Chapter IV

ABORTION
CONTRACEPTION
STERILIZATION

ABORTION

The question of abortion has become a political issue. . .and quite a hot one at that. Only a few decades ago, induced abortion, or willfull termination of pregnancy before the fetus attained viability, was completely within the domain of Obstetrics & Gynaecology, and was decided upon purely medical considerations. The medical profession used to be concerned for both maternal and fetal lives, and only when these were at irreconcilable conflict was the doctor permitted to sacrifice the fetus if this was the only way to save the mother. Social changes and radical revision of prevailing ideologies resulted in the change of both legislation and social outlook concerning abortion and many other practices, and in many countries abortion has been more and more accessible to women even without a medical indication. In many countries in the world now "abortion on demand" is practically the operating policy. The Islamic ruling on abortion cannot ignore the goings-on in the rest of the world, nor can it blind its eyes to the impact of the changing global climate and its implications for the nation of Islam. Typically the main resource of jurist scholars when proposing to solve juridicial problems is a thorough review of their library. What was written by the heads of the juridicial schools and their principal disciples hundreds of years ago is given the status of well established teaching even though at their day it was quite innovative as it addressed emerging social patterns and new trends unknown before. The author of one of the four principal sunni sects, Imam Shafiai, actually issued two sets of teaching, the old while in Bagdad and the new when he later moved to Egypt and encountered a different social climate. The tendency to shun innovation on the part of the majority of professional Muslim jurists is further compounded by a lack of awareness of what happens in the rest of the world, due to the lack of effective knowledge of a foreign language and therefore having a window on the international scene. This linguistic limitation is the result of colonial policies on education fragmenting it to religious and

civilian; a trauma that is hopefully being remedied now. On the positive side, however, is the Islamic revival that has become increasingly noticeable over the past few decades. This is certainly a genuine movement although it remains concealed to many eyes by the clouds of Islamic emotionalism, ultrafundamentalism and sensationalism that are not part of it and are even obstacles in its way. This revival, together with the complexities of modern advances in science and technology, have made it essential and inevitable that Muslim scientists and Muslim jurists sit together to discuss contemporary issues in search for an Islamic ruling on them. This is now becoming an established pattern, and the blessings are clearly palpable. An instant bridge between juridicial thinking and the forefront of world happenings has been established. After the solid foundations of Quran and sunna, old writings and teachings became guidelines but not dictators of juridicial ruling on the problems of our day. The discussion of a subject like abortion no more stops at the mere recitation of old books with their varying views, but account is taken of up-to-date medical and biological data as well as social and moral trends. This was quite obvious in several meetings I participated in, such as the symposium on "Islam and Family Planning" (International Planned Parenthood Federation, Rabat, Morocco, 1970) and the seminar on "Islam and Reproduction" (The Islamic Organization of Medical Sciences, Kuwait, 1983). With this introduction we pursue the subject of "abortion".

QURANIC GUIDANCE

(1) The Sanctity of Life

> "On that account we decreed upon the Children of Israel that whosoever kills a soul for other than manslaughter or corruption in the land, it shall be as if he killed all mankind, and whosoever saves the life of one, it shall be as if he saved the life of all mankind." (5:32)

Human life is sacred, and should not be taken away except upon indications singled out and specified by the law (none of these ever falls within the domain of the medical profession). Human life is a value, and its sanctity covers all its stages including the intrauterine phase. Many centuries ago, it was thought that the early fetus was devoid of life but now we know that this is not the case.

(2) The Pledge Of The Believing Women

"O' Prophet: when believing women come to you to give you their pledge not to associate anything with God in worship, that they shall not steal, that they shall not commit adultery, THAT THEY *SHALL NOT KILL THEIR CHILDREN*, that they shall not utter slander, intentionally forging falsehood, and that they shall not disobey you in any just matter, then do take their pledge and pray to God for their forgiveness, for God is Oft-Forgiving Most-Merciful." (60:12)

We would like to focus on the phrase "They shall not kill their children." The word "children" in Arabic, like in English, comprises boys and girls. This verse of the Quran mentions a number of sinful acts the sinful women before Islam commonly participated in. When considering "killing their children" we are presented with an exception. The Arabs of the Jahiliya (ie the era of ignorance preceding Islam) knew, as an approved social habit, the killing of children for three reasons: existing or expected poverty, in fulfillment of a vow to their idol gods and the burial alive of the female neonate to evade shame. Historically, all these kinds of infanticide were executed by men, and never did women carry them out. The only explanation open to us therefore is that the Quran prohibits abortion, the only form of child killing that was carried out by women and at those times by women only, so that it was quite in order to include it in the Pledge of the Believing Women.

(3) The Financial Factor

"Say: Come, I will recite what God has really prohibited you from. Join-not anything as equal with Him. Be good to your parents. KILL-NOT YOUR CHILDREN ON A PLEA OF WANT; We provide sustenance for you and for them. Come-not near to shameful deeds whether open or secret. TAKE NOT LIFE WHICH GOD HAS MADE SACRED except by ways of justice and law. Thus does He command you, that you may learn wisdom." (6:151)

"KILL-NOT YOUR CHILDREN FOR FEAR OF WANT: We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin." (17:31)

The protagonists of family limitation to curb down population growth so as not to outstrip available resources tend to insist that this can never be achieved without the back-up of abortion to existing contraceptive

technology. Such practice would be unacceptable to Islam. The two verses make mention of existing as well as anticipated poverty; neither can justify the killing of one's children. Another verse in the Quran reads:

> "Even so in the eyes of most of the pagans, their partners made alluring the slaughter of their children, in order to lead them to their own destruction and cause confusion in their religion. If God had willed, they would not have done so; but leave alone them and their inventions." (6:137)

Ibn-Massoud, one of the prophet's companions, asked the prophet: What is the gravest sin?" The prophet answered: "That you associate partners with God who created you." Ibn-Massoud asked: What is next to this?, and the prophet answered: "That you kill your offspring for fear of them sharing your food with you." (Bukhari and Muslim)

The Hadith Of The Forties

A hadith related to the prophet peace and prayer be upon him says:

> "The creation of each of you in his mother's abdomen assumes a 'nutfa' for forty days, then he becomes 'alaqa' for the same (duration), then a 'mudgha' (like chewn food) for the same, then God sends an angel to it with four instructions. The angel is ordered to write the sustenance, life-span, deeds and whether eventually his lot is happiness or misery, then to blow the Spirit into him."(The two shiekhs after Ibn-Massoud)

Another hadith related to the prophet reads:

> "When the 'nutfa' has lasted for forty two days, God sends an angel that shapes it, creates its hearing, vision, skin, flesh and bone, then asks: my Lord, is it a male or a female."
>
> (Muslim after Huzaifa ibn Aseed)

Both hadiths are considered authentic according to the standards of the science of the hadith. Other versions reported bear some variation in wording in both hadiths. There is indeed a view held by some authorities, that both might in fact been the same hadith but reported differently. The mention of the 'Spirit' in the first hadith is taken to signify that the human fetus at the age of one hundred and twenty days assumes a higher status, and this led some jurists of old time to use that cut-off point to emphasize the gravity of the sin of abortion and estimating the legal punitive measures

ensuing upon it. The spirit, however, is something we human beings cannot grasp or know the meaning of. It is a mystery that God kept the truth about to Himself, and we are told by God not to pursue the attempts to unravel its secret. God says in the Quran addressing the prophet peace be upon him:

> "They put questions to you concerning the Spirit. Say the Spirit is at my Lord's command. . . and of knowledge only a meagre part has been imparted to you." (17:85)

The blowing of the spirit is therefore a metaphysical phenomenon beyond human comprehension at all times, and the hadith is taken as a matter of faith. It so happens, however, that the time of pregnancy given for the blowing of the Spirit, coincides with the time the pregnant woman begins to feel the kicks of the fetus inside her uterus; a sensation referred to as quickening of the fetus. Some old jurists therefore fell into the error of considering the blowing of the Spirit to signify also the beginning of life, and since the pregnant woman did not feel quickening before, the fetus must have been therefore 'without life'. Such were the data offered by the knowledge of embryology at their time. In our present day we know that the fetus has been alive from the beginning, but because of its small size, stunted limbs and the abundance of fluid in the amniotic sac around it, the mother could not feel its movements. Only at sixteen or more weeks could the fetus and its limbs grown enough to be able to kick at the inner walls of its mother's womb.

In view of the second hadith, other old scholars set the cut-off time at seven weeks of pregnancy, that is the assumed time of the visit of the angel reported in that hadith, maintaining that it was the time when the fetus shaped up to take a human form. Again our modern knowledge of embryology tells us that the process of shaping up has started a long time before that, and that suitable methods are now at our disposal to ascertain the life of the early fetus, observe its heart beat and various other parameters as well as cytogenetically prove its human nature and various other individual characters including its chromosomal sex even days after the beginning of pregnancy.

The Beginning Of Life

Reviewing old juridicial writings, one feels that the prevailing concepts about the beginning of life were erroneous, and have been superceded by

new facts which are amongst the fruits of advances in science and technology. Whereas juridicial rulings based on the text of the Quran or well authenticated hadith are usually ultimate, other rulings are put forwards by jurists based on the available data at a certain time. Such verdicts are technically said to "revolve around their reasoning." If new knowledge or new situations supervene, then the reasoning might lead to a different conclusion and a previous ruling may be changed for a new one. Since the jurists of old times had their views on the beginning of life which no doubt were pertinent to the question of abortion, we would like to throw the light of modern knowledge on this matter before proceding to review the stand of various jurists on abortion. The definition of the beginning of life has of late become a hot ethical topic, not only in relation to abortion but also concerning the early embryos that remain in surplus in the procedure of in vitro fertilization, and whether it is permissible to use them as research and experimentation material and until what age.

Various treatises on medical ethics exhibit a spectrum of definitions for the beginning of life. Fertilization, nidation, taking shape, quickening, ensoulment have all been adopted by various authors probably influenced by their convictions concerning the subjects we alluded to. Setting personal convictions or idiosyncracies aside, it seems to us that the phase of life of an individual qualifying to be considered its beginning, should combine *ALL* of the following criteria: (1) It should be a clear and well defined event that can actually be pointed at to be called the beginning of life. (2) It should exhibit that cardinal feature of beginning life viz "growth." (3) If this growth is not interrupted, it will naturally lead up to the subsequent stages of life as we know them: fetus, neonate, child, adolescent, adult, old...until death. (4) It contains the genetic bag that is characteristic of the human race at large and also of a unique particular individual of whom no other human being is a perfect copy, since eternity and until eternity. (5) It is not preceded by another phase which combines all the preceding characteristics from 1 to 4.

Applying these criteria, life begins with the fusion of a spermatozoan with an ovum to form the zygote, endowed with forty six chromosomes, half maternal and half paternal. Neither sperm nor unfertilized ovum fulfil the criteria although they are alive. Subsequent stages do not qualify because they are preceded by the zygote that fulfils all criteria.

Jurists' Views

The accounts on abortion in books of jurisprudence are quite lengthy and it would not help to copy them all. For the sake of simplifying the matter to the reader, we will give an adequate digest of the different views.

All jurists of all sects unanimously agree that abortion after sixteen weeks is a grave and punishable sin. A small minority showed leniency before sixteen weeks, and a small minority showed leniency before seven weeks. The influence on their concepts of the presence or absence of life in the early fetus has already been alluded to.

Sheikh Mahmoud Shaltout (late grand Imam of Al-Azhar in the 1940s), in discussing the verdict on abortion wrote: "Old scholars are agreed that after quickening takes place, abortion is prohibited to all Muslims, for it is a crime perpetrated against a living being. Therefore blood ransom is due if the fetus is delivered alive, and the 'ghorra' (one twentieth of the ransom for manslaughter) if delivered dead. The jurists were not, on the other hand, agreed whether to sanction or prohibit abortion if performed prior to the quickening phase. Some felt it was permissible on the grounds that no life existed and therefore no crime could be committed. Others held that it was unlawful, maintaining that it already had invisible life, that of growth and preparation. Among the latter was Al-Ghazali, the great master belonging to the Shafiai school. He clarified the difference between contraception (by coitus interruptus at that time) and abortion, for abortion is an assault on an already existing life. The first grade of existance occurs when male matter falls into the womb and fuses with the female matter and gets ready to receive life. To destroy this is a crime, Al-Ghazali said. The crime grows more and more serious as this matter passes from one phase to the other. The crime is more heinous after the blowing of the spirit, and reaches its worst after the baby is born alive as was the pre-Islamic (Jahiliya) Arabs' practices of killing their children or burying their female neonates." (Shaltout: Islam—Creed and Law. Pub. Darul Qalam, 3rd ed, 1966).

Commenting on the quickening of life, Sheikh Shaltout 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 fetus, to which the term 'instillation of life' has been given. It is this point which enables us to conclude that the scholars' dif-

ferences of opinion on the permissibility of abortion resulted from their unawareness or lack of grasp of these technical aspects of the question, leading them to regard abortion before, as different from abortion after, formation of the fetus is complete and quickening takes place. It may be said therefore that they are all agreed on the interdiction of abortion at any time during pregnancy." (Shaltout: Al-Fatawa-Al-Azhar, 1959).

In his reference to 'quickening' and whether it really marked the beginning of life, Al-Ghazali was shrewd enough to postulate that fetal life proceeded in two phases: the phase of imperceptible life characterized by silent growth and making ready to receive the spirit, followed by perceptible life starting with the mother's perception of quickening. Both phases are respectable and should not be violated.

When Is Abortion Permitted?

Almost all jurists are agreed that if the pregnant woman suffers a medical condition incompatible with pregnancy and the medical opinion is that continuation of pregnancy poses a real threat on her, then abortion is permissible. Jurisprudence considers that the mother is the root and the fetus is the offshoot, and if their welfares are irreconcilable then the fetus has to be sacrificed in order to save the mother. These medical indications have become quite rare in modern medical practice. Some old jurists were even more rigorous and would not approve of any excuse for aborting a fetus of one hundred and twenty days of gestational age or more. When faced with the argument that abortion then might be necessary to save the mother's life, they answer back that it is against he jurisprudence to save one individual by killing another. To them the life of the existing fetus is a palpable reality, whereas the alleged feared death of the mother if not aborted is merely an expectation (Ibn-Abdeen of the Hanafi school—quoted in Encyclopaedia of Jurisprudence, Kuwait, Part 2/57). Such a restrictive argument has not been adopted by the other old or contemporary scholars, for if the mother died her fetus would also die in any way because of her death.

Islamic Regard Of The Fetus

The human race is the noblest race as God decreed:

"We have honoured the sons of Adam, provided them with transport

on land and sea, given them for sustenance things good and pure, and conferred on them special favours above a great part of Our creation."
(17:70)

Since every person started as a fetus, Islam confers respect and protection on the fetus since the time it is there. On the metaphysical side we have already referred to the assignment of an angel to keep watching the pregnancy. A hadith of the prophet (that might well be another version yet of the same hadith) says:

"God has assigned an angel to watch the uterus. The angel says: My Lord, it is a nutfa. . . my Lord, it is an alaqa. . . my Lord, it is a mudgha. And as God shapes it the angel asks: my Lord, is it male or female? lucky or unlucky? rich or poor? How long will it live?—and all of this is then registered." (Qortobi: Ahkam al-Quran,12,7)

On the practical side, various legal rulings were decreed by Islam to safegard the well-being and healthy development of the fetus. It made it an obligatory duty on the father to provide for the pregnancy and answer its financial needs even if the relations with its mother have been severed by divorce or separation or other circumstances. The provisions for the pregnancy are quite independent of any other dues the father might owe the mother.

It is for the sake and welfare of the fetus that the pregnant woman is exempted from the obligatory fast of the month of Ramadan.

If a woman commits a crime the punishment of which is death and is proven to be pregnant, then the execution of the punishment shall be postponed until she gives birth to her baby and completes its breast feeding until weaned. This is a straightforward acknowledgement of the right to life of the fetus. This applies even if the pregnancy was illegitimate, emphasizing that the fetus conceived out-of-wedlock also has the right to life. This was the sunna carried out by the prophet and operates irrespective of the age of the pregnancy no matter whether it is very early pregnancy or has attained forty two days or more or less. It is the universal policy followed by all Islamic courts of all sects and juridicial schools. This ruling settles once and for all any queries pertaining to our duty to safegard and protect the fetus starting from the onset of pregnancy.

Islam gives the fetus a "zimma". The "zimma" is the status that qualifies a person to exercise his rights and his duties, except that this is incomplete

in the case of the fetus, for the fetus enjoys its right but owes no duties. The fetus has the right to be related to its father without confusion of paternity. If its mother is a divorcee or a widow then she should not marry until the fetus is born so as to keep the genealogy clear.

If a man dies while his wife is pregnant, then the rules of inheritance recognize the fetus as an inheritor if born alive. The share of the unborn is set aside, and other inheritors upon receipt of their shares of the legacy give a documented pledge that if more than one baby are born then they would reimburse the share of the twins. The same applies if the deceased is some other heritable than the father. If the fetus is miscarried at any stage of pregnancy but it shows definite signs of life such as a sneeze or a cough or suckling the breast or established movement and after a while it dies, then this fetus has the right to inherit any of its legal heritables who died after the beginning of pregnancy, and after the fetus dies it is inherited by its legal heirs.

Islam prescribes punitive measures for committing abortion. Besides being a sin, punishable by God in this world or the hereafter, legal punishment is also due. This has been discussed extensively in books of jurisprudence, detailing the views of jurists of various sects. We will here outline a digest of these lengthy views. If assault on the fetus results in miscarriage of a dead fetus, a money punishment is to be paid, as well as a separate punishment for the agression per se. The money punishment here is called the "ghorra", and it equals one twentieth of the money ransom that may be paid for killing an adult. The "ghorra" is paid to the legal heirs of the fetus, but if one or more of them did contribute to effecting the abortion, they have to pay their share of the punishment but are denied their share as inheritors, and this applies to the parents as well. The other punishment for agression is subject to the decision of the judge. It is severer if abortion is willful than when it is inadvertent.

If the fetus is aborted alive and then dies as a result of the assault on it, the punishment is severer and may be raised to a full ranson, or even be considered manslaughter with full fledged punishment. If the result is abortion of a living fetus but afflicted with an injury such as the loss of an eye or a limb, compensation will be paid in accordance with the approved scale of compensations in the judiciary system.

It is only under the necessity of saving the life of the mother if pregnancy is lethal to her, that all these penalties are foregone.

On The Western Front

It is perhaps not out of the way to give a short briefing on the abortion situation in some countries that have liberalized abortion. It is far from exaggeration to state that the large majority of abortion operations are performed on unmarried women. This seems to uncover the real need fueling the enthusiasm of abortion protagonists. Abortion became part and parcel of a total wave preaching sexual license and uprooting the codes of behaviour prescribed by all God's religions. Nice names were used to enhance the acceptability of the new deal, such as personal freedom, love, emancipation and equality of the sexes: since man enjoyed free sex without inhibition and only woman faced the sequelae of a possible pregnancy. It had been thought that widespread availability of contraceptive means would be sufficient to relieve woman from the worry of getting pregnant, but this did not work in reality and out-of-wedlock pregnancies showed a steadily rising incidence. Promiscuity became rampant and girls in their couldn't-care-less attitude did not feel responsible enough to contracept. Abortion therefore was a necessary backup, as well as the promotion of the 'single parent family' to the level of social acceptability and support.

In some countries, like Romania for example, it was realized that the matter got out of hand when the number of induced abortions considerably exceeded that of full time births. It was seen that the nation was in the process of committing suicide by extinction, and the state retracted the permissive abortion laws, making abortion legally justifiable only upon medical indications. It took steps to encourage population growth by incentives like financial allowances, tax deductions, compensation for large families and fully paid adequate maternity leaves. Without these measures it was felt that the productive stratum of society would not be sufficiently replenished, whereas the unproductive aged stratum would continue to grow as a result of the rising longevity brought about by progress in health and medical care. Progressively less and less (people) would be carrying more and more.

It is indeed regrettable to see that the same anti-life pro-abortion factions have realized the problem but are forwarding a proposal to balance the equation at its other limb in a sinister monkey-and-cheese philosophy. If the carrying stratum is not to expand, then the carried stratum should not accumulate. Disposing of the old will be the social cry of the not too distant future. Already pressure is being applied towards legalized euthanasia, and—comparing with the early pro-abortion days—we must

admit that the new cry has already covered part of the road. In his editorial in the News Exchange of The World Federation of Doctors Who Respect Human Life (No. 80, June, 1983), doctor Ph. Schepens quotes the official Dutch medical weekly *Nederlands Tijdschrift voor Geneskunde*, which is the official publication of the Dutch Medical Society, that devoted six articles out of eleven in its issue of May 28, 1983, to the subject of 'Euthanasia for consenting people' or—so called—'Voluntary 'euthanasia'. Fourteen out of fifteen authors defended euthanasia and promoted it under such titles as: Editorial—about responsibility; Clinical lessons—Active Euthanasia; How the general practitioner learns to live with euthanasia; The responsible performance of euthanasia; About the declaration of death, euthanasia and how to help someone to suicide etc. Even various lethal cocktails were described entailing the best way to murder the patient. According to this movement the medical professional should cease to assume his or her historical role as a servant of life, and means of taking life should be amongst the doctor's armamentarium. As the editor of that journal explicitly admits it (NTG 1983, 127, No 22, p 945), "Times are changing and so are we. This means that there are no longer principles, norms or values that should continue to guide humanity from its beginning and for good. Everything is 'time dependent'."

It is no surprise then that glamorous names who pioneered the abortion movement are the same at the top of the euthanasia cult such as the late Dr. Allan Guttamacher, renowned gynaecologist and famous abortionist and member of the executive council of the International Planned Parenthood Federation, later become a member of the council of the Euthanasia Society of America. The kinship is also evident as Professor Michel Schooyans of Belgium points out, in the systematic recourse to the 'antiphrase', that is the art of making a word mean the opposite of what it normally means. The followers of 'death with dignity' speak about 'death under the most favorable conditions', and a 'death of quality'. . . both in reality being clinically planned murder (News Exchange of the World Federation of Doctors Who Respect Human Life, 1983, no. 80, p 3). Being unable to conquer illness, the medical profession solves the problem by killing the patient. Incentives and pressures to pursue research would be undermined by this easy solution that runs at a lower gradient, instead of being bolstered up and fortified by faith in the statement of prophet Mohammad peace be upon him:

"To every illness God has created, God has created a remedy."

Having secured their success against life in the fetal stage, the anti-life lobby are doing well on the front of euthanasia and are even pushing a spearhead into the socio-political field. This is well illustrated in the writings of no less a man than Jacques Attali, advisor to the French President Miterrand. His following words speak for themselves (Jacques Atalli: 'La medecine en accusation' in Michel Solomon, 'L'avenir de la vie', Coll. Les visages de l'avenir, Ed. Seghers, Paris, 1981 p 273-275). "I believe that it is in the logic of our industrial system that the prolonging of life is no longer a desired objective in our political system. Why? Because as long as the reason for prolonging life was to achieve the full capacity of the human machine, in terms of work, this was perfect. But when a man lives beyond 60/65 years of age he outlives his productive capacity and thus he is a financial burden upon society. So the objective, within the logic of the industrial society is no longer to prolong life but rather that within a given life-span of an individual he lives the best possible life but in such a way as not to undermine the collective good. And so a new criterion for life expectancy is that the value of a particular health system is not its concern with life expectancy but with the number of years a person has lived without illness or need for hospitalization. In fact, from a social point of view, it is much more preferable that the human machine is stopped abruptly rather than be allowed to deteriorate progressively." The author adds "Socialist logic is liberty and the most fundamental liberty is suicide, consequently, the right to suicide whether done by one's own hand or another's is an absolute value in this type of society. . . In a capitalist society, killing machines, which would pursue the elimination of life when it becomes too intolerable or economically too costly, will come into being and be in daily use. I therefore think that euthanasia, whether it be a value of freedom or a commodity, will one day in the future be very prevalent."

This advertant elimination of life, be it at its beginning in the form of abortion under the banner of 'the freedom of the woman over her body', or later for the sick and disabled under the banner of 'the right to die' and using the nice name 'mercy killing', or in old age when dying ceases to be a right and becomes a duty even if the person is unwilling, under the pretext that 'the human machine has outlived its productive span and its upkeep has become a financial liability', is becoming a political wave to be taken seriously. It has its logic; but only when human life is given the same status as animal life or machine life. Humanity per se ceases to be a value in itself, and an absolute value at that. Under this purely

materialistic approach, which unfortunately continues to sway over the world, people become things—like other things. To speak about God, spiritual values, the hereafter, divine guidance, has no room in such vocabulary. Loving care extended to old parents would be a waste and a betrayal of society.

When people become things, fetuses of course are little things, and the abortion issue is judged only under the light of personal freedom. The public opinion in the United States of America is divided between a Pro-life movement and a Pro-choice movement. The Pro-choice of course can see only the right of the woman over her body and the unacceptability of asking her to carry a fetus she does not want to carry. That the "choice" implied in the name of the movement is in fact a choice to kill an individual who is not part of the body of the woman (indeed it is genetically and immunologically different) is totally ignored. That the fetus is present in her womb as the result of her own doing and not by any will or action on its part is totally ignored. The taking away of the life of the only innocent party for the sake of convenience is totally ignored. The fetus is a biological parasite just as the old and disabled are social parasites. They aim at a lower number of those admitted into life, at its beginning, and a high number of those that have to be wilfully sent out of it near its end. It is a grave shortsightedness to study the issue of abortion in isolation from the totality of the ideological climate that sponsors it, and its implications in terms of the sanctity of human life and whether it is a value or a commodity. At this crossroads facing social ethics in our present day, the future of humanity for millenia to come is being decided.

But the Pro-life movement in the U.S. have recently aquired momentum and become as vocal and as noisy as their adversaries. Since they are the ones seeking the change in the status quo regarding the legitimization of abortion, they are no more stereotyped as the conservative, old fashioned pedantic elements. They are in some measure America's reaction to a period of ultra-license that is leading to grave moral consequences, and their cry is more perceived as 'on to morality' rather than 'back to'. A film of their production was shown on television, illustrating an abortion operation shot by an ultrasound camera. The little fetus was there, alive and kicking. As the surgeon's instruments touched it, it retracted its limbs in an attempt to escape. But when its body was grasped and crushed by forcepts, it frantically convulsed and repeatedly opened its mouth as if crying for help, until it succumbed to the instruments invading its sanctuary and was

brought out in pieces. That television release confronted the nation with what abortion really is, and aroused great revolt. Demonstrations were organized against abortion and abortion clinics were picketed and branded as murder shops. In the presidential election campaign of 1984 abortion was the subject of hot political debate. President Reagan in his book "Abortion and the Conscience of the Nation" declared that since abortion was legalized in 1970, fourteen million American lives had been lost by abortion, more than all lives lost in all America's wars. Many doctors gave up the practice of abortion, including one with a record of ten thousand abortion operations. Many women turned back from abortion and decided to carry their fetuses to birth. And the battle continues:

Conclusion

In Islamic jurisprudence there is a rule called 'Sadel-al-Zara'ea" which means the anticipation of evil by closing the doors leading to it. A long chain leading to evil is better broken at its first link. A basic criterion of "ijtihad", that is the reasoning process to deduce a religious ruling in situations not specifically mentioned in the Quran or Hadith, is a full knowledge of social circumstances and the near and far reaching implications of the question under consideration. Perhaps the question of abortion is not a difficult case since the religious evidence against it is overwhelming. However, for the sake of the minority of contemporary scholars who permitted abortion before ensoulment or before aquiring human form, this lengthy display of the various dimensions of the abortion issue is quite worthwhile.

I would like to report a personal experience that is not without significance to the subject. That was when I was once asked to mend the rift between a couple and their eighteen year old son. They were a Muslim family and as I reminded the young man with the Islamic injunctions on the Muslim towards his parents, the young man retorted "I owe them nothing doctor and it was by a stroke of luck that I escaped murder at their hands. When they married they decided to have two kids only, and they aborted the five others who were conceived after my sister and myself. Had I not been the second, and if I happened to be number three or four or five or six or seven, they would have killed me as they did the others"!!

When the subject of abortion was discussed—at wide angle—in the 1970 IPPF Conference on Islam and Family Planning in Rabat, Morocco, and

in the 1982 Symposium on Islam and Reproduction held in Kuwait by the Islamic Organization of Medical Sciences comprising scholars in jurisprudence and scholars in medical and life sciences. . . the consensus was that Islam recognizes, respects and protects human life in all its phases including the intrauterine stage, and therefore abortion is not to be permitted except under the most dire medical indication.

CONTRACEPTION

A crucial difference between abortion and contraception is that in the latter there is no killing of an already existing fetus. All Quranic references forbidding the killing of children for any reason including poverty, present or anticipated, or the female infanticide practiced by pre-Islamic (Jahiliya) Arabs therefore do not apply. The great majority of old and contemporary jurists therefore had liberal views on contraception, as long as it does not negate altogether the procreative function of marriage. It is not acceptable therefore that a marriage should be contracted with the preset condition or intention to make it a childless marriage.

The evidence that contraception is not religiously prohibited derives from various reports since the time of the prophet peace be upon him. In the esteemed compendia of Al-Bukhari and of Muslim, both very reliable sources on the prophet's traditions, a companion of the prophet with the name of Jabir reports: "We practised contraception by withdrawal (coitus interruptus) at the time of the prophet peace be upon him, at the time the Quran kept being revealed to him, and when he knew he did not forbid us."

Responding to a question from a man whether it was alright to practise coitus interruptus with a woman he owned, the prophet said:

> "If you so wish you may. And if God willed for her something (pregnancy), she will have it." (Muslim)

This reference to the possibility of failure of the contraceptive method that was known at that time, became relevant as the man later went to the prophet to tell him that the woman had become pregnant, to which the prophet remarked:

> "I have already said it to you. Whatever is willed for her will come to her." (Muslim)

The practice is also sanctioned with one's wife, except that it must be

by mutual consent, as decreed by the prophet:

"A man must not practise withdrawal with his wife unless she freely consents." (Abu Dawood)

The objectives of contraception have been many and varied. At one time the search for a reliable acceptable contraception was spurred (and actually funded) by advocates of the women's liberation movement, believing that as man can enjoy sexual liberty without the threat of bearing an undesired pregnancy, then woman should be freed from that fear and enabled to enjoy sex without such anxiety. At the beginning contraception was a prescription for the married woman. But times changed and with them the accepted social norms, and contraception is now universally available for married and unmarried. On the medical side, the hazards of high parity have become identified and the terms 'grand multiparity' and 'the dangerous multipara' were coined, and contraception was promoted by doctors to obviate these hazards. These are mainly anaemia, calcium deficiency that might lead to soft bones and secondary contraction of a previously adequate pelvis, diabetes mellitus, haemorrhages and malpresentations associated with pregnancy, worsening of existing medical diseases and age related maternal illness or fetal anomaly.

The economic factor on a global scale has been widely publicized, projecting that population explosion will soon outstrip resources that are already available or that can be added, and publications relating to this give quite convincing statistics and projections. But probably the most effective single motivating factor is the socio-economic factor at the level of the individual family. As the number of children ceased to be a financial asset, the emphasis is mainly on the quality of life the parents want for their children, and that the required standards of raising up the children and of catering for the whole family might be incompatible with a large number of chilren.

Iman Al-Ghazali wrote that contraception was permitted and innumerated a wide range of indications to practise it, beginning with health reasons that would make pregnancy a health hazard to the woman, through socio-economic factors and going as far as the mere wish of the woman to preseve the beauty of her physique.

The instruction of the prophet to Muslims to "marry, procreate, and abound in number, for I will pride myself with you amongst the nations on the day of reckoning" (Abu-Dawood) is sometimes quoted as evidence against the permissibility of contraception. But it is obvious that numbers

alone are no reason for pride unless the quality was also good. In another tradition the prophet—as if reading clearly through many centuries—said:

> "There will come a time when other nations fall upon you like greedy eaters upon a bowl of food. And God will take off from the hearts of your enemies any heed for you, and put in your hearts fear of them. And throw feebleness into you." When asked: Apostle of God, will that be because we are small in number? He said: "No. You will then be too many but rather like the foam floating over water."

The Quran rebukes the wrongdoers saying:

> "It is not your wealth nor your children that will bring you nearer to Us in degree." (34:37)

The distinction between quality and quantity is adequately illustrated in the following verse:

> "How oft by God's will has a small force vanquished a large one. God is with those who steadfastly persevere." (2:249)

The Islamic look at contraception, however, does not stop at a statement of its permissibility. Several states have adopted a population policy aiming at curbing the preproductive rate, and it is the consensus of Muslim scholars that no population policy should be enforced on the people, for such will be in conflict with a basic Islamic human right. Public education and cultural maturity have proved to be the most effective measure in this respect, but then the matter should be left for each individual family to meet their circumstances by their own free choice. It has been the constant observation that with widespread education of women and active participation in the affairs of their community the family size had tended to be smaller, an this—and not the economic factor—is the primary motivating factor toward family limitation. The ethnic and cultural variability is great and in our opinion should be acknowledged and respected. It is not uncommon in practices serving a mixed community, like ours in Kuwait, to receive the woman seeking to stop pregnancy after one or two children, and the mother of six children who is quite anxious because over the past two years she has not become pregnant yet.

The contraceptive armamentarium has become very much developed over the past few decades, and yet it is true to say that search for the ideal contraceptive still continues. The Islamic rule of "No harm and no harm-

ing" should be meticulously observed, and unless the safety of a contraceptive method is proven, it should not be dispensed. Every time and again the medical literature carries the news about side effects and complications—some serious—following the use of one or the other contraceptive, and this arouses much anxiety if it finds its way to the public press. Since the marketing of contraceptive pills in the fifties and their widespread use, qualitative and quantitative modifications in their formula have never stopped, casting an air of suspicion about their alledged safety. Although much has been known about the pill after thirty years of use, especially pertaining to situations where the pill should not be given, reservations are sometimes voiced concerning more subtle biological changes that would take several generations to express themselves and claiming that interference with normal physiology for long periods of time cannot occur at no price.

Another ethical reservation in the field of contraception is the observation that some governments have put a ban on certain contraceptives for their own people, while sanctioning their production by their own firms in their own country but only for export. This covers also a wide variety of medicines and chemicals, banned for local use but produced to be sold to other countries. It has also been observed that some new drugs (an example is the contraceptive pill itself) or technologies devised by medical scientists, are not granted endorsement for national use until they have been extensively tried outside the borders, on other nations, and their safety or unsafety properly established. In other words other nations are used as human guineapigs to know if the drug is safe for the masters. It is regrettable to see scientific (!) bodies mediating in the process, under the guise of funding medical research and fostering academic collaboration. Despite the excuse, the ugly fact remains that states and medical bodies operate on the basis of a double standard in evaluating human life, and that human beings are not equal or—as George Orwell put it—they are all equal, but some are more equal than the others.

A contraceptive method should not act by agression against an established pregnancy. The operation of 'menstrual regulation' which—inspite of the innocent name—is a very early induced abortion, or the use of prostaglandins for the medical induction thereof (this might be the future method for wholesale early abortion) cannot be sanctioned by Islam. The intrauterine contraceptive device has caused much debate, whether it is a contraceptive or an abortifacient. In its early days it was assumed that

as a foreign body it sensitized the genital tract so that the unfertilized ovum would be hurried along without being fertilized, in a manner likened to diarrhoea. Other theories suggested alterations in the endometrium making it unsuitable for nidation, or even inducing an abortion of the nidated embryo. Perhaps this question can be answered by diagnosing recent pregnancy in two groups of normal fertile normally menstruating women: the one fitted with the device and the other for control. A rosette inhibition test is reported to be able to diagnose pregnancy only hours after fertilization. If the incidence of pregnancy in the contraceptive device bearers is statistically higher than the general background incidence of unnoticed miscarriages in the general population represented by the control group (unknown but estimated as more than twenty per cent), it might be concluded that the device is abortifacient. The newer generations of intrauterine contraceptive devices, however, incorporate contraceptive means. Copper containing devices emanate copper ions which are known to be spermicidal. Progesterone containing devices would alter the physico-chemical properties of the cervical mucus rendering it too thick to be penetrated by spermatozoa.

Two more aspects of contraception deserve further comment. The warning cry about shortage of resources in the face of population growth seems to focus solely on population limitation as the only solution. It is felt that other complementary solutions should also be highlighted and implemented. Redistribution of wealth should also be considered, not only nationally but also internationally. While some societies suffer from the sequelae of overnourishment others are in the grip of famine or undernutrition. Some countries burn the surplus of some crops so as to maintain prices, while others are in dire need of it. Basic food items are used as a political weapon and poverty of whole nations is exploited by purposes of conversion: political or religious. The international monetary system based on usury has transformed loans given to poor countries from a blessing to an expanding curse, and economics of poor nations are depleted in a desperate attempt to pay interest rates, let alone the debts. The selfish game of politics keeps igniting military conflict here and there so that nations' resources are spent on buying arms from the developed industrialized countries, instead of giving priority to building up their economy. On the other hand, military expenditure by major powers is tremendous, and the search for more deadly weapons continues at astronomical cost. If only part of the military budgets were diverted to the development of known resources and the discovery of fresh ones then perhaps the picture would not have

been as gloomy. There is a crisis of human compassion and a lack of trust between nations that is at the root of much of the contemporary human suffering. Unless people of all nations realize that they are one big family and act accordingly at all levels, the mere curbing of population growth will never be the answer. Unless politics and economics acknowledge and heed moral considerations, the future of humanity remains bleak. It is amazing and unfortunate that the great political figures of our times continue to abide by the traditional rules of politics based on prejudice, deceipt and selfishness. Intelligent statesmanship should not fail to see the abyss humanity is heading to, and the long chain of aetiology that leads to an international climate of bitterness and despair in which the value of man and the values of humanity entirely lose their worth.

The remaining aspect of contraception has lately come under the light and achieved public awareness. One type of human conflict is manifested by what may rightly be called the demographic warfare. In certain locations long term plans have been drawn to change the population composition, so that with time minorities would grow to be majorities and majorities would shrink to be minorities. Family limitation is strongly preached in certain quarters while it is strongly banned upon others.

A people might react by a higher reproductive rate in the face of national disasters or in the aftermath of war. Palestinians are known to be very pronatal, but when a people have lost everything except their sheer numbers then it would be folly to sacrifice this as well. Israeli sources have repeatedly expressed anxiety at the higher reproductive rate of the Arab population compared with the Israeli population in Israel. A doctor or a reformer preaching the hazards of high parity or the population explosion to Palestinian Arbs would be none but a voice lost in the wilderness. It would seem the more that the balancing of people and resources takes more than contraception to achieve.

STERILIZATION

Sterilization refers usually to a surgical procedure aiming at preventing pregnancy. The common method in woman is the interruption of the continuity of both uterine tubes so that the ascending sperm and the descending ovum can never meet. Sterilization of the male aims at interrupting the continuity of the vas defferens on either side, so that spermatozoa formed

by the testicles do not have an egress to the outside and the ejaculate is devoid of spermatozoa; later on the function of producing sperms by the testes is lost, although they continue their hormonal function of producing testosterone, the male hormone responsible for libido and sexual vigour. It does not entail castration, which means removal of the testes (or the ovaries in the female).

As a surgical procedure, sterilization cannot be described per se as religiously permitted or prohibited, for this would depend on the application rather than the operation. The decision to carry out this operation, however, should not be taken lightly, for although technically easy, the religious implications can be very serious. The gravity of the decision is realized if we remember that the five basic goals of Islamic law are the preservation of self, religion, mind, property and procreation. In the scale of compensations to be paid as ransom for damages resulting in loss of life or of body members and/or functions, the ransom paid for causing loss of the procreative function is equal to that for loss of life.

When performed for a clear medical indication, sterilization is not only permissible but might be mandatory. If an incurable condition of the mother makes a further pregnancy hazardous to her health or life, then she should be offered the option of sterilization, especially if other contraceptive methods are not acceptable, suitable or reliable. Fear of transmission of hereditary disease to the progeny is also a valid indication. This is quite consistent with the Islamic rule of "repelling harm". The permissibility of contraception is not conditioned with a time limit, and sterilization is merely contraception for good. When practised for non-medical indications, however, there is no rule of thumb to be applied. Careful balance has to be made in each individual case between the pros and cons, but always with full heed to the seriousness of the decision from the religious as well as the human point of view. Permission to sterilization is not absolute, and Islamically the doctor should choose what is best for his or her patient, not what is second best. Certain guidelines should influence the decision making, such as:

(1) Sterilization should be the outcome of voluntary, enlightened and free consent of both spouses. No government policy should pressure people into sterilization or tempt them to it by attaching money or other incentives. . . for this exploitation of need and poverty is amongst the worst kinds of pressure. Procreation is a basic human right and one of the individual freedoms. The fact that scientific and other agencies in countries

where individuality is overemphasized, are seen to encourage an opposite policy of authoritarianism in other countries, the double standard in regarding individual rights and freedoms, are, in the long run, conducive of injustice, bitterness and divisiveness. Expediency should not override principle.

(2) The decision on sterilization should be considered an ultimate decision. Advances in techniques of sterilization and of its reversal do not mean that reversal can be guaranteed. We are aware of practices luring people into sterilization upon the sure promise of reversal if the patient changes her (or his) opinion. This is not honest practice. Besides, the fees of reversal operations should be declared to the patient before and not after, sterilization. As a matter of fact the real impetus for perfecting reversal surgery, that is belated change of opinion, is in itself an admission of a faulty decision on sterilization in the first instance. Few patients in the practice of the gynaecologist are more miserable than women who decided on sterilization and underwent it at a time when they felt quite confident about their decision, and then something happened that made them seek to get pregnant again but without success inspite of repeated surgical attempts, and every gynaecologist must have seen them time and again. Perhaps in-vitro-fertilization may provide an option to address this problem, but is this a really reliable solution? The answer is no, for the success rate of in-vitro-fertilization in terms of a viable pregnancy still revolves around the twenty percent mark. These patients with previously normal fertility are the more miserable because they know that they lost something they already had; they had not been infertile seeking treatment but then they lost their fertility at their own hands and iatrogenically at the hands of their doctors.

With the possibility of loss of children by accidents of fate, or the possibility of the youngish spouse getting divorced or widowed and remarried and desirous of getting pregnant in her new family situation, it should be a counsel of wisdom to resort to some form of reversible contraception rather than sterilization as a means of family limitation. The availability of suitable reliable contraception should make sterilization superfluous in the majority of cases.

The situation is perhaps a little more flexible in the elderly patient who has achieved or exceeded her "feasible" family size. The elderly does not have much of an obstetric future to sacrifice anyway, as fertility naturally dwindles with advancing years, with concomitant increased libility to

the hazards of high parity for the mother and chromosomal nondisjunction syndromes affecting the fetus. It should be remembered that what we refer to as "feasible" family size is more socially than medically defined. It might be one or two children for an Indian but six to eight for an Arab, and this is apart from individual family predelictions. During an international conference on contraception a few years ago, a delegate from Egypt pointed out that in his series of sterilization the average patient age was thirty four years and the average number of children was 4.1. Commenting, a French delegate was really hot under the collar as he pounded the table with his fist shouting in an authoritarian way: "This means that we have to be more aggressive, sterilizing more and more women at a younger and younger age with fewer and fewer children." To me this sounded both amazing and horrifying. From within the captivity of an obsession, medical people sometimes miss the point that their ultimate goal is to end up with happy and not miserable or remorseful clients. At another conference, a colleague from India described how in his set-up the operation of sterilization was carried out by trained paramedical personnel under local anaesthetic, on an ordinary kitchen table, cleaning the instruments between operations with ordinary boiling water, so as to be able to cope with the long queu of women lining outside the room to get the operation performed. At the time when medical liability and the cost of practice insurance in America were soaring up, American colleagues enthusiastically applauded the achievements of the Indian colleague and commended them frantically. Two standards of medical practice seemed to aquire full approval, as long as each was targeted to its respective category of people. To us this is certainly unprofessional, unethical and certainly non-Islamic.

(3) Wholesale sterilization should be avoided, whether to curb population growth or to experiment with new techniques. Individualization is absolutely necessary, and full counsel should be given to every patient (or every couple) individually, without attempt to play down the possible sequelae and implications of sterilization. Consent should be really and honestly informed and free. The choice of the patient should not be binding to the doctor, and when the young patient with low or no parity opts for sterilization then it is the doctor's right to decline if he or she do not feel that this is in the best interests of the patient. Needless to say, if Islamic standards are to be observed, then the doctor should be known to believe in Islam, abide by its regulations and keen to heed its standards.

In a properly Islamic practice, sterilization is an operation that is usually discouraged unless the medical indication is clear or the nonmedical indication carefully appraised. Financial gains should not tempt the doctor to compromise. Nor should the decision be left for junior medical staff eager to gain surgical experience. Mature opinion, preferrably in consultation, should be sought for every case.