage is practically possible. The causes behind this circumstance might be debatable, but the fact remains that virginity is not out of reach.

In the face of this torrential flood of undesirable changes, a counter movement of reform cannot come about unless there appear reformers and leaders genuinely concerned about the future of the youth and really prepared to enlighten them as to the principles of true freedom and fairness. Virtue is a form of 'preventive medicine' not restricted to medical science, but extended over a much wider sphere as well.

Behind the scenes, there is a movement of skill, cunning and power whose aim is the undermining of human societies by exchanging strength for weakness, disintegration for solidarity and mental inactivity for mental alertness. Who knows but that in the near future all this would bear fruit, and would probably destroy whole social fabrics, hold whole societies in thrall and rob them of their rightful heritage. Could it be that, by so doing, it aspires to gain mastery over the whole

world, an ambition perhaps considered to be possible of achievement through perversion of ideas and the demoralization of people. Maybe it has no scruples in carrying out its designs, in the belief that they are God's chosen people and that the rest of mankind are but the scum. Will the world forever remain blind to what is manifest to the eye? Will no one take it upon himself to head off the imminent peril? Is there none to fight for this most worthy cause or is it already too late?

THE FOETUS DEFINED

Clearly, societies adopting legislation on abortion look upon the foetus as an inert, lifeless refuse to be rid of since it is 'unwanted'. I have heard a British colleague say in defending the legalization of abortion: "Whenever in my clinic, one of these women comes to me with her problem, I feel first and foremost that the problem is a dual one concerning us both: the doctor and the patient..." In truth, I do not remember having ever sat in like manner with one of my patients and felt we were just two. I have always felt that along with us both there was a third silent party who was unable to put forward his own point of view, or defend his right to live against his mother's right to extricate herself from a predicament or to limit the number of her family.

This third party is the foetus... the newcomer, waiting at the door, for it to be opened to him after the end of the fixed term. The foetus is me, and you and all of us. He has the advantage over us in that upon arrival he will have his whole life open before him, whereas in our case we have already left behind a goodly portion of our lives, with only the remaining portion still to be left behind on death, sooner or later.

As soon as the spermatozoon comes into contact with an ovum from the ovary after starting its trip inside a duct leading to the uterus, the spermatozoon and the ovum fuse or merge to form one cell. In thirty hours — the longest waiting period in the life of the embryo — there occur changes within the cell and it divides into two. The cell division then follows apace, first into four, then into eight, then into sixteen and so on.¹ This cell mass of blastocyst reaches the uterus a few days after and proceeds to attach itself to the lining.

¹ L.B. Shettles, in *Scientific Foundations of Obstetrics and Gynaecology*, E. Philip, J. Barnes, and M. Newton, eds. (Heinemann, 1970), pp. 134-158.

Both prior and subsequent to this step, the cell goes on dividing steadily, until, from conception to birth, it increases from one to 200 million cells. In size it increases thirty million times while in weight it increases 6,000 times. The cells next proceed to cluster in groups, each going its separate way to form a segment of the embryo, and then different organs in this segment — all this in the midst of constant unceasing activity. In the first month the weight increase is one million times; in the second 74 times; in the third eleven, and in the last, the increase is only one-third of a time.

The eye cannot follow this phenomenal activity. However, we can discern in two weeks' time the lengthening of the embryo and distinguish the head from the tail part and the incipient shape of forty four parts from 19 to 21 days. When the embryo is three weeks old, the lobes of the brain and nerve bulges begin to appear as well as the mouth indentation, together with a rudimentary nose and ears, incipient viscera, and blood vessels into which blood is pumped by means of an incipient pulsating heart. Smoothly and with more and more streamlining the embryo's shape grows well-defined while the internal organs develop. From the fifth to the eighth week its length increases from 5mm to 3cm; and during this period the formation of the foetus is complete. With delicacy and streamlining, the embryo's features are perfected, so that by the time it is three months old, it may be regarded as a human being in miniature.

The embryo lives in the uterus inside the amnion, a membranous fluid-filled sac, in which it floats about freely, protected from the pressure of the uterus wall and having enough room for growth. It also drinks from and voids his little urine in this fluid. This fluid is by no means stagnant; it absorbs and is secreted, constantly being renewed. However, the rate of the foetus' growth outstrips that of the inflation of the sac, and consequently of the uterus, continuously occupying more and more space. Whereas previously its faint gentle kicks and movements took place inside the fluid, they, by the end of the fourth month and afterwards kick against the uterus wall and are, therefore, felt by the mother.

In ancient times it was believed that the creeping felt by the mother inside the walls of her womb marked the flows of life into the foetus (this is what al-Ghazzālī and others called 'the quickening or animation'). Embryology, however, has shown that the foetus begins to move long before the mother can feel its movements. Moreover, in the hospitals today there are apparatus sets that enable doctors

to hear foetal heartbeats in the eighth week, although the heart starts beating even before that. Embryology has occupied a good deal of my time and life. The topic of my doctoral dissertation was 'Studies in the Regular and Irregular Formation of the Human Foetus'. I have come to know the foetus in its various phases, and to recognize that the foetus is an individual. I have been unable to draw a line between the foetus when human and when non-human. I have, moreover, been unable to draw a line, where I should feel concerned for the foetus and where I would feel unconcerned about it. As a matter of fact, one aspect of modern progress in general medical development is its concern for the foetus, and the emergence of a new medical specialization in obstetrics and paediatrics, namely embryology. Casualties in the lives of babies at birth have reached a fixed minimum. It was seen that there was no way of reducing that minimum except by tending the foetus while in the uterus. New diseases were brought to light. They could be diagnosed and medically or surgically treated if the foetus is born prematurely, too young normally to survive. The scope of this branch of medicine has grown and is still growing. Infants are being saved from diseases hitherto fatal. Research studies are still actively pursued to improve incubators to insure that foetuses, however prematurely born, can be tended until they are older.

A slight consideration of the responsibility which the medical charter imposes upon the doctor vis-à-vis his patient will reveal the many contradictions and floundering of the medical profession, whether they belong to the group advocating legal abortion or to that performing it. On the one hand it uses its ingenuity in the saving of foetuses under wits own care, while on the other hand it is ready with equal earnestness to snuff out their lives and rob them of their right to live for no other reason than that they are 'unwanted'.

THE ISLAMIC STAND

The worthy jurists among our ancestors had their own views on abortion. Those views were unanimous on certain points and at variance on others. In pronouncing a formal legal opinion (*fatwā*), some of their individual judgements were based on the medical beliefs prevalent in their time. One of those regarded the inspiration of life into the foetus as marking two distinct stages of its life, as determined by the foetus' movements which were supposed to start taking place four months after pregnancy.

We have shown that scientific progress over the centuries and the emergence of embryology as a separate science have proved beyond any doubt that the foetus starts moving long before the mother is aware of it. Its gradual development from a cell to a full-blown infant is a smooth and continuous development, without there being any scientific dividing lines or clear boundaries separating one stage from the other.

As we see it, a legal opinion based on a scientific belief must be modified in accordance with the change in this scientific belief. If the foundation changes, the structure above it must change too. Our forebears rested their legal judgements on old medical opinions. Perhaps it is, therefore, fortunate that this conference is held now. Today's medical profession can meet and modern medical facts can be presented and taken as a basis for a modern legal interpretation by individual judgement.

I have perused some of the works of the ancients as well as some of those modern thinkers and authors; my conclusion was that the moderns tend to copy the ancients, even in old medical opinions whose error has been brought to light and which have since been superseded by various other ideas. I will cite some of these ideas here, and reaffirm the need for new legal opinions.

Clearly, the opinion one holds concerning abortion differs from that held about contraception. Whereas abortion is a murderous assault upon life and, therefore, a criminal act, the elements of crime are lacking if pregnancy is prevented because the victim is non-existent, and there can be no crime where there is no victim.

The late Shaikh Maḥmūd Shaltūt,¹ in discussing the rule on abortion said: "Scholars are agreed that after quickening takes place abortion is prohibited to all Muslims, for it is a crime against a living being. Hence blood-money becomes due if the foetus is delivered alive, and the *ghurra* if delivered dead. The jurists were not, on the other hand, agreed as to whether to sanction or prohibit abortion if performed prior to animation. Some felt it was permissible on the grounds that there was no life at that stage and, therefore, no crime could be committed. Others held that it was unlawful, maintaining that it was already possessed of inviolable life, of growth and development. Among the latter was the great master, al-Ghazzālī. He dealt

¹ Maḥmūd Shaltūt, *Islam: Creed and Law* (Arabic) (3rd. ed.; Dar al-Qalam 1966), pp. 211-213.

with this question, in contradistinction from coitus interruptus, saying: "This ('*azl* or coitus interruptus) is not the same as abortion and infanticide, for the two latter are crimes against a living being that is already in existence. The first grade of existence occurs when semen is injected into the womb where it merges with the ovum and becomes disposed to receive life. To destroy this is to commit a crime. The crime grows more and more serious as this lump of living matter passes from one stage into another, until it reaches consummation and it detaches itself and comes out alive."

The author of *Al-Khāniyya*, one of the Ḥanafī scholars,¹ on the other hand declares: "I cannot speak in support of the legality (of this matter), for if a pilgrim, while on ritual pilgrimage, breaks the egg of a game bird he becomes liable for it, because the egg is the origin of the bird. Since liability is incurred here, the least that can be said is that a certain degree of criminality attaches to a woman's action, if she aborts without cause" — a logical and interesting opinion, for no one can presume that the foetus in his mother's womb, even in its early days, has far less right to live than the egg of a bird.

'Alī Ibn Wahbān,² commenting on the question of 'cause', said that one valid reason justifying abortion would be the mother's milk drying up after pregnancy and the father being too poor to hire a wet nurse. This view does not hold today because it is now possible to prevent pregnancy through various means, all easily accessible, and of little expense or even freely provided by the state, in addition to the fact that the practice of hiring wet nurses is no more, as a result of the canned or dried milk prepared for infant feeding which can be obtained at little cost or which is supplied by the state free to the poor. This is far better than solving the problem of poverty through murder.

Commenting on animation or ensoulment, Shaikh Shaltūt³ says: "As they say, it does not occur until after the first four months. When, on the other hand, we speak of life taking place in the fourth month, we are actually referring to the perceptible life which the mother feels through the movements of the foetus, to which the term

¹ *Ibid.*

² *Ibid.*

³ Mahmūd Shaltūt, *Al-Fatāwā: Studies on the Problems of Today's Muslim in His Daily and Public life*. Publications of the General Culture Administration at Al-Azhar, 1959, pp. 263-265.

'animation' has been given." We believe we have dwelt long enough upon the scientific aspects of this question. But we marvel, however, at Shaikh Shaltūt's further remark, as follows: "It is this point," he says, "which enables us to conclude that the scholars' differences of opinion on the permissibility of abortion resulted from their unawareness of, or their failure to comprehend, these particular delicate aspects of the question, which lead them to regard the inviolability of abortion in this case as different from abortion if performed when the formation of the foetus is complete and animation takes place. It may be said, therefore, that they are all agreed on the interdiction of abortion at any time during pregnancy." This was the stand adopted by al-Ghazzālī¹ when he spoke of the grades of pregnancy from the time the first seed is sown. He says: "To destroy it such as it is, is a crime. If it becomes a clot or blob then the crime becomes more wicked. If life is inspired into it and it attains full formation then the crime becomes more wicked still. The crime becomes most wicked after birth, alive." There is a consensus of opinion, however, on the case where proof from a reliable source is obtained that continued pregnancy, even after confirmation of the existence of life in the sense given above, would definitely lead to the mother's death. Islamic Law (the Sharī'a) in this case fundamentally ordains that the lesser evil is to be chosen. If to preserve the life of the foetus would mean the death of the mother, and there is no other way to save her life than by aborting the foetus, then abortion in this case is authorized. The mother is not to be sacrificed to save the foetus, for she is its originator."²

I have read for Professor Muṣṭafā al-Zarqā'³ (may he live long) some material in which he propounds a view based on the stand of the Ḥanafī school. He divides the first four months into two stages: 1) either the foetus has begun to take shape, in the sense that either some of his organs have emerged, or not; or 2) if none of his organs has appeared, in which case, it may be aborted, in the opinion of some jurists, for this would be equivalent to preventing pregnancy, a permissible measure, with the consent of the husband, for the foetus has not yet acquired any of the properties of man. The preponderant juristic opinion, however, is that abortion without justifiable grounds

¹ *Ibid.*

² *Ibid.*

³ Muṣṭafā al-Zarqā', *Abortion in Islamic Law* (Arabic), Law Journal, Aleppo, No. 26, 1939.

is disfavourable in the sense that it is interdicted by religion under the category of offence bordering on sin, because the foetus is a living lump of matter destined to grow into a future human being. Aborting it, however, carries only a religious responsibility but has no penal or civic liabilities, unless abortion is effected without the husband's knowledge or as a result of an assault by a third party, in which case penal action in the form of castigation is incurred. Castigation here is an undefined form of punishment. It is left to the discretion of the judge, who is to take into consideration the aborter's condition and decide how much would be sufficient in the way of penal retribution to deter others from committing similar acts.

If, however, during a pregnancy some of the organs have begun to take shape, then the abortion of the foetus is prohibited to both husband and wife, and a fortiori to a third party unrelated to them. To perform abortion in this case, that is, after the foetus has assumed shape or after the lapse of 120 days from conception, constitutes in the view of Islamic Law (the Sharī'a) an offence, sinful in the eyes of religion, and, as such, incurs penal retribution in the form of a penalty exacted by law, whether the aborter is the parent or a third party unrelated to them. Abortion incurs yet a third responsibility, a civic one, namely, a financial surety: the aborter is required to pay an indemnity for the foetus, called a *ghurra* (amounting to 500 silver dirhams, the dirham equivalent in the early days of Islam to 50 gold dinars or 75 gold dirhams, the dirham weighing approximately $3\frac{1}{2}$ gold grams). This *ghurra* used to be left to the heirs of the aborted foetus. The aborter, however, even if one of the heirs, pays the fine but cannot inherit any portion of it. All this is applicable to cases having no justifiable grounds for abortion. On the other hand, abortion is sanctioned on justifiable grounds, e.g., if the mother's health cannot sustain pregnancy or if she has a suckling baby who will be badly affected if suckled by a pregnant mother, and the father's means are not such as to make it possible for a wet nurse to be hired. We have already given our opinion regarding the first case; as regards the other, we think it should be disallowed on the grounds that (1) pregnancy can be prevented nowadays, and (2) the baby can be fed artificially. Moreover, modern science has shown that there is no harm if the baby is suckled by a pregnant woman.

In any case, and after the elapse of four months, abortion is not to be allowed, unless the mother's life is certainly in danger, consequent upon continued pregnancy. For, in the latter case, the

death of the mother would also mean the death of the foetus, while abortion would preserve the mother's life. If any person aborts the foetus subsequent to the four-month period, be he one of the parents or a third party unrelated to either of them, he becomes in the religious, legal and civic sense, culpable in a more heightened degree than in the case of abortion performed prior to this four-month period of pregnancy. The religious guilt which attaches to the action is definitely considered greater. If the foetus is delivered alive but dies soon after, the responsible person must expiate his guilt in the same manner as when he is guilty of an accidental death (expiation being a religious penalty enjoining the freeing of a slave, or the giving of a certain amount of alms to 60 needy people, or the observance of a 60 day fast if the guilty person be of straitened circumstances). Penal retribution would similarly be more severe. The financial liability, on the other hand, has the following alternatives if the foetus is stillborn, the aborter has to pay the *ghurra* as mentioned above, just as in the case where abortion takes place before the first four-month period of pregnancy but after the foetal organs have begun to differentiate. But if the foetus is expelled alive and then dies, the aborter must pay the full blood-money normally due for a man, which is equivalent to 10,000 silver dirhams. This money is distributed among the heirs in the same manner as described above for the *ghurra*. It will be observed that Islamic Law, in cases where abortion is prohibited, has administered the law equitably, in the case of the two parents as well as in that of a third party in the enforcement of prohibition, exaction of liability and the passing of sentences. In all these, the law is applied equally to all. But in cases where abortion is allowed, the decision to be taken lies with the parents alone, abortion here by a third party being prohibited and regarded as a murderous act against life. Needless to add that the third party referred to above is not meant to apply to a doctor or midwife or any paramedical help, whose experience will be called upon in the performance of an abortion.

We have something to say on the process of organ differentiation (the taking of shape) in the foetus. Ovulation in a woman (specifically, the rupture of a thin ovulatory sac, the follicle, to discharge the ovum into the general cavity of the abdomen) takes place usually 14 days before the following menstruation. The ovum can be fertilized during the space of one day. If in the course of that day a spermatozoon reaches it and penetrates its outer wall, fertilization takes place; otherwise no fertilization takes place, and the subsequent menstrual

cycle begins. Fertilization usually occurs in the hollow part of the two tubes (the oviducts) leading to the uterus. We have shown how the fertilized cell, now known as the egg, travels to the uterus, dividing itself the while, reaching the uterus in five or six days, when it implants itself into the uterus.

In other words, when the next menstrual cycle is due, pregnancy would already be gone two weeks of its full period. Since in the case of most women it is not unusual that menstruation would sometimes be subject to irregularity, coming sooner or later than it is due, it is seldom that a woman can be aware of a possible pregnancy except several days after its occurrence. The surest way to ascertain whether pregnancy has occurred is by means of a test carried out on the woman's urine, provided, however, that two weeks have elapsed after conception, to allow enough hormones secreted by the uterine wall to flow into her blood stream and then trickle into her urine in sufficiently concentrated quantities to give positive results.

In other words, to ascertain scientifically that a pregnancy has occurred means that the embryo is at least four weeks old after fertilization. We have shown that by that time it will have developed and reached the stage of organ differentiation. Before we leave this point, however, we would like to state again our medical opinion that life in the sense of growth and nutrition exists in the cell from the moment it begins subdividing, one day after fertilization and two weeks before the next menstruation is due to take place, and that thereafter growth is continuous and smooth.

While admiring and commending the meritorious attempts of the jurists of old to formulate legal verdicts on matters concerning which there is no textual reference, by basing their opinion on such scientific data as were available to them at the time, I wish at the same time to see the modern jurists follow in their forebears' footsteps, and apply what scientific data are available to us today.

A chart is appended here (Fig. 5) to sum up the outlook of Muslim Law regarding the question of induced abortion and also that of accidental abortion (e.g., if a person hits a woman without intending to abort her but who nevertheless causes her to abort). Here the mother was the immediate victim, but the harm was sustained by the foetus accidentally. We do not intend here to go into this aspect of abortion; but anyone wishing to know more on the subject may consult a work

entitled *The Start of the Diligent and the Finish of the Provident*,¹ which elaborates this subject under various headings and in accordance with the various schools of Muslim theology.

We must repeat the Prophet's words on the 'Forties'. In this connection the Prophet said: "Each one of you possesses his own formation within his mother's womb, first as a drop of matter for forty days, then as blood clot for forty days, then as a blob for forty days, and then the angel is sent to breath life into him..." We hope, however, that this tradition of the Prophet's be not taken to mean that the embryo in its first 120 days of development is just a dead weight or an inert mass which can be discarded at will. This is precluded by the legal implications, shown above, of induced (intentional) abortions or accidental ones, in the form of prohibition, castigation or fines prior to, or subsequent to, the 120-day period — all of which were formulated in the light of this tradition of the Prophet's.

To round the subject of organ differentiation in the embryo, i.e., the emergence of any of its organs, we shall cite Mālik's opinion in which he holds that the aborter is accountable for all pregnant matter discarded by a woman, be it a blob, a clot, or simply blood.² Ashhab, a Mālikī jurist, on the other hand, maintains that no liability attaches to the discharge of blood, but it does attach to that of a clot or a blob, lest the discharge of blood alone be wrongly interpreted as a symptom of pregnancy followed by abortion. We repeat here that a microscopic test can detect pregnancy in almost all cases, barring certain very exceptional ones. In fact, Abū Hanīfa, like al-Shāfi'ī, maintains that if a woman discharges a blob in which no incipient formation can be discerned but which is, according to the testimony of reliable authorities, already possessed, in yet invisible form, of the rudiments of human formation which would take shape if allowed to continue developing, the woman's aborter in this case is also accountable.³ The phrase 'testimony of reliable authorities', translated into our modern terms, would mean medical diagnoses or tests. Criminal abortion, therefore, covers the abortion of the embryo from its earliest

¹ M. Ibn Rushd, *Bidāyat al-Mujtahid* (2nd ed.; Cairo, 1950), vol. 2, pp. 415-417.

² 'Abdul Qādir 'Auda, *Islamic Criminal Law*, Part 2, 5th ed., 1968, pp. 292-302. (Commentaries of al-Zarqānī and marginal commentaries of al-Shaibānī, Part 8, p. 31; *Bidāyat al-Mujtahid*, Part 2, p. 348.)

³ *Ibid.* (Marginal commentaries of Ibn 'Ābidīn, Part 5, p. 519; *Nihāyat al-Muhtāj*, Part 7, p. 362.)

Abortion Rules According to the Hanafite School

Fig. 5

	The Embryonic Stage		Type of punishment			
			Sin	Castigation	Fine	
Induced	Before Differentiation	Parents	x			} authorized on justifiable grounds with the husband's consent
		Alien	x	x		
	Differentiation and before the first four months	Parents	x	x	<i>ghurra</i>	} authorized on justifiable grounds
		Alien	x	x	<i>ghurra</i>	
After the first four months, parents and aliens same	Born alive	x	x	ex-piation		
	Born dead			<i>ghurra</i>		
Accidental	Pre-differentiation				<i>ghurra</i>	
	Differentiated but before the first four-month period				<i>ghurra</i>	
	After four months	Born alive			full ransom	
Born dead				<i>ghurra</i>		

Excluding compensation to the mother for any harm she suffers, a compensation due to her alone. Money payment for the foetus, either as *diya* (full ransom) or *ghurra* belongs to the foetus' heirs to the exclusion of whoever among them took part in inducing the abortion. The latter has to pay his share of the ransom.

Source: Original chart based on the opinion of Professor Muṣṭafā al-Zarqā'.

stages, or rather in fact at the incipience of pregnancy and as from the moment there is reliable evidence that conception has taken place. What is left, therefore, are those rare cases where the accused may be given the benefit of the doubt through lack of conclusive evidence that pregnancy did occur, as a result, for instance, of the loss of the aborted matter or the disappearance of the pregnancy symptoms which would have been determined through laboratory testing.

It has been shown that blood-money or indemnity for the foetus is separate from what is due to the mother in compensation for any harm done to her. However, compensation for her personally is due to her alone, while that of the foetus belongs to its heirs, to the exclusion of the aborter, if one of them, in which case he would have to pay the indemnity but not inherit therefrom. The indemnity due for a foetus, the *ghurra*, varies in amount in accordance with the number of foetuses aborted. If the pregnant woman aborts two foetuses then the aborter has to pay two *ghurras*, and if three, he has to pay three.

It is worth noting at this point the safeguards with which Islamic Law secures the right of the foetus. The Islamic Law does not regard physical action as the only cause for abortion. Other causative factors are recognized, such as deeds or utterances. We list in the following some of these immaterial causes: threatening a woman, scaring her, suddenly shouting at her, or coming face to face with a person whom she dreads or of whom she stands in awe.¹ This point is illustrated by a famous anecdote. 'Umar b. al-Khaṭṭāb summoned a woman to him. On being ordered to go, she exclaimed in fright: "Woe is me! Why would 'Umar want to see me?" While on her way to him, filled with apprehension as she was, she was overtaken by labour pains. She miscarried there and then, she yelled twice and fell dead. 'Umar sought the advice of the companions of the Prophet on this matter. Some thought that 'Umar was not to blame, except for the fact that he was the ruler and hence the administrator of justice. 'Alī kept silent, but 'Umar turned to him and said: "What do you say to that, Abūl-Ḥasan?" 'Alī answered: "If that is their opinion which they have given, they are wrong; if on the other hand, they have spoken in those terms to oblige you, they have not given you good

¹ *Ibid.* (Commentaries of al-Zarqānī and of al-Shaibānī, Part 5, p. 31; Marginal commentary of Ibn 'Ābidīn, Part 5, pp. 516, 519; *Nihāyat al-Muhtāj*, Part 7, p. 360; *Al-Mughnī*, Part 9, pp. 552, 557; *Al-'Iqnā'*, Part 3).

advice. It is you who have to pay the foetus' indemnity, for in terrifying the woman you have caused her to abort." 'Umar acted as 'Alī advised.¹

CONCLUSION

We have presented several opinions regarding the question of the legalization of induced abortion. It is clear that the opinion advocating its absolute legality does not give the foetus the consideration due to it as a human being. We have shown that the Islamic outlook is of one accord in considering the foetus as a human being and with a right to live, To deprive it of this right is prohibited by religion, unless there are strong grounds which outweigh by far the grounds against the destruction of the foetus. We have also expressed an opinion on the other types of penalization, such as castigation and fines.

Islamic Law lays stress upon the respect due to man as man, while the right of the foetus to life stands apart from the question of abortion. Were a woman to be deprived of her right to life, this right would still be retained by the foetus. The jurists are unanimously agreed that if a pregnant woman were to commit suicide or to be executed, she would be allowed to give birth first.²

Similarly, the Prophet deferred the infliction of punishment on a pregnant adulteress until she was delivered of her baby.³ According to another tradition, punishment was deferred until a certain period of time had passed to allow the woman to nurse the baby in the meantime. This perhaps serves to indicate that pregnancy occurring out of wedlock does not constitute sufficient grounds for depriving the foetus of the right to life, regardless of whether the foetus has already been formed or taken shape or animated.

The foetus has also the right, if aborted with visible signs of life, such as the moving of a finger, breathing, coughing, sneezing or any other similar sign, to inherit from any of his bequeathers who had died prior to the abortion provided it is established that pregnancy had occurred before the death of the bequeathers concerned. Similarly, the foetus inherits in his brief span of life after abortion from any of

¹ *Al-Mughni*, Part 9, p. 579.

² Ibn Rushd, vol. 2, p. 405.

³ *Majallat al-Wa'i al-Islami* (Journal of Muslim Consciousness), No. 75, Kuwait, 1971, p. 105.

his bequeathers if the bequeather dies during that period. If the foetus dies thereafter he can bequeath.

A man may die and leave a pregnant wife; a portion of the inheritance left by the father or by any other legator — equal in portion to that of one male child or one female child, whichever is the greater is to be assigned to the baby-to-be according to the preponderant view in the Ḥanafī school of jurisprudence, for the single rather than the multiple birth is the general rule. It is true, some jurists concede, that portions for twins or triplets or quadruplets are to be assigned, but if the woman then gives birth to one child, the remainder is to be restored to the rest of the inheritors, in accordance with their shares. Those who are of the opinion that a single child's portion should be reserved to the foetus require, however, that the heirs should provide a person to act as security for them, in case the woman gives birth to more than one child, in which case the portion of the additional child would be reclaimed from them.

This is the foetus. These are his distinctive characteristics and these are his rights in Islam. I believe, guided by my observations as a doctor and my sentiments as a Muslim, that the grounds for abortion — even in its early stages — should be restricted to two cases only (1) when there is certainty of danger in the immediate present or future to the mother's life or of serious harm to her health, or (2) when there is strong or likely probability of the baby being born deformed or afflicted with a serious disease.

In all other cases, no life is to be destroyed. Means of contraception are permissible and within easy reach. It would be far better to use them and thereby obviate hazards of pregnancy rather than allowing it to happen and then undo it.

To say, on the other hand, that a foetus is unwanted is mere delusion and a pretext. We conducted a survey on a group of women — married — who had requested to be aborted, but the request was rejected. When they were delivered of their babies, we asked each of them if she still felt that her baby was unwanted; the reply of each and all was in the negative. The whole problem is laid out before you, worthy gentlemen and jurists. May God guide your footsteps along the path most pleasing to His sight.

ABORTION IN THE NATALITY TRANSITION IN MUSLIM COUNTRIES

BY

DR. ABDEL R. OMRAN

Islam is not a mere collection of religious rituals and rigid behavioural precepts. It is rather a way of life and as such carries with it a sober realization of changing human needs and aspirations as well as an inherent flexibility that can masterfully accommodate measures to satisfy these needs and aspirations within the general frame of Islam's objectives and basic principles. Islam's flexibility has been a tremendously important tool for suppressing superstitions, taboos and fundamental ignorance which bedevil traditional reproductive patterns.

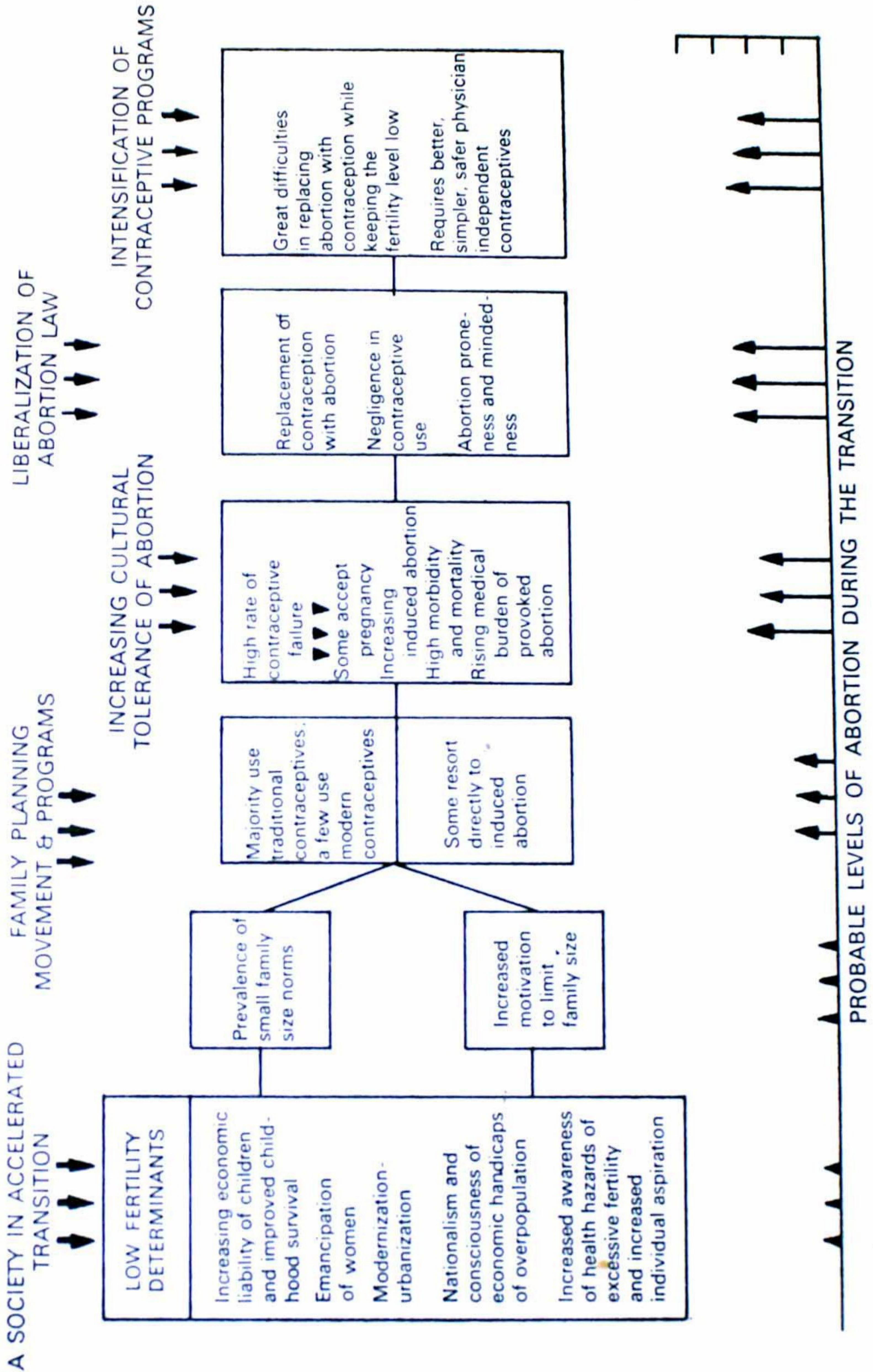
In terms of national and individual welfare, Islam's support for planned parenthood is unequivocal. In a previous paper I described the dichotomy of Islam's natality design in an epidemiologic context. In this paper I deal with a much more controversial issue, namely, abortion, and I feel that Islam's great tolerance may extend to abortion under some conditions, although I hasten to emphasize that Islam, while tolerating some abortion, will not advocate it as a substitute for contraception. However, there are certain circumstances under which I humbly and appreciatively call upon the great tolerance of Islam. I feel that there are four basic grounds on which Islam may warrant abortion: (1) demographic compulsion; (2) realistic planning; (3) humane considerations, and (4) theological flexibility.

DEMOGRAPHIC COMPULSION

The term "demographic compulsion" may be taken to encompass the dynamics of the complex process of population change that enforce abortion. The conceptual model given in Figure I illustrates — in admittedly over-simplified terms — the evolution of the abortion epidemic during the accelerated demographic transition from high

Fig. 1

Model of the Role of Abortion in an Accelerated Demographic Transition



to low fertility. When a developing country is strongly urged to accelerate its transition from high mortality and fertility and low production and consumption to low mortality and fertility and high production and consumption, induced abortion may become such a popular method of fertility control that it may actually reach, or have the potential for reaching epidemic proportions. The prevalence of abortion tends to be due to a joint action by two major factors. The first factor is the intensity of the desire to limit fertility among large segments of a population, which is itself indicative of the extent to which certain low fertility determinants common to countries in transition have been assimilated; and the second factor is the availability and acceptability of effective contraceptives and the extent to which they are used. The dynamics of this transition can be described in six steps, as follows:

Step I. Prevalence of Low Fertility Determinants: In a society in which an accelerated transition is occurring, it is easy to identify a host of low fertility determinants, which are represented by five major categories in the conceptual model.

1. *Increasing economic liability of children*: High among the factors that compel people to lower their fertility is the increasing economic liability of children. An unmistakable increase in the economic costs of children becomes obvious as swift progressive changes from an agrarian to an industrial economy translate the need for more hands to work in the field into a new need for fewer mouths to feed. Improvements in childhood survival have also begun to increase the economic liability represented by each new birth; whereas parents used to give birth to nine or ten children and hope that a few of them would survive, now most of the children who are born survive in numbers that exceed the tolerable family sizes. This has led to the acknowledged disadvantage of having too many children in need of support, disciplining and schooling, as beautifully described by the Prophet when he predicted:

There will be times when the child becomes an unwelcome burden on the family.

2. *Emancipation of women*: Islam pioneered in the emancipation of women. For example, Islam prohibited the pagan practice of *wa'd* (the killing of girls for fear of shame); it gave woman equal rights in all civil and religious affairs, even to the extent of giving her complete independence in administering her possession without the interference of her husband, something that is yet to be achieved by the women's

“liberation” movement in the twentieth century in some western countries. These and many other healthy attitudes of Islam towards women were undermined during the last several centuries in Muslim countries, however, and only in the last few decades has re-emancipation of Muslim women been taken up again. Female interests and activities outside the home are being duly recognized and constructively encouraged. In countries like Egypt women are given not only the right to vote but also the right to hold public office and to be representatives in the National Assembly. With emancipation, women tend to limit their family size. Furthermore, the women’s liberation movement in Muslim countries has been fortuitously involved in the family planning movement. In Egypt, for example, the pioneering work of women’s clubs in promoting the idea of planned parenthood and in providing contraceptive services laid a solid foundation for the successful launching of the National Family Planning Programme in 1966.

3. *Modernization and urbanization*: The experience of many countries has been that an increased motivation to limit family size goes hand in hand with the processes of modernization and urbanization. This increased motivation is the result of a complex of mechanisms related to improved living standards, rising social aspirations, improved childhood survival, in addition to problems of urban life such as the enjoyment of adequate housing facilities.

4. *Nationalism*: After World War II, national feeling and aspirations have been rising in many countries and with this there has been an increasing consciousness of the economic handicaps that overpopulation may cause in the way of national goals and development. This consciousness usually pervades the political as well as the civil systems and lends support to fertility control programmes.

5. *Increased awareness of the hazards of excessive fertility*: With rising levels of living, emancipation of women, increased individual aspirations, and increased educational levels, people have started to realize the overwhelming hazards that excessive fertility may produce where the health and well-being of family members, particularly mother and children are concerned. Islam has been most sympathetic to this aspect of human welfare. Even at a time when high fertility was a necessity to compensate for high mortality, the Qur’ān forcefully and emphatically set a condition that the breeding of children should in no way harm the mother (physical harm) or the father (financial and psychological harm). As for the children,

Islam has again set a condition that a new pregnancy should not harm a preceding child.

Step II. Prevalence of Small Family Size Norms: The low fertility determinants that become prevalent in developing societies tend to effect a change in norms from large, extended families to small, nuclear families which in turn tend to intensify motivation to limit family size. Studies in various countries indicated the diffusion of small family size norms even to societies still traditional.

Step III. Supportive Institutions: The prevalence of low fertility determinants and the diffusion of small family size norms are further enhanced by organized family planning efforts whether they are made by voluntary or by governmental agencies and whether on a local or a national basis. There has also been a rapidly increasing cultural tolerance of fertility control in Muslim countries.

Step IV. Trial and Error: The majority of couples who are motivated to limit family size use traditional methods of contraception such as withdrawal ('*azl*'), safe period, jellies, douches, condoms, etc. The failure rate of these methods is usually high. Others use modern methods such as the diaphragm and jelly, the intrauterine device or oral contraceptives. Because of inexperience, some contraceptive failures occur with these methods also. When failure occurs, some couples may accept the resulting pregnancy but increasing numbers terminate the unwanted pregnancy by abortion. A third group which use no contraception may resort directly to abortion, but this is usually a minority. One result of the diffusion of low fertility norms may thus be a cause for the rising wave of abortions. The occurrence of such a wave of abortions in Muslim countries will be discussed in greater detail below.

Most of these abortions are done illegally and inexpertly outside hospitals and carry great risk for the women who have them, a great proportion of whom end up in hospitals with complications that overburden already crowded services.

Step V. Liberalization of Abortion Laws: Some countries having realized the drawbacks of overpopulation and/or the hazards of illegal abortion, are liberalizing their abortion laws. While this may cut out most illegal abortions it does not eliminate the problem entirely. Furthermore, liberalization may increase legal abortion to a great extent. This increase may result from replacement of contraception with abortion, carelessness in the use of contraception, and an

increase in 'abortion-mindedness'. Many countries such as Japan and a number in eastern and northern Europe have taken the calculated risk and liberalized abortion laws.

Step VI. Intensification of Contraceptive Efforts: This step is favoured by all countries, even by those with liberalized abortion laws, and is certainly highly favoured by Muslim countries. Theoretically, intensification of contraceptive efforts could prevent an abortion "epidemic" or moderate the use of abortion if it is already very high.

REALISTIC PLANNING

Planners on national or local levels must sometimes address themselves to problems in a realistic rather than emotional way. Realistic planning to achieve an accelerated transition may have to include tolerance of a temporary rise in abortion.

Effect of suppressing abortion: Some countries have chosen not to acknowledge abortion as a means — however objectionable — of enhancing their transition. Hence they continue to suppress abortion. In so doing they delay their transition and increase the potential for an epidemic of illegal abortion.

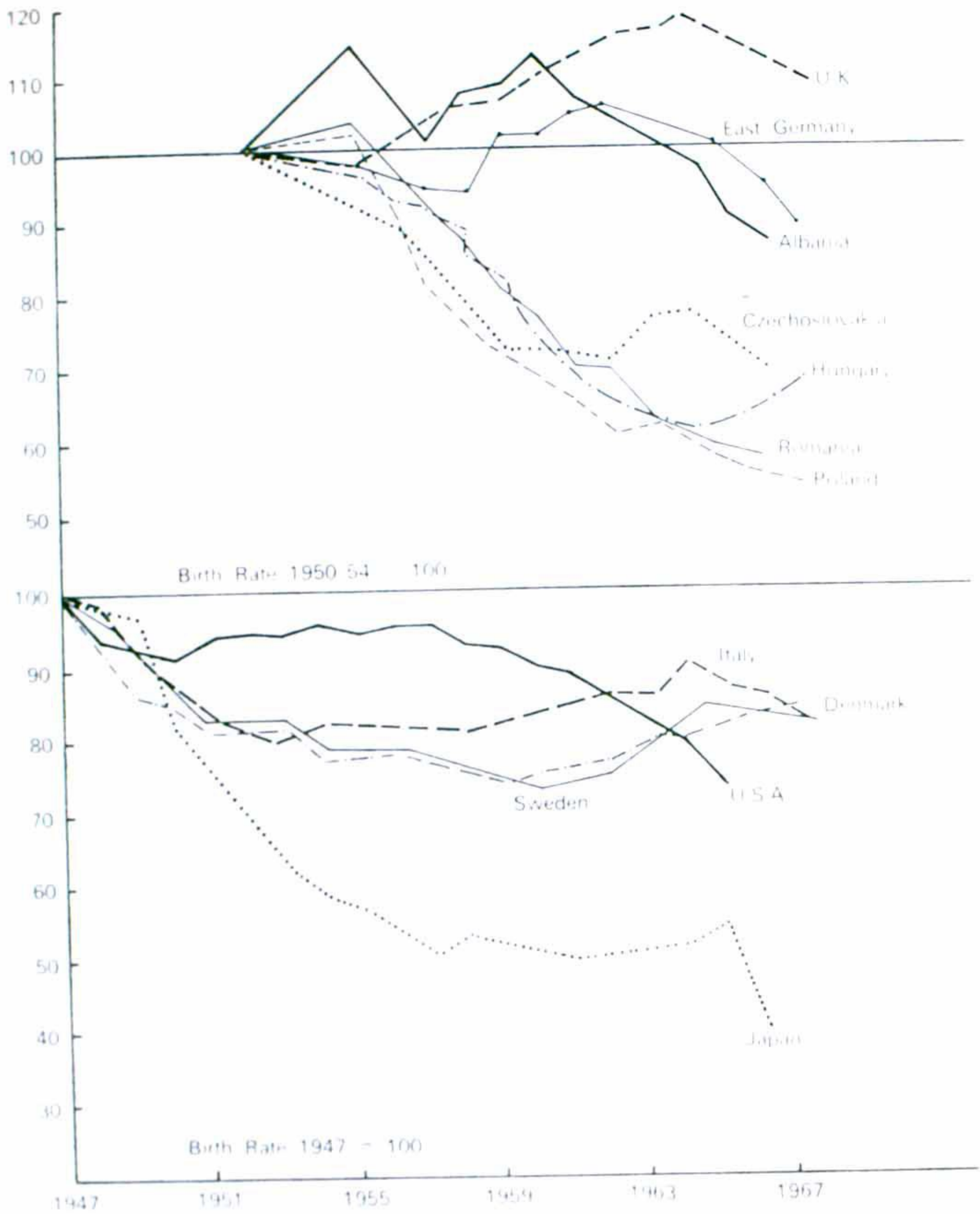
The experience of many countries demonstrates that the decline in the birth rate was much faster in countries which chose to liberalize their abortion laws than in countries which did not. (See Figure 2.) Demographic history bears witness to the fact that no country could achieve an accelerated transition within a few decades without some use of induced abortion. For example, in Japan the reduction of the birth rate from 34 per thousand population in 1947 to 17 in 1957 was due 80 per cent to abortion and 20 per cent to contraception.¹

Why Abortion? In addition to the dynamics already described, a mathematical model developed by Thomas shows the relationships between family size and contraception and abortion.² The model, as summarized in Figure 3, indicates that in order to achieve a small family size norm, either a substantial number of eligible couples must use very effective contraception or else abortion will have to be resorted to.

¹ Koya, cited in W.T. Pommerenke, *Abortion in Japan, Obstetrical and Gynecological Survey*, 1955, vol. 10, pp. 145-175.

² H.A. Thomas, Jr., personal communication in a discussion at Woodshole Conference, August, 1969.

Fig. 2
Changes in Birth Rates in Selected Countries

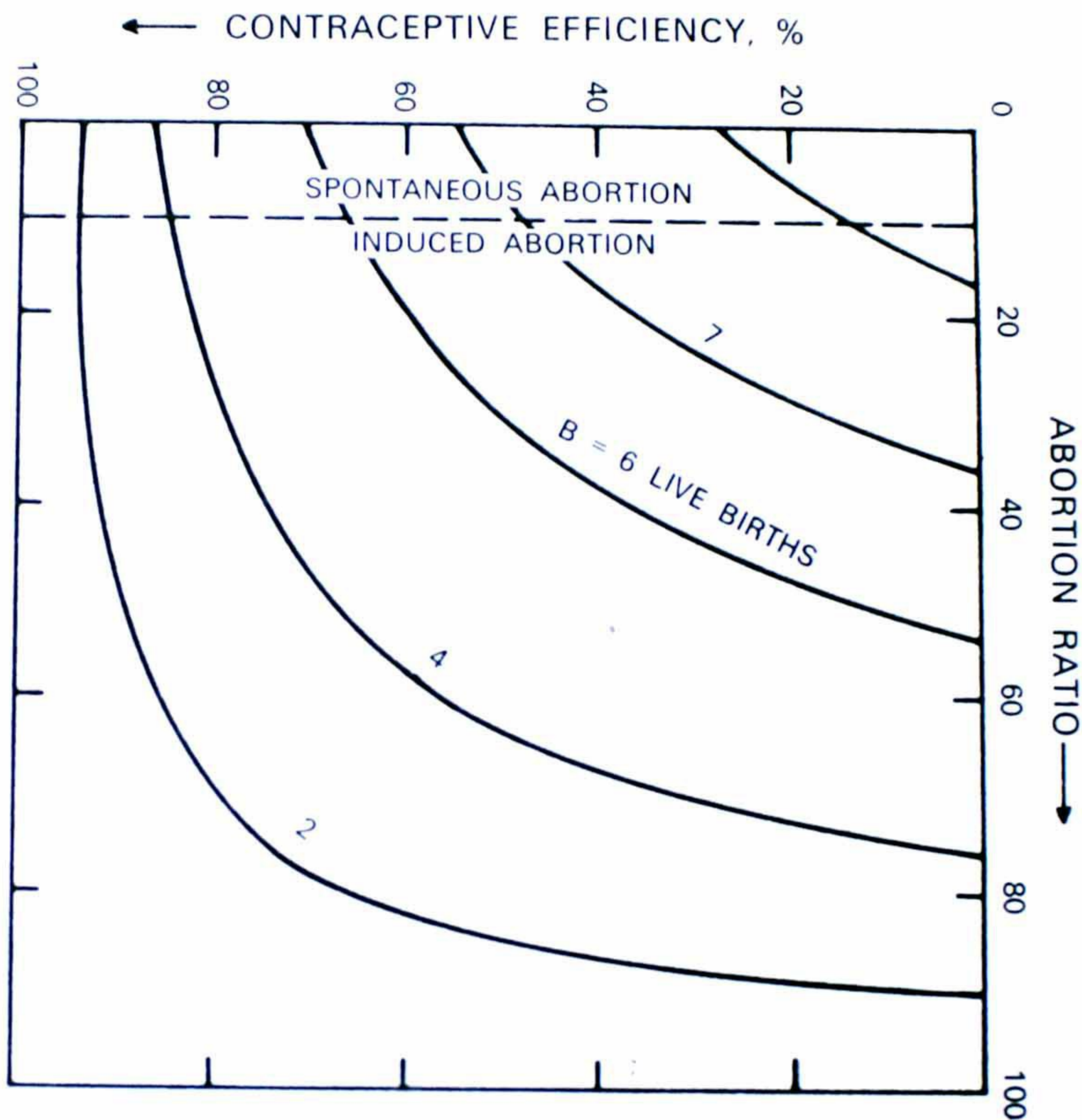


The lower part of the figure compares the natality trends in the United States and Italy — two countries which did not liberalize their abortion laws — with Sweden, Denmark and Japan — countries which liberalized their abortion laws in the late 1940's or earlier. The upper part of the figure makes possible a similar comparison between eastern European countries which have liberalized their laws and East Germany and Albania which have not and the United Kingdom, which has liberalized its abortion law only recently, in 1967.

Source: Drawn from data (updated by the author) in Christopher Tietze, "Abortion in Europe", in *American Journal of Public Health*, vol. 57, 1967, pp. 1923-32.

Fig. 3

Relation Between Total Births, Contraceptive Efficiency and Abortion; Separation Coefficient = 0.3



Source: H.A. Thomas, Jr., personal communication in a discussion at Woodshole Conference August, 1969.

THE SITUATION IN ISLAMIC COUNTRIES

An examination of the family planning programmes in Muslim countries would reveal that, much publicized as they may be, they still have a long way to go in order to effect a sure and accelerated transition in a reasonably short time. This may be a most distressing statement, but realistically it must be recognized that contraception alone will not help achieve rapid and dramatic fertility declines. Furthermore, the signs of abortion epidemics are already obvious in several Muslim countries.

The rising wave of abortion in Muslim countries: The scanty data available from Muslim countries point very harshly to the fact that abortion is already prevalent. Most of these studies were presented at the IPPF conference on abortion in Beirut in February 1971. Although the value of some of these data is limited because they are based on hospital or selected samples, their seriousness should not be underestimated.

Because the Turkish data were gathered from a national sample survey, they are more representative and can be used to illustrate three points:¹

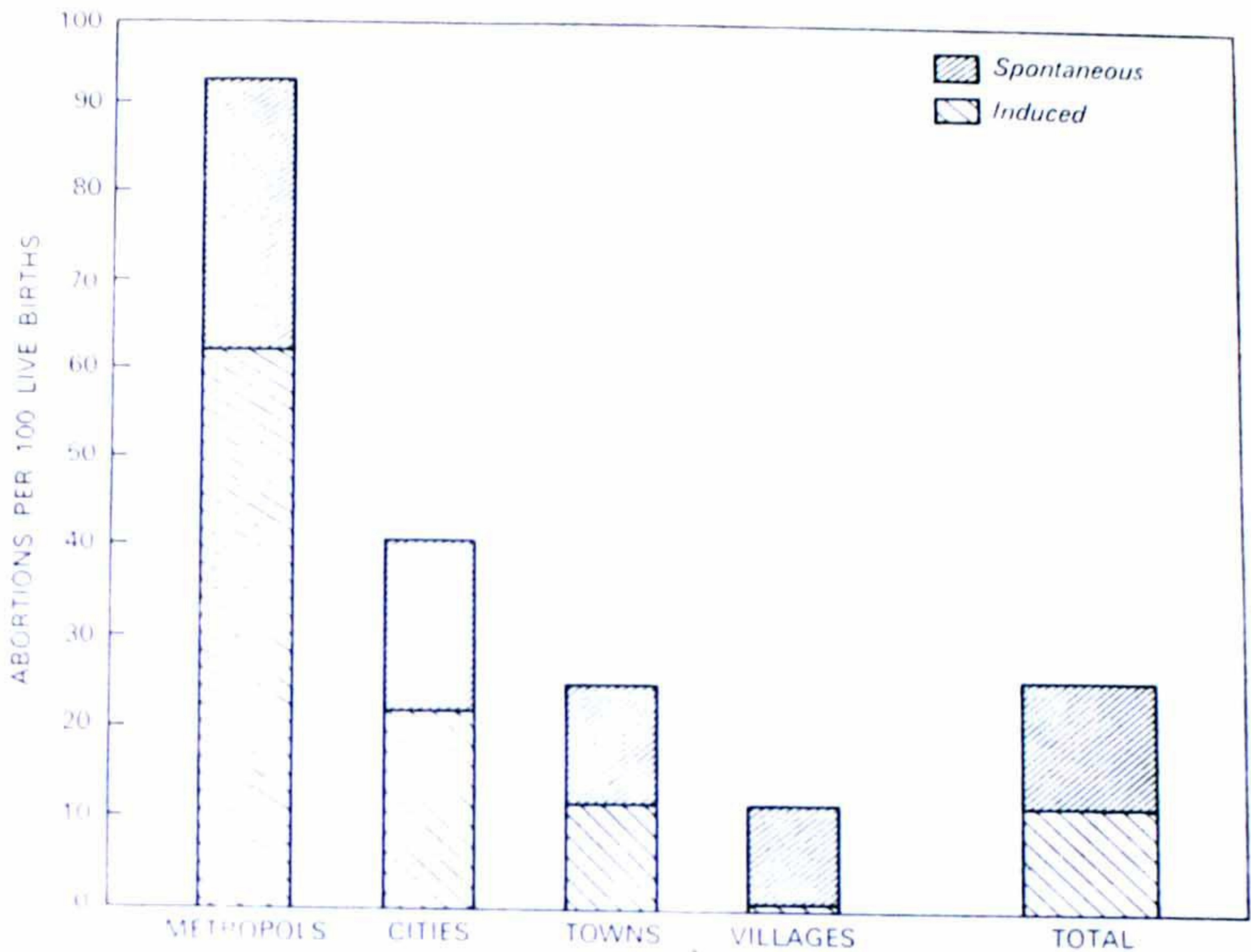
1. Induced abortion increases from rural to urban and metropolitan areas as shown in Figure 4.
2. Induced abortion increases in direct proportion to the degree of modernization (Figure 5).
3. Induced abortion also increases with the rising standard of education (Figure 6).

HUMANE CONSIDERATIONS

There can be no doubt that urbanization, modernization and increased educational opportunities for both men and women are necessities for development in Muslim countries. If abortion must accompany these processes, it is clear, from the humane viewpoint, and with the strong interest of the religion in maternal health, that these abortions should be given the chance of being performed legally, in the safe facilities of a hospital. I don't need to dwell on the safety of medically induced abortion as compared to illegally induced

¹ Nusret H. Fişek, 'An Epidemiological Study on Abortion in Turkey', in I. Nazer, ed., *Induced: Abortion A Hazard to Public Health?* (Beirut, 1972).

Fig. 4
Abortions Per 100 Live Births, Turkey (1968)



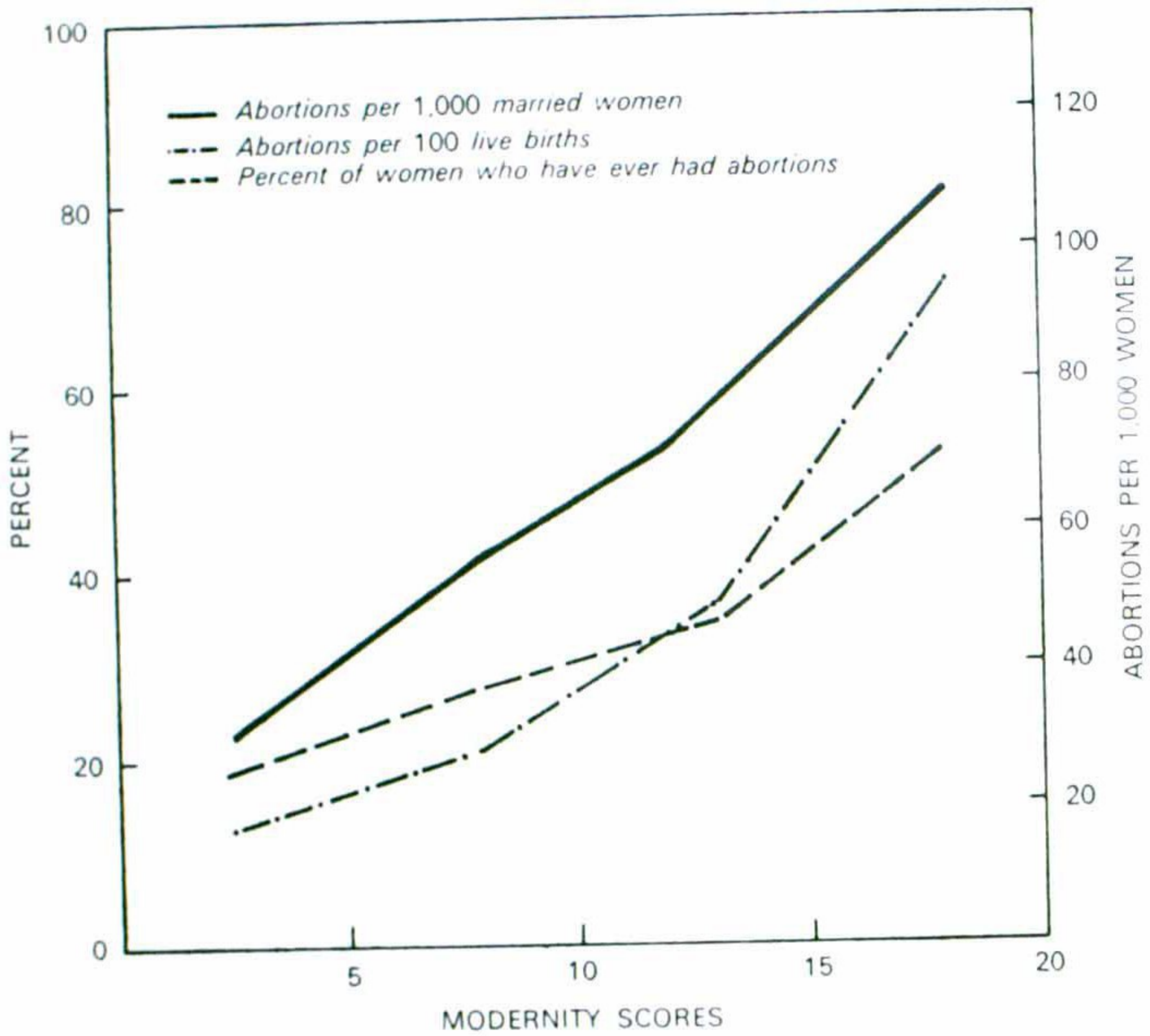
Source: Plotted from data in Nurset H. Fisek, 'Epidemiological study on Abortion in Turkey', in I. Nazer, ed., *Induced Abortion: A Hazard to Public Health?* (Beirut, 1972).

abortion. Neither do I have to indicate further the burden on our medical services because of illegal abortion. A study of Cairo University Hospital by Kamal *et al.* indicates, for example, that 50 per cent of the cost of the maternity services is accounted for by abortion.

Therefore, if the restrictive legal code in Muslim countries continues to treat abortion as a criminal act and/or if the ethical code of trained physicians continues to push women with unwanted pregnancies into the squalor of shanties and the hands of butchers, the inevitable result will not only include unnecessary maternal mortality and morbidity but a deluge of complicated, septic abortion cases requiring extensive medical care and services.

Fig. 5

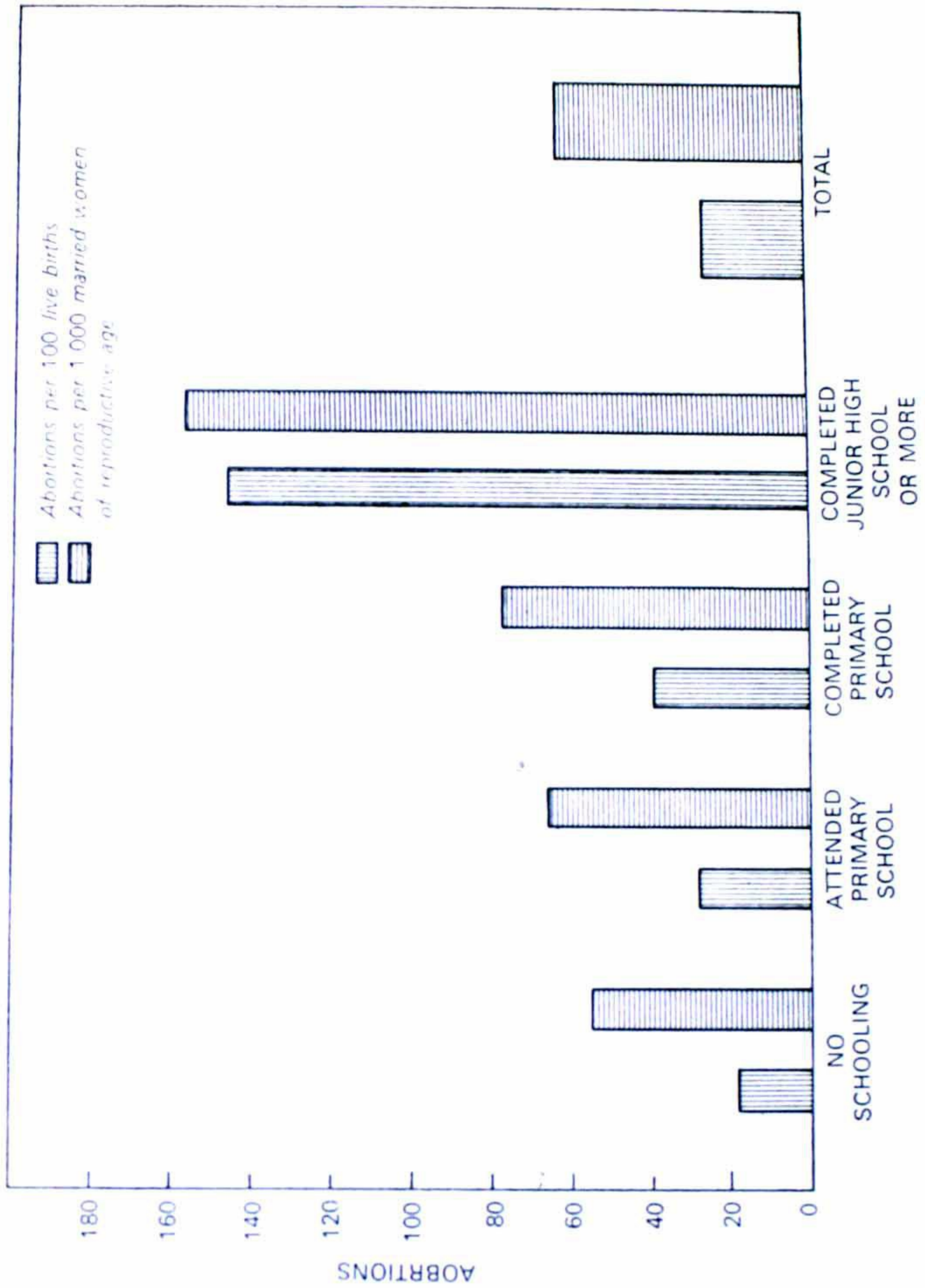
Modernity of Values and Abortion Rates, Turkey



Source: Same as Figure 4.

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Fig. 6
Abortions at Different Educational Levels, Turkey



Source: Same as Figure 4.

THEOLOGICAL FLEXIBILITY

We are in the fortunate position that our beloved religion is flexible and tolerant — within reason, of course. The views I am expressing here are subject to emendation and rectification by those who have more profound knowledge than I can ever possibly claim. With humility I am presenting these interpretations, but I am also quoting authorities as far as I can. The sources of Islamic jurisprudence are four — the Qur'ān, the tradition (the Prophet's *ḥadīth* and acts), the consensus of *'ulamā* and *qiyās* or analogy. The first three sources will be discussed.

The Qur'ān: To my knowledge there is no clear-cut statement for or against induced abortion in the Qur'ān. There is, however, a statement about the process of foetal development, and at a fixed stage, ensoulment occurs: "Then we placed him, a moist germ in a safe abode; then made we the moist germ a clot of blood: then made the clotted blood into a piece of flesh; then made the piece of flesh into bones: and we clothed the bones with flesh: then brought forth man of yet another make — Blessed therefore be God, the most excellent of Makers" (Sura 23/12-14).

The most authoritative explanation (by me at least) is the one given by Imām 'Alī, the fourth Caliph. In a meeting of a group of companions, including such prominent men as 'Umar, 'Alī, Zubair, Sa'd and many others, a man argued that *'azl* was claimed to be equal to a minor *wa'd* (early infanticide, a practice much execrated by Islam). Imām 'Alī argued that *'azl* could not possibly be considered infanticide or *wa'd* until the foetus had progressed through the successive stages of development from the stage of the drop of seed to that of the clot, to the foetus lump and successively to the development of bones, of flesh and finally to the stage of another creature. In this argument, 'Alī was referring to the Qur'anic verse which depicts the stages of development as indicated in the above verses. 'Alī's views were immediately supported by 'Umar.¹

This authoritative interpretation leaves no doubt that the process of ensoulment first, is not synonymous with life and second, takes place at a later stage in pregnancy rather than at the moment of fertilization.

¹ Anwar-ul-Haque, *Family Planning in the Light of Islam* (Gujranwala: District Planning Board, 1967), p. 41.

The Tradition : One relevant *ḥadīth* in regard to abortion is concerned with stages of foetal development and specifies that three stages of 40 days each precede ensoulment: "The germ of one of you is concentrated in his mother's womb in the form of a drop for forty days; then he becomes a clot of blood for the same period; then he becomes a piece of flesh for the same period; then the angel is sent to him to ensoul him." This is the source for the 120 days so widely quote in religious literature as the time of ensoulment.

The Consensus of 'Ulamā : There is a consensus among Muslim theologians that when the life of the mother is endangered by pregnancy, abortion can be induced regardless of the period of gestation, provided that this will not further endanger her life. In other words, if there is a choice of saving the life of the unborn child or that of the mother, Muslim theologians unequivocally advocate saving the life of the mother. This was stated in a *fatwā* by Shaikh Maḥmūd Shaltūt, who said:

"If the continuation of pregnancy endangers the mother's life and if the only way to save her life is by inducing abortion, it becomes mandatory that abortion should be induced because the mother's life is independent and she is the origin of the foetus and the support for the family, and it is not logical to sacrifice her life in order to save the foetus with a dependent life." ¹

In modern abortion terminology, this means that when there are medical indications for inducing abortion, it is not only sanctioned by Islam but is required. This position is reflected in the early *fatwā* by Shaikh 'Abdul Majīd Salīm in 1937 when he stated that abortion was allowed to protect the health of the mother, if the abortion was induced during the early months of pregnancy. ²

In the event that there are no health indications for inducing abortion, differences exist between the different systems of Islamic jurisprudence. There is general agreement among Muslim theologians that the foetus passes through a number of stages of development and somewhere in this process ensoulment occurs.

¹ Cited in M.M. Dabash, *Al-Islām wa Tanẓīm al-Usra* (Islam and Family Planning), (Alexandria: Society for the Preservation of the Holy Qur'ān, 1960).

² *Muslim Attitudes Towards Family Planning* (New York: Population Council, 1967), pp. 11-12.

There is also a consensus that after ensoulment when the foetus is "another creature", induced abortion is prohibited unless it is to save the mother's life.

It is on the induction of abortion for reasons other than strictly medical reasons that theologians' views differ. These views have been examined and summarized very carefully by Dr. Madkūr, Chairman of the Division of Islamic Jurisprudence at Cairo University.¹

1. *The Ḥanafī madhhab or system* is a cardinal one in Islamic jurisprudence, adhered to by millions of Sunni Muslims around the world. The majority of the theologians in this *madhhab* sanction the induction of abortion during the first 120 days of pregnancy. A minority say that it is *makrūh* or disfavourable if there is no occasion for it. Among the occasions that they specified was the fear that continuation of a pregnancy in a mother who is lactating another child might dry up her milk; at a time when there was no other way of feeding the baby, this would obviously hurt the child, especially if the father could not afford to hire a wet nurse.

2. *The Zaidiyya madhhab* is a Shī'ite track of Islamic jurisprudence and is probably the most permissive in regard to abortion. Imām Yaḥyā used the principle of analogy to sanction abortion for the same reasons that sanction 'azl or coitus interruptus provided the abortion occurs before the stage of ensoulment.

3. *The Shāfi'i madhhab* is another major — and probably more popular — Sunni *madhhab* followed by millions in the Islamic world. Some of the theologians in this *madhhab* have liberally sanctioned abortion before the 120-day limit and some others have considered it *makrūh* without justifications.

4. *Mālikī madhhab* is an ultra-conservative *madhhab* followed by a minority of Sunnī Muslims. Some of the Mālikī theologians totally prohibit abortion and some others consider it as strictly *makrūh*.

It can be concluded, therefore, that as regards induction of abortion during the first four months of pregnancy, the following variations occur in Islamic jurisprudence:

¹ M. S. Madkūr, 'Family Planning from the View of Islamic Jurisprudence' (Arabic) in *Lecture Series for Training Family Planning Physicians* (Cairo, 1968).

1. According to 'Umar and 'Alī, there could be no question of infanticide until gestation has reached the stage of another creature (120 days).

2. Liberal sanction for abortion is given by the Zaidīs, some Hanafīs, and some Shāfi'īs.

3. Sanction for specific indications and *makrūh* without indications is the position held by some of the Hanafīs and Shāfi'īs.

4. Strictly *makrūh* is the attitude of some Mālikīs.

5. Total prohibition is the position held by the majority of the Mālikīs.

As a footnote to this presentation, I would like to acknowledge that abortion is a subject that is loaded with emotion. We all hate abortion; we cannot possibly think of it as a reasonable substitute for contraception, but we should not allow our hatred to mislead our judgement. There is in Islam an elegant example in regard to divorce. There is no question that divorce has untoward effects on many members of a family, including parents and children; and yet divorce is allowed as the lesser of two evils. In point of fact, the Prophet says: "The most hateful to God of sanctioned practices is divorce."

CONCLUSION

In conclusion let me say that we must not forget:

1. That demographic history bears witness to the fact that no country has achieved an accelerated demographic transition without the assistance of abortion. Without an accelerated transition, the process of development in the Muslim world will be seriously hampered.

2. That induced abortion has already increased in many Muslim countries despite the beginnings of contraceptive programmes. This is indicative of high motivation to limit family size. Since the majority of abortions are performed outside hospitals, they increase maternal morbidity and mortality unnecessarily. Furthermore, these cases overtax already strained medical services. Thus, for humane and administrative reasons, if abortion cannot be prevented, it should be done by medical practitioners.

3. That our religion is highly tolerant, especially in matters that endanger the future of Muslim nations. With the existing difference of opinion regarding abortion, it may be wise to sanction abortion in early pregnancy, based on the opinion of those theologians who have seen little or no religious objection to early abortion.

4. That we should not clog our judgement with our hatred of abortion for its being a drastic and bitter treatment of some of our social ills.

THE ATTITUDE OF ISLAM TOWARDS ABORTION AND STERILIZATION

BY

SHAIKH 'ABDUL RAHMĀN AL-KHAYYIR

THE FAMILY AND HUMANITY

God says: "O men! verily, we have created you of a male and female; and we have divided you into peoples and tribes that ye might have knowledge one of another. Truly, the most worthy of honour in the sight of God, is he who feareth Him most. Verily, God is Knowing, Cognisant" (Sura 49/13). He also says: "O men! fear your Lord, who hath created you of one man (*nafs*; soul), and of him created his wife, and from these twain hath spread abroad so many men and women. And fear ye God, in whose name ye ask mutual favours, and reverence the wombs (that bare you). Verily is God watching over you" (Sura 4/1).

In the first verse, God addressed the whole of mankind, showing them how they were created of two mates; a male and a female, and how they were made into nations and tribes that they might know one another. He also showed that the noblest in His sight were the best in conduct, that is, the most obedient to His commands and the most observant of His laws. He concluded the verse by calling to their attention His omniscience of their innermost thoughts and actions.

The second verse was introduced by a call upon all people to fear Him. It is He Who in His graciousness caused them to exist. He brought to their notice His powers manifested in His creating mankind of one soul, giving a mate unto it of its own self. Further tokens of His grace to mankind were his spreading these two mates into a multitude of men and women. God's special grace of having created man and woman of one soul was meant to serve a special purpose: to impress upon them their one single origin and that consequently it behoved

them to love one another and act towards one another with charity and mercy. He stressed His command that they show regard to those that bore them for His sake, respect the bond of kinship, and harbour feelings of love and affection towards one another since their creator is one Lord and their origin one soul.

THE FAMILY AND SOCIETY

The man and the wife, together with the children they beget, form the family, the first cell from whose multiplication society is built. The family constitutes the foundation stones that fix society firmly into position, as well as each successive brick in its structure. If the family is built upon a sound system of life, the setting up of a strong integrated society will be possible; if the structure of the family is unsteady or shaky, however, the vigour of society would be impaired, and as a result flows would develop in the social structure.

THE FAMILY IN ISLAM

Since the family is the foundation of society, Islam makes it its special concern. The Holy Qur'ān assigned for it a number of verses in which it sets forth in clear detail reciprocal conjugal rights; regulations pertaining to marriage, such as the contract, the dower and adequate alimony for the wife; and all things dealing with the relations between the various members of the family, such as good companionship, foster relationship, divorce and inheritance. The Qur'anic texts hardly left out anything to be prescribed by the Sunna (the Prophet's acts and sayings) in so far as the family is concerned, save what might serve to explain in more detail general concepts or principles, or to demonstrate their practical applications.

Hence, the thorough scholar and researcher will perceive that the family structure in Islam has no need of importing rules from cultures other than our own Islamic culture, whose foundation was laid by God Almighty in a noble book which "Falsehood, from whatever side it cometh shall not come nigh it; it is a missive down from the wise" (Sura 41/42); and whose edifice was erected by our Arab Prophet, truthful and honest, in his acts and sayings, which have won the admiration of master thinkers and legislators alike, particularly as their radiance burst forth over an unlettered, uncultured environment that had not hitherto contributed one, to the cause of

progress or civilization. His Sunna with its well-integrated system of life was the second human miracle next to the Holy Qur'ān, the first divine miracle.

THREATS TO FAMILY AND SOCIETY

It is all too evident that we are now being swept away by the hurly-burly and fury of material life through the rush of communications, and swamped by the destructive printed word, illustrated or otherwise, through the printing press. We look helplessly on as our rising generations are seizing on cheap and vulgar books and magazines that are invading our conservative Islamic countries. All these are causing fearful havoc in the social stream of our times, transforming our society from one of simple, guileless nature to one of hollow superficiality in today's material civilization, to which end the colonialists have mobilized huge resources under various deceptive guises.

Intellectual stagnation, which has been the cause for concern to many of the educated classes as well as to the common people for several centuries past, has co-operated with weak and irresponsible regimes, to firmly implant certain serious social evils, such as the spread of alcoholism, venality, fraudulence, rabid tribalism and factionalism, interstrife for power, apathy, dissipation and indulgence of one's sensual desires. All these ills have paved the way for foreign penetration to do as it will with our people. As a result of this concentrated onslaught, our Islamic society is on the verge of disintegration, if it is not already disintegrating.

This state of affairs has been dealt with by Dr. Maḥmūd Ḥilmī¹ who says:

“Unfortunately for the Muslims, decline and decay have begun to seep into the Ottoman Islamic society. The Turks are overmastered by jealousy and hate; the monarchs have turned into tyrannical despots and the princes have betrayed and deceived the people. The worst evils with which the Muslim World was plagued were the intellectual stagnation under the Turkish rule, the standstill in education, moral decadence and decline of the sciences of language and religion.”

The family, which but a few years back was still preserving within the sanctum of the home certain genuine principles of Islamic education, now stands bewildered before this sweeping onslaught.

¹ Dr. Maḥmūd Ḥilmī, *Development of Arabo-Islamic Society*, p. 76.

It can no longer act in accordance with its beliefs and convictions, except in very limited and rare cases, for radio and television inside the home have shared with movies, theatres and wanton entertainment haunts outside the home in infixing more firmly the impression of this crushing overpowering invasion.

Under the impact of all these forces collectively and severally, the relationship between husband and wife as well as between parents and children is growing day by day lax and lifeless, and the family bonds as a result are disrupted in many, if not in most, cases.

ISLAM'S ATTITUDE TO THESE THREATS

Those seriously concerned looked about them and saw distinctly before their eyes the gravity of the impending danger, not only to the family and the society but to the faith of many, educated and uneducated alike. The Islamic faith which is the solid base of the make-up of the individual of the family and of society throughout our world.

Some writers and thinkers of Islam have vied with one another in writing and publishing in order to expose these dangers and warn against them. The countless social ills, however, have become so aggravated that the ear is already deaf to the calls, for reform, and the eye blind to the overhanging peril which steals under cover of civilization, laicism, progressiveness and world modernism, but at the same time holding aloft the banner of materialism.

The West has outstripped the Eastern countries, in the field of industry, material and intellectual civilization, and has been the forerunner in turning arms into engines of domination and destruction. Its ascendancy in all this has enabled it to conquer the Islamic countries militarily, economically and intellectually. It has so dazzled the mind with its inventions, military might, and down-to-earth culture, that the world of Islam has come to regard reform in terms of imitations of Western systems and importations of its culture, regardless of the social and ideological differences, and irrespective of the dangers, consequent upon the West's deep involvement in materialism and its drift further and further away from spiritual human values that are indispensable to the endurance of a true, sound civilization and of firm and stable society.

Men of discrimination and learning have lately awakened to the dangers that threaten their spiritually, decadent societies. They rose

up with a clarion call for the urgent need to stem the onrush of materialism. Each came forward with specific suggestions, depending on his environment and the needs of his society. Some called for the prohibition of liquor and for a stop to the rot of laxity in morals and ban the use of destructive weapons. Some advocated the restructuring of society on the basis of religion. Others felt there was danger in reducing birth rate and urged that procreation be encouraged, as may be seen in Cyril Beaty's book on Sex Education (translated by Muḥammad Rif'at Ramaḍān), in his discussion on encouraging birth rate (p. 74).

A significant fact is that the clinics for building up the family in the Western countries are replacing those for birth control.

Some feel that the danger lies in the population explosion and, therefore, urge birth control (the Malthusian theory).

Some Western reform slogans have found their way to the minds of many among us, just as their evil influences have spread to our societies, thriving in the midst of our educated circles. Among these is the idea of birth control, adopted by some among us with great eagerness. Soon contraceptive means began to be imported from Western factories, together with their various and constantly changing fashions of indecent dress. Their unscrupulous ways and their brazen boldness press their attacks on time-honoured values and all things holy.

Having perceived the danger to our Islamic society involved in this influx of ideas and their destructive consequences, the more responsible and more sensible among us got together to look into these dangers and decided to hold meetings and conferences to discuss and define our attitude towards these incursions, first as Muslims and secondly as a nation which has been a target for the varied types of colonialism in masked or shameless forms.

THE IDEA OF BIRTH CONTROL: PHASES AND UNDERLYING REASONS

This idea is not the product of our present age, although its widespread prominence and the attention given to it make it appear as though it were of recent origin. Mention of contraception occurs in the works of the ancients: the Egyptians, the Chinese and the Greeks, though on an individual basis, as well as the Arabs, who practised it, in the form of burying female children alive and the killing of children generally, for fear of disgrace or poverty. Arab lore of the pre-Islamic era (*jāhiliyya*, age of ignorance) refers to this practice, and it is

confirmed by the Holy Qur'ān, where it condemns *wa'd* (infanticide), and sternly forbids it.

Birth control as a policy to be adopted by the state is advocated as a means of stopping the population explosion. It was first propounded by the English scientist Malthus, who lived in the last decade of the nineteenth century.

The suggested stages for this policy comprise a number of varied measures: permanent sterilization, temporary sterilization, contraception and abortion, for each of which, reasons and arguments are put forward.

Malthus argued the need for birth control on account of the steady increase of population. According to him, the world population doubles every twenty-five years, while the production of food increases during the same period at a much smaller rate, which, according to him, would eventually bring about world starvation, thereby endangering the fate of the whole of mankind.

It is interesting to observe that the actual facts during these long past years have not corroborated his so-called theory. Fortunately for humanity, facts have disproved it. As a matter of fact, we see that certain countries like the United States for instance resorted to the destruction of the surplus of their grain crop, an important source of nutrition, as a measure to maintain the price level in the world. At the same time we see other countries, like Syria and Egypt, turn away from the over-production of grain and other foodstuffs to that of cotton, for industry.

We also find that certain countries of limited area, such as Holland or Cuba, export dairy products or sugar, two important sources of nutrition, to many other countries, whose areas are many times larger, and which, at the same time, possess natural and human resources, capable, if exploited scientifically and properly, of turning these countries into exporters of those same products.

There are, moreover, vast plains in many countries of the world that are still unexploited, or exploited by means of very primitive and unproductive methods.

Hence, if Malthus had called on people to co-operate in spreading true learning and exchanging material and spiritual assistance instead of calling on them to control births, it would now be possible, if his call had been heeded and the idea of co-operation had been adopted for food production to increase a thousand-fold and consequently, any threat of famine would vanish from the world.

It is common knowledge that what is expended by world governments in the way of scientific, industrial and human effort for war and other destructive means exceeds many times over the effort that would be needed to meet the needs of mankind, however much the numbers grow. The world would be a happy place if governments were to devote part of what they spend on destruction to improving production exploitation and development of the land, and to spreading happiness among mankind instead of sorrow and misery.

Moreover, the riches of the oceans, which cover four-fifths of the globe surface, have not yet been tapped. Their abundant food resources still lie fallow; and what little exploration has been made in this field has been quite insignificant.

From all this it can be seen that the Malthusian call for birth control to avert impending starvation because of food shortage and population increase did not prove to be the brainchild of careful thought or great insight. It had a narrow base of reference which perhaps did not go far beyond the British Isles, limited as they were in area and dense of population, or far beyond other comparable European countries.

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ISLAM'S ATTITUDE TO BIRTH CONTROL TO AVERT STARVATION

Some of the Arabs in pre-Islamic times used to kill their children for fear of indigence. When Islam came with its divine teachings, it warned against this practice in these terms: "Kill not your children for fear of want: for them and for you will We provide. Verily, the killing of them is a great sin" (Sura 17/13); "And that ye slay not your children, because of poverty: for them and for you will We provide (Sura 6/151). And also: "Lost are they who, in their ignorance, have foolishly slain their children, and have forbidden that which God hath given them for food, devising an untruth against God! Now have they erred; and they were not rightly guided" (Sura 6/140).

In these verses God has shown the believers that He has taken it upon Himself to provide for the parents as well as for the children. To slay one's children for fear of poverty is a great wrong and a disgraceful act of foolishness, for it indicates a lack of trust in God. He is the Creator and He is the Provider. It behooves the believer simply to strive and apply himself to his occupation and have faith in God. God said: "And for him who putteth his trust in Him will God be all-sufficient" (Sura 65/3); "How many animals are there which

provide not their own food! God feedeth them and you. He heareth, knoweth all things" (Sura 29/60); "God lavisheth supplies on such of his servants as He pleaseth or giveth to them by measure. God knoweth all things" (Sura 29/60). The Prophet says: "Marry the affectionate and prolific woman, for I shall make a display of your multitude before other nations."

The Prophetic tradition encourages the Muslims to marry, to reproduce and multiply: "He who does not marry for fear of having a large family has not trust in God." God says: "And marry those among you who are single, and your good servants, and the handmaidens. If they are poor, God of His bounty will enrich them. God is all-bounteous, Knowing" (Sura 24/32).

The following tradition is related on the authority of Imām al-Ṣādiq, who reported that the Prophet said: "He who does not marry for fear of having a large family has no trust in God", for God says: "If they are poor, God of His bounty will enrich them" (Sura 24/32). This was recounted by al-Ṭabarsī in the interpretation of the verse. It was also cited by Hāshim al-Baḥrānī in his interpretation *Al-Burhān* (the proof), who gave an uninterrupted chain of authorities, tracing it back to Abū 'Abdullāh, to the Prophet. In the book *Al-Fiqh 'alā al-Madhāhib al-Arba'a*, we read: "The true goal of marriage is procreation, for thus the nation multiplies, and becomes strong and respected."¹

Maḥmūd al-Sharīf, says: "Poverty has never been in Islam a reason for controlling birth."² "And if ye fear want, God, if He please, will enrich you of His abundance" (Sura 9/28).

When God commanded the believers in this same verse to prevent the idolaters to perform the pilgrimage after that year, He noticed the Muslims' anxiety that they might suffer privation as a result of the stoppage of gains accruing to them from the idolaters' visit to Makka. God reassured them by promising to provide for them of His bounty: "O believers! only they who join gods with God are unclean! Let them not, therefore, after this their year, come near the sacred Temple. And if ye fear want, God, if He please, will enrich you of His abundance: for God is Knowing, Wise" (Sura 9/28).

Another instance of God's providence is given in the Sura of Yūsuf, where a dream by the Pharaoh is taken as a portent for a

¹ 'Abdul Wahhāb Khallāf, *Al-Fiqh 'alā al-Madhāhib al-Arba'a* (Cairo: Ash-Sha'b Press, 1380 A.H.), vol. 4, p. 8.

² Maḥmūd b. al-Sharīf, *Al-Islām wal 'Usra*, p. 60.

series of seven successive lean years in the future. God's Prophet Yūsuf did not on that score, advise the Egyptian monarch to institute birth control or contraception temporarily, but advised him instead to take necessary precautions by hoarding provisions against scarcity and starvation. This is the Qur'anic evidence for refuting the argument of birth control as a means of averting famine.

Another proof may be found in the annals of early Islam when the idolatrous people of Makka boycotted the Banī Hāshim (the Prophet's clan). The Banī Hāshim were isolated in a ravine and made to suffer all sorts of hardships as a result, so much so that they were reduced to such extreme poverty that they lived on leaves of trees. Neither God nor his Prophet, however, advised them to use contraceptives to control births, temporary or otherwise, to escape the hardship of famine.

'*Azl* (EXTERNAL EJACULATION) AS A MEANS OF CONTRACEPTION

By '*azl*' is meant that the man continues coition until he is about to ejaculate and then he withdraws and discharges the semen outside to prevent conception. There are various opinions concerning this practice. Some fully authorize it, and some others authorize it with reservations, but some others still indirectly prohibit it or regard it as disfavoured. Some jurists hold that it is forbidden on a religious basis. In the work *Fath al-Bārī fī Sharḥ al-Bukhārī*¹ we have: "Ibn Ḥazm stressed the obligation of sexual intercourse and the disallowance of '*azl*', on the strength of a Prophetic tradition related by Judāma, daughter of Wahb, who said: The Prophet was asked about '*azl*'. He said: 'This is infanticide (*wa'd*) in disguise' (related by Muslim)."

In Muslim's *Ṣaḥīḥ* there is also a chapter on the permissibility of *ghaila* (sexual intercourse with a nursing mother), and disfavouredness of '*azl*' (Vol. X, pp. 16-17).

"Judāma, daughter of Wahb, al-Assadiyya, sister of 'Ukkāsha b. Miḥṣin al-Asadī on the distaff side, related that the Prophet when asked about '*azl*' answered: 'This is infanticide in disguise (*wa'd*)'. In a tradition related by Abdullāh, on the authority of al-Muqrī' were added the words: 'That is when the female child had been buried alive shall be asked...'"²

¹ Ibn Ḥajar, *Fath al-Bārī fī Sharḥ Ṣaḥīḥ al-Bukhārī* (Cairo, 1319 A. H.), vol. 2, p. 220.

² Muslim b. al-Ḥajjāj, *Al-Jāmi' al-Ṣaḥīḥ* (Cairo, 1330 A.H.), vol. 4, p. 160.

Al-Nawawī comments saying: “‘*Azl* is a disfavourable practice in our opinion, irrespective of whether the woman is willing or not, for it is a means of contraception. This is why it was designated in the Prophetic tradition as *wa'd* in disguise.” Then he goes on to say: “These traditions and others have the following in common: What is stated regarding forbiddance may be taken to mean venial disfavour, and what is stated regarding permissibility may be taken to mean non-interdiction, but not disfavour, by canon law.” This is a summing up of the material in the chapter relating to rules and prescriptions and to the concurrence of traditions. Our forbears differed as to certain aspects of the matter. Some have disallowed it if the permission of the wife is not obtained, saying: “It is prejudicial to her, and, therefore, for it to be allowed, her permission is requisite.”

Abū Ja‘far and Zain al-‘Ābidīn, according to Kulainī, saw no harm in ‘*azl* in the case of a free-born woman or a female slave.¹

In a lecture on birth control and family planning and Islam’s attitude to both, delivered by Shaikh ‘Aṭīyya Muḥammad Sālim, teacher in al-Madīna al-Munawarra (Medina), the grounds advanced for birth control were the following:

1. Penury, lack of means of livelihood or the state’s lack or poverty of resources. (I have already refuted this argument in the section on the Idea of Birth Control: Stages and Reasons, and so I will not repeat myself here.)

2. Danger to a woman’s health in certain cases of difficult labour, and delivery. Contraception in this case is permissible without exception, both on the basis of reason or on that of transmitted authority.

On the basis of reason, it is an accepted fact that if the parent may suffer harm because of the child, then the well-being of the parent, as the root, is to take precedence over that of the child, as the branch. The adherents to this theory declare that if the offspring brings about the destruction of the origin then the offshoot is to be destroyed. According to the exponents of the law, the rule is that the sequel becomes invalid if it has the effect of invalidating the original argument.

Among the valid grounds cited for the above, he gave the following: septic pregnancy and the impossibility of delivery except through

¹ Abū Ja‘far M. al-Kulainī, *Al-Kāfī* (Teheran, 1391 A.H.), vol. 5, p. 504.

a caesarian operation which the mother cannot sustain; in this case, the foetus must be aborted to save her life.

He cited, in support, the tradition of the man of knowledge who ordered the death of the boy to safeguard the interests of his parents, as told in the story of Prophet Mūsā (Moses) and the man of knowledge in the Qur'ān: "As to the youth his parents were believers, and we feared lest he should trouble them by error and infidelity" (Sura 18/80).

The lecturer went on to mention the remaining grounds and said:

3. The desire on the mother's part to safeguard her health, or her desire to avoid the risk of harmful consequences of pregnancy, childbirth and child-rearing. This was refuted by the lecturer — although he took note of the fact that al-Ghazzālī allowed it on the grounds of the need for the satisfaction of the sexual needs of the husband and the need for keeping him chaste on the basis that it would be suppressing the husband's, or the wife's natural function. In refuting the point, he invoked a transmitted tradition to the effect that a man asked the Prophet's opinion concerning his (the man's) marrying a beautiful but sterile woman. The Prophet enjoined him not to do so, repeating his injunction three times, and adding; "Marry the affectionate and prolific woman, for I shall make a display of you before other nations." Another tradition says: "A black woman, if prolific, is better than a beautiful woman if sterile."

Then the lecturer dwelt on the arguments used in favour of birth control, among which he named:

1. The early part of married life to be devoted to satisfying natural desire.

2. The presence of a suckling baby; contraception in this case is advisable to protect him from pregnancy milk.

The first reason he turned down on the basis that it presented a sentimental, superficial outlook, easily refuted by actual facts, since the period anteceding pregnancy and delivery is sufficient to satisfy desire. Furthermore, he added, the ultimate end of marriage is not merely to satisfy sexual desire but procreation, and the satisfaction of sexual urges is but the means to that end.

As regards preventing conception on account of there being a suckling baby, he cited the following Prophetic tradition: "I offered to prohibit the suckling of a baby during the mother's (new) pregnancy." He refuted it also on the basis of another tradition which

says: "A man came to the Prophet and said: 'I practise 'azl with my wife.' The Prophet said: 'Why do you do that?' The man said: 'Out of mercy for her child'. The Prophet said: 'If it were harmful, it would have done harm to the Byzantines and Persians'." Consequently, it is unnecessary to prevent pregnancy to avoid harm to the child feeding on his pregnant mother's milk.

Fathī 'Uthmān says: "It is understandable to me that birth control should be rejected on the basis of reason and logic, or on that of inclination and temperament, but it is not understandable why this rejection should present itself under the cloak of religion.

"Islam is a religion that regulates the affairs of the Muslims, both spiritually and physically. What should, therefore, prevent it from rejecting what is not in harmony with its spiritual and physical system? Marriage is a spiritual and physical association between the married couple, which God ordained as a means of preserving the species on this earth. Any action blocking the way of reproduction is covered by a ruling among the rulings of Islam."¹

On p. 198 under the heading 'Preventing Pregnancy for a Sufficient Period between two Deliveries', he says:

"Contraception in this case is not regarded as being unlawful by Islamic canon law, according to the majority of juristic opinion." By this case is meant coitus interruptus for fear of difficulties resulting from numerous childbirths and for avoiding strain from overwork or tension in resisting temptation — this practice in this case is not commanded against. All the same, it is better to put one's trust in God — as counselled by al-Ghazzālī in his work 'Revival of Religious Sciences'.² In the margin of the same page, he adds: "No one disagreed with this view except Abū Muḥammad b. Ḥazm, a follower of the school believing in literal interpretation of sacred texts, who declared the permissibility of preventing conception if the woman is nursing her baby, and that is to safeguard both baby and mother, and even to protect her beauty and well-being."³

Professor Fathī also approves of it in the case of venereal as well as serious hereditary diseases. He also approves of it after the sixth child and at the start of married life. As regards prevention of

¹ Fathī 'Uthmān, *Al-Fikr al-Islāmī wa al-Taṭawwur* (Cairo: Dar al-Ma'ārif), p. 197.

² *Ibid.*, p. 198.

³ *Ibid.*

conception permanently, he thinks it allowable, although venially disfavoured to be done. He then referred to the remonstrance made by Shaikh Ḥasanain Makhlūf against the legalization of birth control and to Shaikh Maḥmūd Shaltūt's opposition to birth control on the grounds that control as such is contrary to the national interest and to Islam's advocacy of procreation, and his allowing it in individual cases. Then he cited an opinion of Dr. 'Alī 'Abdul-Wāḥid's: "If birth control is to be resorted to by nations that have exhausted all their economic resources, it should not be resorted to in a country such as Egypt, which has not exhausted any appreciable measure of its productive resources — agricultural or industrial."

By comparing and contrasting all these different points of view, we conclude that there is no place for Dr. Faṭḥī's astonishment at the rejection of the idea masquerading in a religious garb. For it has been seen that competent authorities are not in favour of contraception except when unavoidably needed to ward off definite harm. As for other cases, it is opposed generally in certain quarters because it contradicts Islam's support of procreation.

ISLAM'S ATTITUDE TO ABORTION

Abortion is the act of ridding a pregnant woman of the foetus before it is due to be born naturally, whatever the reasons. If it is unintentional then no guilt attaches to the act, according to canon law. If, however, it is intentional, Islamic Law has laid down penalties thereto, with less or greater severity depending on the stage of the pregnancy.

In Shaikh Ṭūsī's work *Ṣaḥīḥ al-Taḥdhīb*, he relates the following: "Abū 'Abdullāh, when asked concerning a woman who took a medicine during pregnancy in order to abort her child, and aborted in consequence, said: 'If the foetus had developed an incipient bone structure as well as rudimentary eyes and ears, then she will have to pay the blood-money to his father. If, however, it is still embryonic — a clot or a blob — then she has to pay 40 dinars or a *ghurra* (money compensation) to his father.' I said: 'Does she not inherit from her child's blood-money?' He answered: 'No, because she has killed him.'"¹

In *Al-Kāfī wal-Taḥdhīb* on the authority of Abul-Ḥasan, it is related that in the 'Book of Religious Duties' the caliph fixed the blood-money

¹ Al-Ṭūsī, *Ṣaḥīḥ al-Taḥdhīb*, vol. 10.

for the foetus at 100 dinars. He assigned five stages for the man's semen to attain the foetal state: to the sperm he assigned a fifth of the hundred dinars (20 dinars), to the clot two fifths (40 dinars), to the blob three fifths (60 dinars), to the stage of bone differentiation four fifths (80 dinars). If animation takes place in the foetus, then he is regarded as a full individual, in which case the full amount of 1,000 dinars is to be paid, if a male, and 500 dinars, if a female.¹

In the two *Ṣaḥīḥs* of Bukhārī and Muslim the following is related about two women from Hudhail, one of whom threw the other down and caused her to abort. The Prophet of God decreed the payment of a *ghurra*.

Imām al-Nawawī explained in his commentary on Muslim saying: "The authorities have agreed that the blood-money for the foetus is the *ghurra*, whether the foetus is male or female. This was decided like that on the grounds that it might be difficult to determine the sex of the foetus, and for the purpose of avoiding unnecessary dispute. The law settled in this way leaving no room for equivocation. Moreover, there was unanimity that the *ghurra* to be paid should be the same, whether the aborted foetus is complete or incomplete of formation or whether it is a blob with emerging human features or other physical properties." Then he adds: "Know that this also applies in case the foetus is aborted dead. If, however, he is aborted alive and then dies, the full amount of the blood-money due to the adult is to be paid, whether abortion is intentional or accidental."

It is thus clear that intentional abortion is prohibited in Islam. A penalty is imposed on abortion, since it is regarded as murder. If, however, the midwife or the obstetrician is forced to induce abortion to save the mother's life, and the foetus must be sacrificed in the process, no guilt is involved according to the law, for abortion in this instance falls within the rule of the prevention of harm. (If the parent suffers harm through the offspring, the wellbeing of the parent, as the root, is to take precedence over that of the child, as the branch).²

¹ Al-Kulainī, *op. cit.*, vol. 7, p. 342-343.

² Normally, the Muslim Shī'a Imāms (Ja'farīs) *mujtahids* (proponents of new interpretations of the laws by the use of individual judgement) do not abide by the interpretations of their predecessors who are no longer living. They only use them as a rough guide, but not binding.

STERILIZATION

It is the prevention of reproduction through castration, through contraceptives or through the performance of an operation to the male or to the female to stop reproduction.

In the chapter dealing with indemnities for the loss of body organs and limbs from the *Ṣaḥīḥ al-Taḥdhīb*, Ṭūsī states that indemnity for the male organ if removed is 1,000 dinars (full indemnity); also an indemnity is payable for the loss of the testicles. Likewise, in the case of a maid, if a man copulates with her and causes bodily damage in such a way that she ceases to be able to bear children, the indemnity is to be paid in full.¹

In *Ṣaḥīḥ Muslim*, Sa'd b. Abī Waqqāṣ said: "The Prophet did not countenance a request for sexual abstinence on the part of 'Uthmān b. Maz'ūn. Had he (the Prophet) done so, we would have castrated ourselves." Commenting thereon, Nawawī said: "This amounts to a rejection of their idea of the permissibility of castration, formed from their own interpretation of law, very much at fault as it is. Castration for humans is prohibited by religion whether performed on children or adults."

It is clear then that sterilization is a crime punishable by law, for it is regarded as a form of murder. Consequently, to control births by preventing either husband or wife from begetting children is a crime for which full indemnity or blood-money has to be paid.

As for the analogy drawn by Shaikh 'Aṭīyya Sālim from the story of Mūsā in the Sura of '*al-Kahf*' in which the man of knowledge kills the lad, there is here an important difference, namely, that the man of knowledge is a Prophet in receipt of revelation, as evidenced by his saying: "And not of mine own will have I done this" (Sura 18/82), and Mūsā condemning the act with "Hast thou slain him who is free from guilt of blood? Now hast thou wrought a grievous thing" (Sura 18/72).

It is unanimously agreed that a crime is not punishable until it is first perpetrated. Consequently, sterilization cannot in general be allowed on the strength of analogy in the story of the lad. True, it can be resorted to in certain cases where the prevention of breeding is for the purpose of warding off a harm. We must need, however, ascertain first whether there is any conclusive evidence obtained

¹ Al-Ṭūsī, *op. cit.*

scientifically to prove the presence of any serious hereditary disease which cannot be treated by ordinary methods, and whether there is no other way of preventing its transmission except by sterilization. The reader is referred to Dr. Ma'rūf Dawālibī's answer, in the chapter 'Note on the Science of Heredity', to Dr. Aḥmad Shawkat al-Shaṭṭī's work *Views on Heredity, Foetus, Premature Birth and Eugenics*.¹

CONCLUSION

In conclusion, Islam is a religion of life, and life is man and society. The family is the human cell at the base of the human social structure. Islam has prescribed all that is conducive to enriching, developing and safeguarding the family. Its divine and prophetic system, as set forth in the Qur'ān and exemplified in the Prophet's acts and sayings; constitute, therefore, the secure and stable lodgement of the family, whoever settles therein (whoever adheres truly to the teachings of Islam) will escape from hunger and lead a life free from fear.

This is Islam — a living, human force, which rejects all that is a negation of life and man, whether inspired by Western philosophy or by Eastern formal legal opinion; whether also it presents itself in ancient or in modern garb.

Birth control in any shape or form which tends to impoverish life is none of the principles of Islam. Islam is richness and enrichment and a blossoming out of real life. Abortion and sterilization are on the other hand a form of death, and as such are repudiated by Islam.

True, the general rule is relaxed in exceptional cases, but that is simply due to necessity. The essential thing is the general rule and the spirit of Islam as a whole.

Islam is trust in God. Strength and inspiration come from Him. Hence Islam's spirituality does not admit of birth control as a means of averting hunger, for this would imply a lack of faith in God and God's omnipotence, a disbelief in His ability to provide and scepticism about His power to bestow upon man the ability to transform deserts into verdant gardens and to harness the air and seas, to ride and roam at will.

A true Muslim, man or woman, of today realizes that in the call for birth control in our countries there are two underlying dangers:

¹ Aḥmad Shawkat al-Shaṭṭī, *Nazarāt fī al-Wirātha wa al-Janīn wa al-Khidāj wa Tahsīn al-Nasl*, p. 48.

the first, is to make us doubt our God who has promised us plenty and security, and the second is to lend a hand to the enemy in his attempt to destroy us as he chooses and to attack us, in order to displace us and exploit the riches of our land.

Birth control is an emasculation of life and a war against it. Islam is a religion of life to vitalize and create, even to create man from a formless clot with the help of God. Let us learn what we do know and put our trust in our gracious Lord, the Provider and the most Generous.

AN HISTORICAL SURVEY OF ABORTION IN IRAN

BY

DR. MAHMUD NADJMABADI

INTRODUCTION

In accordance with this conference's programme, and following on my discussion with my colleague Dr. T. Ihtisham Zada, I must say a word or two on the subject of the "History of the Organization of the Family", concentrating on abortion in Iran before and after the coming of Islam. For this purpose I should like to prepare the way with a few words about the earliest ages.

Mankind was, of course, familiar in former times with miscarriage, but felt aversion to it, particularly when he came to realize that it prevented him having children. This is perfectly understandable since it is a fact that man, the family and the tribe, in fact all mankind, felt the need to have children in order to enjoy a life which is comfortable, calm and settled. The role of children or the growth of population was a factor of extreme importance.

Another aspect of this matter is that the parents felt after the birth of children a sense of superiority over families and tribes without children (especially male children), which were consequently without protection.

ABORTION IN VARIOUS RELIGIONS

It is quite true that abortion was forbidden in all religions, Zoroastrianism, Judaism, Christianity and Islam; and we may say, in summing up the matter that the followers of these religions according to their sacred scriptures or traditions, considered abortion to be forbidden and illegal. In addition to this, they encouraged marriage and the bearing of children so as to increase the number of their family and so strengthen its position.

We find that the Avesta — the sacred scripture of Zoroastrianism — the Old Testament, the Gospels and the Qur'ān, forbid abortions except in the rare circumstances where the mother is in danger of dying. It should be pointed out, however, that the image or concept entertained at that time of abortion and the growth of population differed from the way they are viewed nowadays. We should also be aware that one of the main reasons for abortion was the fear of having an illegitimate child.

ABORTION IN PERSIA BEFORE ISLAM

The Zoroastrians believed in a god who has six angels, one of them the protector of health and cleanliness.

They were extremely particular about cleanliness: They used to bathe, wash their bedcovers and sheets, and pay especial attention to the cleanliness of their clothes. They also had the greatest reverence for water. Herodotus, Strabo and Xenophon all say in the course of their histories of ancient Persia that the Persians were especially careful about the cleanliness of water. We read in the Avesta that anyone who pollutes water or throws a corps into it is to be considered just as guilty as a criminal, and should be punished severely because he knows beforehand that his reward is death. According to their sacred scriptures, the Zoroastrians believed that there was a medical reason for the abundance and the small quantity of the menstrual flow. A man did not have the right to have sexual intercourse with a woman during menstruation; if he did, he was considered to have committed an offence. The same applied if he had intercourse with a woman who was breast-feeding or pregnant.

We find in the Avesta and other sacred books of the Zoroastrians certain guide-lines for marriage. Zoroaster taught his disciples — male and female — that marriage was a course of action which loyalty and fidelity made coherent and lasting. While a male Zoroastrian had the right to marry a non-Zoroastrian, a Zoroastrian woman did not have such a right. The faithful had to remain loyal to their lineage, both of family and of race and so we see the great Persian poet, Firdausi, mentioning the legends relating to this history of heroism and the birth of heroes. The Zoroastrians believed that the married person was of greater worth than the unmarried and that a man who was a father was more respected than a bachelor, because

married persons and heads of families had greater virtue in God's view.

The Avesta recommends young girls to marry wise men because in that case every ovum would become a virtuous child.

The Zoroastrians forbade abortion because they believed that the destruction of the foetus was the same as the destruction of the highest form of God's creatures. We find in the Avesta that there is no great importance attached to the abortion of the foetus which is four months and a half old, after conception, because the soul has not yet developed. We also find in the Avesta mention of some of the medicaments used for abortion such as rue (a sweet smelling plant, of medicinal use), myrtle and so on.

The Zoroastrians hated unfaithful wives. As soon as a man had irrefutable evidence of the wife's infidelity she had to commit suicide. This law remained in force till the age of the Achaemenids. In the Sassanid era this law was made less stringent, so that the wife was imprisoned as punishment for the first occasion of infidelity and had to commit suicide if she repeated this offence.

To sum up, abortion, the encouragement of marriage, the combatting of adultery, the increase of the population were all very important matters in ancient Persia. Virtue was considered to be a sacred duty for the Iranians. When Persia was converted to Islam, these ethical concepts did not change. I shall deal with all this in detail.

I shall also deal in the remainder of this section with the point of view of Islam. Before that, however, I should say that Islam has dealt quite clearly with the duties of the man and the woman, the child, the young girl and the head of the household. I shall analyze the related questions from three points of view:

- a) According to Islamic Law
- b) From the medical point of view
- c) According to sociology and the actual situation in real life.

The first and second points are more relevant to my subject than the third one, which is nearer to the realm of sociology.

The Holy Qur'ān has explained perfectly clearly to us, Muslims, all matters relating to marriage, abortion and the duties of man and wife. This is apart from the clear treatment of these matters in the *hadith*, *fatwās* and commentaries.

1) *On the subject of marriage*

There are in the Qur'ān explicit, clear verses on the subject of marriage. God says: "And marry those among you who are single, and your good servants, and the handmaidens. If they are poor, God of His bounty will enrich them. God is all-bounteous, Knowing" (Sura 29/32). He also says: "O believers! when ye marry believing women, and then divorce them before ye have consummated the marriage, ye have no term prescribed you, which ye must fulfil towards them! provide for them, and dismiss them with a reputable dismissal" (Sura 33/49).

There is a *ḥadīth* (tradition) of Prophet Muhammad's which sums up the subjects of marriage and multiplicity of children perfectly: "Marry among yourselves and beget children for I shall make a display of you before other nations."

2) *On the subject of a mother's nursing her children, and the man's duties towards the woman and the child*

God says: "Mothers, when divorced, shall give suck to their children two full years, if the father desires that the suckling be completed; and such maintenance and clothing as is fair for them, shall devolve on the father. No person shall be charged beyond his means. A mother shall not be pressed unfairly for her child, nor a father for his child: And the same with the father's heir. But if they choose to wean the child by consent and bargain, it shall be no fault in them. And if ye choose to have a nurse for your children, it shall be no fault in you, in case ye pay what ye promised her according to that which is fair. Fear God, and know that God seeth what ye do" (Sura 2/233).

3) *On the subject of having large numbers of children*

On the subject of the encouragement of procreation, God says: "Your wives are your field: go in, therefore, to your field as ye will; but do first some act for your souls' good: and fear ye God, and know that ye must meet Him; and bear these good tidings to the faithful" (Sura 2/223).

4) *On the subject of relationship on the father's side*

In the Qur'ān there are verses relevant to the subject of relationships on the father's side, a subject of great importance in medicine. God says: "And marry not women whom your father have married: for this is a shame, and hateful, and an evil way: though what is past may be allowed" (Sura 4/22).

God also says: "Forbidden to you are your mothers, and your daughters, and your sisters, and your aunts, both on the father and mother's side, and your nieces on the brother and sister's side, and your foster-mothers, and your foster-sisters, and the mothers of your wives, and your step-daughters who are your wards, born of your wives to whom ye have gone in: but if ye have not gone in unto them, it shall be no sin in you to marry them; and the wives of your sons who proceed out of your loins; and ye may not have two sisters, except where it is already done. Verily, God is Indulgent, Merciful" (Sura 4/23).

5) *Prohibition of sexual intercourse with a woman during her menstrual period*

Here there is another problem, also of importance in medicine, especially in relation to gynaecology and women's illnesses, namely, intercourse with women during their menstrual periods. We read in the Qur'ān: "They also will question thee as to the courses of women. Say: They are a pollution. Separate yourselves therefore from women and approach them not, until they be cleansed. But when they are cleansed, go in unto them as God hath ordained for you. Verily, God loveth those who turn to Him, and loveth those who seek to be clean" (Sura 2/222).

Texts similar to the ones we have adduced, are to be found in the majority of religions and especially among the ancient Persians.

6) *A few words about Abortion in Islam*

The Qur'ān says: "Now of fine clay we have created man: then we placed him, a moist germ, in a safe abode; then made we the moist germ a clot of blood: then made the clotted blood into a piece of flesh; then made the piece of flesh into bones: and we clothed the bones with flesh: then brought forth man of yet another make. Blessed therefore be God, the most excellent of Makers" (Sura 23/12-14).

The commentators have referred to the dangers which may threaten the mother's life during pregnancy. They have spoken of the foetus in the womb and of abortion during the first months of pregnancy. People have wondered: Is abortion permissible or not? Some of the doctors of medicine have gone so far as to say that the verses we have adduced refer to abortion before the soul goes into the foetus, that is roughly before the end of the fourth month (120 days), and discuss the question of its legal status, during this period, but they

have proclaimed that abortion was forbidden after the first four months of pregnancy because life and soul have gone into the foetus.

The various schools of Islamic jurisprudence have said that induced abortion is admissible only in certain circumstances, when the mother's life is in danger.

However, from the medical point of view, induced abortion is allowed when the mother's life is in danger. Hippocrates, the celebrated Greek physician was the first to forbid abortion, in his medical code of ethics or to be precise, the oath which bears his name, which doctors repeat on the completion of their studies. To sum up, abortion is condemned in Islam, and especially among the Shī'ites who oblige the abortionist to pay a fine.

7) *A concise summary of abortion as viewed by Muslim Physicians*

Now, I shall adduce extracts from medical studies compiled by Muslim scholars in medicine, such as Al-Rāzī, Ibn 'Abbās, Avicenna Al-Jurjānī, Al-Māliqī and Al-Anṭākī.

(i) Abū Bakr Muḥammad b. Zakariyyā Al-Rāzī, is the celebrated physician, chemist and philosopher of Persian origin born in the month of Sha'bān in the year 251 AH (27 August 865 AD) at Rayy. He wrote 272 different treatises and books on various branches of medicine chemistry, philosophy, metaphysics and so on.

(ii) 'Alī b. 'Abbās al-Majūsī, born either in 318 or 338 AH and died in 384 AH, was a famous physician of Persian origin. He was the author of a celebrated book in medicine, *Al-Kitāb al-Malakī* or *Kāmil al-Ṣinā'a al-Ṭibbiyya*.

(iii) Avicenna was born in 328 AH (995 AD) in Afghanistan and died in 428 AH (1036-37 AD) in Hamadan. He wrote 200 treatises and books, in which he investigated various branches of medicine, philosophy, and literature in Arabic and Persian.

(iv) Al-Ḥasan b. Muḥammad was born in Jurjān in 433 AH (1042-43 AD) and died in Merū in 531 AH (1136-37 AD). There are four medical treatises in his name.

(v) Ibn Al-Bīṭār Al-Māliqī was born in 587 AH (1191 AD) and died in 638 AH (1240-41 AD) in Damascus. He is the author of a famous book entitled *Al-Jāmi' li-Mufradāt al-Adwiya* (an encyclopaedia of pharmacopoeia).

(vi) Shaikh Dāwūd Al-Anṭākī, died in 989 AH (1581 AD) in Makka. He was the author of a medical work entitled *Al-Tadhkira*.

The majority of Muslim physicians believe that the man's sperm must be prevented from reaching the woman's uterus if there is danger to be expected to the mother's life, and consequently, the sperm must be removed from the uterus if it reaches it, for the same reason. They even believe that if that is impossible, the foetus should be extracted from the uterus by mechanical means or by other well-known means. In ancient times, the following medicaments were used to expel the foetus:

(a) Salts of ammonia and sugar mixed with potassium hydroxide powder; or the sterilization of the uterus before and after intercourse with tar, or by coating the man's member with balsam oil or lead carbonate. Sometimes the inner rind of a pomegranate was placed inside the uterus, or leaves of either cabbage or willow wrapped in wool. Sometimes, also suppositories were placed in the uterus containing ferrous oxide or sulphur or colocynth and salts of sulphur, and other substances.

In addition, the woman would take certain potions such as juice of sweet basil and myrtle and beer etcetera, or she would take tablets of cabbage and colocynth, swallow pills of cabbage and colocynth, or eat nothing but beans because it was believed that prescriptions such as these facilitated abortion.

(b) The man's member would also be coated with balsam oil and concentrated onion juice or castor oil.

(c) There was another method in use: either coitus interruptus or the vaginal douche immediately after intercourse, after which she would sneeze and walk backwards 7 to 9 paces. The man and wife had to abstain from intercourse during the fertile periods.

We must say that most doctors did not accept the idea of abortion especially the physician Al-Ahwāzī, because he believed that abortion should be performed only after proper consultation, and that it was better for the woman to be made to understand methods by which she could avoid becoming pregnant.

Al-Ahwāzī affirms that the Hippocrates' oath requires the absolute prohibition of abortion and of the prescription of medicaments for abortion. He adds to this that the pregnant woman should not have recourse to medicaments which lead to abortion. Al-Rāzī, however, says of pregnant women whose health is in danger through

pregnancy, that they should introduce a piece of wood into the uterus and keep it there for two weeks; the end of this piece of wood protruding from the uterus should be tied to the woman's thigh till the uterus begins to bleed.

As for coitus interruptus, we should mention that a number of physicians and wise men such as al-Ghazzālī pronounced opinions which were both religious and philosophical. They linked the question of the exercise of conjugal relations and the number of children with the means of preventing pregnancy.

SUMMARY AND CONCLUSIONS

1. Islam forbids unjustified abortion.
2. Concerning procreation of children and lack of adequate means of subsistence, the parents must use appropriate means for control and limitations of birth.
3. In countries with no birth control, medical establishments, charitable persons and especially with no children must offer a great deal of assistance to large families.
4. If a woman procures an abortion for herself for one reason or another, she must be judged by the laws of her country.
5. It is the obligation of social and medical service centres and social scientists to participate in drawing up plans leading to the logical control of births and to help large families.

In my opinion these places for limiting births, should be implemented as follows:

Countries rich in foodstuffs should help those in need of them. Assistance must be organized under the supervision of UNICEF, and the ILO. It is possible to set up an international bank to assist those countries which are in need of foodstuffs.

ISLAM'S VIEW OF ABORTION AND STERILIZATION

BY

SHAIKH AHMAD SAHNOUN

Islam determined the role of the family in society, establishing it on sound bases and fencing it round in with guarantees that safeguard its cohesion, ensure its growth and continuance, prevent it from disintegration and breakdown, and protect it from the harmful effects of accidental concomitants in conjugal and social life.

This is so because it is the family which is the first brick (unit) in the structure of the nation, consisting as it is of the totality of families, linked together to form one community. If the bricks are strong and firmly pressed and bonded together, the resulting structure, i.e., the nation, would be strong and sturdy likewise.

Since marriage is the basis and backbone of the family, all revealed religions held it in special esteem, giving it due consideration and laying down for it special regulations and well-defined rules.

Similarly, nations that appreciate life for its true value, set marriage and family at the head of all the questions in the human society, which it was the special concern of these nations to organize and regulate, first and foremost.

Islam is the last of the revealed religions, and its law is in harmony with human nature in its best aspects. One of its achievements, in improving upon the already available social setup, is the control of marriage according to precise and firm rules. This has given to marriage stability, with principles and safeguards capable of saving it from disruption and dislocation.

Islam advocates marriage and encourages it, in certain cases declaring it even to be an obligatory religious duty. No other religion in its legal code has urged marriage as strongly as Islam, for marriage

in the Islamic view, is the mainstay of the family, which, in its turn, as has already been said, is the mainstay of the nation.

All the Qur'anic verses and Prophetic traditions advocating marriage and making it attractive, declare its purpose to be the protection of public and individual morals, particularly those closely connected with chastity and integrity, the affording of peace of mind, and the multiplication of the community. Under these circumstances, when achieved, the Islamic community would be healthy and strong, by virtue of its multiplicity and state of preparedness. God says: "And one of his signs it is, that He hath created wives for you of your own species, that ye may dwell with them, and hath put love and tenderness between you" (Sura 30/21). He also says: "God, too, hath given you wives of your own race, and from your wives hath He given you sons and grandsons, and with good things hath He supplied you" (Sura 16/72).

An authentic tradition (*ḥadīth*) of the Prophet's says: "O ye men! Those of you who can get married, let them marry, for it is a better shield (screen) for the gaze (from covetousness) and a greater security against unchastity. And whoever cannot do so, let him fast, for it would shield him from temptation."

It once came to the ear of the Prophet that some of his companions having watched his assiduous devotional habit, felt envious, and one of them said: "I worship all night long," another said, "I fast all life long and never break my fast," and a third one said, "I keep away from women and do not marry"; whereupon the Prophet said: "Why is it that some people say so and so; I, by God, am more God-fearing and devout than you; nevertheless I fast and break my fast, and I pray and marry; he who deviates from my way, is none of me." The Prophet declared the good woman to be the greatest boon in life, saying: "The world is an object of enjoyment, and the best of life's enjoyment is a good wife." He said also: "Marry, for I shall make a display of you before other nations; and do not be as the monks of the Christians." To these he added other similar *ḥadīths*, which are many. They all indicate as we have said earlier, that the purpose of marriage, first to preserve chastity and purity of life; and secondly, to promote the propagation of mankind, and that is on the grounds that marriage is primarily a means for the control of the native instincts endowed by God, which he made common both to man and beast. Were it not for regulated marriage, there would be no difference between men and animals in the attempt to satisfy their instinctive desires. Moreover,

man is innately disposed by instinct towards the perpetuation and preservation of his species. This cannot be achieved except through the procreation of offspring, one of the fruits of marriage, and this procreation is an unalterable law of life and nature, which enforces multiplication in continuity.

Hence, all that leads to the disruption of marriage and to licence in life and contributes to the interruption of procreation is opposed to the purposes which Islam seeks to achieve through marriage. It is also opposed to the highest principles upon which human society rests.

There are various ways of interrupting procreation, the most prominent being abortion and sterilization.

ABORTION

There is a vast difference between abortion and sterilization, although each leads to the same result, namely, the depletion, and eventually the extermination of the human race, involving the attempt to alter God's law of creation and go counter to his will.

Abortion is the expulsion of the foetus before it is due for natural birth. It is an abhorrent and a most damnable act, interdicted by Islam in the strongest terms, with wrathful censure of the culprit, and severe condemnation by true humanity and by all those of upright nature, all for the fact that abortion is no less heinous than the committing of a murder sternly prohibited by God, and amounts, in other respects, to insubordination to God's will and to a deliberate attempt to change the divine order. Islam forbade such murder: "Neither slay any one whom God hath forbidden you to slay, unless for a just cause" (Sura 17/33). It is also prohibited to alter God's dispensation: "And I will command them, and they shall alter the creation of God" (Sura 4/119). Abortion is akin to *wa'd* (infanticide) which was practised in the pre-Islamic era. This is no less reprehensible. *Wa'd* is to bury the child alive for fear of hunger or disgrace. Islam condemned this practice severely: "And when the female child that had been buried alive shall be asked for what crime she was put to death" (Sura 81/9-10). It also prohibited fathers to kill their children for fear of need: "And that ye slay not your children, because of poverty: for them and for you will we provide" (Sura 6/152). Such action would be a great error, leading to utter perdition, as declared in the Qur'ân: "Lost are they who, in their ignorance, have foolishly slain their

children, and have forbidden that which God hath given them for food, devising an untruth against God! now have they erred; and they were not rightly guided” (Sura 6/140).

The Prophet, when asked which offence was the greatest, said: “To set a rival to God, and He created you; to kill your child for fear of sharing your food with you; and to commit adultery with the spouse of your neighbour.” Then he recited: “Those who call on no other gods with God, nor slay whom God hath forbidden to be slain, except for a just cause, and who commit not fornication. He who doth this shall meet the reward of his wickedness. Doubled to him shall be the torment on the Day of Resurrection; and in it shall he remain, disgraced for ever” (Sura 25/68-69).

The above stricture applies, whether abortion takes place during the first phase of the foetus’ life or after animation, for all the phases of foetal growth possess a life which is to be respected, a life of growth and preparation. This is contrary to those who authorized abortion before animation, claiming that, before animation, the foetus is inanimate and, therefore, no offence or breach of law is entailed. By so claiming they open a door which would be hard to close, and they would thereby put a weapon into the hands of the enemies and opponents of Islam, with which they can assail it, and then they can justify the scandalous misdeeds now current outside Islamic countries, which cause great concern to the serious-minded, and horrify religious authorities and men of religion.

The only plea which those people fall back on is that they want to draw a parallel between the abortion of the foetus and the practice of *‘azl* (coitus interruptus) concerning which there are certain *ḥadīths* (traditions of the Prophet) variously interpreted by scholars. The subject will be touched upon when we come to the question of sterilization. This plea has no basis or parallel. The plea, although based on inference by analogy is, because of inconsistency, invalid.

Even Imām al-Ghazzālī, who is one of the greatest advocates of *‘azl* condemn abortion and ruled against it; he drew a distinction between abortion and *‘azl* saying: “This is not — i.e., *‘azl* — the same as abortion or *wa’d*, for the latter is a crime against a being already in existence. The first grade of existence is the discharge of the semen into the uterus, the fusion of the sperm with the ovum and its readiness to receive life. To destroy this is a crime, which grows in gravity as the process progresses from one phase to another, until it reaches its terminal phase, when the baby is born alive.”

The phases that al-Ghazzālī refers to here are the four phases of the foetus described in several verses of the Qur'ān, whose extents were defined by a *ḥadīth* reported by Bukhārī and Muslim: "The germ of every one of you is concentrated in his mother's womb in the form of a drop for forty days; then he becomes a clot of blood for the same period; then he becomes a piece of flesh for the same period; then the angel is sent to him to ensoul him. Then four things are ordained for him: his sustenance, his term of life, his work, and whether to be fortunate or unfortunate."

Islam used most forceful arguments against abortion as a means of birth control, branding it as the slaying of a soul, which deserves correction in this world and punishment in the next.

Besides, an established principle of Islamic Law declares that "to ward off evil has precedence over the drawing of benefits." Moreover, it has been medically proved that abortion is greatly harmful to the woman's health and subjects her nervous system to serious effects.

Suffice it here to point to the view held by Dr. Fridrik G. Taussig, which embodies a summary of the medical facts on this subject. Dr. Taussig affirms that when the foetus is expelled prematurely — that is by forced birth or induced abortion — three harmful results will be entailed, to which mankind as a whole will be exposed:

1. An indefinite number of the human race are destroyed before they see the light.
2. Quite a sizable number of mothers meet death during the abortion operation.
3. Women undergoing abortion might suffer a significant number of serious after-effects, with the result that any future deliveries they may have could be attended by appalling conditions.

This is a clear and candid opinion of a specialist in medicine and surgery, which plainly points to the serious dangers involved in abortion. He also discusses the great outcry now being raised in Europe and America by the Church and some intellectuals against the practice of abortion. For abortion as well as other acts of immorality are assuming alarming proportions in the West, as a result of the predominant materialistic attitude and the widespread breakdown of morals.

Since it has been scientifically proved that abortion poses a danger to the health and life of the woman, its performance is prohibited by Islam on the basis of the principle, "to ward off evil takes

precedence over the drawing of benefits”, and the “safeguarding of the body takes precedence over the safeguarding of religion”.

STERILIZATION

We must first discuss *'azl*, because it is the first step in sterilization, there is a number of traditions about it, and it has been a point of controversy among the scholars of Islam.

'Azl (coitus interruptus) is the withdrawal after intromission, for ejaculation outside the womb, as a method of contraception. Scholars are divided about it as to whether it is allowed, as some have thought, for special reasons, or prohibited, according to others. Those who have allowed it base their decision on certain traditions of the Prophet from which the permissibility of *'azl* was thought to be implied, one of which is quoted by Jābir and reported by Muslim and Bukhārī, namely, “We used to practise *'azl* at the time of the Prophet.” This is according to one version. Another is, “We used to practise *'azl* while the Qur'ān was being revealed.” A third says: “We used to practise *'azl* at the time of the Prophet while the Qur'ān was being revealed.” What is intended by the revelation of the Qur'ān in this context is the communication of legal rules, irrespective of whether the revelation as such involves, when recited, a religious obligation or not. Thus the meaning to be deduced is “We used to practise *'azl* while the law was being instituted; the Prophet knew of it and allowed it, for if it had been prohibited he would not have approved it.” This sense is borne out by a saying of Ibn 'Umar's: “We used to be restrained both in speech and behaviour towards our women, lest there be revealed at the time of the Prophet something concerning us. When the Prophet died we began to talk freely and behave without reserve.” There is nothing in Jābir's account to indicate that the Prophet was asked explicitly for a rule on *'azl* and he allowed it; what is all to it is that the Prophet learned of that and was silent about it.

In support of the claim of some theologians that the Prophet allowed *'azl*, they used as their authority an account related by Muslim and accredited to Ibn al-Zubair, who had it from Jābir, who said: “We used to practise *'azl* at the time of the Prophet. This came to the ear of the Prophet, but he did not command us against it.” In another report also by Jābir, we are told: “A man came to the Prophet of God and said: ‘I have a maid and I consort with her. But I do not like to have her conceive.’ The Prophet said: ‘Practise *'azl* if you wish!

What is preordained for her will certainly befall her'. Later, after sometime, the man came back to the Prophet and said: 'The maid has conceived.' The Prophet said: 'I told you that what was preordained for her would certainly befall her'."

In the first version, we learn that the Prophet was aware of the practice but did not forbid it. In the second, we learn that he allowed it, although the general context leads one to understand that the latter contradicts the former, since we are told that what God ordains shall inevitably take place whether there is *'azl* or not.

The tradition attributed to the Prophet affirming *'azl* is contradicted by another tradition related in Muslim and Bukhārī on the authority of Abū Sa'īd al-Khudrī, who said: "We took female captives and practised coitus interruptus with them. Upon asking the Prophet about it, he said: 'Surely you will do it (three times). No soul fated to come into being till the Day of Judgement but comes into (actual) being'."

The external sense indicates that the Prophet was not aware of the practice, and the fact that he repeated it thrice suggests disapproval.

It is generally recognized that what is reported in al-Bukhārī is given credence over all other reports. The transmitted *ḥadīths* purporting to mean that the Prophet was informed of the practice and allowed it are less authentic than those related by Bukhārī. In an account related by Muslim on the authority of Abū Sa'īd, we read: "There is no harm if you do not do so." There was much disagreement about the exact meaning of this sentence. The scholars' opinions regarding it may, however, be summed up as follows:

1. Prohibition of *'azl*. Ibn Sīrīn said: "There is no harm if you do not do so" is closer to prohibition. Al-Ḥasan al-Baṣrī said: "By God, it has more of the nature of a restraint." These regarded the negative word '*lā*=not' in the *ḥadīth* text as prohibitive and that a portion of the expression was understood, the whole to convey 'You are enjoined not do so'.

2. Prohibition of *'azl* on the basis that the '*lā*=not' is negative, the expression being understood to mean, "No sin would attach to you if you did"; this sin is negated in the case of not practising *'azl*, which means that sinfulness is confirmed in the case of *'azl*, as expounded by al-Ḥāfiẓ b. Ḥajar.

As for reasons which caused some of the Muslims to practice 'azl, they may be summed up as follows:

1. Fear lest the slave-wife become pregnant, and the child be regarded as a slave.
2. Fear of harm being done to a baby suckling the milk of his pregnant mother.
3. Keeping away from having too many children, if the father is in straitened circumstances and does not wish for more children lest their multiplicity be a handicap to him in earning a living.

Al-Ḥāfiẓ b. Ḥajar comments on those reasons, saying: "All this avails nothing, because 'azl for the above reasons is not fool-proof against pregnancy if God wills it, nor are these reasons sufficient for declaring it permissible.

First, because of the *ḥadīth* reported thereon, as for instance: "If the fluid from which the child is formed were to be poured onto a rock, God, if He so wills, would produce a child therefrom."

Secondly, because the reasons stated are concerned with individual cases for special purposes, and necessitated by personal circumstances. In all the reasons stated, there is only one in which 'azl is recommended, except perhaps in regard to a solitary case mentioned by Muslim, which is the hazard to a baby being suckled by a pregnant mother, for experience shows it to have probable harmful effects. But even in this case, probability is eliminated on the strength of another account related by Muslim of a *ḥadīth* attributed to Usāma b. Zaid, who said: "A man came to the Prophet and said: 'I practise 'azl with my wife out of pity for her child (or children)'. Whereupon the Prophet said: 'If this were harmful, it would have done harm to the Byzantines and Persians'."

In the version of Zuhair¹ the Prophet is reported to have said: "If that were the case, it caused no harm to Persia nor to the Byzantines." Another point of disagreement among the Imāms turned round the question whether the practice of 'azl required the wife's approval or not. Some declared that there was a consensus that there could be no 'azl without the wife's approval, while others did not premise a consensus. These are the Shāfi'īs, whose view on the matter

¹ One of the reporters of traditions in the chain of authorities. See the tradition in Muslim: *Al-Jāmi' al-Ṣaḥīḥ* (Cairo, 1320 A.H.), vol. 4, p. 162.

is two-sided: first, permissibility, as is the view of al-Ghazzālī, subsequently confirmed by later scholars, and second, prohibition as is the view of the great majority of believers, on the strength of a *ḥadīth* attributed to Ibn 'Umar and related by Aḥmad b. Māja, which runs as follows: "He commanded against 'azl in the case of a free woman, unless it is with her consent."

Ibn Ḥazm affirmed that 'azl was disallowed even if both partners consented to it, because the Prophet, when asked about it, called it the 'infanticide (*wa'd*) in disguise', according to a *ḥadīth* handed down by Judāma bint Wahb and related by Muslim. This *ḥadīth* was collated with two others, one was reported by al-Tirmidhī and by al-Nasā'ī on the authority of Jābir, who said: "We had maid-servants, and we used to practise 'azl. The Jews said that it was a case of infanticide on a smaller scale, when the Prophet was asked concerning it, he said: 'The Jews lie. If God wished to create him (a human being), you would not be able to turn Him away (from this purpose)'. The other was reported in a different form; but all these forms reinforce one another.

Many scholars tried to reconcile all these *ḥadīths* in ways which are all manifestly forced and stilted. The *ḥadīth*, which is the argument of no less a person than Ibn Ḥazm, has greater weight. Ibn Ḥazm, when cited should suffice as an impugnable authority. They also disagreed as to the reason for people to be commanded against 'azl. Some said that it was to set aside the woman's right; others said that it was a defiance of fate, and this is what is corroborated by texts and attested by testimonies.

This is Islam's view as regards 'azl, which is other than sterilization. In fact, it differs from it in both word and sense, for 'azl is temporary, while sterilization is permanent contraception.

What we said above on abortion — that it is an alteration of God's design and order, a defiance of His will, a weakening of the strength of the Islamic nation through the reduction of its numbers of whom the Prophet shall make a display on Judgement Day — applies equally to sterilization.

There is no explicit or implicit textural authorization in Islam for collective sterilization, or compulsory stoppage of procreation, or birth control as a national plan and a general policy in society. Indeed, all texts are opposed to it, on the grounds that all ideas and theories calling for the adoption of contraceptive measures — without real reasons and good cause — are antithetical to the teachings of Islam and contrary to its general principles.

God has seen fit in His divine wisdom to sterilize whomsoever He wishes to from among mankind, not for economic reasons. God says: "God's, the kingdom of the Heavens and of the Earth! He createth what He will! and He giveth daughters to whom He will, and sons to whom He will. Or He giveth them children of both sexes, and He maketh whom He will to be childless" (Sura 42/49).

Let us suppose that there are explicit texts prohibiting sterilization. The harm caused to health and the many economic and social hardships resulting therefrom should make sterilization taboo by law and repellent by nature.

It is to the point here that we should indicate some of these hazards and hardships, and apply to them the principle referred to earlier, namely, "to ward off evil takes precedence over the drawing of benefits."

From the point of view of health, medical scientists assert that there is no means of contraception which does not leave harmful effects upon the woman's physical condition and her nervous system.

Dr. Clair E. Folsome says: "We have not yet discovered any known means, easy to use, reasonably priced and free from harm, which may be used for birth control."

Dr. Sattywati confirmed this fact in her book on family planning, in which she says: "Sometimes the consequences of birth control may be quite serious: a person may lose his peace of mind and become subject to anxiety and nervous tension; he may suffer from insomnia and be often a prey to delusions and a sense of suffocation; his mental balance may become upset. In certain cases, women may become sterile and men may lose their sexual potency."

Even the pills, used as contraceptives and highly praised by the protagonists of birth control, are not free from harm to the woman's health. Indeed, experiments and medical reports have confirmed their harmful effects and often their lack of efficacy.

Commenting on these pills Dr. R. Dukes says: "When a woman takes these pills, she is exposed not only to headaches and to nervous strain, but she can never feel sure that she will not develop an incurable disease such as cancer."

Again, experience has confirmed the uselessness of these pills. Many women take them regularly, but they nevertheless conceive.

This substantiates the Prophet's saying: "If the semen out of which the child is formed were to be spilled on a rock, God would

produce a child out of it." Again, when he was asked regarding 'azl he said: "No soul fated to come into being till the Day of Judgement but comes into (actual being)." And further: "Not out of every semen a child comes into being; and if God wished to create something, nothing would prevent Him from doing it."

From the social point of view, sociologists and experts on urbanization have asserted that lack of children in married life is in many cases a factor in the increasing rate of divorce and the breakdown of the family.

On the basis of the investigation carried out by Dr. Freedman, Whelpton and Campbell it is shown that the divorce rate increases for childless families, or for those families which have few children.¹ Similarly, Barness and Ruedi, have asserted that out of the number of husbands and wives who ask for divorce, two-thirds have no children, while one-fifth have no more than one child. They also say: "In fact, there is a clear correlation between divorce and childless married life."² Many others have corroborated these same findings.

Sociologists also maintain that peoples, in which each man and wife do not produce more than two children, or having brought them into the world, do not keep them alive must eventually become extinct, and their race comes to an end.

Now to come to the moral point of view. The popularization of contraceptives and making them available to all and sundry will encourage licentious sexual relations. People would no longer stand in fear of blame of censure of society since there would be no visible traces of their illicit relation. They would be in no danger of incurring shame, disgrace or a feeling of guilt by bringing into the world a child born of adultery, since they can avert all this by legitimate methods.

In consequence, immorality tends to become widespread and venereal and other pernicious diseases would rear their heads again, and morals would sink to the lowest depths of degradation. We only have to look at the shocking immoral conditions in Europe and America, where outrageous forms of licence are practised openly, to realize the gravity of the situation arising from so much libertinism and permissiveness.

¹ *Family Planning, Sterilization and Population Increase* (New York, 1959), p. 45.

² *The American Way of Life* (New York, 1951), p. 652.

How apt the poet Aḥmad Shawqī, may God rest his soul, was when he said: "Good morals make the nations, so long as these morals endure. But if they fade away, the nations also fade away."

Even the economic plea upon which the champions of birth planning base their theories, has proved to be untenable. In fact, sociologists have asserted the danger that contraception may pose to the national economy, in view of the fact that a reduced population is one of the strongest and most important causes of economic depression, and they in this assertion derive corroboration from unquestionable figures and concrete facts.

There is no need to set forth the opinions of scientists, for these are well-known and have been published in more than one book or magazine.

These are some of the theories and statements clearly portraying the extent of the harm and evil caused by birth control and the planning of births. The Islamic legal principle to be observed is 'when evil threatens to engulf the good in view, then this good is to be left alone and effort should be turned first towards the stopping and stemming of the evil'. Or, in the words of the jurists and legists it is: "To ward off evil is to take precedence over the drawing of benefits."

Moreover, the general call for birth control for economic considerations — i.e., that the earth will be overpopulated, and that the population rate of increase will cause shrinkage in foodstuffs — an idea essentially in conflict with Islam and in opposition to the spirit of the Islamic Law, for God who in creating man, has undertaken to provide for him, and it is He who knows man's ultimate position and destiny. God says: "There is no moving thing on earth whose nourishment dependeth not on God; He knoweth its haunts and final resting place: all is in the clear Book" (Sura 11/6). He also says: "How many animals are there which provide not their own food! God feedeth them and you" (Sura 29/60). He also says: "His, the keys of the Heavens and of the Earth! He giveth with open hand, or sparingly, to whom he will" (Sura 42/12) He also says: "Verily God is the sole sustainer: possessed of might: the unshaken" (Sura 51/58). He also says: "And we have provided therein sustenance for you, and for the creatures which not ye sustain: and no one thing is there, but with us are its storehouses; and We send it not down but in settled measure" (Sura 15/21-22).

There are numerous other verses in the same vein but which cannot be all included here.

We have already referred to the verses in which God forbids the killing of children for fear of poverty, assuring mankind that He provides for them all: "For them and for you will we provide" (Sura 6/152).

To be sure, God has taken on the task of providing sustenance, but, at the same time, He has decreed that the task of man in this world is to seek this sustenance, work for it and use his talent in extracting the treasures of the earth and exploiting its resources. God said: "Traverse then its broad sides, and eat of what He hath provided" (Sura 67/15), and also: "Then disperse yourselves abroad and go in quest of the bounties of God" (Sura 62/10). And again: "Seek, then, your supplies from God; and serve Him and give thanks" (Sura 29/17).

Islam commands man not to be the slave to any but Him, not to believe in aught but His Godhead, and not to look upon any but Him, as the provider, Who provides for man as well as for every other creature on earth.

The materialistic, atheistic stance is responsible for the suppression in the hearts of men of the image of God. It teaches that no trust is to be placed in God nor faith in His providence. For when man beholds the wealth of material means at his disposal, he believes that it is he alone who provides for himself and his children, which is quite contrary to the Islamic faith.

The purposes of Islamic Law are absolutely incompatible with the idea of birth control, either on the basis of economic considerations or in accordance with the planning policy of the atheistic West, for the Islamic laws for social and economic life and their moral precepts reject all the reasons advanced by Malthus for birth control — a theory which has gained currency both in the East and the West, with its champions, supporters and sincere advocates in both.

But the tolerant Islamic Law has room for cases of real, unfabricated, genuine necessity. It is my belief that Muslims would never have found themselves constrained to get into such contretemps, if they had not got entangled into the system of colonialism and subjected themselves to its plans.

The true Islamic texts urge the procreation and the multiplication of the Islamic community. The Prophet urged: "Marry the affectionate and prolific woman, for I shall make a display of you before other nations on the Day of Judgement." He also said: "Marry

among yourselves and multiply, for I shall make a display of you before other nations.”

That does not mean, however, that Islam, in enjoining procreation, aims, by large numbers, to have hordes and hosts of weak and brainless beings. Islam paid great attention to the individual's physical, mental and spiritual well-being, by providing him with all that would help him attain perfection and assure him success and excellence.

It also had the community's interest at heart, as evidenced by its insistence on solidarity among its units, regarded as an essential condition for its development and growth.

If we were to illustrate all the aspects of strength in the intellectual, physical and moral legislation of Islam, we would probably need to devote a lot of space in whole books for the purpose.

If we cast a glance at the map of the Islamic world and its demographic distribution, we shall perceive that the countries of Islam need above all to utilize the resources of their lands, to unearth their treasures, and to turn them to their own advantage. This calls for manpower, both qualitatively and quantitatively, for it is only natural that quality should go with quantity.

Those who would embark upon such tasks and rush Islam into them, must be wary of the consequences which might follow. Colonialism is at the root of our poverty and our ignorance, despite the great resources and the wealth of the earth's surface upon which we tread. It aims at keeping us in tow, ever subservient to its thinking and planning, doing all in its power to keep us in the morass of back-wardness and stagnation.

There lurks behind birth control a certain design, whose aim is to limit and restrict the numbers of Muslims, lest they become a force to be reckoned with. It is but one of the many forms of attacks against the stronghold of Islam.

How do the champions of birth control feel about the People's Republic of China, whose population is estimated at about 800 million, a number exceeding by far that of the Muslims throughout the world? In spite of that, this great nation, which used to import its foodstuffs from abroad before it had attained such density of population, now exports its agricultural products to the outside world.

Never for a moment does this republic entertain the idea of adopting birth control. On the contrary, it maintains that multiplicity of people is a source of power and wealth.

It has finally succeeded in forcing the world to recognize it, thus gaining admittance into the United Nations, to replace Formosa, which had occupied that seat ever since that organization had been established.

The question of birth control cannot be resorted to until all other avenues are explored and exhausted, and all other obstacles standing in the way of economic progress and social advance are removed.

Far more serious things are being practised now without any feelings of shame or embarrassment. Yet, on these, the opinion of Islam has not been sought, although these serious things pose urgent problems in need of urgent attention. How can we disregard these problems and turn our attention to this question of birth control and approach it in a manner disfavoured to Islam? It is felt that while the solution suggested for the question tends to promote the interests of foreign economy, it threatens, on the other hand to cause weakness and disintegration in the structure of Islam.

In conclusion, I would like to add that this is a general view of Islam's attitude to abortion and sterilization. I only hope that I have succeeded in presenting my view and in exposing the points of weakness in the adoption of a contrary course. May justice prevail and may God grant us the power to view things rightly, so that we might fulfil our duty to Islam and to the Muslim community, as God enjoins us to do. And God is the Giver of success!

ISLAM AND ABORTION

BY

DR. IBRĀHĪM ḤAQQĪ

Islam, as a religion, is no doubt logical, scientific and rational. The Qur'ān and the Prophetic traditions frequently urge people to acquire learning and counsel them to respect learning and the learned. So often does God describe Himself in the Qur'anic verses as the Knowing one that the word 'knowledge' and its derivatives recur more often than the word 'faith' and its derivatives. Obviously, this argues that the rulings and principles of Islam are rational and logical in their basis, and with this point in mind I turn now to speak on the views of Islam on abortion.

What is abortion from the scientific point of view? Abortion can be defined as the expulsion of the foetus from the uterus before it reaches the stage of development when it becomes ready to receive life. Abortion may take place either spontaneously or deliberately. Induced abortion is performed illegally by an abortionist or legally by a qualified doctor. In the former case, abortion aims at getting rid of the woman's foetus for reasons either social or financial. But in the latter case, abortion is carried out under the guidance of a doctor for the purpose of saving the pregnant woman from a disease which, if pregnancy is allowed to continue, becomes fatal or incurable.

The first question to which we must address ourselves is: to which of the two kinds of induced abortion does abortion in our definition belong, to the illegal and criminal one or to the legal and medical one?

This question leads to another, namely, is the expulsion of the pregnant woman's foetus in the first weeks or months of pregnancy to be considered a case of homicide and hence a crime or not to be a crime and hence permissible?

The second question which we must also answer is: does the act of abortion, whether criminal or medical, involve no dangerous consequences to the pregnant woman and is safe to perform, or does it

have dangerous sequels which cause serious or not so serious harm to the pregnant woman?

The third and last question is: what religious ruling should follow from the answers to the first two questions?

With regard to the answer to the first question, there are some people who claim that the pregnant woman's foetus does not become viable except after the elapse of a certain period of pregnancy. This view has been scientifically refuted. Actually, life begins as soon as the ovum is fertilized, when it combines with the sperm. This is demonstrated by the fact that from the moment of impregnation the fertilized ovum splits and begins to grow. If we accept the foregoing claim we must take it for granted that the embryo or the lump of flesh before the claimed period of pregnancy, is void of life, like an inert piece of matter, but it then becomes endowed with life. Or, we may say, in other words, that the non-living thing becomes transformed into some sort of a creature having life. This idea of transformation is absolutely rejected by medical science and is not accepted by Muslim Law. Not only is there no reference to it in the Qur'ān, but there is an antithesis to it in the following Qur'anic verses. God says: "Now of fine clay have we created man. Then we placed him, a moist germ, in a safe abode; then made we the moist germ a clot of blood: then made the clotted blood into a piece of flesh; then made the piece of flesh into bones: and we clothed the bones with flesh: then brought forth man of yet another make — blessed therefore be God, the most excellent of Makers" (Sura 23/12-14).

The sequence in the above Qur'anic verses shows that there is continuous life which is only transformed from one form into another during the growth of the creature.

Those people who hold the mistaken view that the embryo does not acquire life except after a certain period (on which they differ) following the start of pregnancy are perhaps misled by certain signs of life, particularly by the embryo's movements which are only felt just before the middle of the period of pregnancy. But the progress of science and of laboratory investigations has made it easy to discover if there is pregnancy and whether there is life in the foetus long before that, after impregnation; so that even if the foetus dies we are able to find that out by the same laboratory analyses.

The above statement may seem contradictory with our definition of abortion, i.e., the expulsion of the pregnant woman's foetus before

it becomes viable. For how can the foetus be 'non-viable' and we say at the same time that it is alive? Actually there is no contradiction. All that there is to it is that the embryo's congenial surroundings inside the womb differ from those outside. It is alive and viable throughout pregnancy, but inside the womb where it is fed and where it breathes in its own way during this period of its life. If, however, the embryo is deprived of the congenial womb-atmosphere it will die. The same situation arises after birth. The way a newborn is fed is not the same as the way a child is fed. It is different, but can we say that the newborn is not viable if we fail to have him suckled, which is his only way to live?

Similarly if the astronauts get out from their space ship without their special space outfit and die, can we say that they are not viable simply because they are not capable of keeping alive in the incogential new environment?

All this leads us to conclude that right from the first moment the fertilized ovum acquires life, and, therefore, any attempt to deprive it of life is to be considered homicide. Such an attempt is identical with depriving human being of oxygen by preventing him from breathing or by strangling or suffocating him and consequently by denying him to have environment congenial for life.

'We can now answer the first question: to what kind of induced abortion belongs the abortion carried out for the purpose of expelling the pregnant woman's foetus? Is it to be considered criminal or medical? /

I think that the answer is obvious and that the crime committed is not only implicit but also explicit, beyond any doubt.

Let us now proceed to answer the second question: does induced abortion involve any dangers to the pregnant woman or is it completely safe?

In order to answer this question let us first briefly list the available and usually followed methods of abortion. These are:

1. Drugs and chemical preparations generally.
2. Drugs and chemical preparations or local devices.
3. Curettage, to empty the uterus cavity.

1) As to the drugs and chemical preparations generally they include nothing that leads to abortion, hormonal or otherwise. None of these drugs or chemical preparations, used in the past or now

leads to abortion unless large quantities of it are used, in which case the pregnant woman will suffer from the harmful effects, and may very likely be exposed to the hazard of serious bleeding without abortion, when it becomes necessary to intervene surgically in order to complete the work. Other fatal developments may occur, such as hypatitis. However, the few cases of this sort we come across have left upon our minds the worst impression.

2) But substances and compounds used locally, such as the injections of soap solution or of some other stuff into the womb are harmful and may lead to the destruction of the walls of the uterus and even to fatal complications which may cause sudden death.

In primitive societies, extremely dirty substances and compounds are used for the purpose of abortion. These cause local or general infections, and result in permanent serious injury, without abortion being successfully effected.

Methods in which mechanical devices are locally used have always been in use in countless forms, ranging from flesh spits, hair pincers, knitting needles and wooden rods, pencils, rubber catheters, to many other objects of great variety employed by the patient herself or administered for her by unskilled persons, all of which cause infections or bruises, and in consequence bring about the perforation of the uterus. Even if such objects or mechanical devices are used by a physician, they are often inefficacious. Besides, they are not entirely safe, because, carefully and skillfully used as they may be, they may lead to unfortunate results.

3) The only safe way which definitely produces abortion is curettage. This operation is now carried out in all parts of the world. However, it has its own dangers, and like other ways, may cause immediate and late effects.

Hemorrhage, for instance, may frustrate the curettage. It may be so heavy as to require transfusion of blood which has its problems, such as anaemia developing later on.

There is also the method of enlarging the cervix first before curettage. But either of them might lead to the perforation of the uterus, notwithstanding the good experience of the physician, and consequently, to heavy bleeding or local and general infection with their attendant problems.

With all the experience of the physician and the great care he takes in performing the curettage, the operation might sometimes be

carried out inefficiently and results in heavy bleeding. A second curettage has then to be carried out, exposing the patient to various organic, functional or psychological disturbances.

In some cases, and particularly following the second curettage, the doctor may develop a feeling of inferiority complex and feels inadequate. Consequently, he intensifies curetting and the scraping of the mucous membrane of the uterus, which results in the adhesions of the uterus, and this in its turn cause the decrease of the periodic flow of menstrual blood from the uterus or stops the menses and causes sterilization.

The use of the special extractor for clearing the uterus does not remove all the complications of the curettage, but leaves part of the contents. This is not the ideal way.

Now that we have presented this brief account of the dangers which are involved in following the various common methods to get rid of the pregnant woman's foetus, we can proceed to answer the second question. We have seen that all of those methods are not entirely harmless. Actually we began our discussion by stating that they might lead to the death of a helpless creature. They amount to murder of a defenceless and innocent human being. In other words, they are modes of assassinating an innocent helpless soul.

At this point also we can easily answer the last question: what is the Muslim legal ruling?

God says: "Say: Come, I will rehearse what your Lord hath made binding on you — that ye assign not aught to Him as partners; and that ye be good to your parents; and that ye slay not your children, because of poverty: for them and for you will we provide: and that ye come not near to pollutions, outward or inward: and that ye slay not anyone whom God hath forbidden you, unless for a just cause. This hath He enjoined on you, to the intent that you may understand" (Sura 6/151).

In this verse we find that God makes homicide equal to the association of other gods with Him. How then would the situation be if the victim were the son of the killer?

God also says: "Kill not your children for fear of want; for them and for you will we provide. Verily, the killing them is a great wickedness" (Sura 17/31). He also says: "Neither slay anyone whom God hath forbidden you to slay, unless for a just cause" (Sura 17/33).

What is the punishment for killing a human being? The answer enacted for them: "Life for life, and eye for eye..." (Sura 5/45).

Muslim jurists have approved this, and are agreed that if the foetus dies as a result of a criminal act, the culprit has to pay the *ghurra* whether the foetus is born dead or dies in his mother's womb. (The *ghurra* is the blood-money or fine for the foetus. It can be a slave or a slave girl; it can be also one-tenth of the blood-money for killing a man, or one-tenth of the blood-money for killing a woman. This is estimated to be 500 dirhams or 50 legal dinars — a legal dinar being about half a Syrian pound). This is to be paid whether the foetus is male or female. The Prophet is reliably to have awarded a *ghurra* in the case of the foetus of a woman from the tribe of Hudhail.

Muslim jurists have also ruled that if a man beats a woman and causes miscarriage he does not inherit either from the *ghurra* or from any other source because he is a murderer without justification. Such a criminal, unjustifiable act deprives the criminal from his right to inherit whether the criminal is the father or somebody else. This applies only if the foetus is born dead. But if the foetus is born alive and then dies the whole blood-money has to be paid by the wrongdoer who will also be debarred from receiving any share of the inheritance and will.

Besides, a forced birth, apart from being a murder of a guiltless soul, is fraught with hazards and lays another person open to perils and even death; a course of action condemned by God in clear terms. God says: "Give freely for the cause of God, and throw not yourselves, with your own hands into ruin" (Sura 2/195).

If, however, there are circumstances which compel the termination of pregnancy, the ruling to be applied is the one already mentioned in the same Qur'anic verse which says: "And throw not yourselves with your own hands into ruin" (Sura 2/159). When continued pregnancy exposes the mother to death, the mother must be saved on the basis of the ruling: "Necessities may sanction things hitherto prohibited."

We must here pause a little to explain 'necessity'. Muslim Law most accurately defined 'necessity' and attached to it clear conditions so that it might not be abused.

Necessity is the situation in which man finds himself compelled not to observe the strict rules of Muslim Law for the sake of saving his life or property or in order to avert a danger, real or imagined, too oppressive to be ignored. Thus necessity does not arise only when man is sure that his life is in danger, but also when man believes that

his strict observance of the law might involve serious health hazard or physical disability. The following determinants of 'necessity' are to be observed:

1) Necessity should be actual, in the sense of fear for one's life or property, when highly probable according to experience, or that there is actual fear that one's religion, life, offspring, mind or property is in real peril.

2) One is compelled to contravene the strict rules of Muslim Law, because this is the only course open to one to avert the danger or harm.

3) There must be a legal reason or excuse for the contravention. In other words, necessity must make it inevitable that one who resorts to such violation does so only in order to save one's life or body.

4) One should not find oneself compelled to contravene the fundamental principles of Muslim Law in connection with the five general rules already mentioned above, for the protection of religion, life, offspring, mind and poverty. Consequently, he cannot commit adultery and murder and can neither become an apostate nor commit rape in any way, because all of these are in themselves corruptions.

5) One should avail himself of the minimum degree of relaxation for necessity when compelled to avert danger or harm, because the allowance of something already prohibited is occasioned by necessity and the gravity of necessity is relative.

6) The existence of a necessity has to be established by a qualified physician who is trustworthy regarding both his knowledge and religiousness. To avail himself of the rule of necessity he has to make sure that no other solution or remedy is available and that contravention is unavoidable, with no alternative.

It is worthwhile here to note that instituted laws have in several places absolutely prohibited abortion and prescribed severe punishment for those practising it. The punishment goes in some cases as far as debarring the abortionist if a doctor, from practising his profession, in addition to fines and imprisonment. In some countries, abortion is permitted by law but on condition that there be justification, either social, economic or physical, plus the agreement of the married couple.

I am not going to deal with the bad social consequences of making abortion completely free or on very easy conditions because this has

become so obvious that those countries whose laws permit abortion without having to have justification are now amending their laws. That is why I have limited myself to the bad physical effects produced by abortion whatever the way or method followed in undertaking it.

Among the reasons of health that justify the performance of abortion are heart disease, serious kidney trouble, diseases associated with pregnancy such as hypereremises gravidarum, albuminaria, nephritic toxemia etc... Before abortion, however, expert physicians have to submit a report regarding the disease which justifies the operation. This is the rule by Syrian law and it is followed in Syria, in accordance with Muslim Law and logic.

ISLAM'S VIEW OF ABORTION

BY

ACHMAD GAZALI

I begin by reviewing the question of abortion from the medical standpoint for the purpose of comparison and in order to throw light on it. I shall then deal with it from the Islamic standpoint.

TERMINATION OF PREGNANCY (ABORTION)

Abortion is a complex medical problem, except when the pregnant woman undergoes it for some natural cause, in which case the question is not unduly complex. If the abortion is incomplete in the sense that some part of the foetus remains behind, then the woman must be treated by a cleansing of the womb.

The problem is different in the case of induced abortion. Such abortion may be carried out for a medical reason or it may be a criminal abortion. Abortion laws vary from country to country according to their various social conditions. In Japan and some Western countries, for instance, we find flexible and not very stringent laws, because the society enjoys affluence and prosperity, and extra-marital free intercourse between the sexes leads to many cases of unwanted pregnancy. Before these countries allowed abortion, criminal abortion used to lead to deterioration in the woman's health and sometimes to her death.

I should like to go back to the statement that medical considerations are not confined to the question of the woman's health, but go beyond this to her psychological state also. In England, the National Association for Mental Health is seeking a review of the question of the legality of abortion for this very reason. But the evaluation of the psychological justification for abortion is a matter which is related to the doctor's ethics and professional honour and not to criminal law.

A large number of women who are for various reasons seeking abortion fall victim to criminal abortion operations performed by unqualified or irresponsible people. Therefore, abortion laws should be the special responsibility of medicine not of penal legislation.

Among the obstacles to the performance of an abortion is the medical oath which varies from country to country. In some countries, the oath stipulates the necessity to respect the foetus from its first development to the moment it is born. This is what causes some people to view abortion as they would view the crime of homicide.

But since homicide, to be considered a crime, must have in view the distinction of a being possessing a soul, this applies to abortion after the 16th week (3 to 4 months) according to Islamic Law. The reason for this is that the infusion of the soul into the foetus and the signs of life such as heartbeats only appear after that time.

On this basis, the removal of the foetus for medical reasons before that time is no crime. The following conditions should obtain for carrying it out:

- a) If pregnancy would make the woman liable to psychological illness harmful to her health.
- b) If it is likely that the child will be born suffering from certain illnesses.
- c) If pregnancy is the result of rape or incest, between brother and sister or father and daughter, and the termination of pregnancy in this case is due to psychological considerations.

There are also conditions relating to the mother's mental state and psychiatrists considered these to justify abortion before the sixteenth week. These are:

- a) If it is likely that the pregnancy may be instrumental in causing hazard to the mother's psychological condition.
- b) If the pregnancy harms the reputation of the woman when she is suffering from mental illness.
- c) If pregnancy may induce the woman to do herself serious injury, or commit suicide.

The decision of the National Association for Mental Health to review the legality of abortion on medical grounds draws our attention to the fact that the decision for abortion in such a case should be the joint decision of both doctor and patient, and it must be undertaken without fear of punishment. If also the doctor makes a mistake

while performing the operation, his name should be struck off the register but not imprisoned. (This last brief survey is extracted from a specialized reference source.)

The Indonesian 'Ulamā pronounce that abortion is criminal unless it takes place for some overwhelmingly compelling reasons which, if not heeded, are such as may lead to the mother's death.

In this case, the Islamic Law chooses the lesser of two evils: thus if abortion is inescapable to preserve the mother's life, then abortion becomes imperative.

It is only through God that success is achieved.

THE CASE FOR PERMANENT AND REVERSIBLE STERILIZATION IN MUSLIM COUNTRIES

BY

DR. ABDEL R. OMRAN AND DR. KHAIRIA F. OMRAN

Voluntary sterilization performed on the male or the female is emerging as a means of fertility control that may have great demographic impact. During the last two decades, an increasing number of people around the world, now counted in millions, have chosen sterilization as a method of reducing their fertility. In India, for example, over seven million people (mostly males) have been sterilized.¹ In Pakistan, the response to the program of voluntary sterilization including both tubectomy and vasectomy has been great, far beyond expectations. A conservative estimate is that the number of sterilized Pakistanis may by now have exceeded the million mark, despite the traditional nature of the society and rumours about vasectomy.² It may be interesting to note that the use of sterilization is not limited to the developing countries. Substantial numbers of people have undergone sterilization in the United States, England, Japan, Eastern Europe and many other countries. In the United States, for example, according to studies by Lea, Inc., a research organization, about three million living Americans have already obtained sterilization and some 750,000 are sterilized each year (550,000 men and 200,000 women).

INDICATION FOR STERILIZATION

A variety of indications is given for sterilization. The one most acceptable to all cultures is the medical indication such as the presence

¹ Association for Voluntary Sterilization, *The Case for Voluntary Sterilization* (New York, 1971).

² *Ibid.* The number reported by the end of June 1969 was 770,373, with the great majority in East Pakistan.

of hereditary disease or extreme danger to a woman's life or health from additional pregnancies. In addition, some couples choose sterilization as a method of fertility control once they have had the desired number of children. With the problem of population explosion in many countries, sterilization has become a communal or national concern. In this case couples are encouraged to get sterilization after they have realized their desired family size. This is much wiser and is preferable to the use of contraceptives for the rest of their reproductive life. It is also a sure, safe and one-shot method. Because sterilization does not involve removal of any gland or organ tissue, it has no harmful effects on hormonal balance or sexual potency and function. Furthermore, because of recent advances in sterilization technology, the possibility of reversibility will make the method more popular in traditional societies, including perhaps those in the Muslim world.

In order to demonstrate the safety of these methods we will describe them in non-technical terms.

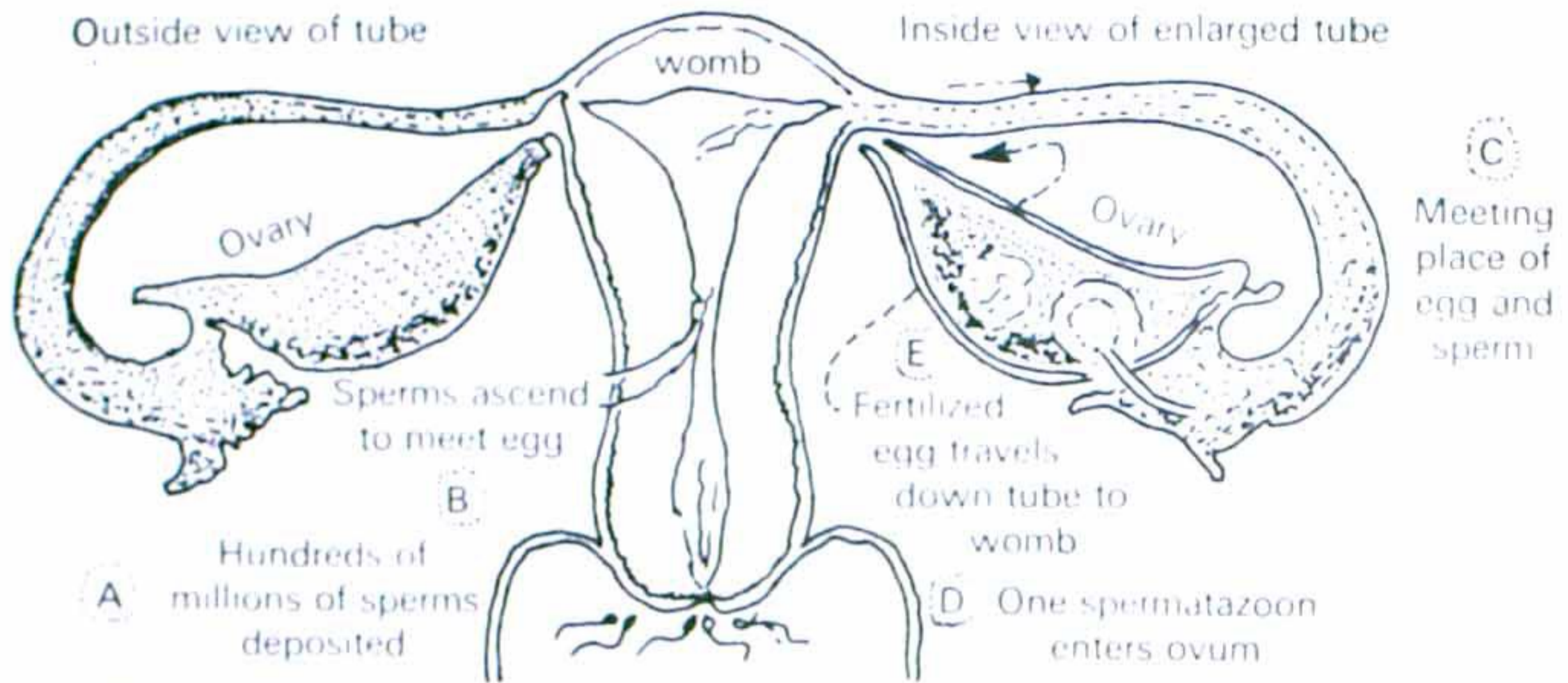
FEMALE STERILIZATION

In order that pregnancy can take place, the egg which is expelled by one of the two ovaries has to pass through a tube (called the Fallopian tube — of which there is one on each side of the body ending in the uterus). In the tube the egg can be fertilized by the sperm and then the fertilized egg passes on to the uterus where it is embedded in its walls (Figure 1). Female sterilization is simply a method of dividing the tubes or obliterating their cavities, so that the egg will not be able to meet the sperm. The tubes can be reached through an abdominal incision, through an incision at the end of the vagina (colpotomy incision) or through the cervix and uterus with no incision at all. According to the technique used, the tubes can be divided and the ends ligated, or the opening or a part of the tubes may be obliterated by chemical or physical means. Two new instruments, the laparoscope and the coldscope have recently been used in these operations, and they have reduced the hospitalization required for female sterilization.

Research has been underway for quite some time to perfect reversible techniques, using clips, polyethylene tubes, and silastic caps (an inert material) to enclose the fimbria or the ovary. These can later be removed if the woman desires to have more children.

Fig. 1

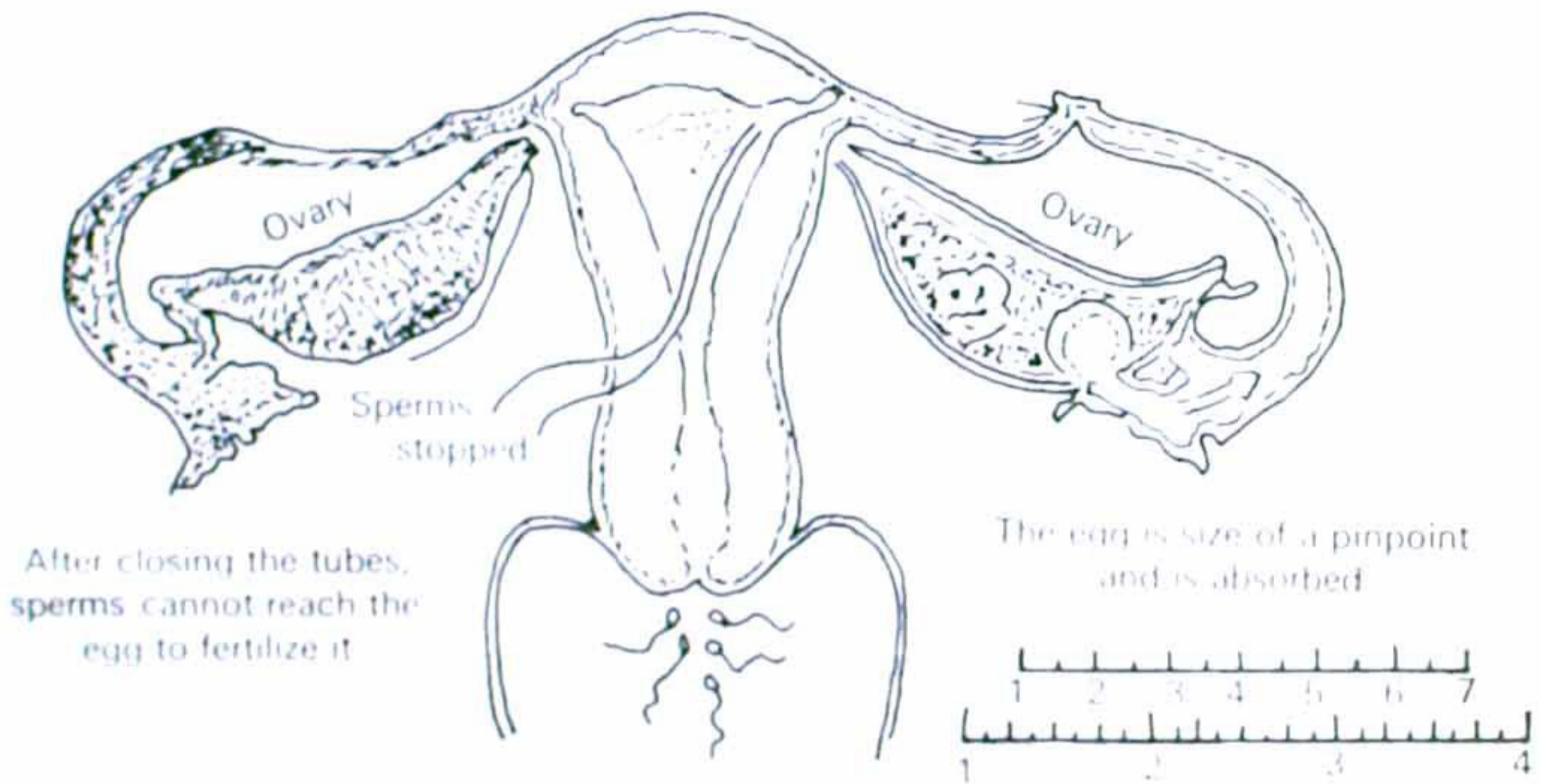
Mechanism of Conception and Sterilization of the Female



MECHANISM OF CONCEPTION TRAVEL OF SPERMATAZOA TO OVUM

End result tips have absorbed, sumps closed and drawn apart

Loop of tube tied and cut off: sperm and egg stopped, egg is absorbed



Source: Robert Latou Dickinson and Clarence James Gamble, *Human Sterilization: Techniques of Permanent Conception Control* (1950).

Side effects

As you can see, no glands or body tissue is removed, hence there is no change in the female hormonal balance, no effect on menstruation or sexual function. On the contrary, many females report improvements in their sexual function probably because of the elimination of the fear of unwanted pregnancy. With the use of newer techniques, an abdominal scar can also be avoided. A survey was carried out among 350 women who had been sterilized 12 or more months earlier, and an analysis of 278 replies received showed the following results:¹

Are you pleased that you were sterilized?	Yes	98 %
	No	2 %
Did the operation disturb you for more than three days?	Yes	28 %
	No	72 %
Are your periods the same?	Yes	39 %
If not, are they: heavier?		33 %
shorter?		28 %
Is intercourse: more often?		30 %
less often?		15 %
the same?		55 %
nil (widow)?	1 case	
Do you enjoy intercourse: the same?		29 %
more?		57 %
less?		14 %
Is your husband pleased?	Yes	93 %
	No	4 %
	Others	3 %

MALE STERILIZATION

Male sterilization or vasectomy is much simpler than female sterilization. It involves the division of the *vas deferens*, the tube that carries the sperm from the testes to the male organ. The operation is done as an office procedure under local anesthesia through a small skin incision in the inguinal region on each side. The *vas* is identified,

¹ P.C. Steptoe, *Recent Advances in Surgical Methods of Control of Fertility*, British Medical Bulletin, vol. 26, 1970, p. 62.

properly clamped and a segment of 1/4 to 1/2 inch is removed. The ends are then tied (see Figure 2).

In recent years, reversible techniques have been emphasized. Included are the use of clips, intra-*vas* devices (IVD), injection of silastic and other non-reactive synthetic materials, or the use of valves.

Side effects

As with female sterilization, there is no removal of glands or organ tissue, and there is no effect on the endocrine status or sexual potency of the male. In fact, in the 1920s and 1930s, vasectomy was advocated as a rejuvenating operation to restore sexual ability. Although there was no scientific basis for the rejuvenating effect of vasectomy, it did help to make the operation all the more attractive to many men.

Numerous studies indicate that 95 to 99 per cent of couples are satisfied with the operation; some studies indicate an improvement in sexual life in 70 per cent of couples, and a weakening in only two per cent.¹ Individuals with previous psychologic disability may show deleterious effects, however, and these individuals should be screened out. The danger comes from equating vasectomy with castration, a confusion which is understandable but entirely incorrect.

STERILIZATION AND RELIGION

Many religions other than Islam have given their sanction to sterilization. The major exception is Catholicism. In regard to Islam, there has been some confusion as to the nature of sterilization and consequently some reluctance to sanction the procedure. Let me touch briefly on several points.

1. As mentioned above, even some knowledgeable people have made the mistake of equating sterilization with castration. There is no question that castration is prohibited in Islam, but sterilization is something else entirely, and the Prophet's *hadith* in regard to castration is, therefore, not applicable: "There is none among us who castrates or is castrated." As we have explained, sterilization in both the male and the female does *not* involve removal of the sex glands as

¹ John Peel and Malcolm Potts, *Textbook and Contraceptive Practice* (Cambridge University Press, 1969)

Fig. 2

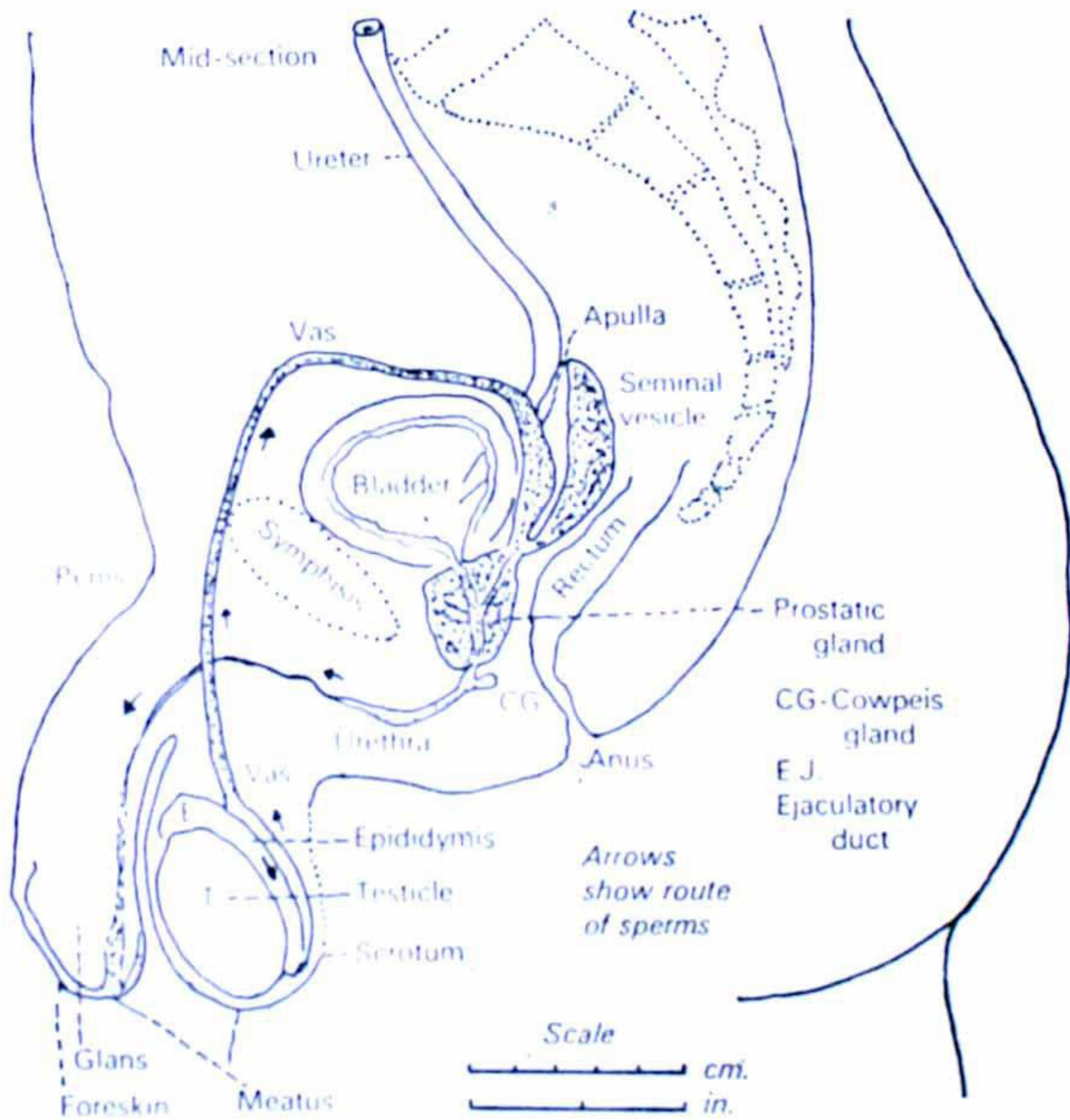
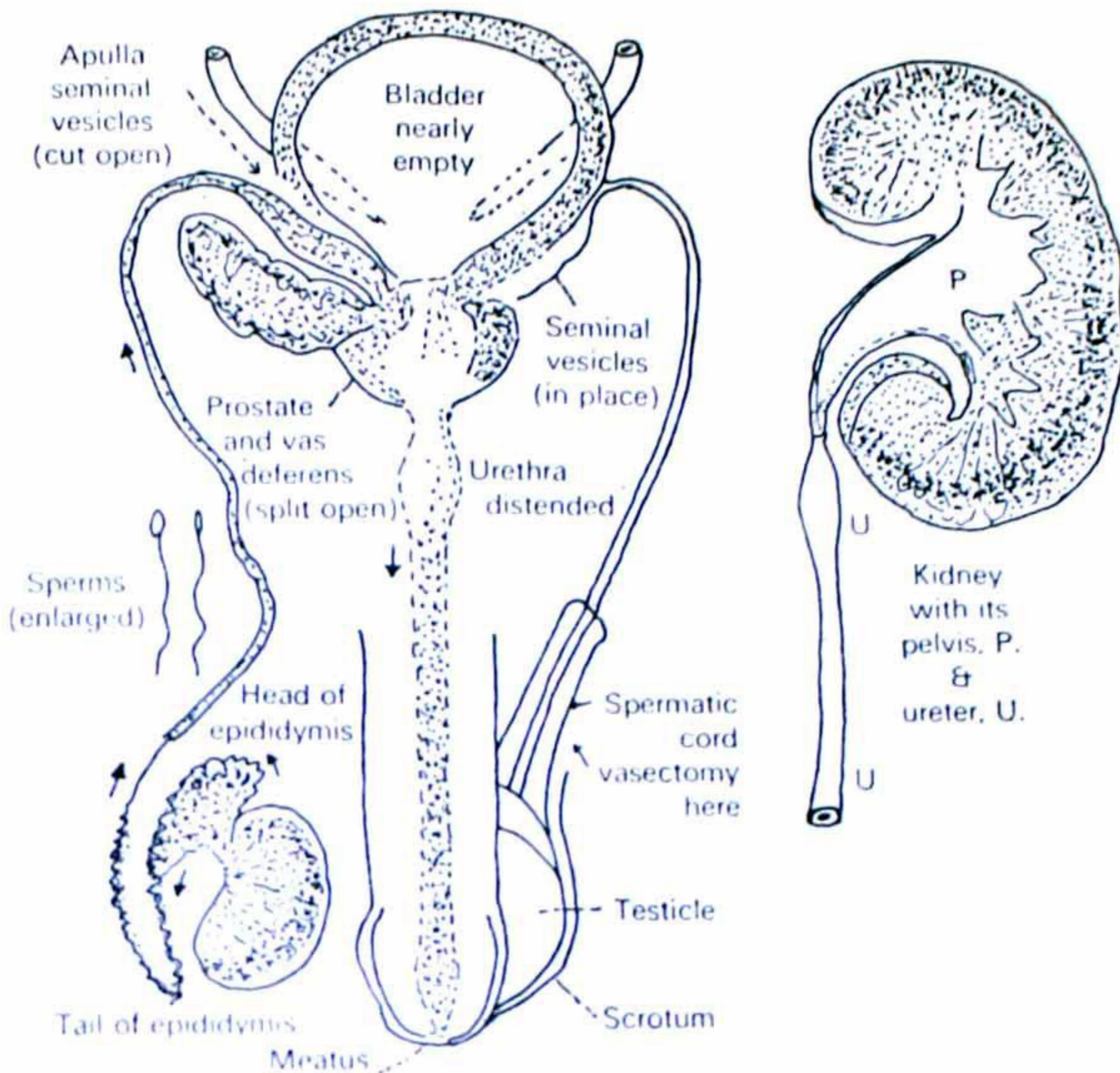
Male Organs, Genito-Urinary

Male genito-urinary system, shown in diagram from front

and in median section

Arrows show course of sperms from testicle to meatus

Note the relatively large size of seminal vesicle compared with testicle.



Source : Same as Figure 1.

occurs in castration, and the operation therefore has no effect on sexual potency.

2. There is also consensus among some people in condemning permanent sterilization. We would like from the conference further discussion of the origin of this consensus. One explanation is that a man or woman wants to remarry after divorce or the death of a spouse, will be in jeopardy if he or she has already been sterilized. This hardship can be significantly mitigated by the use of reversible methods of sterilization. From a national point of view, the number of people who may be exposed to this jeopardy is not large but should nevertheless receive due consideration.

3. There is a compelling demographic indication for the use of sterilization in Muslim countries. Analysis of age and parity in these countries indicates that about one third or more of married women are classified as grand multiparas, that is, women with five, six, seven or more previous births. The tabulation given below shows the analysis of 1960 and 1961 data for Egypt and shows that as high as 39.7 per cent of wives, 45 year old and over, in 1960, and 40.5 per cent of mothers of 30-34 years of age, in 1961 were grand multiparas:¹

Grand Multiparas as Per cent of All Mothers

<i>Age of Mother</i>	<i>1960</i>	<i>1961</i>
under 20	—	—
20-24	0.2	0.6
25-29	5.7	12.1
30-34	14.3	40.5
35-39	23.7	35.8
40-44	16.4	8.6
45 +	39.7	2.4

Medically speaking, these women should be sterilized, not only because they have had more than their "share" of children, but also because they are exposed to great health risks in subsequent

¹ Fouad el-Hefnawi, *The Place of Sterilization in Egypt*, The Journal of the Egyptian Medical Association, vol. 48, 1965, pp. 90-91.

pregnancies.¹ Among these risks which increase with parity are (a) diabetes, (b) cancer of the cervix, (c) difficult pregnancy and labour, especially toxemia of pregnancy, placental disorders, malpresentation, hemorrhage, and hypertension, (d) decreased maternal efficiency, increase in maternal mortality.

CONCLUSION

We conclude that there is a place for male and female sterilization in Muslim countries for compelling demographic and health reasons. Most of the reluctance of Muslim theologians to sanction sterilization is based on their wrongly equating sterilization with castration or exaggerating the effects of sterilization on potency. The possible risk in the operation for persons who might want to resume fertility — another objection — can be met by the use of reversible sterilization techniques.

¹ Abdel R. Omran, *The Health Theme in Family Planning*, Carolina Population Center Monograph Series (Chapel Hill, North Carolina, 1971).

RULES OF ABORTION AND STERILIZATION IN ISLAMIC LAW

BY

SHAIKH MUHAMMAD H. BAHISHTI

Praise be to God and blessings upon his chosen servant, our Master Muḥammad, and upon the best among his family and companions.

This is a paper on the rules of abortion and sterilization in Islamic Law from the viewpoint of the Ja'farite school of religious scholasticism, i.e., the Imāmite Shī'a, in the hope that this slant in the discussion may prove to be a point of departure for a more comprehensive discussion of these two questions in a not too distant future.

Before entering upon our subject, however, I would like to call your attention to the fact that the Prophet encouraged the Muslims to procreate and multiply. It is reported that the Prophet said: "Increase your offspring that I may make a display of your numbers later."¹ Why did he urge his community to do that? There are the following possibilities:

- a) To strengthen the community of Islam against attack.
- b) To increase on earth the number of those who worship God alone without associating others with Him.
- c) To make a display of the large numbers of his community on the Day of Judgement.

Is it for all these reasons together, or for these reasons as well as for others, known or unknown to us?

The third possibility is suggested by a number of traditions of the Prophet's. The second is advocated in statements by members of the Prophet's kinsfolk.

¹ M. b. al-Ḥasan Al-'Āmilī: *Wasā'il al-Shī'a* (Tehran, 1288 A.H.), vol. 3, p. 118. This book is one of the best compilation of *ḥadith* with the *Imāmī Shī'a*.

While keeping the Prophet's advocacy of breeding in large numbers in mind, we turn to two other matters which claim our consideration in this context:

1. Transmitted tradition tells us that the Prophet simply counselled prolific procreation. He did not intend to make it an obligatory duty. Consequently, the prohibition of the use of contraceptive means cannot be inferred from this premise. Indeed, the Prophet is reported to have countenanced *'azl* (coitus interruptus), an indication that the use of contraceptives such as pills and others is allowed.

2. The above reasons or other similar ones may have prompted the Prophet to urge procreation. Different circumstances, however, may prescribe the adoption of a contrary course, such as the undesirability or the proscription of the multiplication of offspring either for the individual in the Muslim community or for the Muslim community as a whole. If, for example, pregnancy involves a hazard to the life of the mother, would we recommend to the parents to go on producing offspring, in complete disregard of the danger posed by pregnancy and would we claim that we, by our action in this direction, are following in the footsteps of the Prophet's tradition?

Therefore, let us suppose that the existing resources of the Muslim community are such that they can be just enough to feed, educate and train a limited number of people only. In this case, it is evident that when the reasonable limit is exceeded, the situation will require that the affairs of the Muslim nation should be carefully planned and organized. If no other way were handy to plan the affairs of the nation except by introducing birth control, would we still go on encouraging people to continue to breed on the plea that we are following the Prophetic tradition? Of course not.

Muslims, particularly men of learning and discernment as well as those in authority among them, should appreciate the conditions under which we live today. We have to disabuse ourselves of all bigotry and sheepish imitation of, and subservience to, opinions emanating from world organizations, and adopt what is to our own best interests in the circumstances, obtaining at the time, provided that proper account is taken of the principles and standards set by Islamic Law. May this conference of ours take, therefore, a further step towards the goal which every Muslim seeks.

Let us now turn to the subject under discussion, i.e., the rules in Islamic Law on the two questions of abortion and sterilization.

ABORTION

Is abortion then tantamount to the destruction of the inviolable soul of man, regarded by Islam as a deadly sin and indeed a most heinous crime? And what is this inviolable soul whose destruction Islam regarded as a most heinous crime? It is the soul of a human being, which Islam decrees to be inviolable, save when sentence of death is passed upon it in the administration of justice.

Is the foetus a human being? And if so, in what phases of its growth can it be regarded as a human being?

In enumerating the phases of growth in man's creation, the Holy Qur'an said: "Now of fine clay have we created man: then we placed him, a moist germ, in a safe abode. Then made we the moist germ a clot of blood: then made the clotted blood into a piece of flesh; then made the piece of flesh into bones: and we clothed the bones with flesh: then brought forth man of yet another make — Blessed therefore be God, the most excellent of Makers" (Sura 23/12-14).

In which of these phases does the Qur'an regard the foetus as a human being?

When it was a piece of fine clay, that is, before it became a foetus? No.

When the product became a moist in a safe lodging? No.

When the moist germ became a clot? No.

When the clot became a piece of flesh? No.

When bones appeared therein? No.

When bone formation was completed and the foetus became possessed of bones covered with flesh? No.

When then?

From the verses cited above it is clear that the foetus was transformed into a human being when God "produced it as another creation"; a creation distinguished from all other animals, namely, a man.

What does man acquire in this phase?

Let us look for the answer in the Holy Book, which is free from all falsity and error: "This is He who knoweth the unseen and the seen; the Mighty, the Merciful, who hath made everything which He hath created most good; and began the creation of man with clay; then ordained his progeny from germs of life, from sorry water: then shaped

him, and breathed of His Spirit into him, and gave you hearing and seeing and hearts: what little thanks do ye return!" (Sura 32/6-9).

In the story of Adam, the Qur'ān says: "And when I shall have fashioned him and breathed of my spirit into him, then fall ye down and worship him" (Sura 15/29).

Thus Adam was not worthy of the angels prostrating themselves before him after his body had been fashioned but was worthy of that only after God had breathed into him of His spirit. It was only then that he became God's regent on earth, having been singled out from among all His creatures for this honourable status. It was only then that respect became due to him. Just as Adam did not gain this pre-eminence except after the spirit had been breathed into him, so the foetus cannot be regarded as an inviolable soul except after animation.

What is this spirit? Is it this life principle which is common to man and beast or common to man and plant, or it is something peculiar to man alone?

The Holy Qur'ān makes it clear that it is something which is peculiar to man alone. It is not that general principle of life which we find in animals, or in animals and plants. Modern science did not concern itself sufficiently with the discussion of the spirit and its nature, preferring to inquire into what we know as spiritual phenomena, peculiar to man. Evidently, if there are spiritual attributes that are peculiar to man alone, these attributes must necessarily be rooted in the initial essence of man, by which he is sharply distinguished from the rest of the animal kingdom, and in virtue of which he has been able to put to use the heavens and the earth and all things therein. In referring to this mysterious principle, and pointing to its existence, the Qur'ān simply uses the words "a spirit from Him" without further explanation, which led somebody to ask the Prophet about the spirit, what it was. The answer came in the form of the following revealed verse: "And they will ask thee of the Spirit. Say: The Spirit proceedeth at my Lord's command: but of knowledge, only a little to you is given" (Sura 17/85).

Ignorance of the essence or quiddity of this principle does not negate our recognition of its existence. By the same token, the Creator is believed to be existent although we are ignorant of His essence. Perhaps this was what the Qur'ān said: "Say: The Spirit proceedeth at my Lord's command" (Sura 17/85), and: "And breathed of my spirit into him" (Sura 15/29), and also: "And breathed of His Spirit into him" (Sura 32/9), appropriating the spirit to Himself.

We do not want to look into the subject of the spirit and its nature. We simply want to inquire into the meaning of the verse "Then brought forth man of yet another make" (Sura 23/14). We know that the foetus becomes a new individual once the spirit is breathed into it, after, as in the Qur'anic verse, man of a different make is brought forth, that is after all his organs are fashioned and are fully developed.

'Alī's Ruling

The following account which came to us about 'Alī in the *Wasā'il* on the authority of Muḥammad b. Ya'qūb who based his account on an interesting book on the Prince of the Faithful. There it is reported that 'Alī said: "They fixed the blood-money of a foetus at 100 dinars. From the time fertilization takes place until the foetal stage is reached, the embryo passes through five stages of development. When the foetal stage is reached, but before the spirit is breathed into it (i.e., before animation), the blood-money is fixed at 100 dinars. As to the five phases, these are: the drop (sperm), the clot, the lump, bone formation, and the growing of the flesh, when the embryo becomes a full fledged foetus, thereby completing the fifth stage. Consequently, 100 dinars are fixed for these five parts and are to be proportioned as follows: one fifth (20 dinars) is assigned to the sperm stage; two-fifths (40 dinars) to the clot stage; three-fifths (60 dinars) to the lump stage; and four-fifths (80 dinars) to the bones stage. When the bones are covered with flesh, the blood-money for the foetus is to be paid in full, viz. 100 dinars. If the foetus is 'brought forth man of another make' that is, if the spirit is breathed into it, when it becomes a human being and then the blood-money payable is 1,000 dinars if a male and 500 if a female."¹

Al-Hillī, the Leading Collator, on Islamic Laws

This was the opinion delivered by a group of our jurists. Among them was the First Collator al-Hillī² who expressed his opinion on the subject in his work *Sharā'i' al-Islām*. He spoke of: "The fourth consideration regarding the subsequent developments, which are four:

¹ *Ibid.* p. 498.

² Abū al-Qāsim Najm al-Dīn Ja'far b. al-Ḥasan al-Hillī who died in A.H. 676. He was an outstanding Ja'farī *faqīh*.

the first concerns the foetus. The blood-money of the Muslim foetus, if it is fully grown in form but not yet animated, whether male or female, is 100 dinars. When, however, animation sets in it, the blood-money must be paid in full for the male, and only half for the female. It cannot, however, be exacted unless animation is established, and a pause following stirring is to be disregarded, because the stirring may be just wind. In this case compensation must be made, with the recognition that the crime was immediately committed. If the woman terminates her pregnancy by immediate action or consequentially, she is liable to the payment of the blood-money, and she has no right to any portion thereof. If someone scares her and she gets so alarmed that she miscarries, then the blood-money is to be paid by the offender, and the foetus' blood-money is to be inherited by the foetus' rightful heirs in accordance to their degree of proximity in kinship to the foetus. If one hits her, causing her to miscarry and the foetus dies thereafter, then the offender is guilty of homicide and is to be punished by death if his act is deliberate, or to be responsible himself for the blood-money if the issue is doubtful. If, however, the happening is only accidental then the blood-money is to be paid by the man's male people. The same applies if the foetus remains in the womb, dead, or if it is expelled alive, but has no hope of subsistence. Compensation must be made in each of the above cases, even if she aborts it alive..."¹

The learned jurist, author of *al-Jawāhir*,² in his exposition of the Islamic law says: "At all events, as we see it, no compensation is to be exacted from the culprit, as agreed in unanimity, because murder cannot be established where it is assumed that there has been no animation..."³

Al-Shahīd al-Thānī⁴ said in *al-Rawḍa*:⁵ "No compensation is chargeable for the death of a foetus at any of its stages, because liability is conditional upon whether there is life or not. If there is

¹ Al-Hillī, *Sharā'i' al-Islām* (1320 A.H.), pp. 397-398.

² Shaikh Muḥammad Ḥasan b. Bāqir al-Aṣbahānī who died in A.H. 1266. He was a leading Ja'farī faqīh.

³ Al-Aṣbahānī, *Jawāhir al-Kalām fī Sharḥ Sharā'i' al-Islām*, vol. 6, p. 742.

⁴ Zain al-Dīn b. 'Alī b. Aḥmad al-'Āmilī who was killed in A.H. 965 or 966. He was an outstanding faqīh of the Imāmī Shī'a.

⁵ *Al-Rawḍa al-Bahiyya fī Sharḥ al-Lum'a al-Dimashqiyya*, al-Lum'a was compiled by Shamsuddīn Muḥammad b. Makkī al-Nabaṭī al-'Āmilī who was killed in A.H. 786. He was a leading Ja'farī faqīh.

animation, blood-money must be paid in full in respect of a male, and in half in respect of a female..."¹

From the above, it may be seen that abortion of the foetus is regarded as murder only after animation. Prior to that, the term murder does not apply to it, i.e., the murder of the inviolable human soul.

Modern Science

Some may maintain, however, that the expulsion of the foetus by abortion is an act of murder at any stage, because modern science has shown the foetus to be endowed with life from the very beginning.

The answer to this is that what is meant by 'soul' or 'spirit' in Islamic legal parlance, which is breathed into the foetus at the final embryonic stage in the womb, is something unlike that of the animation or life asserted by modern science to be the property of the foetus and, for that matter, of the sperm before it is transferred from man to the womb. If the man discharges his sperm outside the womb, as in 'azl (coitus interruptus) for instance, can this act be accounted as homicide? No. The expulsion of the foetus by abortion before 'inspirit-ing' or animation cannot be regarded as the murder of a human being, for the foetus is transformed into a human being only at the last stage of its development, that is, when the spirit is breathed into it. If you would like still to regard abortion as murder before the breathing of the spirit into it, then call it the killing of an animal, since it is possessed of a life which potentially will turn it into a human being, rather than the murder of a human being as such.

It is related in *al-Wasā'il*, on the authority of Muḥammad b. Ya'qūb, who had it from 'Alī b. Ibrāhīm, who had it from his father, from Ibn Maḥbūb, from 'Abdullāh b. Ghālib, from his father, from Sa'id b. al-Mussayyab, who said: "I asked 'Alī b. al-Husain concerning a man who kicked a pregnant woman, and she aborted a dead foetus as a result. He said: '... if she aborts it when a lump, he has to pay sixty dinars'. I said: 'What is the determinant of the lump?' He said: 'It is that which has found its way into the uterus and has become attached to it for 120 days.' He said: 'If she aborts it when it is a living creature, well-differentiated and having bones and flesh with fully-fashioned

¹ *Ibid.*, vol. 2, p. 373.

limbs, into which the spirit of reason has entered, then the blood-money is to be paid in full...'.¹

He added spirit to reason to make it clear that what is intended is the spirit which distinguishes man from the rest of the animals, not life in general.

An interesting sidelight may be noted here. It is that modern science asserts that the stages through which the foetus goes in the womb are analogous to all the chief stages of man's evolution over the millions of years of his existence. At each of these phases, it represents in its form and many of its characteristic traits, a certain type of living creature antedating man. Similarly, man corresponds to the last stage of full development in the womb. Is not this, though in other words, the same as God's words: "Then brought forth man of yet another make" (Sura 23/14)?

We can say that science in this instance does not diverge from the revealed word, that is, from the Holy Qur'an and from the tradition explicating it.

To be sure, the investigator may find in the statements of both jurists and tradition scholars what may suggest that the foetus acquires life at the last phase only, when all its organs are fully formed. He will also note that the scientist does not distinguish between life as such and between the spirit of reason. Religious scholars, however, regard the foetus as acquiring life only after the spirit is infused, i.e., the spirit of reason enters into it, but that prior to that it is but a lifeless lump of matter. It is not for us to take that as a point against them; scientific progress enables us now to understand the Book and the Prophetic traditions in a far better way than was possible to our predecessors. But the assumption on their part that the presence of life in the foetus as coinciding with its attainment of the characteristics peculiar to man is not at fault in so far as the interpretation of the rules of abortion as deduced by them from the revealed word and from the Prophetic traditions is concerned. It is evident from the works of the Collator, of the two Shahīds and of the author of *al-Jawāhir*, as well as from the works of others, that the verdicts of these and other scholars with regard to the expulsion of the foetus clot and lump are not the same as theirs on the question of homicide. If a jurist or a doctor wishes today to designate the abortion of an embryo in the form of a clot or a lump

¹ *Wasā'il al-Shī'a*, vol. 3, p. 498.

of flesh as murder, he is free to do so, provided the murder is that of an animal and not of a human being, as already shown, in which case he has also to call murder the destruction of the sperm even before the man's sperm is introduced into the woman's uterus, for it also has life or the germ of life.

The abortion of the clot or lump was designated as murder in *al-Wasā'il*, as related by Muḥammad b. Ya'qūb who had it from a number of our companions, who had it from Sahl b. Ziyād, from Muḥammad b. Yaḥyā, from Aḥmad b. Muḥammad, all of whom had it from Ibn Maḥbūb on the authority of 'Alī b. Ri'āb, who heard it from Abū 'Ubaida, who said: "I asked Abū Ja'far concerning a woman who had taken a drug while pregnant without her husband's knowledge, and aborted in consequence. He said: 'If the foetus had bones with flesh growing thereon, then she has to pay the blood-money, payable to its father. If however, it is a clot or a lump as yet when aborted: then she has to pay forty dinars or a *ghurra* (indemnity) to be paid to its father.' I asked: 'Does she not inherit along with the father from her child's blood-money?' He said: 'No, because she killed it, and she could not inherit from it.'" ¹

Another tradition transmitted by Muḥammad b. Al-Ḥasan on the authority of al-Ḥusain b. Sa'īd who had it from Ibn Maḥbūb, from 'Alī b. Ri'āb, from Abū 'Ubaida, from Abū 'Abdullāh, gives the following judgement concerning a woman who took a drug while pregnant to induce abortion, and eventually aborted as a result. He said: "If flesh has begun to cover the bones, and indentations for the organs of hearing and sight have emerged, then she has to pay blood-money to the father." He added: "If it is still an embryo (a clot or a lump), then she has to pay forty dinars or a *ghurra* (indemnity) also to the father." I asked: 'Then she does not inherit from her child's blood-money?' He answered: 'No, because she killed it.'" ²

The Imām's saying 'because she killed it' may be taken to mean either that the foetus at these stages is animated but is not human or that abortion under these conditions is regarded as virtually the same as murder, which debars the murderer from the right of inheritance. By the same token, according to a Prophetic tradition, *'azl* (coitus interruptus) is designated as infanticide (*wa'd*). At all events, there is nothing in the two traditions already quoted to indicate that the two

¹ *Ibid.*, vol. 3, p. 336.

² *Ibid.*, vol. 3, p. 449.

Imāms considered abortion in these specific cases as the killing of a human being but simply as killing, a more comprehensive concept than the killing of a human being, which imposes penalty or full blood-money, in accordance with the general rules of the Book and the Prophetic tradition.

This shows that the interdiction of the abortion of a foetus before quickening, i.e., before the infusion of the spirit of reason, and before it becomes a human being in the uterus, on the strength of the general rule proscribing the killing of a human being, as given in the Book and in the tradition, or on the basis of the special case, of proscription in the matter of infanticide, as in the following Qur'ānic verse: "Kill not your children for fear of want: for them and for you will we provide. Verily, the killing them is a great wickedness" (Sura 17/31). That it is not well-grounded.

The killing of children as practised by the Arabs in pre-Islamic times, was carried out after the children's birth, not before. They used to kill female newborn children, and spare the male, and this they could not know except after birth. In commenting on the verse "And when the female child that had been buried alive shall be asked: For what crime she was put to death" (Sura 81/9), Al-Ṭabarsī¹ says in *Majma' al-Bayān*: "When a woman was about to deliver, she dug a hole and sat on top. If the born baby was a girl, she would throw her into the hole; but if she gave birth to a boy, she would keep him. This is on the authority of Ibn 'Abbās."

When can abortion be regarded as murder?

All this so far has been concerned with the abortion of the foetus before quickening, that is, before it fully develops into a human being in the womb. But abortion when the foetus is 'brought forth man of yet another make,' that is, after God has breathed into it of His spirit and it has consequently developed into a human being, is a veritable murder, the murder of a soul, which God proscribed, except in the right cause. How just and condign are the penalties and punishments prescribed by the rules of the Law, by way of reprisal, blood-money and expiation, has already been dealt with at length in the quotations from the First Collator and those of other jurists.

¹ Amīn al-Islām Abū 'Alī Faḍl b. Ḥasan b. Faḍl al-Ṭabarsī. He was one of the exegetes of the Qur'ān among the Imāmī Shī'a. He died in A.H. 548 or 552.

When does the foetus develop into a human being?

It is related in *al-Wasā'il* on the authority of Muḥammad b. Ya'qūb, who had it from Muḥammad b. Yaḥyā, who had it from Muḥammad b. Ismā'īl, who had it from Ṣāliḥ b. 'Uqba, who had it from Sulaimān b. Sāliḥ, who had it from Abū 'Abdullāh, that the compensation to be paid for a sperm drop is twenty dinars; forty dinars for a clot; sixty dinars for lump; eighty dinars for bone; if and when flesh cover the bones, then it is one hundred dinars. This is the blood-money chargeable until birth, when the newborn emits the cry of life. At this final stage, the blood-money must be paid in full.

It is known that the baby to be can emit the cry of life after the elapse of the foetus' first six months of existence in the womb. However, according to another tradition related in *al-Wasā'il*, on the authority of Muḥammad b. Ya'qūb, who had it from Muḥammad b. Yaḥyā, who had it from Muḥammad b. al-Ḥusain, who had it from Muḥammad b. Ismā'īl, who had it from Ṣāliḥ b. 'Uqba, who had it from Abū Shibl, we are told: "I was present with Yūnis while Abū Abdullāh was telling him about blood-money... I said: 'If he hits her, and causes her to abort a foetus, but it is not known whether it is alive or dead'. He said: 'This is unlikely, O Abū Shibl, for after the first five months life sets in, and blood-money is incurred'."

The First Collator said in this connection: "If the spirit has been breathed into it, the full sum of the blood-money is payable for the male, and half for the female. It is due only when life is established to be there, notwithstanding a pause after stirring."¹

Neither he nor the author of *al-Jawāhir* in expounding this statement, made reference to the narrative transmitted by Abū Shibl on the authority of Abū 'Abdullāh Ja'far b. Muḥammad al-Ṣādiq relating to the infusion of the spirit after the elapse of five months.

As for modern science, it has not brought to light anything that serves to clarify this point. True, it asserts that the foetus attains full development in the womb towards the end of the seventh month of pregnancy, when it may be said to be possessed of fully developed organs, capable of insuring continued life if it is born there and then. If, however, it is delivered prior to that, say, at the beginning of the seventh month, some of his physical organs and systems would be inadequate to cope with the requirements for subsistence. Therefore,

¹ *Sharā'i' al-Islām*, p. 397.

it cannot be kept alive unless special conditions similar to those of the womb are provided to help it attain a degree of development equal to that attained by the foetus in the womb in its seventh month. Thus the premature baby used to be enfolded within a thick cotton envelope to maintain a stable degree of warmth, as in the womb.

Another ruling is reported by ‘Abdullāh b. Sinān, who had it from someone, who had it from Abū Ja‘far, who said: “I asked him concerning a case in which a man hits a woman, causing her to abort a sperm blob (an incipient embryo). He said that twenty dinars were due in compensation; if the embryo is a clot, then forty dinars; if a lump, then sixty dinars; but if it reaches the stage of bone formation, then he has to pay blood-money.”¹

The following case is reported by Muḥammad b. Muslim who said: “I asked Abū Ja‘far concerning a man who hits a woman causing her to abort a sperm blob. He said: ‘He has to pay twenty dinars.’ I said: ‘And if she aborts a clot?’ He said: ‘Then he must pay forty dinars.’ I said: ‘If he strikes her, and she expels a lump?’ He said: ‘Then sixty dinars.’ I said: ‘If he strikes her and she aborts a foetus which has bones?’ He said: ‘Then he has to pay the blood-money in full. Thus,’ he said, ‘it was ruled by the Prince of the Faithful.’ I said: ‘What are the characteristic features at the bone stage?’ He said: ‘If it has bones and if indentations for the organs of sight and hearing have emerged and its limbs begin to take shape — if the foetus has all these characteristics — then the blood-money has to be paid in full.’”²

It appears that it was generally recognized that the full sum of the blood-money was one hundred dinars. This blood-money was regarded as due in respect of the aborted foetus with visibly developed limbs but into which the spirit had not yet entered. This is the blood-money which the Prince of the Faithful ‘Alī, as reported in al-Kulainī, divided into five portions, corresponding to the five foetal stages preceding the final stage as stated in detail in this version.

Is abortion prohibited in other ways?

If the foetus is aborted without both the father’s and the mother’s consent, the act would constitute an act of aggression against them both; or against one of them only, if one or the other agrees to it. Hence, Islamic Law imposes blood-money thereon, because aggression

¹ *Wasā’il al-Shī‘a*, vol. 3, p. 364.

² *Ibid.*, in *Kitāb al-Qiṣāṣ*.

is proscribed by law. If, however, both parents agree to it, then aggression does not apply to the case, and, therefore, cannot be regarded as a breach of divine law.

True, it is related in *al-Wasā'il*, on the authority of Muḥammad b. 'Alī b. al-Ḥusain, who had it from Ibn Abū 'Umair, who had it from Ibn Abū Ḥamza and from Ḥusain al-Rawāsī, all of whom had it from Ishāq b. 'Ammār, who said: "I said to Abū al-Ḥasan: 'To get rid of pregnancy, a woman takes a drug, and aborts her child by it.' He said: 'No!' I said: 'It is but a sperm blob.' He said: 'It is a sperm blob when it is first created'." ¹

The questioner did not mention the father's consent or lack of it. Does this generalization justify the forbiddance of both cases, and would forbiddance involve simply disfavour or interdiction? The author of *al-Wasā'il* was inclined to call it interdiction, when he wrote: "The chapter that it is interdicted for a woman to take an abortifacient drug, even if the aborted is no more than a sperm blob." In this chapter, only one *ḥadīth* was cited, the one stated above.

It seems that what had led the Imāms to inquire into the rules of abortion in all its forms is their interest in finding a ruling which would take the right of the parents into account and determine the blood money incurred by the aborter. We may refer you to the narrative of Abū 'Ubaida, related on the authority of Abū 'Abdullāh, concerning a woman who took an abortifacient drug and in fact aborted, in which he says: "If the aborted has already begun to be covered with flesh, and if indentations for the organs of sight and hearing have begun to show, she incurs the penalty of the blood-money, payable to the father." ²

In his answer, the Imām made mention only of the blood-money, and the difference of the sum to be paid in accordance with the state of the foetus and the woman's liability to pay the blood-money, if her action proved a transgression of her husband's right. She is not obligated to pay the blood-money unless she does not obtain her husband's consent to her taking of the abortifacient. If, however, he consents to it, then his claim to the blood-money is inadmissible. Hence, the questioner, who asks Abū 'Ubaida in the other narrative handed down by Abū Ja'far, says: "I asked Abū Ja'far concerning a

¹ *Ibid.*, vol. 3, p. 464.

² *Ibid.*, vol. 3, p. 498.

woman who took a drug while pregnant, without her husband's knowledge, and consequently aborted."¹

What matters, according to the narrative of Ishāq 'Ammār on the authority of Abū al-Ḥasan, is the non-obtainment of the husband's permission for the taking of the drug, as was generally the custom in those times. Prohibition proves that the act was regarded as an infringement of the father's rights, which is also corroborated in the chapter on 'azl, to which we refer you.

Is abortion prohibited under secondary headings?

It may occur to the mind that the prohibition of abortion, even when the embryo is still at its first rudimentary stages (sperm blob or zygote, clot, lump) is prompted by the fear lest abortion, if unrestricted, should make people less respectful of life and more daring in committing murder, and also by the fear that it should entail the spread of adultery and marital infidelity, especially on the part of the wife, if the fear of pregnancy and its inevitable visible signs for everybody to see along with the resultant problems, is removed as the chief deterrent to fornication. Or it might be felt that it should be prohibited because it frequently exposes the mother's life and health to grave hazards owing to carelessness in matters of pregnancy and in the provision of healthy conditions for it, which is particularly the case among the less privileged sections of society and in the developing countries generally. It is, therefore, felt that it is better to prohibit abortion altogether to avoid one contingency or another.

It will be noted that the above cases are not sufficient to warrant the prohibition of abortion and that this prohibition is one of the rulings of the Islamic Law. In fact, the Imām or the supreme authority in the state should look into the matter, and see when to prohibit it and when to permit it, depending on the circumstances of each particular time or place, by taking into consideration the requirements of public interest in the light of the fundamental principles of the Book and of the Prophetic tradition.

Observation

Al-Bukhārī relates in his *Ṣaḥīḥ* that Qutaiba reported on the authority of al-Laith, who had it from Ibn Shihāb, who had it from Ibn

¹ *Ibid.*, vol. 3, p. 498.

al-Mussayyab, that Abū Huraira said: "The Apostle of God, in the case of a stillborn foetus of a woman from Banī Liḥyān, awarded her compensation equal to the blood-money payable for a slave or a slavegirl. Later, the (culprit) woman who was adjudged to pay the blood-money died, and the Apostle of God adjudicated that her inheritance should go to the children and husband, and that the blood-money (due for the stillborn foetus) was a liability of her descendants."¹

Muslim relates in his *Ṣaḥīḥ* that Ibn al-Musayyab and Abū Salama b. 'Abdul-Raḥmān said that Abū Huraira said: "Two women of Hudhail fought together, and one of them hurled a stone at the other and killed her and killed what was inside her. The case was referred to the Apostle of God, may peace be upon Him. The Apostle adjudicated that the blood-money for the foetus was that of a slave or that of a newborn female child; and he adjudicated that the blood-money for the woman was to be exacted from her male kin, and that she was to be inherited by her children and those who are with them; whereupon Ḥamal b. al-Nābigha al-Hudhalī expostulated saying: 'O Apostle of God, how is it that I should be penalized for someone who never drank, ate, uttered a word or cried, such a one should go unavenged.' The Apostle of God said (in reply): 'He is only one of the fellowship of seers, because of his rhymed speech which he spoke'."²

Al-Shāfi'ī relates more or less the same case and adds: "From all this, we may take what is pertinent to the foetus..."³

In *al-Muwatta'* in the chapter on blood-money, in the section on the blood-money for the death of the foetus, Mālik relates traditions on this subject transmitted from the Prophet, and then adds: "Mālik said that the indemnity for the foetus of a free-born woman is one tenth of the indemnity for her, the tenth being fifty dinars or 600 dirhams." Then he adds: "I have never heard anyone disagree that no *ghurra* (indemnity) is due to the foetus until it leaves its mother's womb and is expelled dead therefrom." He also said: "I have heard that if the foetus was delivered alive from his mother's womb and died afterwards, then his blood-money must be paid in full. The foetus can have no life unless it emits the cry of life. If it comes

¹ Muḥammad al-Bukhārī, *Al-Jāmi' al-Ṣaḥīḥ* (Cairo, 1313 A.H.), vol. 8, p. 189.

² Muslim Ibn al-Ḥajjāj, *Al-Jāmi' al-Ṣaḥīḥ* (Cairo, 1330 A.H.), vol. 5, p. 110.

³ Muḥammad al-Shāfi'ī, *Kitāb al-Umm* (Cairo, 1325 A.H.), vol. 2, p. 93.

out of its mother's womb, emits the cry and then dies, his blood-money is payable in full..."¹

Ibn Rushd (Averroes) compared the opinions of the Imāms of the four schools on this subject in his valuable book *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* to which we refer you.²

The Prophetic tradition on the subject is set forth in the *Jawāmi' al-Hadīth* of the Imāmite Shī'as.

In his work *al-Mabsūṭ wal-Khilāf wal-Tahdhīb wal-Isti'bār* as quoted by the Collator in *al-Sharā'i'*, Shaikh Abū Ja'far Muḥammad al-Ṭūsī³ related the Prophetic tradition, as reported in the *hadīth* collections of the Imāmite Shī'as, on the blood-money due for the death of the foetus that is not fully developed, i.e., the embryo, whether a clot or a lump.⁴ The majority of the jurists of this sect take it that the ruling was occasioned by an actual case, in which the foetus may have been a lump, for which the blood-money is sixty dinars, or midway between a clot and a lump, for which the blood-money is fifty dinars. This sum used to be in general the price of a man or a woman slave, on the basis of the fines relating to men and women slaves. There is no contradiction here between this and what has been reported of the ruling of 'Alī and the rulings of the rest of the Imāms amongst the Prophet's family on the apportionment of the blood-money in correspondence with the various stages of development and transformation, as shown in the works of the Collator in *al-Sharā'i'*.

Conclusion

From our inquiry, we may conclude the following:

1. Abortion of a foetus after it has developed into a human being having a soul or spirit is most definitely prohibited; it is to be regarded as tantamount to the murder of a soul, prohibited by God except in the cause of justice. It is a deadly sin, to which apply all the rules imposed for murder, whether punishment, blood-money or expiation.
2. Abortion prior to that cannot be regarded as the murder of the inviolable soul. It is not prohibited from this consideration; it is,

¹ Mālik Ibn Anas, *Al-Muwaffa'* (Cairo, 1862), vol. 2, p. 184.

² Muḥammad Ibn Rushd, *Bidāyat al-Mujtahid wa Nihāyat al-Muqtaṣid* (Cairo, 1950), vol. 2, pp. 410-412.

³ He is an Imāmī Shī'a *faqīh* and *muhaddith* (traditionist) who died in A.H. 460.

⁴ *Sharā'i' al-Islām*, p. 397.

however, an act of aggression against both parents or either of them, if it is caused without their consent. This is why the Islamic Law imposes blood-money for that, in accordance with verdicts and secondary considerations transmitted to us. It appears that blood-money is exactable from the aborter, if abortion is induced without the consent of the parents.

3. The categorical prohibition of abortion on the basis of secondary considerations, other than those stated here, is inadmissible.

4. The Imām of the Muslims, the head of the Muslim community, may, under special circumstances, prohibit it, if the national interest demands it, or the interest of the mother, due considerations being given to the rules and limits prescribed by the Book and by the tradition of the Prophet.

STERILIZATION

As far as we can tell, from our investigations, there is nothing to indicate that sterilization, of the father or the mother, is prohibited if it is medically performed with the consent of the parents, provided it does not impair virility and has no harmful effects, such as disfigurements or psychological complexes.

Some may deduce its prohibition from a Qur'ānic passage on Iblīs (Satan): "...and will lead them astray, and will stir desires within them, and will command them and they shall cut the ears of animals; and I will command them, and they shall alter the creation of God.' He who hath taken Satan rather than God for his patron, is ruined with palpable ruin: He hath made them promises, and he hath stirred desires within them; but Satan promiseth, only to beguile!" (Sura 4/119-120).

Sterilization, according to this, is an alteration of God's creation, and, therefore, the work of the devil. On the prohibition of deadly sins, the Qur'ān says: "O believers! Surely wine and games of chance, and statues, and the divining arrows, are an abomination of Satan's work! Avoid them, that ye may prosper" (Sura 5/90).

I don't believe, however, that this deduction is very convincing to the jurist. The alteration of God's creation urged by the devil is not evident in this context, hence the differences of opinion. As far as our subject is concerned, this verse falls under the head of generalizations and cannot be used specifically as a basis for prohibiting what is regarded as lawful in accordance with a fundamental principle of allowance covering such individual cases.

Castration

Prohibition of castration may be inferred from the grounds and arguments for the forbiddance of sterilization. Al-Bukhārī relates in his *Ṣaḥīḥ*: “We were told by Muḥammad b. al-Muthannā, who was told by Yaḥyā, who was told by Ismā‘īl, who said: Qais told me on the authority of Ibn Mas‘ūd, who said: We used to go on raids with the Prophet and had no women. We asked the Prophet: Should we not castrate ourselves?’ He forbade us to do so.”¹

He also relates:² “We were told by Ibn Sa‘īd, who was told by Jarīr, who had it from Ismā‘īl, who had it from Qais who said that ‘Abdullāh had told him: We used to go on raids with the Prophet and had nothing. We asked if we could castrate ourselves. He forbade us to do so. Then he permitted us to marry in return for giving the woman a garment. Then he recited: ‘O ye who believe! interdict not the healthful viands which God hath allowed you; go not beyond this limit. God loveth not those who outstep it’ (Sura 5/87).”

He also relates: “It was told us by Aḥmad b. Yūnis, who was told by Ibrāhīm b. Sa‘d, who said that Ibn Shihāb told him that he had heard Sa‘īd Ibn al-Musayyab say: I heard Sa‘d b. Abī Waqqāṣ say that the Prophet disallowed ‘Uthmān b. Maz‘ūn celibacy; if he (the Prophet) had not done so we would have castrated ourselves.”³

Castration is different from sterilization as performed these days by modern methods which we would like now to investigate as regards the judgement passed thereon in the law. The inference based on the reported narratives and traditions that sterilization is prohibited is unwarranted. Castration deprives one of mating and generally causes disfigurement as well as psychological disorders that are prejudicial to one’s sanity and faith. Hence, the Prophet rejected Sa‘d’s celibacy and condemned refusal to have children, thus banishing ascetism from Islam. This is a far cry from the sterilization that is in no way prejudicial to one’s virility or harmful to one’s physical, spiritual or even social condition.

If there is no sufficient evidence for prohibition, then permissibility is valid as legally basic, for “everything is lawful to you, until you know that it is prohibited as such.”

¹ Al-Bukhārī, *op. cit.*, vol. 7, p. 4.

² *Ibid.*, vol. 7, p. 25.

³ *Ibid.*

Sterilization without the Consent of the Spouses

Now to turn to the question of sterilization without the consent of the spouses. Is it to be regarded as an act of aggression and consequently to be prohibited on this score? Is legal analogy to be drawn for that from the practice of 'azl with the free-born woman without her consent, or the woman's abortion of the sperm blob despite the husband's disapproval?

This is a complex question on which it is difficult to decide. For in the practice of 'azl the net result is the loss of an established right to which each of the spouses has a claim. Not so in sterilization, unless it is said that there is also an established right, that of procreation. The couple may at a certain time happen to be living under conditions unfavourable to procreation; but the situation gets altered, with new conditions favourable to procreation and more encouraging. To cause the removal of such a possibility for procreation by an act on the part of either of the couple is an act of aggression against the other in as much as it is an act of aggression against the right to have children in mutual co-operation between the two.

Can sterilization be forbidden on other grounds?

We have already discussed the prohibition of abortion under secondary conditions. The same applies in greater or lesser degree to the question of sterilization. We have already shown that this is to be largely determined, on the one hand, by the special circumstances obtaining at the time and, on the other, by the general tenets and prescription of the Holy Book and the Prophetic traditions. It is for the Imām, the head of the state or community, to decide on that matter.

DISCUSSIONS ON
ABORTION AND STERILIZATION

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ABORTION AND THE FOETUS

Samarrai

I am surprised that we have ventured into the discussion of abortion before agreeing on a definition of it. I noticed that all the definitions in the discussions were imprecise, except perhaps for one put forward by one of the doctors. Mr. Madkūr stated that the scholars in religion agreed with medical scientists in defining abortion as the deliberate expulsion from the womb of the foetus prematurely. There was another definition to the effect that abortion was delivery before the expected time of birth. If this definition is correct then Dr. Ḥaqqī and I and even the devout and learned Dr. Hathout perform this delivery operation at least once a week. For medical reasons sometimes, we frequently find ourselves compelled to terminate pregnancy a week or a fortnight before the expected time of birth.

Madkūr

Dr. Hathout in the precis of his contribution has expressed a most valuable point of view. But I have an observation to make on what he says about inheritance by the foetus, for he says the foetus can inherit. In fact a portion of the legacy is preserved as a precautionary measure for the foetus. If it is delivered alive it has a right to this share, whether it be male or female, but if stillborn it has absolutely no portion. Therefore, to quote as an example inheritance by the foetus in connection with the subject of abortion was quite out of place.

Sharabassy

I am of the same opinion as Dr. Madkūr that the foetus can inherit if it is born alive and of clearly marked bodily parts. For if the lump of flesh in the womb is delivered and can be described by Dr. Hathout as being in medical terms alive, but is delivered without clearly marked bodily parts as a living human being and lacking the principal parts of the body it is no longer to be considered as a foetus

with a right to inherit. This is my understanding of the matter which I hope is correct.

Ennabli

The question of the foetus getting a portion of the inheritance, as mentioned by Dr. Hathout, is no argument for the proof of life. The portion of the foetus is assigned to it as soon as the woman claims that she is pregnant, even if she is not. The portion is kept until pregnancy is confirmed and is allotted when and if the foetus is born alive.

Hathout

What I meant to say about the foetus and inheritance was that in Islam the foetus from its earliest stages of development had the right to life. It is quite unreasonable for us that we should reserve a portion of this inheritance for something with no right to life.

Sharabassy

Dr. Hathout stated that his knowledge did not extend to the ability of determining the lines separating the various stages of development of the foetus. I wonder if this is true of all medical scientists, or is it that some know and others do not? I would just mention that more than one doctor has written about the degree of correspondence between those verses of the Qur'an dealing with the progressive creation of a human being and the medical science on the gradual stages of development of the foetus. I should like to state that according to scholars in jurisprudence the foetus has two lives: a latent and an apparent one.

The latent life as I conceive of it and I hope that I am right — is what doctors perceive by means of the microscope which perceives life in the human being even though this life has not become apparent to the naked eye. The apparent life is what we all share in perceiving.

Ennabli

I have been struck by the diversity of opinion which I have noticed amongst medical specialists on the phases of development of the foetus. Some set these phases apart and others do not. We all

know the tradition of the forty days, which sets apart the phases of the foetus. Of these, there are some at which the foetus lacks animation.¹ Even medical scientists make a distinction between what is known as 'embryo' and what is known as 'foetus' and some of them do use the term 'foetus' only after 120 days of pregnancy. Therefore, I should like to ask the doctors: Is the foetus before the 120th day a living being with life as it is known to us, so that the abortion of it is a crime? Do the scholars in jurisprudence agree that abortion in this period is a permissible act? If amongst them there are some who allow the act may we adopt this allowance even though we know that others dissent from it? If there is a compelling necessity to resort to this and there exists a Shari'a text we can rely on, why should we not adopt it?

Hathout

Concerning the phases of development of the foetus I believe in what the Qur'an and Prophetic traditions say on the subject. However, from the medical point of view, at present medicine cannot distinguish between phases. I can close my eyes and picture to myself the cell from the moment that it is an ovum until the moment it is delivered, but I can find nothing to justify drawing definite boundaries between the phases of development of the foetus. Moreover, medical knowledge up till now has been unable to learn what God really intended by those phases. However, there are amongst medical scientists some who come forward with explanations of those phases in the belief that hereby they are defending Islam.

If the foetus is delivered alive, the life we mean is not the microscopic one, but life which is apparent. When a woman miscarries I carry out a registration of any sign of life in the foetus — such as breathing, movement, heartbeat, sneezing and so on because I know that these have legal bearing in respect of the foetus inheriting and other matters. It has become evident that there is a dispute concerning life. It is said that the spermatozoon, or the ovum, has life. But neither the spermatozoon nor the ovum alone can lead to a human being. In my opinion life begins only when the two fuse together.

¹ The reference here is to the Prophetic tradition which reads: "The germ of every one of you is concentrated in his mother's womb in the form of a drop for forty days; then he becomes a clot of blood for the same period; then he becomes a piece of flesh for the same period; then the angel is sent to ensoul him."

See: Muslim, *Ṣaḥīḥ*, vol. 8, p. 44 (Eds.).

Omran

My intention in putting the question to my colleagues was that they should satisfy my conscience in the matter of separation between life and the soul. Am I right or wrong? The Qur'ān states that there are phases, and I have implicit faith in this and follow it up in my work. If medicine fails to confirm this then the Qur'ān is not to be answerable for the failure. If it is said that the Qur'ān is not a medical manual at any rate there is no doubt that He who revealed the Qur'ān to His Messenger is the Lord of Medicine, Who is infallible.

As I understand it the question is not one of biological life in the foetus from its inception, but one of the co-existence of body and soul in the foetus, i.e., human life from the moment it comes to exist. It is clear from the tradition, about the forty days, quoted above, that that happens only after 120 days. We have been shown pictures so that we may get to know the stages of development of the foetus. This is not a foolproof proceeding because from pictures it is not possible to know if the soul entered the body from the moment of inception, and no microscope or ancient or modern apparatus can tell us the nature of the soul. "And they will ask thee of the Spirit. Say: The Spirit proceedeth at my Lord's command" (Sura 17/85).

Therefore, it is a mysterious question, and we believe what we have been told about it by God's Holy Book and His Prophet. The scholars in Islamic jurisprudence who have declared the legality of abortion before the 120th day have founded their opinion on this. Murder is the destruction of the soul and not putting an end to biological life. Otherwise the amputation of a limb in a surgical operation would be murder.

Samarrai

Some people have stated that so long as the doctors of medicine are divided on the question of the development of the foetus then it is the more reason that religious scholars should differ likewise. I should like to say this: Doctors are not divided as to their knowledge of the actual development of the foetus, but only differ on the clinical aspect.¹ I cannot, and especially in the first weeks, determine how far the foetus has developed towards full formation. However, from the anatomical point of view, the matter is perfectly clear and doctors do not disagree on it.

¹ Tests made directly on the patient without the use of laboratory tests or other tests.

JUSTIFICATIONS FOR ABORTION

Ḥaqqī

Life begins from the moment the ovum is fertilized by the sperm. The fertilized ovum thereafter proceeds from phase to phase, and putting an end to it is murder of the soul. "Neither slay anyone whom God hath forbidden you to slay, unless for a just cause" (Sura 17/33). Abortion, whatever the means used to effect it may lead to harm being done to the pregnant woman. The harm may be light and temporary or serious and permanent. "And throw not yourselves with your own hands into ruin" (Sura 2/233).

Termination of pregnancy, then, is legally permissible only if continued pregnancy constitutes a hazard to the life of the pregnant woman. In that case it may be permitted to have recourse to it on the ground that 'necessity legalizes actions normally banned'.

Madkūr

One of our colleagues has attempted to deduce the legality of abortion from the incident of the woman who conceived adulterously. When the Prophet learned of this he postponed her punishment until she had delivered. How can the legality of abortion be deduced from this incident? If abortion were legal it would have been wise — so long as this was an adulterous pregnancy — to have inflicted the punishment there and then even if this sacrificed the foetus.

Dr. Omran has made an analogy between abortion and divorce and has said that the Muslim Lawgiver has allowed divorce even though sentimental considerations and the texts should motivate people to hate divorce. ("The most hateful of lawful things in the sight of God is divorce."). Dr. Omran made an analogy between this and the sentimental aspect of abortion. But there is a difference, because in abortion there is a third, innocent party, i.e. the foetus, whereas divorce is a matter which concerns only the two contending parties and does not go beyond them to anyone else.

If the scholars in jurisprudence have disagreed on some of the details this disagreement is no reproach to them nor to the Sharī'a in any way. Even doctors engaged in obstetrics disagree over abortion from the point of view of medicine. Some consider it to be harmful to the pregnant woman, others not.

Sharabassy

We must say that all people look upon abortion as hateful because it is unnatural. But this abortion has varying degrees, as is clear from the text of al-Ghazzālī quoted by Mr. Sahnoun, which is the most complete text. All the 'ulamā and scholars in jurisprudence are unanimous in proscribing abortion after the soul has been infused, as is stated in religious texts. They have also proscribed it even before quickening if there is no public interest at stake, and no justification for it in the Sharī'a. The Ḥanafīs among others have given as an example of a justifying factor the case of a woman who has no milk and her husband has not the means to hire a foster-mother. In this case abortion is legal before quickening, since it would otherwise mean the loss of the child.

But there remains the question or the broad question-mark: Is a desire to limit the size of the family a justification for abortion? This is what must be discussed. I should like to say that abortion is not a preventive measure. I believe that we must concentrate our attention on the use of preventive measures in the event of the need to limit the size of the family, because this is better by far than waiting until we reach the acute or critical stage (on which there is a great deal of dispute), and then wonder if abortion is legal or not.

I have heard some colleagues speak of the need to terminate adulterous pregnancies, and give their opinion that this is legal in Islam. I believe this is incorrect, there are no texts which spell out the legality of terminating such pregnancies.

Mroueh

There are people who wonder whether the need for abortion will disappear if the principle of family planning is established and contraceptives such as the pill, coitus interruptus and so on are used. The truth of the matter is that the means and ways currently available are not sufficient in practice. In the U.S.A., for example, where women have reached a high level of sophistication the proportion of

unplanned or unwanted births has reached some 30-40%. If this is the case in an advanced country such as the United States what must the position be in a backward country? I am certain that the ratio in such countries would be much higher. The reason for this is the mistakes which are involved in the adoption of contraceptive measures such as the pill and coitus interruptus. I should like to state that we should discuss abortion within the framework of the question of overpopulation. In my opinion many people do not view the question of overpopulation in the way it should be viewed. I myself — even though I am a doctor working in the field of family planning, and I do not approve of abortion — have begun to lean towards the point of view of those countries which take the view that abortion should be legalized. The population explosion is very much like a bomb; it must be defused before it goes off.

Wā'iz

After Dr. Madkūr had reviewed the views of the schools of jurisprudence on abortion, he said: "We are inclined, in relation to the period before the 40th day — the stage of the foetus' assuming definite physical formations — to the second opinion, that of declaring it permissible if there is a good cause, and of declaring it to be disfavoured if there is not." But when he summarized his discussion he went so far as to declare it to be forbidden at all stages, except in the case of extreme need, to use his words, I am inclined to support this latest opinion of his.

Shamsuddin

I should like everyone who talks about abortion as being permissible in case of extreme need to know that in my opinion extreme need is fear for the woman's life, and nothing else. No other case of need can be described as extreme. Moreover, there is no dividing line between what is described as the period before or the period after quickening.

Dr. Hathout went so far as to declare abortion permissible in the case of some fatal defect in the foetus. This question has now been posed all over the world for discussion from both the medical and the humane points of view, and there is no definitive opinion on it.

Messrs. Omran and Mroueh have spoken of the population explosion and pointed out that we — that is the *'ulamā* — will

sooner or later face the phenomenon of the spread of abortion. Yes, we shall face it but we shall never give it the cloak of legality, because we do not justify crime. The spread or diffusion of a thing does not by any means make it lawful. Our function here is not to provide a legal justification for an unlawful act.

Hathout

The question of pregnancy during lactation is not, in the Shari'a a circumstance justifying abortion. For it is possible to avert this situation by preventing pregnancy. Then if the woman becomes pregnant during lactation and is unable to produce milk, and the husband cannot afford to engage a wet-nurse, then the choice is between sacrificing the foetus by terminating the pregnancy and the hazard of causing permanent debility to the baby. I think that the right to life has priority over the right to bodily strength. In any case it is possible to give the woman pills or tablets which make up for any deficiency in her milk or to give her artificial milk on which the foetus can be nourished.

With reference to abortion and overpopulation I should like to say that in Britain before abortion was legalized the birth rate was in fact falling. But this phenomenon was accompanied by a sharp rise in the number of illegitimate births, because most of the operations for abortion in England and America were performed on unmarried women. This makes clear the truth of the pressure and the insistence for abortion to be declared legal. To legalize it is a preventive measure to ward off the damage caused by promiscuity. In Islam, however, the preventive measure lies in preventing promiscuity in the first place, through proper upbringing, guidance and faith.

Mahasin Saad

Some of the 'ulamā have said that abortion is allowable in case of necessity. The case of necessity may be medical and have two aspects, physical or psychological. It is very difficult to define the latter. Nonetheless, it must be recognized that women go through a very difficult psychological state following pregnancies in quick succession. The case of necessity may be a social one: the existence of illegitimate children causes harm not only to the girl concerned but also to the family and the community.

Concerning the civil laws promulgated by states we have already

mentioned that the strength of such laws is derived from the extent of the people's belief in them and in their implementation. There are many civil laws which the 'ulamā do not approve of, such as taking interest from banks. Why do we not look upon laws relating to family planning and abortion from the same angle?

Huzayyin

Our discussions have tended towards the condemnation of abortion totally, even if we declare it to be permissible in the case of real danger to the mother's life. But the question of the real danger to life is a subjective one which must be left to the future to determine. If it is a question of physical danger, then this is the responsibility of the doctor, as a matter of conscience, for it is he who decides. Two doctors may disagree, and in this case the more circumspect, prudent course is adopted. Some may wish to extend the concept of danger and thus take into consideration the woman's psychological state. The woman may suffer from a psychological state which renders her life void of any meaning to her. Man is not only a body, but a body, a soul and affections.

Sharabassy

I have noticed a strange phenomenon whilst we have been discussing abortion and sterilization. I had expected that the standard of opposition to abortion and sterilization would be borne for the most part by the scholars who are specialists in religious studies because they are usually conservative and eager to preserve the essence of man, for the Prophet Muḥammad has said: "Man is God's structure; cursed be he who pulls it down." But I, like you, have noticed that those who have led the campaign against sterilization and abortion have been very often those who are specialists in science and medicine. In fact there are those amongst the 'ulamā who have expatiated on the subject of sterilization and abortion and have maintained that sometimes there is no objection to them both. But we are agreed that these two measures are not preventive. It would be a good thing if in the field of family planning we were to focus our attention on preventive measures and the preventive aspect. It would, therefore, be good if we were not to present anyone reading or following our discussions with a particular approach so far as sterilization and abortion are concerned.

I should like to remind Mrs. Mahasin Saad that in a conference of Muslim scholars it cannot be very well said that the law derives its force from the general will of the people. I believe that the law, if it is a Muslim law in a Muslim country, implemented by Muslims, must primarily derive its force from the divine law, from the law of justice, which is the law of God (the Sharī'a).

Khayyir

Induced abortion is absolutely forbidden at all stages so far as I know. However, if a pressing necessity calls for it to protect the life of the woman, I am of the opinion that it is permissible.

Hathout

For abortion there are two cases of necessity; that resulting from the fact that there is already a living being, whose life should be preserved, and that consequent upon the existence of an occasion for the destruction of this life. In this case of abortion, we have to put each of the necessities in the scale of a balance. If the scale is weighed down on the side of preserving life we do so, otherwise we sacrifice it.

MEDICAL HAZARDS OF ABORTION AND MODERN DRUGS

Mroueh

My colleagues Hathout and Ḥaqqī have gone ahead of me in talking about the damage done by abortion and its medical effect on woman. I agree with them as regards the statistics which they have adduced, but in the case of criminal abortions, i.e., where abortions are performed in the surgeries of quacks and charlatans in medicine, or in places which are unfit from the health point of view the ratio of infections increases, and an operation for abortion constitutes a danger, medically, to the woman's life. But if the operation is performed in an operating room and under direct medical supervision, that is a different matter.

A researcher found that 185,000 abortion operations were performed successfully in Hungary in 1967, without any fatalities. Had pregnancy continued for those women 10 out of every 10,000 of them would have died. Therefore, the danger from a properly conducted abortion operation under medical supervision is much less than the danger from pregnancy and childbirth.

Hathout

Dr. Mroueh has stated that the hazards from abortion are found in illegal abortions, whereas English statistics show that the death rate from legal operations for abortion conducted in hospitals is 30 per 100,000, whilst the death rate from miscarriage and illnesses of pregnancy and childbirth is 25 per 100,000.

As for the Hungarian statistics they are doubtful as they mention 185,000 abortions without a single death. We know that fatal complications are inevitable in some cases simply from administering anaesthetics.

Omran

I should like to remind Dr. Hathout that the Hungarian statistics are actual statistics arrived at by scientific methods. They are supported by statistics of 140,000 cases of abortion operations in Czechoslovakia in 1963-64, performed without a single death. Moreover, statistics from Japan show that from 1959-63, 5 million operations were performed with a death rate of 4 per 100,000. This means that medical complications resulting from abortion operations performed under medical supervision are very few.

As for the rise in the death rate from legal abortion in England, this precedes the law legalizing abortion of 1967. This means that abortion in those cases was being performed with medical justification, i.e., because of illness in the woman.

Mroueh

Mr. Sahnoun stated that contraceptive pills cause cancer, although there is no evidence for this. There are more than 20,000,000 women who have used the Pill for from 10 to 15 years and they have not contracted cancer through the use of the Pill. I should like here to refer to new medicines on which research is being done at present, such as compounds of prostaglandin, which are very effective compounds for inducing abortion, for they cause evacuation of the womb at any stage of pregnancy. Research done on them indicates that they are so safe that some believe that their use will spread for the termination of pregnancy.

Hathout

I agree with Dr. Mroueh that compounds such as prostaglandin will be on sale in the chemist's, like lipstick and so on. Women will be able to take them and abort. But there is a difference between a thing happening and its being legal.

STERILIZATION

Shamsuddīn

I have already set out the view of the Islamic jurist which you have heard on sterilization. I now learned that my fellow *'ulamā* at the conference do not share my view. I should like to repeat that among Shī'a *'ulamā* of the "Twelvers" there are some who allow sterilization. Every Muslim can follow the scholar in whose learning and piety he has trust.

Khayyir

As I understand it, sterilization is of two kinds: the first prevents the ability to have complete practice of sexual intercourse and from the enjoyment of the coital pleasure derived from this intercourse between the spouses, and this comes under the heading of castration, which is forbidden in the Sharī'a. The second does not prevent complete practice of sexual intercourse nor the enjoyment of the coital pleasure of this intercourse between the spouses, and if it is only temporary I consider it to come under the heading of coitus interruptus. This is permissible but must be treated with reserve.

Huzayyin

We have noted that some of the Muslim scholars in jurisprudence allow sterilization. But there is a certain amount of difference of opinion between the rest of the members. Some allow temporary sterilization, i.e., that which can be terminated. Science is now on the way to solving the problem of ending sterilization. It would be a good thing for the opinion of Muslims to be clearly known on the subject of whether temporary sterilization is acceptable or not. It may be that the ruling on sterilization is not very different from that on contraceptive measures. As for permanent sterilization some see this as a degradation to the humanity of the person concerned, whether it is a man or a woman, and a challenge to the will of the Creator Who created us so

that we should be the means of continuation of life by means of procreation. I hope that the report will include all these points without giving one priority over another. It may be useful for a conference such as this not to arrive at a decisive conclusion on this question, but to leave it to the exercise of individual judgement on the part of Muslims in the future in the light of advances in knowledge.

Sharabassy

On the subject of sterilization I hope that consideration will be given to the writing of the scholar in jurisprudence Shaikh Aḥmad Ibrāhīm, who declared it permissible.¹ He did not categorically declare it to be permissible in all cases but simply said — and I am only quoting his opinion — that sterilization may be adopted if there are chronic contagious diseases in the parents, so as to prevent such diseases being transmitted to the children, who would suffer in consequence. As far as I remember he added a cautionary reminder, saying sterilization must be resorted to only in case of despair of any treatment to put an end to such contagious illness; or at least to prevent its being passed on to the children.

I do not endorse nor do I refute this opinion but simply state that this study is worth consulting as it was written and published in 1936, as I said previously, which is very early in time, because the campaign for family planning had not yet taken its present form. But I wish for the matter of temporary sterilization to be discussed, to see if this is correct and we are sure of it whether it may be possible for us to come back to the subject once more.

¹ Shaikh Aḥmad Ibrāhīm, the leading scholar of Islamic jurisprudence in Egypt in the first half of the 20th century, said on the subject of the permissibility of sterilization: "Are not abstinence from marriage, coitus interruptus and treatment before there is any effect the same in their result? There is no reliable text which bans any of them. Therefore, I can see no religious objection to sterilization. It is an operation the intention of which is to prevent birth by preventing the necessary cause for its existence and not by means of custom. In this there is no crime against anything already existing: not against a soul about to emerge into the world, nor against what may be about to become a soul about to emerge. The matter, therefore, is perfectly clear. There must be no delay in declaring sterilization permissible." Ahmad Sharabassy, *Religion and Family Planning* (Cairo, 1966), pp. 87-88.

Foda

I should like to make a brief comment about sterilization as I saw it on my recent visits to India and Pakistan. The operation takes no more than six minutes. Six million such operations have been performed in India and Pakistan and we know that the vast majority of the population of Pakistan are Muslims. Do we pass judgement on them that they have rejected their religion? I do not think so.

This operation is a modern one, which goes back only a few years. It is concluded that the ratio of the return of fertility is more than 80% and that the pregnancy rate following return of fertility is 50%. The sterilization may be temporary or permanent and in future the success rate may be higher in relation to pregnancy, if adequate opportunity is given to those who have the operation performed to improve methods.

For men, this operation has been performed on the scrotum not inside the abdomen. For women it is performed either on the abdomen or on the vagina. In Cairo and Alexandria these operations are performed in the out-patients' clinic on women who want them. The woman leaves half an hour after the operation. The operation does not require an anesthetic which might lead to death. Furthermore, the operation involves no complications for either spouse.

PART FIVE

DISCUSSIONS ON THE FINAL
REPORT AND THE PRESS
RELEASE OF THE CONFERENCE

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DRAFT FINAL REPORT:
PREPARED BY THE CONFERENCE COMMITTEES

Zayid (as the Coordinator)

The conference has affirmed that Islam laid down rules adequate enough to meet all problems arising from social changes which confront the family in modern society. The conference has drawn attention to the need to organize scientific studies on the family, as well as to the need for people to be informed on the decrees of Islam concerning significant conditions and events which may arise from time to time.

The conference considers that Islam has given woman all the rights due to her, not given by other religions, that work for woman is lawful if she needs to work or if there is need for it in the Islamic society, on condition that this is consonant with her preserving her religion, her chastity and her decorum, and that this does not clash with her mission as wife and mother. The conference condemns any exploitation of a woman's femininity in any sphere of her work, since this represents dissension and corruption in the society. The conference has also drawn attention to the importance that women's dress is to be decorous and decent, and has condemned the degree of indecency that modern dress for women has reached, with its seductiveness and undue emphasis on women's charms, all of which leads to corruption.

The conference has asserted that Islam, while allowing polygyny, has imposed restrictions to guarantee that the allowance could not be abused, exploited or not taken seriously. Furthermore, the delegates to the conference have affirmed that the question of the family concerns the parents and society alike, because the family is the primary element in society.

Opinions in the conference are agreed that Islam has rules and principles which do not brook change or modification because they are the pillars for the reform of human life, and because they provide the straight path approved by God Almighty for the betterment of

mankind and their protection against degeneration. There are also in Islam firm general provisions for normal circumstances, and special provisions for cases of necessity and exceptional circumstances. Furthermore, Islam's view of means differs from its view of ends. Means are subject to change and development to suit conditions and times. Islam is a comprehensive system for the reform of intellectual, spiritual, legal and social life and covers all matters of the life of the individual and the community.

Islam has opened the door of *ijtihād* (the exercise of individual judgement) to those able to exercise it, in response to ever-renewed needs, by way of analogy, the application of discretion, the observance of provisions as to the common weal and the public interest for which there are no formulated rules, and conventions. All these are sufficient to guarantee that there will be Islamic solutions for all the various problems of society. The provisions of Islam on matters relating to worship must be accepted without question, because they are not connected with normal, evident means of explication in term of cause and effect. However, as to other provisions of Islam concerning conduct these are subject to logical explication in law in terms of the common weal. Judgement on these varies according to whether or not there is a firmly established reason or precedent. Hence provisions as to means are made with a view to ensuring ends.

As to the primary element in building the good life in Islam's view, this is the doctrine resting on faith in the oneness of God and His freedom from anthropomorphic attributes. Islamic society is built on principles of conduct and morals which are firmly established in the Qur'ān and the Sunna. Among these are brotherhood and affection among Muslims, social solidarity, the enforcement of justice and the supremacy of the Sharī'a, urging people to do good, commanding them against evil, glorification of good works which redound to the advantage of the individual and the community, and love of the welfare of the whole human race.

Muslims are charged to work to achieve the greatest measure of economic and social development and growth by discovering the resources and treasures of the universe and exploiting these treasures to improve the living conditions of the Muslims. Among the basic means of achieving these aims are the spread of education, making Muslims aware of their responsibilities, and Islamic upbringing, and looking on any expenses incurred for these purposes as an investment necessary for development in the whole Islamic world. Moreover, any efforts

made at any level in order to bring the Muslim world out of the state of backwardness from which it is suffering must be made within the framework of the preservation of the genuine Muslim personality.

The conference tends to the belief that family planning includes both increase or regulation of the numbers of offspring, as well as the treatment of sterility, and the observance of comfortably long intervals between one pregnancy and the next. There is agreement that in Islam there are no legal obstacles to the parents using safe means to guard against pregnancy if they need to.

The conference has debated the question of sterilization and the tendency is towards the adoption of the finding of the Academy of Islamic Research on the subject which is that the use of means which lead to sterilization for no personal necessity is unlawful for all, be they the married couple or others.¹

On the question of abortion, i.e., the removal of the foetus from the womb in order to get rid of it, the conference has reviewed the opinions of the scholars in jurisprudence on the subject and in the result it has become clear that, after the fourth month, it is strictly prohibited, in the unanimous opinion of all, except for the urgent necessity of saving the mother's life. Before the fourth month, however, notwithstanding several juristic opinions among the scholars in law the correct view takes the lines that abortion is forbidden at any stage of pregnancy except in the case of extreme personal necessity.

¹ See the Appendix on *Fatwas*.

DISCUSSION ON THE REPORT

A. WOMAN AND POLYGAMY

Lam'ān Zakī

It is very nice of the conference that it has taken real notice of woman's humanity and of the need to avoid the exploitation of her femininity. As the reference to exploitation includes, among other things, the question of woman's dress, I think that the reference to the dress in the report should be omitted. I believe it is the general interest to omit it, for many prejudiced people, with ulterior motives pretend to forget that Islam is also a great social philosophy, and only remember that it is a religion of polygyny, purdah and suchlike.

Shamsuddin

When I dealt with the subject of woman's dress — and I was the one who did this — I did not refer to the question of unveiling or veiling of women. This question was not raised or dealt with, at all. In what I wrote, and suggested to be added, I intended that woman should observe decorum in dress and not become involved in the European style of dress, which makes woman's dress a means of sexual arousal. This has no connection with the subject of veiling or unveiling.

Omran

Perhaps the report can be amended by shortening the phrases to which Mrs. Lam'ān Zakī referred. We did not gather here to discuss woman's dress and woman's rights.

Fathia M'zali

I believe that in Islam there are ethical provisions relating to both man and woman. We should not give special mention only to the provisions restricting woman's conduct: the organization and safety of the family are matters which concern both man and woman.

Woman alone cannot preserve good morals in society. In my opinion, if you keep the paragraph referring to woman's conduct, you must add another one relating to man's conduct, otherwise I suggest the paragraph be omitted.

Bint al-Shāṭi'

Firstly, I should like to ask why the conference has singled out woman for three separate communiqués, when the conference is not dealing solely with woman's rights alone. Secondly, I think that so long as the subject was touched upon in the context of the organization of the family then we must look again at the directives concerning woman's right to work and her preserving her religion. The preservation of one's religion is a duty imposed on everyone. Thirdly, I propose that we look again at the point concerning woman's dress.

Huzayyin

I would like us to be fair to women, just as we have been fair to man. There is no need to go to great lengths in discussing dress. It is enough to state that the conference considers that woman should observe propriety of an Islamic kind in dress and there is no need to discuss finery or make-up and so on. The fact is that 95% of Muslim women are decorous in behaviour, and the proportion of those who are given to finery are no more than 5%. It is not fair to make accusations against the overwhelming majority in this way. But now that we have referred to woman we must refer to man's responsibility, as head of the family, for the personal appearance of the members of his family. Woman is not responsible by herself, man also has his responsibility for matters of dress and so on. Dress is an external thing, while there may be in the family a departure from what is right in other aspects which we do not notice. Therefore, we should add another paragraph in which the conference asserts the responsibility of the Muslim head of the family for the life of his family in accordance with the Sharī'a, in its outward appearance and its inner reality.

Zarqā'

The idea of the father's responsibility for the outward appearance of the family is an excellent one. Therefore, I agree with Dr. Huzayyin's proposal. The fact is that the father is the one who is responsible usually for any immorality which may be exhibited by the family.

Sā'ih

So, we have two proposals before us, one to reduce the emphasis on woman in relation to dress and seductiveness, and to confine ourselves only to what touches the essential part of the subject, and another proposal to add a paragraph dealing particularly with man's responsibility.

Nazer

So, let us confine ourselves to mentioning woman's wearing only decent, decorous dress, with a reference to the man's responsibility as head of the family for the external appearance of the family in accordance with the letter and the spirit of the Sharī'a.

Sā'ih

Therefore, let us rephrase this section in the light of the amendment and the addition suggested.

Huzayyin

I propose the following wording: "The conference condemns any attempt at exploiting woman's femininity in any sphere of her work and draws attention to the need for woman's dress to be decent in accordance with Islam's decrees. The conference draws the attention of the man to the need for him to carry out the duties required of him by Islam in looking after his children, and to be bound by Islam's provisions in his conduct and morals."

The conference report states that Islam authorizes polygyny. It may be understood from "authorizes" that Islam allows it unreservedly. So I should prefer that we say that Islam "does not forbid polygyny", instead of "authorizes polygyny". There is little difference between these expressions. But if we stick to "allows", then we must mention the limiting conditions.

Sā'ih

This is in agreement with what the report says, for it mentions that polygyny is allowed, then mentions the restrictions in the following way: "The conference asserts that whilst Islam allows polygyny it has put restrictions on it which guarantee that its legality will not be exploited or abused".

It seems that this wording of the report meets with the general acceptance of the conference.

B. *Ijtihād* AND ITS SOURCES

Sharabassy

With reference to the paragraph dealing with the sources on which the *mujtahid* draws analogy — the application of discretion for the choice of what is good, the observance of provisions for cases ungoverned by textual definitive statements of allowance or forbiddance, and customary law — I suggest the addition of the following phrase: “within the framework of the Qur’ān and the Sunna”.

Shamsuddin

I second the suggestion of our brother Sharabassy for the addition of the phrase “within the framework of the Qur’ān and the Sunna”.

Madkūr

I think we should add, before the proposed additional phrase, the words, “and other sources”, since there are other sources for *ijtihād* than those mentioned.

Sā’ih

So, let the phrase dealing with *ijtihād* be as follows: “... and that Islam has opened the door of *ijtihād* to those able to exercise it, in response to ever-renewed needs, by way of analogy, the application of discretion, the observance of provisions for cases ungoverned by any textual statements of allowance or forbiddance, customary law, and other sources, within the framework of the Qur’ān and the Sunna. This is capable of providing solutions of an Islamic nature to all the various problems of society”.

C. EXPLANATION OF RELIGIOUS OBSERVANCES

Mubārak

In my opinion there is no need to deal with the subject of the inexplicability of religious observances, since among these are those whose wisdom and usefulness are self-evident. The *'ulamā* have explained them, and have written huge tomes on the subject, such as *Hujjat Allāh al-Bāligha*¹ and others.

Marrak

I should like the reference to the inexplicability of religious observances to be omitted because such a reference may lead us into difficulties, as many of us do in fact explain religious observances: they are imposed on us as obligations for the good of mankind and are connected to man's relation to his Maker. If we were to follow up everything written on religious observances we should find that it is explained.

Hathout

I agree to the omission of the reference to inexplicability of religious observances because in the West we have another school of thought which is beginning to spread, under the name of "Virtue without Religion", which believes that if we achieve the goals for which religious observances were instituted then there would be no need for them.

Shamsuddin

We know that religious observances are divinely ordained through revelation. I am afraid that if we introduce into them the element of explanation they will change into mere symbols.

Madkūr

I believe that we should simply add the word "usually" because the basic idea of religious observances is that they are not to be

¹ By Imām Shaikh al-Islām waliyyu Allāh Quṭb al-Dīn Aḥmad b. 'Abdul-Raḥīm b. Wajīh al-Dīn al-'Umarī al-Dahlawī, born 1114 A.H. and died 1176 A.H. His book discusses the science of the secrets of the Sharī'a provisions and the philosophy of the Sharī'a (Eds.).

explained but are divinely ordained through revelation. Many aspects of religious observance such as the pilgrimage rites are not capable of explanation.

Shamsuddin

The amendment of provisions relating to dealings falls within the province of *ijtihād* in Islamic jurisprudence to be exercised by those who are specialists in the subject.

Sā'ih

I should like to remind Shaikh Shamsuddīn that the text of the report states that Islam has opened the gate of *ijtihād* to those able to exercise it. And the expression "those able" should suffice.

Zarqā'

I propose that, with reference to religious observances the phrase should be shortened in such a way as to bring together omission and inclusion, as follows: "Anything other than religious observance in the provisions of the Sharī'a is related to explanation in terms of cause and effect and considerations of the common weal. Pronouncement on such matters varies according as to whether there is or there is not an explanation in the affirmation or negation of any such provisions. Thus judgements as to means are made in such a way as to preserve the ends."

Sā'ih

Therefore, let us amend the phrase in the report as follows: "Anything other than religious observances in the provisions of the Sharī'a is related to explanation in terms of cause and effect and considerations of the common weal. Pronouncement on such matters varies according as to whether there is or there is not an explanation in the affirmation or negation of any such provisions. Thus judgements as to means are made in such a way as to preserve the ends."

Mubārak

It is not right and proper for us to decide that religious observances are all simply acts of piety and devoutness, with no good reason for them or benefit in them. I have said that many '*ulamā*' have written

on this subject at great length. Who does not know that prayer has use? Which Muslim is unaware that there is a rationale for fasting and meaning in the pilgrimage to Makka and that there is benefit in giving alms? These days people, Muslim and non-Muslim, pay tribute to the merits of religious observances in Islam.

The Qur'ān in demonstrating the virtue of prayer, says: "For prayer restraineth from the filthy and the blame-worthy" (Sura 29/45) and also: "Man truly is by creation hasty; when evil befalleth him, impatient; but when good falleth to his lot, tenacious. Not so the prayerful" (Sura 70/19-22). There are also verses on fasting and pilgrimage.

Zarqā'

With all due respect to Shaikh Mubārak, and while conceding his view, I would say that the true implication of saying that religious observances are not to be explained is not as he understands it. We are not referring here to rationale of legislation as to the origin of religious observance as such, but only to what the jurists and the exponents in jurisprudence have unanimously laid down, namely, that partial judgements on religious observances are not to be explained in terms of certain objectives and causes. How could it be that we should exercise individual judgement on them? The number of genuflexions at prayer, for instance, is not explained to us, and the same may be said of some provisions for pilgrimage.

Mubārak

Even religious observances have reason behind them: in some the wisdom is self-evident, in others not.

Sā'ih

I propose the following wording: "Especially because decrees relating to dealings are capable of explanation and are linked up with the general welfare of the faithful; judgement on them varies according to whether there is or not an explanation of them in the affirmation or negation of this judgement. Thus decrees on means will be made in such a way as to preserve the ends in view."

D. SOCIETY AND DEVELOPMENT

Sā'ih

Do you endorse the following text in relation to Muslim society? It is a summary of what is contained in the contributions. "The basic element in building the good life, in Islam's view, is the belief based on faith in the oneness of God and His freedom from anthropomorphic attributes. Islamic society is built on principles of conduct and morals which are established in the Qur'ān and Sunna. Among these are brotherhood and affection among Muslims, social solidarity between them, the enforcement of justice and the supremacy of the Sharī'a, doing charitable acts, forbidding that which is unlawful, the glorification of good works which redound to the advantage of the individual and the group, and goodwill towards the whole human race."

Zahia Kaddura

I propose the amendment of the phrase "brotherhood and affection" to read "brotherhood and friendliness".

Shafei

I have an observation concerning Islam's attitude to economic self-sufficiency. In a previous section we considered this to be one of the difficulties in the way of growth and development in the Islamic world. Therefore, I propose that we mention economic self-sufficiency alongside social solidarity.

Sā'ih

I should like to remind you of what the report says immediately after this: "Muslims are called upon to work to achieve the greatest amount of economic and social development and growth by discovering the resources and treasures of the universe and using these treasures to improve the life conditions of the Muslims."

Shafei

Nonetheless, I think we should insert "economic self-sufficiency".

Huzayyin

I support Dr. Shafei in his suggestion for inserting this addition.

Sā'ih

We have inserted it.

E. THE IMPORTANCE OF FAMILY PLANNING

Shafei

The report has the phrase "safe means" I propose that the words "and lawful" be added. The phrase "to avert pregnancy if they need to" was used, although our discussions were not restricted to the averting of pregnancy but extended to include the delaying or precipitating pregnancy. Therefore, I should like to remind you of my previous proposal for the definition of family planning, which is as follows: "Action on the part of the spouses by mutual consent and without compulsion, to use safe and lawful means to ensure that they have control over the timing of pregnancy and childbirth, in the sense of delaying or precipitating, in such a way as is suitable to their circumstances of health, finance, their social condition and their location." This definition is accordant with the spirit of the debates.

Omran

I agree in principle with Dr. Shafei's definition.

Shamsuddin

With reference to Dr. Shafei's definition of family planning I think the phrase "control over childbirth" should be omitted lest it should be utilized to legalize abortion.

Madkūr

With reference to Dr. Shafei's definition I think we should confine ourselves to the phrase "control of pregnancy", and omit the reference to birth, because control of childbirth is not possible. The period of pregnancy has a maximum duration and the question of regulating that opens the door to illegal childbirth.

Huzayyin

We now have before us two definitions of family planning, one in the report and the other being Dr. Shafei's. I think that it will

be advantageous to amalgamate them together. For Dr. Shafei's treatment of the definition is a scientific one, whether applied to Muslims or non-Muslims. I propose the omission of the word "child-birth". I propose that the definition should be as follows: "The conference is of the opinion that family or parental planning is for the spouses, by mutual agreement and without compulsion, to use safe and lawful means to ensure that they have control over the timing of pregnancy, in the sense of delaying or precipitating, in such a way as is accordant with their circumstances of health, finance and social conditions and that such planning or regulation implies the organization of an increase in population, or controlling overpopulation, or the increase in population in certain circumstances in accordance with the requirements of communal welfare."

Shamsuddin

I do not agree to the addition of the last paragraph on population.

Shafei

I do not agree to the addition of the word "parental" because there is birth and parentage without the family. We do not wish to deal with that kind of childbirth because it is illegitimate. We have restricted the text to the actions of the spouses, so I propose we remain content with the phrase "family planning". Nor do I agree to the addition relating to population increase because demographic policy is outside the scope of family planning.

Foda

I agree with Dr. Shafei, after the introduction of a slight amendment to the definition so that it runs: "... to ensure that they have control over the size of the family". We have restricted our discussions to the intervals between pregnancies whereas the basic thing is the size of the family. I also propose the addition to the definition of the phrase "within the framework of responsibility towards their children and themselves".

Shafei

The phrase in the report, "... in such a way as is accordant with their circumstances of health, and economic and social conditions", is

inclusive of the phrase which Dr. Foda wishes to add, namely, "within the framework of responsibility towards their children and themselves". Nor is it necessary for us to refer to the size of the family because this is implicitly covered by our phrase "in the sense of delaying or precipitating".

Foda

Delaying or precipitating has no connection with the size of the family. For man can delay pregnancy, and father ten children. We are aiming only at limiting the family. Moreover, the other addition is necessary.

Shafei

I agree to the amendment.

Nazer

Therefore, the proposed definition is as follows: "It is for the spouses by mutual consent and without compulsion to use safe and lawful means to ensure that they have control over the size of the family and times of pregnancy, in the sense of delaying or precipitating, in such a way as is accordant with their health, economic and social conditions, within the framework of responsibility towards their children and themselves."

Foda

Where is the addition proposed by Prof. Huzayyin concerning population?

Zarqā'

I do not agree to the addition of the phrase concerning population. Increase in population comes within the province of demography, not of family planning. The family cannot be concerned with demography and international statistics. Therefore, there is no place for the proposed phrase in the definition. I think we should confine ourselves to Dr. Shafei's proposal, and the addition proposed by Dr. Foda.

Dasūqī

My ear would not take kindly to the word "control" in Dr. Shafei's definition. It falls heavily on the ear, and may arouse the disapproval of others in future. I should like the word to be deleted and the definition to run, "... to use safe and lawful means to delay or precipitate pregnancy, in such a way as to... etc..." We must refer to an increase in births by using the following expression, "... or an increase in birth, in accordance with the requirements of circumstances". The aim of this addition is to avoid our being accused of calling for birth limitation.

Shafei

The fact is that delay and precipitation imply control.

Marrak

I do not know why we should fear the word "control". Man has discovered the secrets of the universe, and thus he is able now to control several aspects of human life. Is not our adjustment of the size of the family or the fixing of intervals between pregnancies control?

There is another point, the close association between the individual and society, and the society's control over many aspects of life, the economic, for instance. So why do we not add to the definition the phrase "... in the framework of the common welfare" immediately after "in such a way as is accordant with their social and economic circumstances"?

Mubārak

If we are to be committed to this definition we should be allowing birth control to be practised by individuals and nations alike, for fear of poverty, and with all due respect to the opinion of Dr. Huzayyin we cannot agree to the addition which he proposes, as it allows room for the intervention of the government by various means of organization, by compulsion.

Sā'ih

In none of the proposals put forward is there any reference to birth control. Therefore, I expect agreement to the following wording for the definition: "for the spouses by mutual consent and without

compulsion to use a safe and lawful means to delay or precipitate pregnancy, in such a way as is accordant with their health and social circumstances within the framework of their responsibility towards themselves and their children”.

Madkūr

We are saying that what is meant by organization is organization of the family, and that delaying or precipitating pregnancy is done by the choice of the spouses and with their consent. With precipitation, pregnancy may well take place every nine months. Why then do we specifically mention the increase in population? Does not this take place at the choice of the spouses? If we mention population increase we shall be bringing into the definition a third party, the society, alongside the husband and wife.

Huzayyin

So long as there are those who are afraid to bring in the word “society” I propose we use the word “community”, and perhaps we may state that there should be no compulsion in the matter.

Sā’ih

So long as the addition proposed by Dr. Huzayyin on population and society is meeting such strong opposition it is best not to add it. So the definition will stand as I have stated it.

Nazer

What has happened to Dr. Foda’s proposal of “control of the size of the family”?

Sā’ih

It seems that the majority is opposed to this, so let us confine ourselves to the definition in the following form: “for the spouses by mutual consent and without compulsion to use a safe and lawful means to delay or precipitate pregnancy in such a way as is accordant with their health, social and economic circumstances, within the framework of responsibility towards their children and themselves.”

F. STERILIZATION

Marrak

Concerning sterilization I should like an explanation of what is meant by the phrase "for others" in the phrase which says that the use of means which lead to sterilization is not allowed lawfully for the spouses or for others. Then, what is meant by "extreme personal necessity?" This is a very general vague word.

Shamsuddin

I have stated my attitude on sterilization clearly. The Islamic schools of law whose views have been discussed do not agree to sterilization. The Shī'a have no definite view at present, in view of the fact that it was only recently that the subject was raised for scholars in jurisprudence to reason out a rule for it on the analogy of juristical inference. However, the Twelvers among the Shī'a have some scholars who think that it is now permissible. Therefore, the phrase as stated in the report should stand.

Madkūr

What is meant by the phrase "or others" about which Mr. Marrak wondered is the doctors and suchlike who take part in the sterilization operation. It is possible that sometimes sterilization takes place without the consent of the wife. We want sterilization to be subject to the wish of the spouses.

Sā'ih

I think that you all agree to what the report says on sterilization, namely, "the conference debated the subject of sterilization and tended to adopt the opinion of the Academy of Islamic Research on the subject, namely, that the use of means which lead to sterilization without any personal necessity is something which is not allowed, lawfully, to the married couple or others."

G. ABORTION

Marrak

The opinions have been put forward on abortion before the period of the four months, and in following the conference's deliberations I have not sensed that one opinion has the edge over the other, especially as the doctors are disagreed about the complications and damage consequent upon abortion. Therefore, either it should be stated that opinions on the subject at times converged and diverged at other times, or we should say that we did not come to any clear-cut opinion on the subject.

Hathout

Regarding the hazards of abortion for the mother, I withdraw all I previously said in my discussion of abortion, about the injuries that may be caused to the mother by abortion. I rejected abortion not out of fear for the mother, but in order to preserve the life of one who has the right to life, in law and in medicine.

Lam'ān Zakī

Some of the participants in the conference have taken it that abortion is allowed for only one reason, namely, to save the mother's life. It may be for the general good to add the words "and her health", so that the phrase should run: "to save the mother's life and health". The continuation of pregnancy and parturition, may not by themselves necessarily involve something which causes the mother's death, but only something which threatens her health in a way well known to the doctors.

Omran

I second the proposal of Dr. Lam'ān Zakī.

Shamsuddin

I do not agree to any amendment of the text of the report concerning abortion as read out to the conference. Mr. Marrak has said that two opinions have been put before the conference on abortion and the prohibition of it is not clear. I am one of those who have

declared that abortion is forbidden at all stages of pregnancy. This is the Shī'a opinion, which can be attributed without reservation to the Shī'a, and is not a personal opinion.

Omran

The paragraph on abortion is twofold. One relates to the presentation of the opinions of the scholars in jurisprudence, and the other gives consideration to the conference's findings on the subject. But this second part makes the conference's opinion a subject of concern, apart from the fact that the opinions of the scholars have been summarized into one short phrase, even though these opinions are numerous. If we wish the conference to bring out a balanced report it behoves for us to enlarge a little on the subject of the scholar's opinions so that the reader at least may be aware that Muslims have expressed opinions in the sense of prohibiting, disavouring, and allowing. I should also like to state that the report of Dr. Madkūr who was chairman of the committee which summarized this subject made a clear exposition of these opinions, in both his contribution and in the summary. I am still in agreement with the opinions of the Ḥanafīs, the Shāfi'īs, the Mālikīs and Zaidīs who allow abortion before the fourth month. But in my capacity as an expert on family planning I think it advantageous that we should not wade through the subject of abortion. In my opinion we should just refer to the three degrees of prohibition, disfavour and allowance, and should avoid declaring a categorical prohibition.

Doctors Lam'ān Zakī and Hathout agree with me that among the things which justify medical abortion are certain illnesses which may cause deformation in the child. For this reason medical justification for abortion is not only to save the mother's life, but also, beyond that, to save her health.

Hathout

What I meant was that abortion should be allowed for reasons connected with embryology, such as the foetus being dead or being affected by a fatal disease. Modern medicine can diagnose the illness and perform surgical operations on the foetus while in the womb.

Madkūr

Dr. Omran and Mr. Marrak have assumed that there is more than one attitude on abortion represented at the conference. As chairman of the committee for summarizing the subjects of abortion and sterilization I should like to state that, for the most part, papers and discussions tended to accept prohibition. On this basis the committee for summarizing did not see the need to categorize in detail the numerous opinions. The committee is of the opinion that the necessity for abortion is confined to saving the mother's life. This is because the mother is primary and the child is secondary. Moreover, the mother's life is positive and factual, while that of the foetus is contingent only. Therefore, we make a sacrifice of that which causes the least harm, and so we sacrifice the foetus.

Zarqā'

I object to the addition of the phrase "and her health" to the things which justify abortion before the fourth month because the expression is an extremely fluid, woolly and imprecise one. Dr. Hathout made reference to this in his contribution and showed how the development of legislation on the subject in foreign countries has progressed by degrees until it has gone well beyond saving the mother's life to saving her health and, in consequence, saving her from numerous things, which include even "temperament". It is feared that if we adopt this proposal and accept this imprecise expression we shall some day arrive at a stage where we consider a headache to be a justification for abortion. I hope that we shall not open the way to the use of words which may be used as loopholes for allowing measures and acts which Islam does not countenance.

Perhaps it may be possible to regard the deformation of the foetus as a justification for abortion if the deformation is definitely confirmed and if it is so radical as to impair the life of the foetus if pregnancy goes its normal term, and if the deformation is established by reliable methods.

Sā'ih

I, therefore, propose that we adopt the following wording: "In the matter of abortion, i.e., removal of the foetus from the womb with the intention of disposing of it, the conference has reviewed the opinions of scholars in Islamic jurisprudence and in conclusion it has

become clear that abortion is forbidden after the fourth month, except for an urgent necessity to save the mother's life."

We now move on to consider the period before the fourth month. The report says: "As for the period before the fourth month, notwithstanding the numerous opinions among the scholars, the sound view of the matter tends towards forbidding it at any stage of pregnancy except for the most extreme personal necessity."

Omran

There was some sort of agreement for mentioning something particularly relating to the foetus, and Dr. Hathout suggested the wording for it. I wonder if the fellow members of the conference agree to that.

Hathout

If you have agreed to add the words "to save the mother's life" I have a proposal to add the embryological reasons after that expression, so that it runs, "But there are embryological reasons which may make abortion permissible". The implication of this is that we make abortion permissible if the foetus is dead or suffering from a fatal disease.

Sā'ih

Members of the conference ask Dr. Hathout to explain his idea.

Hathout

The health of the pregnant woman may be so good that she does not get affected by the continuity of pregnancy, while the foetus is dead inside her. Does not abortion for this reason come under the heading of saving the mother's health? Is it not more advantageous, if the foetus in her womb is dead, to free her from it, so that she may be ready for another pregnancy? But what happens sometimes is that the foetus is alive, but at the same time suffering from a fatal disease. Is abortion permissible in this case or not?

Sahnoun

Up till now I was in agreement with Dr. Hathout, but now, I find myself at odds with him. Until we have doctors like Dr. Hathout

we should not allow that. In some Muslim countries there are foreign doctors who may claim the foetus is dead when it is fact alive. I do not agree.

Haqqi

I agree with Dr. Hathout as to the foetus' suffering from a fatal disease, so long as that is established medically. The case of a foetus being dead is something else. The first consideration in forbidding abortion is to prevent a crime being committed. A dead foetus cannot have a crime committed against it, and so this is not relevant to the matter in hand.

Balogun

I agree with Dr. Hathout as to the foetus' suffering from a fatal disease. You may remember that the European and American women who took Thalidomide caused deformities in their foetuses, such as lack of limbs and so on, and used to go to Sweden where abortion in such cases is allowed — to get rid of the deformed foetuses.

Marrak

In the report I do not see the description "the sound view" or "the sounder view". The sound, or the sounder, view is what the doctors decide. But here in the conference we must give the preponderant weight to the view of the majority. But without characterizing it as "sound" or "sounder".

Foda

As to the fatal diseases, there are illnesses well known in all parts of the world, which cause such conditions. There is, for example, German measles, which causes deformity in the foetus, as is recognized in all scientific circles. If a pregnant woman catches this disease, and especially in the first three months of pregnancy, the pregnancy must be terminated because a high proportion of such cases produce children deformed at birth. If you entertain the idea of burdening a family with a deformed child, then that is up to you.

Beji

I propose that we say "in order to preserve the life of the mother or in the case where there is no hope for the life of the foetus".

Alaoui

I should like to ask if it is permissible to take the life of the foetus if it is born deformed.

Hathout

No, it is not. But it sometimes happens that the foetus in the mother's womb is alive but without a head. What do we do in such cases? Do we treat her by giving her a drug so that she may get rid of the foetus or do we wait till the end of pregnancy for the foetus to be born normally and die within minutes? Therefore, I second the proposal to adopt the expression "in order to preserve the life of the mother or in the case where there is no hope for the life of the foetus".

Sā'ih

Do you agree to the addition of the words, "Or in the case where there is no hope for the life of the foetus"?

[Here it was proposed that a vote be taken and the result was: For: 32. Against: 9. Rest: Abstained.]

Shamsuddin

I am opposed to conducting a ballot on the lawfulness of abortion, for its forbiddance is by a Sharī'a rule and a Sharī'a rule cannot be subject to ballot. I do not even understand how could it be possible to give the right to decide by ballot, if this procedure were allowed in principle, to persons not specialists in Sharī'a from among doctors of medicine and experts in development planning. By accepting a proposal such as this we are opening the door wide to the risk of the destruction of hundreds of thousands, even millions, of Muslim foetuses.

I bring forward to the chairman one of the following proposals:

1. Withdrawal finally of the resolution on abortion from the findings of the conference.
2. The reference of the resolution to a committee of 'ulamā at the conference for them to study it.

3. The adoption of the proposal for an absolute prohibition of abortion except in the case of fear for the mother's life.

Sharabassy

We have spoken more than once about respect for specialization, and this being the case we should respect specialization in the religious question which is linked to Shari'a decrees and the principles of Islam. Without doubt the Shari'a decree on abortion is one of the central religious questions.

I have affirmed more than once that Islam regards abortion as disfavoured in general — because in essence, it is an act of aggression against a living being — and that Islam's disfavour of abortion grows and multiplies in proportion as the foetus develops its limbs and organs. There are scholars in jurisprudence who quite categorically forbid abortion even if there are reasons for allowing it, which reasons are recognized and respected by a group of such scholars who declare abortion to be justifiable if these reasons exist.

It is evident that what some of us refer to as deformation of the foetus only appears after the lapse of a certain time during pregnancy, after the soul has been infused. This means that we enter, with the foetus, into a critical area, where it becomes in its developing parts more like a human being, evidently alive, than it is when in its first stages of embryonic formation, as when it is still a blob of sperm, then a clot of blood, or a lump. How can we dare to commit the crime of abortion on the pretext that the foetus is deformed? Who is to tell us that the deformity will persist? Or that it cannot be treated? Deformity has many forms and sorts, and, with living beings, many degrees and scales. And who can distinguish for us between a deformity which can be suffered and a deformity which is insufferable?

Moreover, what is the difference between deformity of the male foetus and deformity of the female?

We know that a deformity in the foetus can be a serious drawback for a girl but not so much for a boy, and so on. Who can guarantee for us safety from exploitation of this dangerous trend?

This is not an occasion for a ballot, it is a subject of religious law. If God has permitted or made obligatory something, then we should accept it. But since He has forbidden it, then total obedience is inescapable. God says: "And obey God and his Apostle; and dispute not lest ye become fainthearted and your success go from you" (Sura 8/46). And God leads on the straight path.

Madkūr

We are speaking about abortion before the end of the fourth month.¹ Is it possible to know whether the foetus is beyond hope or suffering from a fatal disease before then, so that we may decide to abort the woman or kill the foetus?

Hathout

In most cases it is possible to know. But where there is some uncertainty, the uncertainty is resolved in the sense of preserving the foetus.

Madkūr

So the life of the foetus should not be disposed of simply because of uncertainty. Certitude cannot be removed for the reason that there is some uncertainty.

Shafei

I propose an amendment to the definition of abortion, as follows, i.e., "the expulsion of a live foetus".

Sā'ih

The majority is against the proposed amendment. What do you think?

[The majority is opposed, and so the proposal has been dropped.]

Mr. Marrak proposed that the phrase, "The sound view tends towards..." be amended to read "The predominant view...". Who agrees to that?

[For: 6. Against: 30. The proposal is therefore dropped.]

Omran

I had proposed that we should not simply point out that the views of the scholars in jurisprudence on abortion did not agree, in respect of the period before the end of the fourth month. I consider that Muslims have a right to expect us in this conference to state explicitly that some scholars forbid, others are in disfavour of, and others still allow it.

¹ The text in the books of *fiqh* says 120 days (Eds.).

Sā'ih

What we imply in saying, "The sound view tends towards forbidding it" is to suggest forbidding it, working on the basis of what is most predominant among some of the scholars of jurisprudence, including that of Imām Mālik.

Thus we come to the end of our debate on abortion in the report.

H. THE ACADEMY OF ISLAMIC RESEARCH AT AL-AZHAR

Marrak

In my opinion we should not indicate that the conference is following the opinion of the Academy of Islamic Research on the subject of sterilization, because the conference has among its members a selection of doctors of medicine and of the 'ulamā and scholars in Islamic thought. The conferees have thrown new light on the subject. I think that opinion on the matter of sterilization should stem from their opinions and discussions.

Madkūr

I disagree with Mr. Marrak in his attitude to the Academy of Islamic Research. This academy is the highest Muslim body, to which reference is made for guidance, and we should not say that this conference has an authority higher than that of the Academy.

Sā'ih

The Academy of Islamic Research was constituted in accordance with an ordinance which stipulates that there should be a certain proportion of researchers and scholars from the different countries of the Muslim world. The Academy holds annual conferences. The members of the Academy represent the various Islamic schools of jurisprudence, and among them are a number of doctors, philosophers, sociologists and demographers. I am a member of it, and also Dr. Huzayyin and Shaikh Khawwād. I should like to take this opportunity to ask Dr. Nazer if I may inform the conference that the administration organ of the conference had extended an invitation to the Secretary General of the Academy to attend this conference but he did not come.

Zarqā'

I must insist that we should base ourselves on the question that the Academy's opinion on sterilization which we are discussing is more representative of the Islamic scientific point of view than that of this conference even though it does include a large number of distinguished scholars in jurisprudence.

I. POUPLATION STUDIES CENTRE AT AL-AZHAR

Heneidi

As Dr. Nazer says, there have been in this conference several discussions of the importance of sociological and scientific studies to serve national planning in the Islamic countries. This importance has prompted me to come forward before you with a proposal for the initiation of a scheme now under consideration by the United Nations. The scheme has for its aim the provision of spheres where such studies and other similar activities, helpful as they are to the progress of the Islamic countries, can be conducted and brought to fruition. I lay the proposal for this scheme before you for your consideration hoping to get your views on it. The scheme is that the United Nations Fund for Population Activities will finance the establishment of a centre or an institute for demographic studies and researches specially for the Islamic countries to have its headquarters at Al-Azhar University.

Balogun

There is no reference in the statement of the conference to the demographic centre which Al-Azhar intends to establish within its walls in co-operation with the United Nations Fund for Population Activities. The subject was considered in the discussions, and the attitude of the conference to the intended centre should be indicated. Therefore, I suggest the addition to the report of the following statement: "The conference has noted with satisfaction the measures now being taken for the establishment of a centre for demographic studies at Al-Azhar in response to an application by Al-Azhar itself to the United Nations Fund for Population Activities." These measures are a step in the right direction, inasmuch as the centre will cover by its activities all the Islamic world, and also in view of the results which

it will obtain, being reliable by virtue of their being in agreement with Islam.

Shamsuddin

There was no mention in the agenda of the conference of the idea of the demographic centre proposed to be established at Al-Azhar. I think that this conference is not competent to make any recommendations to Al-Azhar in this respect; and therefore, I do not agree that the statement of the conference should contain any reference to the subject. We have great confidence in Al-Azhar, and we must leave the matter to it.

Huzayyin

We could get in this matter an agreed wording to express our appreciation, previously voiced, of the idea of the establishment of the centre, provided we should not say anything strictly definite to restrict the freedom of Al-Azhar in its endeavours to start the centre. Al-Azhar has the full right to establish it in the fashion it chooses. I suggest that the statement and the report include a sentence such as the following: "The Conference realizing as it does the importance of demographic studies and researches for the Islamic world, welcomes any broadening of such studies at Al-Azhar in co-operation with the United Nations Fund for Population Activities."

Sā'ih

I suggest that we should content ourselves with expressing our favour of the idea of a centre to be established for demographic studies owing to the importance of such studies and to the need of Muslims for them.

Nazer

It is hoped that the conference will approve the addition to the statement and the report of the following sentence: "The Conference, realizing as it does the importance of demographic studies and researches in the Muslim world, welcomes the broadening of these studies at Al-Azhar in co-operation with the United Nations Fund for Population Activities."

Madkūr

Will our approval or refusal to approve make any alteration in the idea? Besides, does the discussion of the idea have any effect on our agenda?

Alaoui

I should like to ask Dr. Huzayyin why is this centre not to be set up in Latin America, which suffers from problems similar to ours. I should also like to ask if the Christian scholars made a pronouncement approving the idea of setting it up. We are not opposed to its being established in Cairo in agreement with the U.N., but without interference in the matter on our part. For if we make a pronouncement on the subject we shall have opened the door so wide that we shall be unable to close it, and we shall have presumed the need for every state which is thinking of setting up a centre of this kind to seek a *fatwā* from the *'ulamā* first of all. This is impractical and illogical and involves a breach of international law. Therefore, I agree to the setting up of the centre but without interference on our part in the matter.

Huzayyin

The United Nations is ready to co-operate, provided there is a request from the quarter concerned for the co-operation, on the understanding that while the United Nations does not dictate a policy, it does not take the initiative. The United Nations assists all the world. In Latin America, there is a centre for demographic studies, with headquarters in Chile, and a subsidiary centre in Costa Rica. Undoubtedly the Church must have given its views on the subject, considering that the governments there are all Catholic. There is also another centre for Asia, with headquarters in India, and one in Cairo for the Arab World and Africa. The U.N. intends to set up a centre in West Africa for the French-speaking African countries.

This conference is not being asked to issue a *fatwā*, nor to give an opinion deciding the establishment of the proposed centre. But since the decision of the U.N. has a special significance for the whole Islamic world we should not hear of the proposal and not at least give it a welcome. We simply welcome the idea and leave the implementation of it to Al-Azhar, in co-operation with the U.N. We cannot escape being blamed for our apprehensions on this score, because we are

letting others derive benefits and depriving ourselves of them. Therefore, I propose again that we welcome the setting up of the centre.

Beji

Why do we not add to the proposal the phrase, "if it, i.e., Al-Azhar, accepts that", so that the proposed formula goes, "The Conference, realizing as it does the importance of demographic studies and researches, welcomes the broadening of these studies at Al-Azhar in co-operation with the United Nations Fund for Population Activities, within Al-Azhar, if Al-Azhar accepts that."

Majul

I agree with welcoming the idea. We in the Philippines look up to Al-Azhar not as an Egyptian university but as an Islamic university for the whole Islamic world. We prefer that it should be set up there rather than in Europe or any non-Muslim country. It is for the common good that the centre should be under the supervision and control of Muslims.

Shamsuddin

I still insist that the subject falls outside the conference agenda.

Sā'ih

Dr. Hathuot has presented to me a proposal for the addition of the following: "The Conference has learnt of what Al-Azhar proposes to do in organizing further scientific studies in the field of the demography of the Islamic world in co-operation with the United Nations. There is real benefit to be derived by the Islamic world from Muslim scholars taking up this task, bound by the provisions of Islamic Law."

Do you agree to this amendment?

[A vote was taken. For: 31. Against: None.]

THE FINAL REPORT AS APPROVED BY THE CONFERENCE

The conference affirms that Islam has laid down the rules which are adequate to meet all social changes impinging upon the family in modern society. The conference draws attention to the need to draw up scientific studies on the family, as well as to the need for people to be cognizant of the biddings of Islam on new conditions and events.

The conference considers that Islam has given woman all the rights she should have and has given her rights not granted by other religions; that, furthermore, work for women in society is lawful if she has a need to work or if Muslim society has a need of her work, provided that in her work she should abide by the commands of her religion, maintain her modesty and safeguard her chastity, and provided that the work does not clash with her primary mission as wife and mother.

The conference condemns any exploitation of a woman's femininity in any sphere of her work.

The conference draws attention to the fact that woman's dress should be decent in accordance with Islam's biddings, and draws the attention of man to the need for him to do what Islam requires him to do in the way of looking after his children, and in abiding by Islam's biddings in his conduct and morals.

The conference affirms that while Islam allows polygyny it has set limitations to it to ensure that its legality will not be exploited or trifled with.

Furthermore, the delegates to the conference affirm that the question of the family is of concern to the parents and society alike, because the family is the foundation brick in society.

Opinions are agreed that:

1. Islam has rules, bases and principles which are stable and do not brook change or modification because they are underpins for restructuring human life, and because they constitute the straight path chosen by the Creator, God Almighty, who knows best what

makes for the regeneration of the creation or their degeneration, as it has also firm general provisions for normal circumstances, and special provisions for cases of necessity and exceptional circumstances.

2. Islam's view of means differs from its view of ends. Means are capable of alteration, change and development to suit conditions and times.

3. Islam is a comprehensive system for the reform of intellectual, spiritual, legal and social life, and prevails over all matters of the life of the individual and of the group.

4. Islam has opened the door of *ijtihād* (the exercise of individual judgement) to those able to exercise it, in response to ever-renewed needs, by way of analogy, the application of discretion (*istihsān*) for choosing the best provision for such interests as are not covered by textual rulings, convention and other ways within the framework of the Qur'ān and the Sunna. It is adequate to furnish Islamic solutions whenever necessitated by all the various problems of society especially since provisions as to dealings are correlated to the interests of the faithful and flow from them, while judgement in their cases varies according as to whether or not there is good reason for the judgement, in affirmation or negation. On this consideration, the means are adapted in their course to serve and sustain ends.

5. The prime basis for building the good life in Islam is the doctrine founded on faithful belief in the oneness of God and of His freedom from anthropomorphic elements. Islamic society is built on principles of conduct and morals which are enshrined in the Qur'ān and the Sunna. Among these are: brotherhood and love among Muslims, social and economic solidarity among them, the enforcement of justice and the sovereignty of the Sharī'a, bidding people to do good deeds and commanding them against doing evil, the glorification of good works which redound to the advantage of the community and the individual, and beneficence to the whole human race.

Muslims are charged to work to achieve the greatest measure of economic and social development and growth by discovering the resources and treasures of the Universe and utilizing these treasures to improve the conditions of the Muslims. Among the basic means of achieving these aims are the spread of education, in conjunction with work towards the awakening of Muslims and the inculcation of an Islamic breeding while regarding any expense incurred for these

purposes as an investment necessary for development in the whole Islamic world.

Any efforts made at any level in order to bring the Muslim world out of the state of backwardness from which it is suffering must be made within the framework of the preservation of the genuine Muslim character.

✓ The conference tended to consider that family planning is for the spouses by mutual agreement and without compulsion, to use a safe and lawful means to delay or precipitate pregnancy in such a way as to suit their health, social and economic circumstances, within the framework of responsibility towards their children and themselves.

The conference considered the question of sterilization and felt that the opinion of the Academy of Islamic Research is to be followed on the subject, in the sense that the use of means which lead to sterility for any other reason than personal necessity is something which may not, according to the Shari'a, be undertaken by married couples or others.

As regards abortion, i.e., the expulsion of the baby-to-be from the uterus, with the intention of disposing of it, the conference reviewed the opinions of Muslim scholars in jurisprudence and what came to light was that it was forbidden after the fourth month except for a pressing personal necessity, that is if the mother's life is at stake.

As for the period before the end of the fourth month, diverse as the opinions in jurisprudence on the matter, the correct view favours forbidding it at any stage of pregnancy except for the most extreme personal necessity, in order to safeguard the life of the mother, or in the case of there being no hope for the life of the foetus.¹

¹ The phrase 'or in the case of there being no hope for the life of the foetus' has been inserted by the Editorial Board in the final stages of preparing the material of this book. The Board made sure that the Conference had endorsed it, by re-examining the whole proceedings and listening to the entire tape-recorded discussions on the final report and press release of the conference. The tape was listened to by Shaikh Muhammad Mahdi Shamsuddin, Dr. Kamal Samarrai, Dr. Abdel R. Omran, Dr. Mahmud Zayid and Dr. Isam Nazer. Contacting all members of the International Committee which approved the entire content of the book, Dr. Nazer found them in agreement on this point. The inclusion of the phrase has, therefore, been approved to ensure that the published report is a faithful reproduction of what had taken place in the Conference (Eds.).

The conference learnt of the intention of Al-Azhar to do more studies of a scientific nature in the field of demography in the Muslim world, in co-operation with the United Nations. There is real benefit to be derived by the Islamic world from Muslim scholars undertaking this task, in adherence to the provisions of Islamic Law.

DRAFT PRESS RELEASE AND ITS DISCUSSION

Nazer

A conference was held in Rabat, Morocco, from 26 to 30 December 1971 (8 to 12 Dhul-Qa'da 1391). There gathered 69 participants, including scholars in Islamic jurisprudence, medicine, sociology and demography, from the various Islamic schools of jurisprudence, from 23 different countries, to discuss the views of Islam on the social changes confronting the Muslim family, and likewise its attitude to family planning, abortion and sterilization.

A number of papers were read to the conference (45 in all) on the subjects previously mentioned. The participants had the opportunity to debate the subjects in detail and hear the opinions of Muslim scholars of jurisprudence and specialists in science.

Based on firm understanding and total conviction that in Islam there is legislation which guarantees to the family complete happiness and the assurance of maintaining its integrity, and which furthermore constitutes a sound basis for, and a nucleus of, the Islamic community of peoples, strong and secure; and through faith in the momentous task required of the conferees, and guided by a balanced view which reconciles the rules of law with the wisdom behind its provisions in the light of established scientific facts; and taking all this into consideration, the conference is of the opinion:

1. That Islamic Law with its rules on the family adequately provides for its being cared of and for its safety, and the regulation of its affairs in such a way as not to leave room for disintegration or infirmity to find its way to its structure.

2. That Islamic Law through its provisions, whether recorded in the Qur'ān or in the traditions or inferred from other recorded provisions through the method of inference and *ijtihād* (individual discretion) ensures that the Muslim family will be able to tackle successfully any new situation and have it under control, with correct and sound solutions and measures.

3. That Islamic Law allows the Muslim family to be able to look after itself as regards the procreation of children, whether this is in the sense of having many or having few of them. It also gives it the right to deal with sterility and to arrange suitably spaced cut pregnancies, and to have recourse to safe and legitimate medical means.

4. The conference considered the subject of sterilization and felt that the finding of the Academy of Islamic Research at Al-Azhar is to be followed in this matter, namely, that the use of means which may lead to sterility is not allowed by the law either to the married couple or to anybody else.

5. On the subject of abortion, i.e., the expulsion of the baby-to-be from the uterus with the intention of disposing of it, the Conference is of the opinion that all Muslim scholars in jurisprudence are agreed that it is forbidden after the fourth month except for extreme personal necessity for saving the mother's life. For the period before the end of the fourth month, although there are numerous different opinions among the scholars in jurisprudence, the correct view tends to forbidding it at any stage of pregnancy unless for extreme personal necessity, to save the mother's life, or in the case of there being no hope for the life of the foetus.

The Conference concludes its meetings today, and will publish its resolutions after reaching its conclusions in conformity with the Islamic Shari'a laws.

[At this point the chairman of the session asked for the conference's agreement to the press release, paragraph by paragraph. The Conference unanimously passed all its paragraphs with the exception of the phrase "or in the case of there being no hope for the life of the foetus", which had been added to the statement after the conference had agreed to it in the final report.]

[The chairman here asked members of the Conference to consider the matter again and vote. The voting was as follows:

For: 28. Against: 12]

Shamsuddin

Once again I must object, in principle, to voting. This matter relates to a provision of the Shari'a, which is not subject to voting.

Sharabassy

This is a point to which there has been a reply. There is some dissatisfaction with it by members of the Conference.

Sā'ih

Has Dr. Sharabassy any further explication to offer on this subject from the point of view of the Sharī'a?

Sharabassy

I explained my point of view in detail during the debate of the report, and I repeat that simply voting on this question is not enough. We must be bound by the Sharī'a rule of the subject. Is there any of the Islamic schools whose view we have put forward which allows forced childbirth before the fourth month because there is doubt as to its viability, or because it is deformed? I am not aware of any thing of the kind.

[At this point the debate became heated among the members because of the disputed phrase, which met strong opposition. The participants began debating among themselves noisily and the auditorium was in uproar.]

Nazer

In order to put an end to disputation and dissent, I propose the deletion from the press release of the phrase, "or in the case of there being no hope for the life of the foetus".

Hathout

This question is one of forbiddance or allowance. I have expressed my opinion from a medical point of view, citing the case of a foetus with no head, and wondered what our position with regard to aborting it should be. Therefore, I propose that the phrase be referred to the specialists in the Sharī'a. If they allow it, we shall mention it, otherwise we shall delete it even though this is common practice in hospitals.

Huzayyin

It is clear that this question is very thorny, and that it touches the very core and heart of the Sharī'a. Although I voted for the proposal

to approve this phrase I am prepared to go back on this and to revert to what is right. We put Islam above all other considerations. There is no choice in the matter. I, therefore, support Dr. Nazer's proposal for the deletion of the phrase.

* * *

[The conference agreed to the deletion of the phrase from the press release.]

* * *

Sā'ih

Therefore, we approve the press release, as was read to us, with the deletion of the phrase "...or in the case of there being no hope for the life of the foetus", and the addition of the paragraph on Al-Azhar and the institute of demographic studies.

**THE PRESS RELEASE AS APPROVED
BY THE CONFERENCE**

In the name of God, the Merciful and the Compassionate

A conference was held in Rabat, Morocco, during the period from the 26th to the 30th of December, 1971 (8-12 Dhul-Qa'da, 1391). There gathered 69 participants, including jurists in Islamic Law, experts in medicine, sociology, economics, philosophy, political science and demography, representing, among other things, the various Islamic schools of religious thought and jurisprudence, from twenty three Islamic countries, to consider what is and should be the Islamic attitude to be taken as regards the social changes now confronting the Islamic family and also as regards family planning, abortion and sterilization.

A number of papers were put forward before the conference, 45 in all, on the subjects just mentioned, and the members of the conference had the opportunity of discussing these papers, debating their themes in detail and hearing the views of Muslim jurists and other specialists in the various sciences.

Through positive recognition and firm conviction that there is in Islam legal provisions, which ensure for the family entire happiness and are adequate to preserve its integrity completely, and which constitute the sound foundation and the proper nucleus for structuring the Islamic nation to be strong and secure.

And through faith in the worth of the grave task assigned to the conferees, and through a balanced approach in correlating the rules of the Shari'a Law with the wise reasons underlying these rules, taking account of firmly established scientific facts.

Through all this, the Conference takes the view:

1. That Islamic Shari'a Law, by virtue of its rules on the family, adequately provides for its being cared of and for its safety and the regularity of its affairs in such a way as not to leave room for disintegration or infirmity to find its way to its structure.

2. That the Islamic Law, through its provisions, whether recorded in the Qur'ān or the traditions or inferred from other recorded provisions according to the method of inference and *ijtihād* (individual discretion), ensures that the Muslim family will be able to tackle successfully any new situation and have it under control, with correct and sound solutions and measures.

3. That the Islamic Law allows the Muslim family to be able to look after itself as regards the procreation of children, whether this is in the sense of having many or few of them. It also gives it the right to deal with sterility and to arrange suitably spaced out pregnancies, and to have recourse, when needed to safe and lawful medical means.

4. The Conference considered the question of sterilization and felt that the findings of the Academy of Islamic Research at Al-Azhar are worth following in this matter, namely, that the use of means which may lead to sterility is not allowed by the law to the married couple or to anybody else.

5. On the subject of abortion, i.e., the expulsion of the baby-to-be from the uterus with the intention of disposing of it, the Conference is of the opinion that all Muslim scholars in jurisprudence are agreed that it is forbidden after the fourth month except for extreme personal necessity for saving the mother's life. For the period before the end of the fourth month, although there are numerous different opinions among the scholars in jurisprudence, the correct view tends to forbidding it at any stage unless for extreme personal necessity to save the mother's life, or in the case of there being no hope for the life of the foetus.

The Conference took cognizance of the intention of Al-Azhar to carry out extra scientific studies in the field of demography in the Islamic world in co-operation with the United Nations. The undertaking of this task by Muslim men of science, in commitment to the Islamic Law and its rules, redounds to the actual benefit for the Islamic World.

CLOSURE OF THE CONFERENCE

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SPEECH OF MR. AḤMAD BARKASH

Minister of Waqf and Religious Affairs, Morocco

Excellencies, Ladies and Gentlemen,

On the occasion of the termination of the work of your venerable Conference which included a selection of respectable and dignified savants, it pleases me to come forward, on behalf of myself and of my colleague and brother the Minister of Public Health Dr. Abdul-Majid Belmahi, to renew, in the name of His Majesty, King Hasan II, may God keep him victorious and give him support, a warm welcome to you in your stay in our and your country Morocco which was honoured to receive you and happy to be visited by you, and to express our sincere congratulations on your commendable efforts and valuable studies, and on the scientific investigations carried out by you, for the purpose of shedding light on a problem recognized to be one of the problems which now occupy public opinion in many countries of the world, namely, the problem of family planning. It is by virtue of the great extent of knowledge and erudition, vouchsafed by God, and through what you possess of broad enlightenment in Shari'a and law generally, that you have been able, thanks to your studies, inquiries and findings, to bring to light aspects of our pure Shari'a and of the teachings of our straight religion which is rightly considered to be a religion, a language and a law at the same time, and to be adequate to ensure for the Muslims their material and spiritual strength, and to have their individual and general affairs organized for them on the most durable foundations and the most correct planning.

Muslims today, in the thick of their major battle for the realization of national honour, and the raising high of the edifice of their revival, are in the most pressing need for your enlightened directions and sane plans, in order that their awakening, with God's power and might, may be a true and blessed Islamic one, deeply rooted in the ground and loftily rising high into the sky. For you are beacons of guidance, pioneers of the nation, and the chosen group, honoured by

God with the mission of carrying His Law and propagating His precepts, as set forth in the words of God, the most truthful of all: "Moreover we have made the Book an heritage to those of our servants whom we have chosen" (Sura 35/32), and in the words of our Prophet, the true and the honest one: "The savants are the successors of the prophets".

May God requite you with the best requital for your efforts, and may He set you on the right path, and may He grant us all success in what redounds to the good and the dignity of Islam and Muslims and what will help spread our Islamic nation. We thank you very much for choosing this dear country to be the venue of your conference, a choice which makes us feel very proud, for it gives an indication of the extent of the significance that you attach to it, and of the lofty status accorded to this country by the leading men of thought and knowledge from our Islamic nation to which we have at heart the greatest love and esteem, and in which great interest is shown, and towards which affection is felt, by this Muslim country under His Majesty King Hasan II, the Prince of the Faithful, may God keep him always victorious and exalted in station, and keep his honourable government, and preserve the Moroccan people, loyal as it is to Islam and Arabism.

May God bless our Islamic brotherhood and make it more powerful and enduring.

SPEECH OF JUDGE HASSAN ABU-MAIZAR,
President of the Middle East and North Africa Region

Venerable Gentlemen,

Allow me at the close of this conference to express my gratification that you have been able to meet and discuss among yourselves the subject which you have considered and spoken about. I believe that your conference has achieved a much hoped for success, and contributed greatly towards the clarification of several aspects of these subjects. Therefore, in the name of the Middle East and North Africa Region of the International Planned Parenthood Federation whose invitation to the conference was kindly accepted by you and in consequence of which you were able to take part in the conference, I would like to express to you my deeply felt gratefulness for your supreme efforts and clear ideas in dealing with the question of the Muslim family.

Undoubtedly, as is expected, the esteemed members of the conference, as jurists and intellectuals, will continue responsibly to pursue their researches and investigations in the service of justice and truth to provide guidance and enlightenment to Muslims in all countries. I believe that you will appreciate, out of your personal experience, the efforts exerted by the Regional Office towards preparing for this gathering, pregnant as it is with far-reaching significant meanings which, God willing, will produce the desired and positive effects. I should like in this connection to make special mention of Dr. Isam Nazer, Administrative Director of the Region, and avail myself of this opportunity to extend to him my thanks and gratitude, and also to all those who contributed and assisted in the organization of the conference and towards its success.

In conclusion, I wish all bon voyage in your return to your countries. I declare the conference as closed. God is the Guide of every purpose.

SPEECH OF DR. SULAIMAN HUZAYYIN

Director of Cairo Demographic Centre

Brethren! Now that we have concluded the conference, I beg leave to hope that we shall agree that we should emerge from it in a way which invites greater solidarity among us for the service of the right and the good. To begin with a personal remark, if appropriate, I should like to say that I am indeed indebted to you and to this conference for the great deal I have learned from it. I apologize to you if I was burdensome at times with my comments. My plea for waxing enthusiastic and rebelling against the dictates and limitations of old age is that enthusiasm for what is right is justified. I have not the slightest doubt for a moment that our main motivation in being so enthusiastic — and enthusiasm can be sometimes a good thing, sometimes less good — is that our enthusiasm is for God's religion. This is a right and duty for us. If it happened that some of our opinions were endorsed and others criticized, out of interest, or modified, we should be satisfied with what the conference produced. I should like to assure you that I, for one, respect every opinion put forward in the conference, because the aim was the truth. But I should like to add one more thing at the end of our deliberations, which is that I hope that this Conference will not be a beginning which will come to an end with the end of this Conference; but I hope that co-operation among us will continue, God willing, either officially or on the personal level. It may be that this personal way may prove to be more fruitful and more productive of closer co-operation, mutual understanding and sympathetic relations among us in this cause.

At the same time, I should hope that we will tenderly remember this noble country which has been our host and with us the host of the Islamic idea. I hope we shall remember our sister country Morocco, its King, its government, its people and its scholars, especially the religious ones of them, for which and whom all I have every respect. In their firmness of conviction here they have symbolized Islamic courage in steadfastly holding on to the true opinion. If there has been

some unintentional show of temper in this conference, reflecting somewhat directly or indirectly, upon some of us, Islamic tolerance and magnanimity require us to be forgiving and pardoning. I have no doubt that every one of us leaves this meeting as a brother to every sincere Moroccan Muslim. I should like at the same time to add another word of thanks to the organizers of this conference, and the international organization which we consider to be part of our work. We have a debt to claim from it, and because it has honoured the claim we thank it. We give special thanks also to those who worked in organizing this Conference in conjunction with its agencies and bodies operating in the various Arab and Islamic countries. I thank in particular one of us here — I do not want to mention his name, to avoid embarrassing him, who worked undefatigably and with complete selflessness, giving a glowing example of the true Muslim character in the service of Islam and Muslims.

A word of thanks is also due to the unnamed personnel in the Secretariat of the Conference, and to the translators and interpreters who have done everything possible to translate thoughts and expressions previously unfamiliar to them. This kind of work is new to them for their experience in this field was gained usually in international conferences, political and otherwise. Their work here was a new experience for them. I was truly pleased with their translation when I listened to them from time to time. This deserves from us, of course, all our gratitude and appreciation.

As my Moroccan colleague stated, there is no more fitting way to wind up — or to begin — than by a reading of the Fātiḥa.

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FATWĀS OF MUSLIM SAVANTS
IN CHRONOLOGICAL ORDER

Shaikh 'Abdul-Majīd Salīm (Egypt)	25.1.1937
<i>Fatwā</i> Committee at Al-Azhar (Egypt)	10.3.1953
Tuan Haji Ali b. Mohammed Said Salleh (Singapore)	25.4.1955
Shaikh Maḥmūd Shaltūt (Egypt)	1959
Advisory Council on Religious Matters (Turkey)	16.12.1960
Shaikh Ḥasan Ma'mūn (Egypt)	22.8.1964
Shaikh 'Abdullāh al-Qalqīlī (Jordan)	6.11.1964
<i>Fatwā</i> Committee in Gaza Strip	1964
Ayatollah Hajji Shaikh Bahaeddin Mahallati (Iran)	12.11.1964
Haji 'Abdul Jalil b. Haji Ḥasan (Malaysia)	21.11.1965
Al-Syyid Yusof b. Ali Al-Zawawi (Malaysia)	(undated)
President of the High Court of Appeal (Yemen Arab Republic)	23.4.1968

THE *FATWĀ* OF SHAIKH 'ABDUL MAJĪD SALĪM

*The Mufti of Egypt*¹

The following is an exact transcript of the *fatwā* issued by His Eminence Shaikh 'Abdul-Majīd Salīm, Muftī of Egypt, on 12th Dhul-Qa'da, 1355 H. (25th January, 1937).

A man asked: What does Your Eminence think of the following:

A married man has one child. He fears that, if many children are born to him, he will be embarrassed by becoming unable to bring them up and take care of them properly, or his health may suffer, and his nerves may become too weak to enable him to bear responsibilities and duties towards them, or his wife's health may suffer as a result of many pregnancies and childbirths, with no sufficiently long intervals in between for her to have rest and to recover her strength.

Can he, or his wife, take some measures recommended by doctors in order to avoid having too many children, so that the intervals between one pregnancy and another may be prolonged, and the mother will have rest, without causing undue hardship to the father physically, financially and socially?

The Answer

We have looked into this question. Our considered opinion is that according to textual statements by Ḥanafī scholars of jurisprudence, it is allowed to prevent pregnancy to take such measures as are described in the question, like coitus interruptus, or the use of a tampon or barrier to plug the mouth of the uterus and thus shut out the semen.

The principle is that a husband is not allowed to ejaculate outside his wife's vagina without her consent, and it is not allowed

¹ Dr. Ahmad Sharabassy, *Al-Din wa Tanzīm al-Uṣra* (Religion and Family Planning), p. 183.

for the wife to block the mouth of the uterus without the consent of the husband. However, later scholars of jurisprudence ruled that it was allowed for the man to ejaculate outside the woman's vagina if he feared for the child from the corrupt state of the times. The author of *Al-Muqni'* says: "Another similar excuse of such excuses is to be regarded as having the force of waving the need for her consent."

On the face of it, the phrase 'another similar excuse of such excuses is to be regarded' seems to refer to a case like that of a man who happens to be on a long journey or voyage and fears for his child.

On the analogy of this view, later scholars of jurisprudence ruled that: it is permissible for the woman to plug the mouth of the uterus without the man's (husband) consent if she has an excuse for that.

The gist of the matter is that it is allowed for either of the two spouses, with the consent of the other to take such measures as would prevent the semen from reaching the uterus to prevent procreation; and it is allowed, as ruled by later Ḥanafī scholars of jurisprudence, for either of the two spouses to take such measures as would prevent the semen from reaching the uterus, without the consent of the other, if the spouse has one of the excuses previously mentioned by us, or similar to them.

It remains now to say whether it is allowed to terminate pregnancy by expelling the seminal fluid from the uterus after it has already lodged there and before quickening. The Ḥanafī scholars of jurisprudence are disagreed on this. Apparently they seem to be more inclined to consider that it is disallowed unless there is an excuse, such as the drying up of the woman's milk after pregnancy when she has a baby to breastfeed and when the father does not have the wherewithal to hire a wet-nurse, and it is feared that the baby will die. However, pregnancy is not allowed to be terminated after quickening.

FATWĀ FROM THE FATWĀ COMMITTEE AT AL-AZHAR¹

Question

A married man has one child. He fears that, if he is blessed with many children he will be embarrassed by being unable to bring up the children and take care of them properly; so that his health will suffer through his nerves becoming too weak to stand their requirements and the duties towards them; or that the health of his wife may suffer as a result of too many pregnancies and childbirths without a sufficiently long interval between one pregnancy and another to allow her to have rest in the meantime and to regain her strength, and thus make up for what she has lost from her body for the development of the foetus every time.

Can he, or his wife, take measures, on the recommendation of doctors, to avoid having too many children, such as the prolongation of the interval between one pregnancy and another, for the mother to have rest and to recover, without causing undue hardship to the father physically, financially and socially?

Answer

I have brought the question to the knowledge of the Committee which considers that the use of a drug to prevent pregnancy for a time is not forbidden according to the Shāfi'īs, and this is the ruling which the Committee takes as its authority in the matter, considering that it makes things lighter and easier for people and does away with embarrassment or hardship, especially if there is fear of repeated pregnancies and of the woman becoming too weak to stand the strain of repeated pregnancies without having an interval between one pregnancy and another for her to have rest and to recover. God says: "God wisheth you ease, but wisheth not your discomfort" (Sura 2/185).

¹ *Ibid.*

And says: "And hath not laid on you any hardship in religion" (Sura 22/78).

As regards the use of a drug to prevent conception, once and for all, it is forbidden.

24 Jumāda II, 1372 A.H.
10 March, 1953 A.D.

FATWĀ OF TUAN HAJI ALI B. MOHAMMED SAID SALLEH

*Chief Qāḍī, Singapore*¹

Tuan Haji Ali b. Muhammed Said Salleh, Chief Qāḍī of Singapore ruled yesterday that steps taken to space out births in order to safeguard the health of the Malay and Muslim mothers are not contrary to the Islamic faith, while steps taken to prevent woman from bearing a child are altogether wrong in Islam.

The Chief Qāḍī is in agreement with Shaikh Muḥammad ‘Abdul-Fattāḥ Al-‘Inānī, Chairman of the *Fatwā* Committee at Al-Azhar University, Cairo, who ruled that steps taken temporarily to space out births or for family planning are not forbidden in Islam, particularly for such mothers as are liable to suffer physically on account of the exhausting continued childbearing.

Tuan Haji Ali gave the foregoing ruling on the day following that on which the explanation of Mrs. Goh Kok Kee, Chairman of the Family Planning Association, Singapore, was published in: “Utusan Zaman.”

From the explanation given by the Chief Qāḍī, it appears that there is no objection to Malay and Muslim mothers joining the Family Planning Association or seeking advice from it if they are of those who have been bearing children continuously and whose health has suffered in consequence.

But the Chief Qāḍī warns that to practise abortion in order to destroy a child in pregnancy of four months and over is *ḥarām* (unlawful) in the Islamic faith.

¹ *Utusan Melayu*, April 25, 1955.

FATWĀ OF SHAIKH MAḤMŪD SHALTŪT,

*Former Rector of Al-Azhar*¹

In his book *Al-Fatāwā*, Shaikh Maḥmūd Shaltūt, former Rector of Al-Azhar, talked about the subject of "Procreation: Limitation and Organization." After pointing out that the limitation of childbearing in the sense of enforcing it by the promulgation of a national law committing the whole of the nation to have childbearing restricted at a certain limit, regardless of individual variations is something which nobody can contemplate, let alone a nation seeking survival for itself, and is a line of thought repugnant to the natural law of the universe which is for growth and repellent to divine wisdom, he went on to say that those who call for the limitation of childbearing do not want to be in this sense, and continued:

"As regards the limitation of childbearing in the sense of organizing births for women who get pregnant too soon, for those suffering from diseases liable to be transmitted by heredity, and for a small number of individuals whose nerves are too weak to face up to manifold responsibilities, unhelped as they are by their governments or by the well-to-do in their community to the extent of being able to bear such responsibilities.

"The organization of births in some way like that, individual and restricted to a certain area as it is, is a remedial measure by which certain harms are warded off and through which better and stronger offspring will come into being.

"Organization in this sense is not incompatible with nature, and is not disagreeable to national consciousness, and is forbidden by the Sharī'a, if it is not sought after and pressed. The Qur'ān fixed the period of lactation at two full years, and the Prophet warned against feeding a baby from the milk of a pregnant mother. This argues in favour of allowing steps to be taken to stop breastfeeding during pregnancy.

¹ Shaikh Maḥmūd Shaltūt, *Al-Fatāwā* (Cairo: Al-Azhar Press, 1959), p. 266.

“If the Sharī‘a requires that the multiplicity of children should be strong and not feeble, it is only trying to safeguard the offspring against weakness and poor health, and to fend off harm which may befall man during lifetime, one of its rules being: Harm is to be obviated with every possible means.

“This is why doctors of religion decided to allow temporary or permanent prevention of childbearing between the two spouses, if there is in both, or either, of them a disease which is apt to be transmitted to the children or grandchildren.

“Therefore, for such individual reasons which are not nation-wide, but cover only a very small proportion, the organization of births is allowed by the Sharī‘a, nay, insisted on according to the extent of the weakness or intensity of the harm. I do not think that anybody would disagree; and it is, therefore, an object of agreement. But where is then the disagreement? And why should we disagree among ourselves: unless it is merely out of desire and eagerness for dissent and controversy, which is not the manner of researchers and those who are solicitous for the good of their nation? Finally, listen to what God says: ‘O believers! enter completely into the true religion, and follow not the steps of Satan, for he is your declared enemy’ (Sura 2/208).”

**FATWĀ OF THE ADVISORY COUNCIL ON RELIGIOUS
MATTERS IN TURKEY ON THE QUESTION OF BIRTH
CONTROL**

We received an enquiry from the General Directorate of Health Affairs (No. 10456; dated 13.12.1960) on whether measures towards birth control are lawful in Islam. The enquiry was sent to us by the Ministry of Health (under No. 35739, dated 16.12.1960). Our council examined the matter.

Although coitus interruptus which may be considered as a means of birth control was regarded as objectionable by some of the Prophet's companions and by some scholars who took the same view, it was nevertheless regarded as allowable by some others such as Imām 'Alī, Sa'd b. Abī Waqqāṣ, Zaid b. Thābit, Abū Ayyūb al-Anṣārī, Jābir, Ibn 'Abbās, Khabbāb b. al-Aratt, 'Urwa b. al-Zubair, Abū Sa'īd al-Khudrī, and 'Abdullāh b. Mas'ūd, and by the doctors of religion who came after them and took guidance from them. We may say that, while the consent of the wife is naturally an imperative condition, yet if the proper upbringing of the children is not possible because of the prevailing state of affairs, such as the state of being at war or in turmoil or under similar circumstances, this condition is to be waived also.

We decided to forward these findings to the Ministry in response to the aforementioned enquiry.

FATWĀ OF SHAIKH ḤASAN MA'MŪN,

*Rector of Al-Azhar*¹

In a statement published in *Akhbār al-Yawm* newspaper of 22.8.1964, the Rector of Al-Azhar, Shaikh Ḥasan Ma'mūn spoke about Islam and family planning as follows:

“The view of Islam on this subject is clear and frank. But perhaps what gives rise to wonderment on your part and on the part of many others is the traditional impression that Islam calls for procreation and multiplication, urges those young men who are able to get married to do so and favours that man should take unto himself as wife the woman who is prolific of offspring and affectionate of heart, and such other impressions which would put into the minds of some people that this whole idea is the idea of Islam, and nothing else.

“But we can deal with the subject from another angle, principal and fundamental in the structure of the system of Sharī'a law for the most part.

“Namely, the wisdom underlying the legal ruling and the legitimate good to be aimed at and to be realized. In our subject, wisdom and the good required at the time that there should be procreation and multiplication to be urged.

“This is because Islam, in its initial stage, was something of an intruder, a stranger in the polytheistic society before Islam, and its early followers were few and weak in the midst of a vast majority of aggressive and oppressive people, by reason of their wealth and social standing and influence. The good of the Muslims then required that there should be a call for the multiplication of their number, in order that they might be able at the time to fulfill their responsibilities in defending the mission of Islam and protecting the true religion of God against the powerful and multitudinous adversaries threatening it.

¹ Dr. Ahmad Sharabassy, *Al-Dīn wa Tanzīm al-Uṣra* (Religion and Family Planning), p. 195.

“But now we find that conditions have changed. We find that the density of population in the world threatens a serious reduction in the living standards of mankind to the extent that many men of thought have been prompted to seek family planning in every country, so that the resources may not fall short of ensuring a decent living for its people to provide public services for them.

“Islam, as the religion of pristine nature, has never been opposed to what is good to man. Indeed it has been always ahead in the effort towards the achievement of this good so long as it is not in conflict with the purposes of God’s Law.

“I see no objection from the Shari‘a point of view to the consideration of family planning as a measure, if there is need for it, and if the consideration is occasioned by the people’s own choice and conviction, without constraint or compulsion, in the light of their circumstances, and on condition that the means for effecting this planning is legitimate.”

FATWĀ OF SHAIKH ‘ABDULLĀH AL-QALQĪLĪ,

*Grand Mufti of Jordan*¹

Fears in the world from the increase of population everywhere have assumed serious proportions, and experts have come to regard this as a portent of woe, ruination and dire consequences. In their consideration how the world can be protected against this towering evil and grave menace, they have been led to think that “restriction of births” is one of the greatest menace. They know, however, that most people do not take courage to follow this course unless the ruling of religion in this respect has been made clear to them. Therefore, Muslims have looked up to reliable religious savants to state clearly to them what religion rules on the subject. Questions from all directions have started to come to us for this purpose, including questions from official quarters. This is our *fatwā* (ruling) on the matter:

It is acknowledged on all hands that the Islamic Sharī‘a (law), tolerant as it is, accommodates itself to nature and to human conditions. God says: “Set thou thy face then, as a true convert, towards the Faith which God hath made, and for which He hath made man. No change is there in the creation of God. This is the right Faith” (Sura 30/30).

One of the natural urges created by God in man is the desire for marriage. But the purpose of marriage is procreation for the perpetuation of the species. To this point in particular refers the following Qur’anic verse which regards marriage as one of the blessings bestowed by God upon His servants. “God, too, hath given you wives of your own race, and from your wives hath He given you sons and grandsons, and with good things hath He supplied you” (Sura 16/72). Therefore, marriage is one of the Islamic ways of life, and procreation is one of its desirable and gratifying aims. Indeed, the Lawgiver had in view the multiplicity of offspring, on the consideration that multiplicity gives power and prestige, along with means

¹ First appeared in *Al-Difā’* newspaper on 16.11.1964, then distributed in a statement by IPPF in December, 1964.

to be invulnerable and formidable, as in the words of the Arab poet: "Not the largest in number; for power belongs to him who is possessed of large numbers." It is for this reason that the Prophet urged his people to marry the woman who is prolific. One of the Prophetic traditions says: "Marry the prolific affectionate woman for I shall make a display of you before other nations."

Nevertheless, the Lawgiver made marriage to be specifically for procreation and marriage with a prolific woman conditional upon the availability of means and the ability to bear the costs of marriage and meet the expenses of child education and training so that there should not be a risk that children may go to the bad and develop anti-social ways, or that the father, to earn his living, may get into evil, and unlawful ways. If the risk is there, then the ruling on the matter should be determined by the general juristic rule, namely, "laws change with the change of times". And the meaning of it is that a man intending marriage should be disallowed to get married if he proves to be incapable of bearing the responsibilities of marriage. This is the rule, and it is in this case the denial of marriage, as is clear from the Qur'ān and the Prophetic traditions. In the Qur'ān, the relevant verse says: "And let those who cannot find a match live in continence till God of His bounty shall enrich them" (Sura 24/33). This verse is clear and distinct in calling for continence and self-restraint from marriage until one is really able to get married. The tradition says: "O youngmen, those of you who can support a wife should marry, but those who cannot should take to fasting, for it is a means of suppressing sexual desires." This tradition is the same as the Qur'anic verse in enjoining that marriage is to be forgone in the case of a man who is unable to get married for lack of financial capability. What can be drawn definitely from the verse and the tradition is that "restriction of procreation" is all the more legitimate, in the sense that it is more reasonable, whenever the good of the world or the good of the individual is involved; for both of them, the verse and the tradition, command against getting married even when to forgo marriage because of inability to get married entails cessation of procreation; obviously it is with greater reason that procreation should be limited rather than stopped, as to stop procreation altogether is more serious and of a more far-reaching effect than just limit it. Therefore, it is a cause for much wonder that those who urge celibacy should at the same time hesitate to allow family planning.

Moreover, there are genuine traditions which allow methods for

restricting procreation, such as coitus interruptus. For instance, in the two most reliable collections of traditions, there is the tradition reported by Abū Sa'īd who said: "We took female captives and practised coitus interruptus. We asked the Prophet of God about that. He said: 'Surely you will do it (three times); no soul fated to come into being till the Day of Judgement but comes into (actual) being'." Another reported traditions has it that "A man came to the Prophet and said: 'O Apostle of God, I have a maid and I do not like to have her conceive and I want what men want, and Jews claim that coitus interruptus is minor infanticide.' The Prophet replied: 'The Jews lie. If God wished to create him (a human being), you would not be able to turn Him away (from his purpose)'." Also in the two collections of traditions, there is the report: "We used to practise coitus interruptus during the time of the Prophet, while the Qur'ān was being revealed." Again, in the collection, there is the report that "We used to practise coitus interruptus during the time of the Prophet. The Prophet came to know about it, but did not forbid us."

In all these reliable traditions and reports there is a clear indication that coitus interruptus, one of the methods for stopping or reducing procreation even without cause, is definitely allowed. This allowance is also reported on the authority of a number of the Prophet's companions and their successors. It is the view of the four schools of jurisprudence: the Ḥanafī, the Mālikī, the Shāfi'ī and the Ḥanbalī.

A corollary of this is that it is allowed to take a drug to prevent conception and to cause abortion before quickening. The Ḥanafīs allow that, if for a good reason, as is stated in their standard works on jurisprudence, even in their vocal statements as in *Al-Wahbāniya*. It is undesirable, however, that the woman should be given a drug to abort; but it is allowed for a good reason if the foetus has not been shaped. The jurists illustrated what they meant by "good reason" for abortion, as Ibn 'Ābidīn who says: "Like the mother who has a baby to suckle and who becomes pregnant and thus her milk fails, at a time when the father has no money to hire a wet-nurse, and thereby the baby is exposed to the risk of death. The jurists stated in no uncertain terms as to when it is allowed to take a drug to induce abortion, that it is allowed so long as the foetus is still a clot or a lump of flesh, unshaped. They estimated the period to be 120 days, during which, they say, the foetus cannot be considered at this stage to be

a human being. From reports about 'Umar and 'Alī (the two Caliphs), it is assumed that "forced childbirth is not infanticide until the seven phases are passed". In *Al-Muwatta'*, Mālik says: "The man cannot practise coitus interruptus with the freeborn wife except with her permission." In comment, al-Zarqānī remarks: "If the freeborn wife gives her permission, it is not unlawful." In *Al-Fath*, there is the statement that "From the ruling on coitus interruptus, a ruling on the expulsion by a pregnant woman of the semen blob before quickening may be drawn. If the former is forbidden, a fortiori the latter should be forbidden too; but if allowed, the other goes the same way." Then Zarqānī added: "What goes the same way also is the taking of a drug by a woman to stop childbearing altogether."

From this, one can see that there is agreement among the exponents of jurisprudence, the founders of the four schools of jurisprudence, that coitus interruptus as one of the methods for the prevention of childbearing, is allowed. Doctors of religion inferred from this that it is allowed to take a drug to prevent childbearing, or even to induce abortion. We confidently rule in this *fatwā* that it is allowed to take measures to limit childbearing. The proofs of this have already been given, derived from the Book and the Prophetic traditions, and they are enough to put an end to the uncertainty of those who are still in doubt. If governments accept such ruling, then action accordingly becomes binding, since it is agreed that if the supreme authority adopts a ruling, though slightly below standard in validity, action accordingly becomes inevitable.

FATWĀ FROM THE FATWĀ COMMITTEE IN GAZA STRIP¹

The *Fatwā* Committee of Gaza (Palestine), received a query about prevention of childbearing. The Committee gave its reply, which was published in *Nūr al-Yaqīn* magazine of Ramaḍān, 1384 A.H. It is as follows:

Religion calls for marriage, giving, as reason for that, the multiplication of offspring in the service of God, for the development of the land by way of bringing out its treasures and making use of what it has in store, for defending and protecting homelands and for disseminating good morals and virtues in the world. God has assured mankind of His munificence, and has apportioned in the lands their provisions and “distributed food throughout it” (Sura 41/10). “The Heaven hath sustenance for you, and (it containeth) that which you are promised. By thy Lord then of the Heaven and of the earth (I swear) that this is the truth, even as you speak yourselves” (Sura 51/22-23); and “There is no moving thing on earth whose nourishment dependeth not on God, He knoweth its haunts and final resting place: all is in the Clear Book” (Sura 11/6).

It is for this reason that Islam combated the evil social custom of infanticide, practised before Islam for fear of shame or poverty. “Kill not your children for fear of want: for them and for you will We provide” (Sura 17/31); “For you and for them will We provide” (Sura 6/151).

But if it happens that the wife is sound in health, strong and well-to-do, and there is no reason for her to stop child bearing, the stoppage is disallowed on the grounds that it violates the injunction of religion in this respect, as already explained. By the same token, forced childbirth after the foetus has taken shape is in no case allowed, and it is considered as homicide, categorically forbidden by God, except for the cause of justice, and the perpetrator is considered as having committed a deadly sin for which he or she is punishable in

¹ Dr. Ahmad Sharabassy, *Al-Dīn wa Tanzīm al-Uṣra*, p. 199.

this world and in the hereafter, if in the meantime he or she has not repented to God.

To make it still clearer to the esteemed inquirer, we would like to state plainly that it is permissible to take a drug to stop child-bearing if there are reasons for it, such as birth control, especially for producing good citizens, all of which comes within the bounds of the general rules and provisions of religion, of which are the rule: "No harm and no harassment," and the rule "Harm is to be averted as much as possible." There is also the limitation of the period of lactation to two years by the Holy Qur'ān, as in the following verse: "Mothers, when divorced, shall give suck to their children two full years, if the father desire that the suckling be completed" (Sura 2/233); and also the Prophet's warning against suckling a baby from the milk of a pregnant woman.

Thus, the Qur'ān and the Prophetic tradition, point out to man how births may be controlled or organized by stopping childbearing during lactation. Also the Sharī'a law is very much concerned to ensure happiness, honour and greatness for man, and urges him to resort to power to achieve productivity strongly advised by religion, in the following Qur'anic terms: "Say: Work ye: but God will behold your work, and so will His Apostle" (Sura 9/105). Such a state of affairs cannot be achieved except through organized birth in order to have offspring, sound in body and mind, whole in health, and free from physical and psychological diseases — all of which cannot be accomplished unless the parents are able to educate, to provide food, to instruct and to bring up properly. This is not possible of attainment by everybody, nor is it available to everybody.

This argues that it is allowed to take a drug to prevent child-bearing if the parents are, or either of them is, afflicted with a disease which is likely to be transmitted to the children; or if they are too poor and thus unable to bear the marital responsibility, and cannot find anybody else to bear it from among the well-to-do and responsible people or cannot see that the state can do so; or if they already have enough children, and any increase in their number may cause them to be overburdened and cause their nerves to be strained; or if they already have enough children and the wife may argue that if she bears again her physical beauty will fade away and she will suffer such an overburden as would render her life miserable; or if any increase in the number of children may cause her to suffer a disease or to be negligent in carrying out the duty of upbringing and educating the

children; or if the husband is self-interested and is fond of having more than one wife in order to enjoy himself, knowing that his enjoyment would not be realized with so many children or the wife, with the large number of her children, will not give him satisfaction and fulfilment of his desires, and thus will cause him to marry another; or suchlike untoward circumstances occasioned by repeated pregnancies and childbirths.

Therefore, it is allowed to take a drug to prevent childbearing. It is especially more to the good if any of the foregoing circumstances is to be found. We admire the foreigners for their birth control, a course which is now being followed by the well-to-do people in the educated class in our country. Unfortunately, the poorer people in the society have acted to their own disadvantage, by allowing themselves to be swayed by their sexual desire and thus, though poor, multiply their children, for which purpose they marry too many wives, only interested in having a plurality of children, no matter whether they will turn up to be an asset to the society or a corruptive agent. There is nothing to ensure happiness in life better than conformity to the commands of religion. Why not follow this course with understanding!

FATWĀ OF HIS EMINENCE AYATOLLAH HAJJI
SHAIKH BAHAEDDIN MAHALLATI OF IRAN¹

THE LEGITIMACY OF CONTRACEPTION

Question

Do you agree, or is it legitimate from the point of religion, that the doctor should prescribe, for temporary use, drugs or devices for contraception to avert excessive human reproduction?

Answer

From the point of view of the divine Law, it does not appear that it is unlawful to use, temporarily, drugs or devices for controlling fertility, provided this will not impair the fertility of the female and make her sterile.

¹ Bahaeddin Mahallati, Response to question from Dr. Mohammad Sarram in a letter dated, November 12, 1964.

FATWĀ OF HAJI 'ABDUL JALIL B. HAJI ḤASSAN,

*Assistant Mufti, Jahore, Malaysia*¹

GIST OF RULINGS ON BIRTH CONTROL IN THE ISLAMIC SHARĪ'A LAW

Birth control by the use of drugs or contraceptive devices is permitted if it does not bring about permanent infertility.

Sterilization by the use of drugs or of contraceptive devices is unlawful, except in cases where a testimony, to be obtained from two doctors, asserts that another pregnancy will be hazardous or indeed fatal.

¹ Statement from the Office of the Mufti of Jahore, dated November 21, 1965; mimeo issued by the International Planned Parenthood Federation.

FATWĀ OF AL-SYYID YUSOF B. ALI AL-ZAWAWI,

*Mufti of Trengganu, Malaysia*¹

The establishment of groups and societies for the purpose of family planning is an action demanded of Muslims by Islam. Muslims have given this subject a lot of deliberate thought in the past and the present, and books of traditions and of discretionary jurisprudence in all the schools of juristic thought have been a forum of debate and disputation, but all without a conclusive result. At the time of the Prophet's companions, the practice of contraception was called 'azl which means ejaculation outside the vagina. The Prophet was asked about the nature of this practice, and his answer was: "No creature destined to be till the Crack of Doom but shall be," and he repeated it thrice, from which it can be understood that the Prophet did not prohibit as unlawful the practice of preventing childbearing, but counselled the companions not to indulge in it habitually.

Muslim jurists wondered in their consideration of the position of the children whether they belonged by right to the parents or to one of them only, or whether they belonged by right to the parents and to the community collectively. Opinions on this point varied with the variations of times and situations. Islam has always been a unifying influence, urging its adherents towards conformity and unity, whether in creed, economic life and health. The teachings of Islam are not at odds at all with the science of medicine as regards medical principles. This is the unanimous view of all the Muslim jurists.

Even the Holy Qur'ān itself very often sets down with clearcut definition certain matters relating to health and to physical safety, as in the following Qur'anic verse: "Mothers, when divorced, shall give suckle to their children two full years, if the father desires that the suckling be completed; and such maintenance and clothing as is fair for them, shall devolve upon the father. No person shall be charged beyond his means. A mother shall not be pressed unfairly for her child,

¹ Al-Syyid Yusof b. Ali Al-Zawawi, *Ruling for Birth Control*, typewritten, no date.

nor a father for his child" (Sura 2/233); which means that mothers who wish to breastfeed their babies continue normally to do so for nearly two years. The Qur'ān urges mothers to breastfeed their babies, because the mother's milk, as proved by medical science, contains all the nutritive elements necessary for the nourishments and invigoration of the baby. Upon the fathers falls the responsibility for the clothing and the feeding of the family in a decent and convenient manner, and so it is that every person is assigned the responsibility that lies within his capacity, without the risk that the mother or the father, for that matter, may cause any harm or injury to the child. And this ruling gives us to understand that the suckling mother is to take precautions against the likelihood of her getting pregnant again, in which case she will incur harm to the suckling baby. By the same, it is also to be seen that the Qur'ān encourages in no uncertain terms the work towards family planning.

In a report by Asmā' b. Yazīd al-Sakan, she says that she heard the Prophet say: "Do not kill your children secretly. It will be like throwing the rider off his horse, and knock him down." He means to say: Do not kill your children under false pretentions, for the suckling of the child while the mother is pregnant has the same effect as when a horseman is overtaken (by an opponent) and thrown off the horse. The explanation is that the baby-to-be, conceived during lactation, will be weak.

Scholars of jurisprudence are of the opinion, arrived at deductively, that the limitation of childbearing is disfavoured, on the score that children belong collectively to the community as a whole, basing themselves in this conclusion on sayings by Abū Bakr, 'Umar and Ibn Mas'ūd, the gist of which is the limitation of childbearing leading to the reduction of the size of the progeny. Where husbands and wives are concerned, the ruling is that it is disallowed for the man to obstruct the entry of his seminal fluid into the vagina of his wife without her consent, unless there is a compelling reason which is recognized by the standard rules of Islamic Law. Cases where it is allowed to have incomplete coition (*coitus interrptus*) are like that of a couple living in a country engaged in a war in defence of God's cause, where pregnancy, beside difficulties attending the state of war and the necessity to be always on the move may very likely weaken the wife still more and deprive her of the much needed rest and of the necessary health care. Among those who are of this opinion is Shaikh Muwaffaq al-Dīn b. Qudāma al-Ḥanbalī (d. 630 A.H.). But,

on the other hand, Imām al-Nawawī (d. 676 A.H.), records in his book *The Exposition of Ṣaḥīḥ Muslim*, an opinion of his own, summarized as follows: "Coitus interruptus, or the prevention of the seminal fluid from entering the woman's vagina, is rejected on any ground, no matter whether the wife gives her consent or not, because the practice will have the effect of eliminating the future generations, a circumstance described by the Prophet as 'infanticide in disguise', in the sense that it destroys life in the same way as infanticide destroys babies by burying them alive."

In short, I feel inclined to see three aspects to this question:

1) If it is necessary to resort to contraception for reasons of health, in respect of the husband, the wife or the baby-to-be, there are no laws in religion against it at all, as proved by the Qur'anic verse: "A mother shall not be pressed unfairly for her child, nor a father for his child" (Sura 2/233). The implication also is that this is applicable for a certain period of time, limited in duration, and for special cases.

2) The opinions of jurists on the question of pregnancy and childbearing vary as to whether incomplete coition is to be regarded as allowed before animation (which takes place in the fourth month of pregnancy). They are, however, agreed that it is forbidden after the expiry of four months. If the foetus is expelled by voluntary abortion, those who are responsible for the operation, namely, the doctors, the midwives etc., must pay the blood-money to the parents, if the foetus comes out alive; otherwise, if dead, the payment to the parents is to be equal to the price of a slave. But the parents who agreed to the abortion to be carried out pay an indemnity to the religious authorities in their country.

3) It is categorically forbidden to stop childbearing completely or to cause permanent sterility without good reasons approved by religion, even if it is done voluntarily.

All this shows clearly the extent to which Islam attaches importance to the question of family planning. It is, therefore, the duty of bodies and societies established for this purpose to act according to what is allowed by the Islam laws, as expounded in the *fatwā* issued by Shaikh 'Abdul-Fattāḥ al-'Inānī.

The limitation of childbearing is forbidden unanimously if it is not justified by a good medical reason, if it is simply for the preservation of the good looks of the wife or just a dodge, to escape the duty

of procreation. The Muslim should reject this practice. God points out his blessings bestowed upon us, as in the following verse: "God, too, hath given you wives of your own race, and from your wives hath He given you sons and grandsons, and with good things hath he supplied you" (Sura 16/72).

Indeed, birth control, as practised on the grounds of poverty only, without any medical justification, is unacceptable in Islam, as it is the duty laid by Islam on government and society alike to see to it that the population is always on the increase so that the community may become strong, invulnerable and respectable in the eyes of the other nations.

In brief, the ruling of religious laws on this question is to a great extent predicated on the circumstances of both the husband and the wife. Therefore, I urge strongly that the government choose a body of people truly responsibility-minded, faithful, believe in God and free from cynicism, whose duty it should be to see that the programmes of birth control societies are being carried out in good faith and to the advantage of the nation which stands in dire need for worthy generations fit to take over the responsibilities of the future. Such a body, constituted as it is of men and women of integrity, is apt to ensure that birth control societies will work under a strict internal discipline and in harmony with the laws of Islam.

One of the objectives, for instance, of such societies is to tender wise counsel and accurate advice to husbands and wives to enable them to preserve domestic harmony and healthy life for the family. As such, it is truly a valuable undertaking, worthy of being given every possible support and encouragement.

**FATWĀ OF THE PRESIDENT OF THE HIGH COURT
OF APPEAL, YEMEN ARAB REPUBLIC**

Question

May we have, if you please, your considered opinion, within the framework of religion, as to a married woman with a number of children, who, in her ignorance of the modern devices of contraception, has now got pregnant again, and is seeking to be aborted, do our Sharī'a laws sanction the operation for abortion, considering that it is to be performed with her consent and that of her husband?

Please let us have the opinion as soon as possible, sufficiently detailed to enable us to act on it.

Answer

The faultless Sharī'a does not forbid that with the husband's consent, provided it is performed before quickening. The Sharī'a decides that animation takes place as from the beginning of the fifth month of pregnancy.

23rd, Muḥarram, 1388 A.H.

RESOLUTIONS AND RECOMMENDATIONS OF THE HIGH ISLAMIC RESEARCH ACADEMY OF AL-AZHAR, CAIRO

The First Conference, 1964 :

1. To find out and identify the points of weakness in Muslim societies and to work to remedy them.

2. To try and issue from time to time *fatwās* and rulings drawn from the ultimate principles of Islam and its teachings on questions which may arise newly in the life of Muslims for these *fatwās* and rulings to help them go on with their revival guided by their straight religion.

3. The Holy Book and the Prophetic traditions are the two chief sources from which legal rulings are drawn. Rulings by induction, through the exercise of discretion, are the right of every one to formulate them on condition that the requisite standard qualification for the exercise of discretion are satisfied in full, and that the discretion being exercised is in place.

4. The course to follow in serving national interests and facing up to new developments is to select, out of the rulings of the various schools of jurisprudence, such rulings as would deal effectively with such arising situations. If, however, there are no rulings adequate for fulfilling the task, then recourse is to be had to the unanimous juristic discretionary opinion of a particular school of jurisprudence, or, failing that, to the general juristic unanimity of discretionary opinion.

The Second Conference, 1965 :

1. Polygyny is allowed by explicit texts in the Qur'an, subject to certain qualifications stated therein. The exercise of this right is left to the good sense of the husband, without the need for him to have the sanction of the Qāḍī.

2. Divorce is allowed, within the limits set by the Sharī'a law, the divorce is effected without the sanction of the Qāḍī.

3. Islam regards it as desirable to increase the offspring and multiply it on the consideration that multiplicity of offspring is calculated to give strength to the Islamic nation, socially, economically and militarily and enhance its prestige and render it stoutly invulnerable.

4. In case there is a personal need which makes family planning imperative, the two spouses are free to act in line with the requirements of this need, the determination of the urgency of this need being left to the conscience and sense of religion of the individual concerned.

5. It is correct, according to the Shari'a law, to institute ordinances by which people are to be compelled to limit childbearing in any form whatsoever.

6. Abortion for the purpose of limiting childbearing, or the use of means which lead to infertility for this purpose, is forbidden in the Shari'a law to the two spouses or to anybody else. The conference recommends that citizens should be made aware of such cases, and be given assistance in all matters covered by the foregoing decisions in connection with family planning.

WORLD LEADERS' DECLARATION ON POPULATION

The peace of the world is of paramount importance to the community of nations, and our governments are devoting their best efforts to improving the prospects for peace in this and succeeding generations. But another great problem threatens the world — a problem less visible but no less immediate. That is the problem of unplanned population growth.

It took mankind all of recorded time until the middle of the last century to achieve a population of one billion. Yet it took less than a hundred years to add the second billion, and only thirty years to add the third. At today's rate of increase, there will be four billion people by 1975 and nearly seven billion by the year 2000. This unprecedented increase presents us with a situation unique in human affairs and a problem that grows more urgent with each passing day.

The numbers themselves are striking, but their implications are of far greater significance. Too rapid population growth seriously hampers efforts to raise living standards, to further education, to improve health and sanitation, to provide better housing and transportation, to forward cultural and recreational opportunities and even in some countries to assure sufficient food. In short, the human aspiration, common to men everywhere, to live a better life is being frustrated.

As heads of governments actively concerned with the population problem, we share these convictions:

We believe that the population problem must be recognized as a principal element in long-range national planning if governments are to achieve their economic goals and fulfill the aspirations of their people.

We believe that the great majority of parents desire to have the knowledge and the means to plan their families; that the opportunity to decide the number and spacing of children is a basic human right.

We believe that lasting and meaningful peace will depend to a

considerable measure upon how the challenge of population growth is met.

We believe that the objective of family planning is the enrichment of human life, not its restriction; that family planning, by assuring greater opportunity to each person, frees man to attain his individual dignity and reach his full potential.

Recognizing that family planning is in the vital interest of both the nation and the family, we, the undersigned, earnestly hope that leaders around the world will share our views and join with us in this great challenge for the well being and happiness of people everywhere.

NOTE: The preceding statement, issued by Secretary General U Thant of the United Nations on December 10, 1966, has been signed by nineteen world leaders, among them the heads of six governments whose populations are predominantly Muslim:

Shah Mohammad Reza Pahlavi of Iran

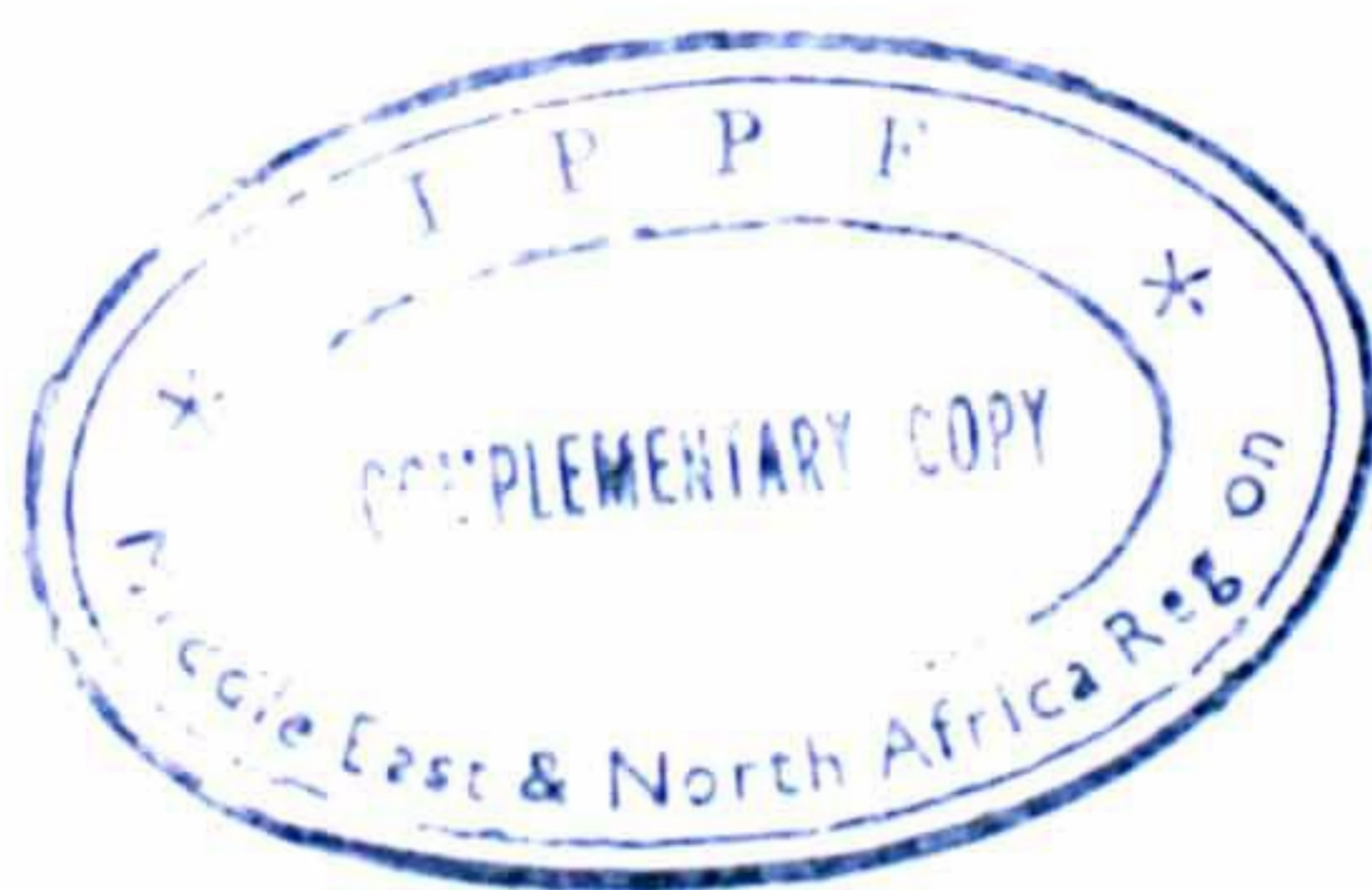
King Hussein of Jordan

Tunku Abdul Rahman, Prime Minister of Malaysia

King Hassan II of Morocco

Habib Bourguiba, President of Tunisia

Gamal Abdel Nasser, President of the United Arab Republic



Source: The Population Council, *Studies in Family Planning*, Number Sixteen, January, 1967.

GLOSSARY OF *HADĪTHS*

A

All creatures are God's charges and he who is dearest to God is he who is most useful to His charges. (1) 152

الخلق كلهم عيال الله . وأحب خلقه إليه أنفعهم لعياله .

Among the signs of the Day of Judgement is that men become less and women become more, so that for each fifty women there will be only one master. (2) 60

إن من أشراط الساعة أن يقل الرجال ويكثر النساء حتى يكون
بخمسين امرأة القيم الواحد .

Any woman who asks her husband for divorce without real grievance shall be denied the delight of paradise. (1) 144

أيما امرأة سألت زوجها الطلاق من غير بأس فحرام عليها
راحة الجنة .

The Apostle of God, in the case of a stillborn foetus of a woman from Banī Liḥyān, awarded her compensation equal to the blood-money payable for a slave or a slave-girl. Later, the (culprit) woman who was adjudged to pay the blood-money died, and the Apostle of God adjudicated that her inheritance should go to the children and husband, and that the blood-money (due for the stillborn foetus) was a liability of her descendants. (2) 421

قضى رسول الله صلى الله عليه وسلم في جنين امرأة من بني
ليحان سقط ميتاً بغرة عبد أو أمة . ثم إن المرأة التي قضى عليها

Note : The numbers in brackets indicate the volume, and the other numbers indicate the page.

بالغرة توفيت ، ففضى رسول الله صلى الله عليه وسلم بأن ميراثها
لبنيها وزوجها ، وأن العقل على عقبها .

Are your parents living? ... Therein lies the true path of dutifulness. (1) 74

أحي والداك ؟ ... ففيها فجاهد .

Attend to your children, and bring them up to be of good manners. (2) 187

ألزموا أولادكم ، وأحسنوا أدابهم .

B

Be fair in dealing with your children just as you would like them to be fair in dealing with you. (2) 85

أعدلوا بين أولادكم كما تحبون أن يعدلوا بينكم .

Be good to women. For they are created out of a crooked rib, of which the most crooked part is its top; and if you try to unbend it, you will break it. (1) 131

استوصوا بالنساء خيراً ، فإنهن خلقن من ضلع أعوج . وإن أعوج شيء في الضلع أعلاه ، فإن ذهب تقيمه كسرته .

A believer who is strong is better, and more loved by God, than a believer who is weak. (1) 179 (2) 145, 187

المؤمن القوي خير وأحب إلى الله من المؤمن الضعيف .

Believers are one to another like a compact structure, with the parts held firmly one to another. (1) 274

المؤمن للمؤمن كالبنيان المرصوص يشد بعضه بعضاً .

The best of people are the most useful to people (1) 152

خير الناس أنفعهم للناس .

The best of women are Mariam daughter of 'Imrān, Āsia daughter of Muzāḥim, Khadija daughter of Khuwailid and Fāṭima daughter of Muḥammad. (1) 72

خير نساء العالمين مريم بنت عمران ، وأسية بنت مزاحم وخديجة بنت خويلد وفاطمة بنت محمد .

The best of you are those who are best to their wives. (1) 130

خيركم خياركم لنسائهم .

The best of you is the best to his wife, and I am better than you to my wife. (1) 115, 150, 189, 307

خيركم خيركم لأهله وأنا خيركم لأهلي .

Beware of getting married to a brainless woman; to live in company with her is a trial, and her children go to waste. (2) 62

إياكم وتزوج الحمقاء ، فان صحبتها بلاء وولدها ضياع .

Beware of the verdant midden. Someone said: "O Apostle of God, what is this verdant midden?" He said: "The beautiful woman in a bad breeding spot." (2) 62

إياكم وخضراء الدمن . قيل يا رسول الله ، وما خضراء الدمن ؟ قال : المرأة الحسناء في منبت سوء .

By God, he cannot be a believer (three times), who does not let his neighbour be safe from his evil deeds. (1) 152

والله لا يؤمن (ثلاث مرات) الذي لا يأمن جاره بوائقه .

By Him who has my soul in His hand, Satan never met you going on along a path but followed a path other than yours. (1) 73

والذي نفسي بيده . ما لقيك الشيطان قط سالكاً فجاً إلا سلك فجاً غير فجك .

A black woman, if prolific, is better than a beautiful woman if sterile. (1) 269 (2) 143, 355

سوداء ولود خير من حسناء عقيم .

C

The child belongs to the marital bed. (1) 36, 311

الولد للفراش .

Choose where you deposit your sperm, for the line of descent is conductive. (2) 144

تخيروا لنطفكم فإن العرق دماس .

Coitus interruptus is not to be practised with a free woman without her consent. (2) 10, 92

لا يعزل عن الحرة إلا بإذنها .

D

The Day of Judgement will not be until the child becomes a nuisance. (1) 234

لا تقوم الساعة حتى يكون الولد غيظاً .

The dead are made to suffer through the lamentations of the living. (1) 75

إن الميت ليعذب ببكاء الحي .

A dinar you spend in the way of God, and a dinar you spend to free a slave, and a dinar you give as an alms to a poor man, and a dinar you spend on your family — the most worthy of God's reward among them is the one you spend on your family. (1) 72, 132

دينار أعطيته مسكيناً ، ودينار أعطيته في رقة ودينار أعطيته في سبيل الله ، ودينار أنفقته على أهلِكَ هو أعظم أجراً .

Dissimulation is polytheism in disguise. (2) 53

الرياء هو الشرك الخفي .

Do not interrupt the urination of the boy (let him go on urinating). (2) 84

لا تزروه بالصبي .

Do not kill your children under false pretences, for the suckling of the child while the mother is pregnant has the same effect as when a horse-man is overtaken (by an opponent) and thrown off the horse. (1) 121
(2) 14, 44, 145, 171, 195, 198, 523

لا تقتلوا أولادكم سرا . فإن الغيل يدرك الفارس فيدعثره عن فرسه .

Do what you can do, for everyone has his way made easy for him to do what he has been created for. (1) 260

اعملوا ، فكل ميسر لما خلق له .

A drinker of wine should not be married and his marriage suit should be rejected. (2) 63

شارب الخمر لا يزوج إذا خطب .

E

Every child when born is the child of nature, and it is his parents who make him a Jew or a Christian or a Magian. (1) 92, 317
(2) 187

كل مولود يولد على الفطرة وأبواه يهودانه أو ينصرانه أو يمجسانه .

Every good turn done is a charity. (1) 152

كل معروف صدقة .

Every one of you is a shepherd, and every one of you is responsible for his flock. The husband is in charge of his household and responsible for those in his charge and the wife is in charge of her husband's household and responsible for those in her charge. (1) 93, 131, 145, 307
(2) 114, 121

كلكم راع وكلكم مشول عن رعيته . الرجل راع في أهله ومشول عن رعيته . والمرأة راعية في بيت زوجها ومشولة عن رعيته .

Everything a man diverts his time with is vain and worthless save the taming of his horse or the shooting of arrows or joining his family in play. (1) 73

كل شيء يلهو به الرجل باطل إلا تأديبه فرسه . ورميه عرس قدسه . وملاعبته أهله .

The evil-doers of my nation are the bachelors in it. (2) 61

شرار أمتي عزابها .

F

Fear God and deal equitably with your children. (1) 151, 313

اتقوا الله واعدلوا في أولادكم .

G

The germ of every one of you is concentrated in his mother's womb in the form of a drop for forty days; then he becomes a clot of blood for the (2) 103, 321, 340

same period; then he becomes a piece of flesh for the same period; then the angel is sent to him to ensoul him.

إن أحدكم يجمع خلقه في بطن أمه أربعين يوماً نطفة ، ثم يكون علقه مثل ذلك ، ثم يكون مضغته مثل ذلك ، ثم يرسل إليه الملك فينفخ فيه الروح .

Get married and do not divorce. For when a family breaks asunder, the very throne of God is jolted. But if there is no alternative to divorce God Almighty is Gracious. (1) 77

تزوجوا ولا تطلقوا ، فإن الطلاق يهتز منه عرش الرحمن . وإذا لم يكن من الطلاق بد ، فإن الله واسع الفضل .

Give women the say in the disposal of their persons: the unmarried woman (previously married) can express her wish explicitly; and the virgin's consent is by her silence. (1) 70

أمروا النساء في أنفسهن ، فإن الثيب تعرب عن نفسها . وإذن البكر صمتها .

Go about your business; I have accepted your pledge (of allegiance). (1) 83

انطلقن فقد بايعتكن .

God enjoins you that you should be good to your mother, and then to those who are next and next. (1) 53

إن الله يوصيكم بأمهاتكم ، ثم يوصيكم بالأقرب فالأقرب .

God has taught me (good manners) and has taught me well. (1) 126

أدبني ربي فأحسن تأديبي .

God sends an angel with four things already pre-ordained (for the child to be born): its sustenance, its term of life, and whether to be fortunate or unfortunate. (1) 119

يبعث الله ملكاً فيؤمر له بأربع : برزقه وأجله وشقي أو سعيد .

God will ask every one of those entrusted with the task of protecting others, whether he has (1) 107 (2) 121

protected or neglected them; even he will ask him in this respect about his own family.

إن الله سائل كل راع عما استرعاه : حفظه أم ضيعه ، حتى يسأل الرجل عن أهل بيته .

God's wrath for anything cannot be greater than when it is for women and children. (2) 78

إن الله عز وجل ليس يغضب لشيء كغضبه للنساء والصبيان .

The good deed most deserving of reward is to maintain ties of womb-relationship, and the evil deed most deserving of punishment is aggression and severance of the ties of womb-relationship. (1) 54

أسرع الخير ثوابا إلى البر صلة الرحم ، وأسرع الشر عقوبة البغي وقطيعة الرحم .

H

Have you had a look at her? ... Have a look at her; it is more worthwhile that you should be known to each other. (2) 165

أنظرت إليها؟ ... فانظر إليها . فانه أجدر أن يؤدم بينكما .

He is not truly kindly to his womb-relationships who does kindness only in return; rather he is the one who joins ties of womb-relationship (on one's own initiative) if ever they come apart. (1) 152

ليس الواصل بالمكافئ . ولكن الواصل من إذا قطعت رحمه وصلها .

He who does not marry for fear of having a large family is none of us. (2) 141

من ترك النكاح مخافة العيال فليس منا .

He who gives his daughter in marriage to a drinker of wine, has severed ties of womb-relationship with her. (2) 63

من زوج كريمة من شارب الخمر فقد قطع رحمها .

He who gives joy to his daughter, is like one who sets free a slave from among the children of Ismā'il, and he who gives assurance to his son, (2) 83

is like one who (in his devoutness) weeps for fear of God.

من فرح ابنته فكأنما أعتق رقبة من ولد اسماعيل . ومن أقر عين ابنه فكأنما بكى من خشية الله .

He who has a boy for child, must behave lovingly towards him. (2) 83

من كان عنده صبي فليتصاب له .

He who has a female child and does not bury her alive nor does he oppress her or give preference to his son over her, will be admitted to paradise by God. (1) 151

من كانت له أنثى فلم يئدها ولم يهنها ولم يوثر ولده عليها أدخله الله الجنة .

He who kisses his child (in love) will have one good deed credited to him by God; and he who gives him joy, will be given joy by God on the Day of Judgement. (2) 84

من قبل ولده كتب الله له حسنة . ومن فرحه فرحه الله يوم القيامة .

He who renounces marriage for fear of exigence has a poor opinion of God. (2) 147, 352

من ترك التزويج مخافة العيلة فقد أساء ظنه بالله .

He who is unfortunate in having some female children, but has dealt with them kindly, will have them as a screen to shield him from the fire of Hell. (1) 61

من ابتلي من البنات بشيء فأحسن إليهن . كن له ستراً من النار .

He who watches over my wives is the one of devotion and goodness. (1) 72

الذي يحافظ على أزواجي الصادق البار .

He who wishes to enter Paradise through the best door must first please his father and mother. (1) 53

إن من أراد الجنة من أحسن أبوابها . فليرض أباه وأمه .

The heart of a believer is (like an object) between two of God's fingers and he turns them about as he wishes!

قلب المؤمن بين إصبعين من أصابع الرحمن يقلبهما كيف يشاء .

Hobble her and then trust (in God).

اعقلها وتوكل .

I

I am laughing at these women who were here with me; no sooner did they hear your voice than they hastened to veil themselves.

ضحكت من هؤلاء اللاتي كن عندي ، فلما سمعن صوتك بادرن الى الحجاب .

I am (only) sent to consummate the noble fruits of character.

(إنما) بعثت لأتمم مكارم الأخلاق .

I am only sent to you with the mission of the tolerant Ḥanifite (Orthodox) religion.

إنما بعثت بالحنيفية السمحاء .

I am sent to the whole of mankind, and the prophets have ended up with me.

وأرسلت إلى الخلق كافة . وختم بي النبيون .

I command women to your care; they are only as captives with you.

أوصيكم بالنساء . فإنهن عندكم عوان .

I offered to prohibit the suckling of a baby during the mother's new pregnancy, and I considered the Greeks and the Persians and found that they used to suckle their babies during the mother's pregnancy, without this doing any harm to their children. Then they asked him about *'azl* (coitus interruptus) and he said that is infanticide in disguise.

لقد هممت أن أنهي عن الغبلة . فنظرت في الروم وفارس فإذا هم يغيلون أولادهم فلا يضر أولادهم ذلك شيئاً . ثم سألوه

عن العزل ، فقال رسول الله صلى الله عليه وسلم ذلك الواد الخفي .

I seek refuge in God from the most gruelling trial (which is to have plenty of children without the means to support them). (2) 12, 144

أعوذ بالله من جهد البلاء ... قلة المال وكثرة العيال .

I verily, do that, with this woman, and then we have a bath. (2) 139

إني لأفعل ذلك أنا وهذه ، ثم نغتسل .

I and a woman with brown cheeks are on the Day of Judgement as these two first fingers of mine. (1) 180

أنا وامرأة سفعاء الخدين كهاتين يوم القيامة .

If any of you promises his child something, he should fulfil his promise. (2) 82

إذا وعد أحدكم صبيه فلينجز .

If any of you proposes to marry a woman and can see for himself what induces him to marry her, then let him do so. (1) 142

إذا خطب أحدكم المرأة ، فإن استطاع أن ينظر الى ما يدعوه الى نكاحها فليفعل .

If the semen out of which the child is formed were to be spilled on to a rock, God would produce a child, or a child be produced out of it. (2) 170, 378, 380-81

لو أن الماء الذي يكون منه الولد أهرقته على صخرة لأخرج الله منها أو نخرج منها ولد .

If someone with whose godliness and character you are satisfied comes to you as suitor, then give him your daughter in marriage; if you do not do so, there will be trouble and great corruption. (1) 90

إذا جاءكم من ترضون دينه وخلقه فأنكحوه . إلا تفعلوا تكن فتنة وفساد كبير .

It is not lawful for a woman who believes in God to mourn more than three days the death of any person other than her husband. (1) 75

لا يخل لامرأة تؤمن بالله أن تحد فوق ثلاثة أيام إلا على زوجها .

It is a sin great enough for man to leave his dependants uncared for. (1) 121, 133

كفى بالمرء إثماً أن يضيع من يعول .

J

The jews lie

(2) 169

كذبت اليهود .

The Jews lie. Verily, if God wished to create him (a human being) nothing would stop him from that. (2) 125, 169, 327

كذبت اليهود . إن الله لو أراد أن يخلقه لم يمنعه منه شيء .

The Jews lie. If God wished to create him (a human being), you would not be able to turn him away (from his purpose). (2) 93, 104, 169, 515

كذبت اليهود . إن الله لو أراد أن يخلقه ما استطعت أن تصرفه .

The Jews lie. If God wishes to create anything, nobody can turn him away (from his purpose). (2) 266

كذبت اليهود . إن الله لو أراد أن يخلق شيئاً لما استطاع أحد أن يصرفه .

Just as anybody of you would normally do, he picks up this, and puts down that and sees to the needs of his family. (1) 72

كما يصنع أحدكم . يشيل هذا ويخط هذا . ويخدم في مهنة أهله .

K

Kinship is attached to the divine throne, and says: He who does kindness to me will have kindness done to him by God; and he who forsakes me will be forsaken by God. (1) 54

الرحم معلقة بالعرش تقول : من وصلني وصله الله ، ومن قطعني قطعه الله .

L

- The learned are of the damned, except those of them who act upon their knowledge, and those who act upon their knowledge are of the damned except those of them who are sincere. (1) 277
العالمون هلكى إلا العاملون ، والعاملون هلكى إلا المخلصون .
- The learned are the successors of the prophets. (2) 494
العلماء ورثة الأنبياء .
- To leave your heirs rich is better than leaving them dependant upon people's charity. (1) 56, 285
(2) 90, 121
لأن تذر ورثتك أغنياً خير من أن تذرهم عالة يتكفون الناس .
- Lend your aid to your children to do good. (1) 151
أعينوا أولادكم على البر .
- Look out where you deposit your child: the line of descent is conductive. (The general meaning is: choose your wife with care, because natural characteristics can be transmitted to the children by heredity.) (2) 62
انظر في أي شيء تصنع ولدك ، فإن العرق دساس .
- Love your children and have mercy upon them. (2) 81, 82, 84
And if you promise them anything fulfil your promise to them. For they consider you as the only ones to provide for them.
أحبوا الصبيان وارحموهم ، وإذا وعدتموهم ففوا لهم . فإنهم لا يرون إلا أنكم ترزقونهم .

M

- Make things easy, and do not make them difficult. (1) 258
يسروا ولا تعسروا .
- A man asked the Prophet: "O Messenger of God, who is most deserving of friendly care from me? He replied: "Your mother". He asked: "Who next?" And he replied: "Your mother." He asked, "Who next?" And he replied: "Your father."

In another version he replied: "Your mother, then your mother, then your mother, then your father, then your nearest relatives in order."

أمك ... ثم أمك ... [ثم] أمك ... ثم أبوك
أمك ... ثم أمك ... ثم أمك ... ثم أبوك ثم أدناك أدناك .

Man is God's structure; cursed be he who pulls it down. (2) 439

الإنسان بنية الله . ملعون من هدم بنيانه .

Marriage is my way; he who deviates from my way is none of me. (2) 7, 61, 110

النكاح سنتي ، فمن رغب عن سنتي فليس مني .

Marry, for I shall make a display of your multitude on the Day of Judgement. (2) 313, 372

تزوجوا فإني مكاثر بكم الأمم يوم القيامة .

Marry the affectionate and prolific woman. (1) 130, 233
(2) 143, 164, 212, 352, 355, 383-84, 514

تزوجوا الودود الولود .

Marry among yourselves and multiply, for I shall make a display of you before other nations on the Day of Judgement (1) 108, 118, 130, 180, 233, 269
(2) 59, 99, 141, 187, 231, 314, 383-84

تناكحوا تكاثروا فإني مباه بكم الأمم يوم القيامة .

Marry outside your kin and kith; otherwise you will beget puny children; and avoid marrying a brainless woman, for her children are waste. (2) 144

اغتربوا لا تضوا . واجتنبوا الحمقاء فان ولدها ضياع .

May God have mercy upon a servant who lends aid to his child to enable him to do good to him and that is by being charitable to him and by reconciling and winning him over and instructing him and educating him. (2) 78, 83

رحم الله عبداً أعان ولده على بره بالاحسان إليه والتألف له وتعليمه وتأديبه .

May God have mercy upon him who lends aid (2) 86
to his child to do good to him... and accepts what
he (the child) can offer in his ease and forgives
him if in his financial difficulty he cannot offer
anything, and does not press him hard and does
not treat him inconsiderately.

رحم الله من أعان ولده على بره... يقبل ميسوره ، ويتجاوز
عن معسوره ، ولا يرهقه ، ولا يخرق به .

The merciful will have mercy from God. Have (1) 152
mercy on the people of this world, and you will
have mercy from Him who is in heaven.

الراحمون يرحمهم الرحمن ، ارحموا من في الأرض يرحمكم من في
السماء .

(Mind) your womd-relations, (mind) your womb- (1) 54
relations.

أرحامكم ، أرحامكم .

The most gruelling trial is to have plenty of (1) 234
children with no adequate means. (2) 12, 99, 144,284

جهد البلاء كثرة العيال مع قلة الشيء .

Multiply your offspring, for in the day to come (2) 407
I shall be boastful of your multiplicity.

اكثروا من الولد أكاثر بكم غداً .

The Muslim is one from whose hand and tongue (1) 274
the Muslims are safe.

المسلم من سلم المسلمون من يده ولسانه .

N

“Nations will soon gather together to fall upon (2) 6-7, 60, 99-100,
you as people would fall upon a trencher to eat”,
122, 145, 195
the Prophet said. Someone asked if that would
be because of their small numbers at that time
and he replied: “No, you will be numerous at
that time; but you will be scum and rubbish like
that carried down by a torrent, and God will
take fear of you from the breasts of your enemy
and cast enervation into your hearts.” He was

asked the meaning of enervation and replied:
"Love of the world and dislike of death."

يوشك [أو توشك] أن تتداعى عليكم الأمم كما تتداعى الأكلة إلى قصعتها . قالوا : أو من قلة نحن يومئذ يا رسول الله ؟ قال : لا . إنكم يومئذ كثير ، ولكنكم كثرة كغناء السيل ، ولينزعن من قلوب أعدائكم المهابة منكم ، وليقذفن في قلوبكم الوهن . قالوا : وما الوهن يا رسول الله ؟ قال : حب الدنيا وكراهية الموت .

Nay, the one on the spot sees what the absent one cannot see. (1) 252

بل الشاهد يرى ما لا يرى الغائب .

No harm, and no harassment. (1) 211

(2) 269

لا ضرر ولا ضرار .

No institution in Islam finds more favour with God than marriage. (1) 175

ما بني في الإسلام بناء أحب عند الله من الزواج .

No obedience is due to any creature in disobedience to the Creator. (1) 311

لا طاعة لمخلوق في معصية الخالق .

No severer of womb-relationship ties will enter paradise. (1) 54

لا يدخل الجنة قاطع رحم .

Not out of every semen a child comes into being; and if God wished to create something nothing would prevent Him from doing it. (2) 381

ما من كل الماء يكون الولد . وإذا أراد الله خلق شيء لم يمنعه شيء .

O

O God, be hard on those who are in their rule hard upon my community. (1) 258

اللهم من ولي من أمي شيئاً فشق عليهم فاشقق عليه .

O God, this is my share (of responsibility) for what I am in possession of; so pardon me for what I am not responsible for in what you are in possession of and which I am not in possession of. (1) 315
 اللهم هذا قسمي في ما أملك ، فاغفر لي ما تملك ولا أملك .

O youngmen, those of you who can support a wife should marry, for marriage keeps you from looking at strange women and preserves you from immorality; but those who cannot should take to fasting, for it is a means of suppressing sexual desires. (1) 90, 106, 117
 (2) 7, 121, 162, 228, 372, 514

يا معشر الشباب ، من استطاع منكم الباءة فليتزوج . فإنه أغض للبصر ، وأحصن للفرج . ومن لم يستطع . فعليه بالصوم ، فإنه له وجاء .

Oh Khinas! [Come along]. (1) 84
 هيه يا خناس .

Once seventy women complained to the Prophet of having been beaten by their husbands. The Prophet was indignant and said that he did not like that at all. (1) 73

شكا مرة سبعون امرأة إلى الرسول صلى الله عليه وسلم بضرب رجالهن لهن ، فأغضبه ذلك وقال إنه لا يحب ذلك أبداً .

One is not a believer until one likes for one's neighbour what one likes for one's self. (1) 93

لا يكون المؤمن حتى يحب لأخيه ما يحب لنفسه .

One of the kindest acts is for a man to be on friendly terms with his father's friends. (1) 54

أبر البر أن يصل المرء ود أبيه .

Only the evil-doers among you are to be beaten. (1) 73

ولا يضرب إلا أشراركم .

P

Paradise lies at mothers' feet. (1) 53, 173

الجنة تحت أقدام الأمهات .

- Practise coitus interruptus with her if you wish. (1) 269
 What is pre-ordained for her will certainly
 befall her. (2) 9, 25, 105, 125,
 139-140, 179,
 190,318,376-377
 اعزل عنها إن شئت ، فإنه سيأتيها ما قدر لها .
- Poverty is next to disbelief. (1) 271
 كاد الفقر أن يكون كفراً .
- The Prophet, on arriving from a journey, used (2) 82
 sometimes to be met by boys. He would stop
 for them and ask for them to be lifted up. Some
 would be lifted in his hands and some others onto
 his back. He would also ask his companions to
 carry some of them.
 كان صلى الله عليه وسلم إذا قدم من سفر تلقاه الصبيان
 فيقف لهم ، ثم يأمر أصحابه فيرفعون إليه ، فيرفع منهم بين
 يديه ومن خلفه ، ويأمر أصحابه أن يحملوا بعضهم .
- The Prophet did not countenance a request of (2) 359, 424
 sexual abstinence on the part of 'Uthmān b.
 Maz'ūn. Had he (the Prophet) done so, we would
 have castrated ourselves.
 رد رسول الله صلى الله عليه وسلم على عثمان بن مظعون التبتل
 ولو أذن له لاختصينا .
- The Prophet never lifted a hand against a (1) 73
 woman or a servant or any other living thing
 unless it is fighting for God's cause.
 ما ضرب رسول الله صلى الله عليه وسلم بيده امرأة قط ولا
 خادماً . ولا ضرب شيئاً قط إلا أن يجاهد في سبيل الله .
- The Prophet used to greet the young and the old. (2) 82
 كان صلى الله عليه وسلم يسلم على الصغير والكبير .
- The Prophet used to mend his shoes, sew his (2) 72
 garment and make himself useful about the
 house just like the rest of you.
 كان صلى الله عليه وسلم يخصف نعله ، ويخيط ثوبه ، ويعمل
 في بيته كما يعمل أحدكم في بيته .

The Prophet used to see to the needs of his family, to carve meat for them and sweep the house and to lend a hand to the servant in his domestic work. (1) 72

كان صلى الله عليه وسلم يخدم في مهنة أهله ويقطع لهم اللحم ويقم البيت ويعين الخادم في خدمته .

R

This religion is firm, therefore go into it gently... (2) 118
إن هذا الدين متين ، فأوغلوا فيه برفق ...

The Religion of Islam is free from narrow restrictions; anybody who tries to be very strict in matters of religion must have his own purpose defeated. Therefore be on the right path, as near the truth as possible, and hopeful in your morning course, your evening course and during your night journey. (2) 118

إن الدين يسر ، ولن يشاء الدين أحد إلا غلبه ، فسددوا وقاربوا ، وأبشروا بالعدوة والروحة وشيء من الدلجة .

The right due to the child from his father is for the father to teach him writing, swimming, archery and to provide him with nothing but what is wholesome. (1) 107 (2) 90, 121

حق الولد على الوالد أن يعلمه الكتابة والسباحة والرماية . وأن لا يرزقه إلا طيباً .

S

Shall I tell you what the best thing for a man to treasure up? A good woman who would be pleasing to him to look at, would stand up for him in his absence, and would obey him if he commands (her). (1) 141

ألا أخبركم بخير ما يكنز المرء؟ المرأة الصالحة التي إذا نظر إليها سرته ، وإذا غاب عنها حفظته ، وإذا أمرها أطاعته .

She (the good woman) who would be pleasing to him to look at, would obey him if he commands, and would not forbid him herself or her property in a way disagreeable to him. (1) 130

التي تسره إذا نظر ، وتطيعه إذا أمر ، ولا تخالفه في نفسها ولا مالها بما يكره .

Surely, you will do it (three times). No soul (2) 92, 189, 377, 381, 515, 522
fated to come into being till the Day of Judgment but comes into (actual) being.

وإنكم لتفعلون (قالها ثلاثاً) . ما من نسمة كائنة إلى يوم القيامة إلا وهي كائنة .

T

Teach yourselves and your people to do good (2) 187
and educate them.

علموا أنفسكم وأهلكم الخير وأدبوهم .

That is infanticide (burial of a child alive) in (2) 53, 126, 142,
disguise. 172, 353

ذلك الواد الخفي .

That you should provide food and greet both (1) 139
those you know and those you do not know.

أن تطعم الطعام وتقرأ السلام على من عرفت ومن لم تعرف .

There are five things which I will not give up (2) 82
until death... and the greeting of children, which is to become a custom after I am gone.

خمس لست بتاركهن حتى الممات ... وتسليمي على الصبيان ليكون سنة من بعدي .

There are those among you who would beat a (1) 74
woman as they would beat a slave, and then embrace her unashamed.

يظل أحدكم يضرب امرأته ضرب العبد ، ثم يظل يعانقها ولا يستحي .

There is no harm if you do not do so. This is (2) 54, 170
only fate.

لا عليكم ألا تفعلوا فإنما هو القدر .

There is no reason why you should not do it. (2) 93, 189
God has written down (preordained) everything to be created till the Day of Judgment.

ما عليكم أن لا تفعلوا ، فإن الله عز وجل قد كتب ما هو خالق إلى يوم القيامة .

There is no reason why you should not do it. God has written down (preordained) everything to be created till the Day of Judgment. (2) 93, 189

ما عليكم أن لا تفعلوا ، فإن الله عز وجل قد كتب ما هو خالق إلى يوم القيامة .

There is no reason why you should not do so. No soul fated to come into being till the Day of Judgment but comes into (actual) being. (1) 119 (2) 168-69, 189, 377

لا عليكم أن لا تفعلوا ؛ ما كتب الله خلق نسمة هي كائنة إلى يوم القيامة إلا ستكون .

There is none among us who castrates or is castrated. (2) 403

ليس منا من خصى أو اختصى .

There is none among us who had no mercy on our young and no reverence for our elder. (2) 84

ليس منا من لم يرحم صغيرنا ويوقر كبيرنا .

There will always remain a group of people in my nation, who will always uphold the truth untroubled by those who dissent from them, until God's will is done. (1) 263

لا تزال طائفة من أمتي على الحق لا يضرهم من خالفهم حتى يأتي أمر الله .

There will be times when the child becomes an unwelcome burden to the family. (2) 329

لا تقوم الساعة حتى يكون الولد غيظا !

Three things there are, whose seriousness is grave: marriage, divorce and return of the wife (to the husband after having been divorced). (1) 78

ثلاث جدهن جد ، وهزلهن حد : النكاح والطلاق والرجعة .

To leave your inheritors rich is better than leave them poor. (1) 285

إن تدع ورثتك أغنياء خير من أن تدعهم فقراء .

To set a rival to God, and he created you; to kill your child for fear of sharing your food with you; to commit adultery with the spouse of your neighbour. (2) 374

أن تجعل لله ندا وهو خالقك . وأن تقتل ولدك مخافة أن يطعم معك . وأن تزاني خلية جارك .

Treat your children with consideration, and bring them to be well-mannered. (2) 81

أكرموا أولادكم . وأحسنوا آدابكم .

Two women of Hudhail fought together, and one of them hurled a stone at the other and killed her and killed what was inside her. The case was referred to the Apostle of God, may peace be upon him. The Apostle adjudicated that the blood-money for the foetus was that of a slave or that of a new born female child; and he adjudicated that the blood-money for the woman was to be exacted from her male kin, and that she was to be inherited by her children and those who go with them; whereupon Hamal b. al-Nābigha al-Hudhalī expostulated saying: O Apostle of God, how is it that I should be penalized for someone who never drank, ate, uttered a word or cried, such a one should go unavenged. The Apostle of God said (in reply): He is only one of the fellowship of seers, because of his rhymed speech which he spoke. (2) 369-70

اقتلت امرأتان من هذيل . فرمت إحداهما الأخرى بحجر فقتلتها وما في بطنها . فاخصموا إلى رسول الله صلى الله عليه وسلم . فقضى رسول الله صلى الله عليه وسلم أن دية جنينها غرة عبد أو وليدة . وقضى بدية المرأة على عاقلتها ، وورثها ولدها ومن معهم . فقال حمل بن النابغة الهذلي : يا رسول الله . كيف أغرم من لا شرب ولا أكل ولا نطق . ولا استهل . فقتل ذلك لا بطل . فقال رسول الله صلى الله عليه وسلم : إنما هذا من إخوان الكهان من أجل سجع . الذي سجع .

V

Venerate your elders and have mercy on your young. (2) 84

وقروا كباركم وارحموا صغاركم .

- Verily God has taken away from you pagan allegiance and your boastfulness of ancestors and forefathers. (1) 51
 إن الله أذهب عنكم عبية الجاهلية وتفاخر الآباء .
- Verily God is the withholder of His bounty, the Bounteous One, the Provider and the Fixer of prices. I trust that when I meet God no one will ask me to account for any injustice done by me to him personally, either by way of bloodshed or misappropriation. (1) 254
 إن الله هو القابض الباسط الرازق المسعر . إني لأرجو أن ألقى الله عز وجل ولا يطالبني أحد بمظلمة ظلمتها إياه في دم ولا مال .
- (Verily) God sends to this nation at the turn of each century some one who will regenerate its religion. (1) 204, 295
 (إنما) يبعث الله لهذه الأمة على رأس كل مئة سنة من يجدد لها دينها .
- (Verily) the most hateful of lawful things to God is divorce. (1) 78, 144, 189
 (2) 290
 (إن) أبغض الحلال إلى الله الطلاق .
- Verily, there will come a time in this world when one is congratulated for one's light burden (of children) as one is congratulated today for being the father of ten. (2) 144, 230-31
 ليأتين على الناس زمان يغبط فيه الرجل بخفة الحاذ كما يغبط اليوم أبو العشرة .
- W
- Water, pasture and game are communally owned. (1) 55
 إن الماء والمرعى والصيد ملك للجميع .
- We used to go on raids with the Prophet and had no women. We asked the Prophet: Should we not castrate ourselves? He forbade us to do so. (2) 424
 كنا نغزو مع رسول الله صلى الله عليه وسلم وليس لنا شيء . فقلنا : ألا نستخصي ؟ فنهانا عن ذلك .

We used to practise coitus interruptus during the time of the Prophet. The Prophet came to know about it but did not forbid us. If this were something to be prohibited, the Qur'ān would have prohibited us (doing it). (2) 51, 92, 104, 125, 139, 169, 189, 194, 376

كنا نعزل على عهد رسول الله صلى الله عليه وسلم ، فبلغه ذلك فلم ينهنا . ولو كان شيئاً ينهى عنه لنهانا عنه القرآن .

We used to practise coitus interruptus during the time of the Prophet while the Qur'ān was being revealed. The Prophet, adds Muslim, came to know of this but did not forbid us (doing it). (1) 121, 269 (2) 25, 51, 125, 139, 169, 189, 266, 376, 515

كنا نعزل على عهد رسول الله صلى الله عليه وسلم والقرآن ينزل . وزاد مسلم : « فبلغ ذلك رسول الله فلم ينهنا » .

Why do you do that? If it were harmful, it would have done harm to the Persians and the Byzantines. (2) 92, 190, 281, 356, 378

لم تفعل ذلك لو كان ضاراً لضر فارس والروم .

Why is it that some people say so, and so; I, by God, am more God-fearing and devout than you; nevertheless I fast and break my fast, and I pray and marry; he who deviates from my way, is none of me. (2) 372

ما بال أقوام قالوا كذا وكذا . أما والله إني لأخشاكم لله ، وأتقاكم له . لكني أصوم وأفطر وأصلي وأرقد . وأتزوج النساء . فمن رغب عن سنتي فليس مني .

Why should any one of you do that! There is no single soul that comes into being but God creates it. (2) 189

ولم يفعل ذلك أحدكم ؟ فإنه ليست نفس مخلوقة إلا والله خالقها .

Will you not strike a balance between them. (2) 85

فهلأ ساويت بينهما ؟

Woe will be the lot of the Children of the End of Time to betide them at the hands of their parents. (2) 81

ويل لأولاد آخر الزمان من آباؤهم .

- Woman is created out of a crooked rib. If you try earnestly to straighten it up you will break it. Therefore deal with her indulgently and you will manage to live with her. (1) 71
 إنما المرأة خلقت من ضلع عوجاء ، فان تحرص على إقامتها تكسرهما . فدارها تعش بها .
- A woman is taken in marriage for four things: her wealth, her family, her beauty and her religiousness; so get hold of the religious woman, and you will prosper. (1) 90.
 تنكح المرأة لأربع : لمالها ولحسبها ولجمالها ولدينها . فاظفر بذات الدين تربت يداك .
- Women must not be divorced save for a scandal. (1) 144
 لا تطلق النساء إلا من ريبة .
- The world is an object of enjoyment, and the best of life's enjoyment is a good wife. (2) 372
 الدنيا متاع وخير متاع الدنيا المرأة الصالحة .
- Y
- You and what you possess belong to your father's. (1) 311
 أنت ومالك لأبيك .
- You are more knowledgeable about your world matters. (1) 213
 أنتم أعرف بأمور دنياكم .
- You have a duty to your child, as you have a duty towards your father. (1) 285
 إن لولدك عليك حقاً ، كما أن لوالدك عليك حقاً .
- Your father.... Your father.... Then your mother. (1) 53
 [The Prophet said this in reply to a youth who had come to him and enquired as to whom he should obey first in the family.]
 أبوك ... أبوك ... ثم أمك .
- Your state, after I am gone, is of concern to me; for only the truly forbearing people will be forbearing towards you. (1) 72
 إن أمركن لما يهمني بعدي ، ولن يصبر عليكن إلا الصابرون .

remain bachelors, the latter group are not required to marry and are not to be considered sinners. But if all Muslims refrain from marriage, then all of them are to be considered sinners.

One of those who expounded this theory is the Qādi Abū Sa'īd al-Harawī, the Shāfi'ite. He says: "Some of the followers of our legal school hold that marriage is a vicarious duty. If the people of a certain region refuse to perform it, they are to be compelled to do so." In his *Tahfāt al-Fuqahā* (The Boon of the Jurists) al-Samarqandī, the Hanafite, says: "Our fellow jurists differ (on this question). Some regard it as a vicarious duty in the sense that if some fulfil it, the rest get exempted from it."

The Fourth Theory:

The fourth theory regards marriage as a duty binding on every individual.

Some jurists regard marriage as an individual duty to the extent that anyone who is able to get married and maintain (a wife) and at the same time refrains from doing so commits a sin. He, however, does not have to get married except once in his lifetime. Dāwūd b. 'Alī al-Ash'arī and his *Zāhiri* followers are considered to be at the head of the exponents of this theory. It is also well known to the school of Ibn Ḥanbal, and it is supported by some of the Hanafites (see *Tahfāt al-Fuqahā* of al-Samarqandī).

However, the exponents of this theory fall into two groups: one group hold that marriage is to be obligatory and unconditional (irrespective of whether the man who wants to get married fears committing adultery or not). Among this group is Ibn Ḥazm al-Zāhiri. A similar report (*ḥadīth*) somewhat to this effect is ascribed to Ibn Ḥanbal. The second group regard marriage or concubinage as obligatory in case there is fear from committing adultery. If such fear does not exist then marriage is not obligatory.

In his work *E-Mabzūt*, Ibn Taimiyya says: "Marriage for one who does not fear a normative legal action which takes precedence over spontaneous worship (*nijl al-shādi*), except when fear of committing adultery exists, when it becomes obligatory." He is also reported to have declared it as unconditionally obligatory.

In *E-Mabzūt* of Ibn Ḥazm al-Zāhiri, we read: "It is incumbent on every one who is able to lead a marital life or live with a concubine (not slave) that a wife or a concubine; if he is unable to do so, he is to

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