

Chapter Four: Contraceptives & Abortion

A. Introduction

The question of birth control has created much debate in the Western world. This question is related to the basic view of sex. On one hand, if you relate sex to the original sin and equate it with evil, and allow sexual intercourse only for the purpose of procreation then, obviously, you will be totally opposed to birth control.

Allowing birth control would mean allowing sex for pleasure. On the other hand, if you consider sex to be a natural act whose purpose is two-fold: procreation and/or fulfillment of sexual desire, then you would allow birth control. The debate on the use of birth control, moreover, is intertwined with the issue of abortion.

On the whole, there are three opinions on birth control and abortion. On the one extreme, the Roman Catholic Church¹ forbids birth control as well as abortion; ('Allamah Rizvi comments on the Catholic view as follows: "The Vatican seems oblivious of [the] simple difference between underlying reason of a law and the law itself. That is why it has totally prohibited use of contraceptives, on the plea that it goes against the philosophy of marriage.

But does Vatican have the conviction of courage to take this 'argument' to its logical end? Is it prepared to forbid intercourse with a pregnant wife, or ban marriage of infertile men or women? They should have banned these and other examples...because they too cannot produce pregnancy. The prelates of the Roman Catholic Church all unmarried men are perhaps unaware that lawful satisfaction of sexual urge is in itself a valid underlying reason of marriage."²

And on the other extreme, the libertarians and feminists consider birth control and abortion as the basic rights of women. In between these two extremes, Islam allows birth control but forbids abortion.

According to the Shi 'ah *fiqh*, family planning as a private measure to space or regulate the family size for health or economic reasons is permissible. Neither is there any Qur'anic verse or *hadith* against birth control, nor is it *wajib* to have children in marriage. So basically, birth control would come under the

category of *ja'iz*, lawful acts.

Moreover, we have some *ahadith* (especially on the issue of *'azl*, *coitus interruptus*) which categorically prove that birth control is permissible. Imam 'Ali once said, "One of the two (means) of affluence is to have few dependents."³ Imam Ja'far as-Sadiq said that, "[Imam] 'Ali ibnul Husayn (peace be upon him) saw no problem in *coitus interruptus* and he used to recite the verse that,

'When your Lord brought forth from the children of Adam (i.e., from their loins) their seed... [7: 172]

So from whatsoever [seed] Allah has taken a covenant, it is sure to be born even if it is [spilled] on a hard rock."⁴ The Imam is saying that the creation is in the hand of Allah alone. Whether or not we practice birth control, if Allah wills, the child will be conceived. In effect, these *ahadith* are a positive proof that birth control is allowed in Islam.

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However, sometimes the issue of birth control is politicized by the imperialists and racist regimes; and in such cases, the supreme mujtahid has the right to temporarily forbid the use of birth control on the basis of secondary reasons (*hukm thanawi*).

For example, if the Russian communist government plans to impose or promote birth control in its Muslim provinces not because of health reasons but because it fears that the high birth rate among the Muslims might offshoot their minority status, then the mujtahid can issue a *fatwa* saying that to practice birth control in Soviet Russia (without any health reasons) would be *haram*.

Or if the Israeli government, for example, promotes birth control among the Muslims inside the occupied Palestine, then the mufti can prohibit it. Similarly, if the Indian government or the Maronite government of Lebanon intends to promote birth control among their Muslim citizens, then the supreme mujtahid can prohibit the use of birth control. Such *fatwas* will just be of a temporary nature; once the issue is depoliticized, the primary law will be applied again.

B. When Does Pregnancy Begin?

Islam allows the preventing of pregnancy, but does not allow its termination. However, the problem arises in defining the beginning of pregnancy from the *shari'ah* point of view. Before we look at various methods of birth control, we must first define the beginning of pregnancy; and only then will we be able to say which method is permissible and which is not.

My research has failed to find a discussion in the classical *fiqhi* books on the *shari'ah* definition of pregnancy. Even the present mujtahids have not discussed it. I intend, by putting my trust in Allah, to briefly study the issue in light of the scientific explanations and try to arrive at a *shari'i* definition of

pregnancy.

A few words on the criteria of *shar'i* definitions is necessary in order to understand the purely legal discussion on the definition of pregnancy.

1. Criteria of Shar'i Definitions

There are three possible criteria for definitions of things and concepts in fiqh: *shar'i*, *'urfi* and *'ilmi*.

(1) If something is clearly defined in the *shari'ah*, then it is known as the *shar'i* definition; for example, the definition of the word "*salat*" as the ritual prayer consisting of specific actions and recitations.

(2) *'Urf* means conventional, common tradition. *'Urfi* definition means a definition acceptable to the common people without any scientific or *shar'i* precision.

(3) *'Ilmi* definition means a definition presented by science; for example, the definition of pure water as H₂O, a liquid compound consisting of 2 parts of hydrogen and 1 of oxygen, or the definition of the beginning of day as the astronomical twilight.⁵

If the *shari'ah* defines something, then we must follow the *shar'i* definition. But if it is silent on the definition of certain things, then should we follow the *'ilmi* definition or the *'urfi* definition? Anyone who is familiar with the *shari'ah* will agree with me that in the absence of a *shar'i* definition, one has to follow the *'urfi* definition. One has to go by the common perception of things, not the scientific perception.

For example, when the *shari'ah* says that the water for ritual ablution must be pure (*mutlaq*) does it mean scientifically pure? Certainly not! Otherwise, the running water in this part of the world is not scientifically pure, it has some purifying chemicals in it, for example, fluoride. The *shari'ah* says that such water will still be classified as pure unless the common people can sense (without the help of a scientific lab) the difference in its color, taste or smell.

However, there is one case where the *ilm* definition will prevail: in cases where the common people have no way of defining the issue. So in cases where the *shari'ah* is silent and the *'urf* has no opinion, one has no choice but to follow the *'ilmi* (scientific) definition.

The definition of the beginning of pregnancy is one such case where the *'ilmi* definition would prevail; this is so because the *shari'ah* is silent, and it is beyond the common people to define when pregnancy begins. Therefore, in this case, we will first see how science describes the beginning of pregnancy and then attempt to find secondary proofs from *shari'ah* sources to arrive at a conclusion.

2. The Shar'i Pregnancy

The process of conception and pregnancy according to modern science is as follows: After the semen is ejaculated into the vagina, the sperms move into the uterus, cross the uterus and enter the fallopian

tube. The woman's ovum is in the fallopian tube. The sperms travel into the fallopian tube in search of the ovum.

When the sperms reach the ovum, normally only one of them succeeds in penetrating the ovum. This coming together of man's sperm and woman's ovum is known as fertilization. After fertilization, the ovum starts to travel towards the uterus; and after coming into the uterus, it gets implanted on to the wall of the uterus. This process is known as implantation of the fertilized ovum in the womb.

To determine the *shar'i* pregnancy, one has to answer the following question: From the *shari'ah's* point of view, does pregnancy begin

(1) with the entering of semen into the uterus or

(2) with the fertilization of an ovum by a sperm in the fallopian tube or

(3) with the implantation of a fertilized ovum in the uterus?

It is my contention that the combination of three things form the *shar'i* pregnancy: the sperm, the ovum and the uterus. If any two of these things combine without the third, then it is not a *shar'i* pregnancy. As I shall prove below, the *shar'i* pregnancy begins when the fertilized ovum implants itself onto the wall of the uterus.

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In my search for a *shar'i* definition, the closest issue I could come to was the discussion under the indemnity for abortion. In Shi'ah fiqh, the indemnity for abortion differs according to the various stages of pregnancy. However, what is relevant to our discussion is the indemnity for the first four months of pregnancy. The child in its mother's womb during this time goes through five stages gradually with distinctive names:

nutfah, when it is a sperm;

'alaqah, when it is a blood-like clot;

muzgah, when it is a lump of flesh;

'azm, when bones are formed,

yaksu lahman, when bones are clothed with flesh.⁶

The first stage is very crucial in our search for the beginning of pregnancy. Most *ahadith* simply say that the lowest indemnity is for aborting "a *nutfah* sperm."⁷ At the first look it would seem that according to these *ahadith*, pregnancy starts as soon as the sperm enters into the uterus.

This would mean that preventing the semen from entering into the uterus is allowed but once it has entered the uterus, then it is forbidden to abort it. But this is not so. This would have been correct if the word "*nutfah*" is taken only in its literal sense in which it means "a sperm".

However, in *fiqh* and *hadith*, the word "*nutfah*" is used both for a sperm as well as for a fertilized ovum. Fortunately this extended meaning of the word "*nutfah*" has been clarified in *hadith*; for example, the following *hadith* by Imam Zaynu 'l-'Abidin (a.s.).

Sa'id bin al-Musayyab asked Imam 'Ali Zaynu 'l-'Abidin about a person who hits a pregnant woman with his leg and, as a result, she lost what she had in her womb. The Imam said, "If it is a (*nutfah*) sperm, then he must pay her 20 dinars." Sa'id asked, "What is the definition of *nutfah*?" The Imam said, "It is a substance which, when placed in the womb, settles down in it for forty days."⁸

The Imam has used two words to describe the *nutfah*: (1) *wuzi'at fi'r-rahm* it is placed in the uterus, and (2) *fastaqarrat fihi* it settles down in it (i.e., the womb). It seems the Imam is emphasizing that the earliest stage of abortion is not when the sperm enters the uterus for the first time and just passes through it, rather when it settles down in it.

Obviously the "settling down of the sperm in the uterus" and "implantation of a fertilized ovum in the uterus" are one and the same thing.

It is needless to say that the distinction between the entrance of sperm into the womb, then the fertilization of ovum in the fallopian tube and finally its implantation was not clearly known to the scholars of *fiqh* and the scientists till a century ago. But the word "*istiqrar* = settling down" shows that our '*ulama*' were not completely unaware of the fact that the sperm goes through various stages before "settling down" in the uterus.

If they had been completely unaware, then they would not have used the word *istiqrar*, instead they would have just said "the entering of the sperm into the uterus." This difference becomes more clear in the writing of the '*ulama*' of post-seventh Islamic century. Before the seventh century, we find the expression such as "*ilqa'u 'n-nutfah*" (the entering of the sperm into the uterus).⁹

But after the seventh century, the '*ulama*' consistently began using the expression of "*istiqraru 'n-nutfah*" (the settling down of the sperm in the uterus).¹⁰

Even the present mujtahids describe the earliest stage of abortion as follows: "aborting a sperm after its settling down in the womb (*ba'd istiqrari 'n-nutfah fi 'r-rahm*)."¹¹

Moreover, the Qur'an has always used the word "*haml*" to describe pregnancy.¹² "*Haml*" means to carry, and it is obvious that a woman carries the child in her uterus and not in her fallopian tube. And *haml* starts with implantation and not before it.¹³

In conclusion, I can say that the beginning of pregnancy from the *shari'ah* point of view is the stage when

the fertilized ovum is implanted (*istiqrar*) onto the lining of the uterus. And, therefore, whatever prevents implantation is all owed but whatever aborts an implanted ovum is *haram*.

A year after reaching my decision in 1986, I wrote to Ayatullah al-Khu'i asking for his opinion on this issue: "From medical point of view, after the sperm enters the vagina, it crosses the uterus and enters the fallopian tube. In this tube, the sperm joins the ovum. Then the fertilized ovum enters the uterus and implants itself onto its wall. [14](#)

I think the answer of the Ayatullah needs some explanation for those not familiar with the *fuqaha's* style. In the first part of his answer, the Ayatullah agreed that what is forbidden in relation to birth control is the act of aborting the sperm after it had settled down in the womb.

In the second part of his answer, he declined to take it upon himself to specify when does "the settling down of the sperm" occur: soon after the sperm enters into the uterus or after its return from the fallopian tube?[15](#)

Based on the scientific explanation given earlier and the use of the word *istiqrar* in the *hadith* in relation to the *nutfah* and the writings of our '*ulama'* on the earliest stage of abortion, I consider the implantation of a fertilized ovum onto the wall of the uterus as the beginning of pregnancy from the *shari'ah* point of view.

Now we can easily decide on the permissible means of birth control. Any method that prevents pregnancy before the implantation of the fertilized ovum is allowed, and any method that terminates pregnancy after the implantation is not allowed and will be considered as abortion. It is in the light of this criterion that we should look at the various methods of birth control that are presently available.

It was interesting to know that two years after I reached my conclusion on the *shari'ah* basis, Dr. Clifford Grobstein, a leading embryologist of America, published the same conclusion on the basis of his scientific research.

Dr. Grobstein, whose evenhanded approach has won him places on the ethics committees of both the American Fertility Society and the Catholic Health Association, published his *Science and the Unborn* in 1988. He writes,

"In the last several decades, chiefly as the result of extensive studies of mouse development, it has become clear that in the earliest stages of each new generation, mammals (including humans) go through a preliminary pre-embryonic phase before they become embryos in the usual scientific sense...

"In mammalian development, which normally occurs within the body of the mother (internal gestation), it is now evident that the early changes undergone by the zygote first establish multicellularity and, second, prepare for penetration into the maternal uterine wall, or implantation. The second step, as we have noted, is the true beginning of gestation or pregnancy."[16](#)

C. The Contraceptive Methods

The contraceptive methods during our time work in different ways. We shall examine some of the most commonly used contraceptive methods and determine whether they are permissible in Islam or not. It must be mentioned that we are studying the permissibility of these methods from the *shari'ah* point of view only. For the medical opinion about the reliability or any side-effects of these methods, the reader must consult his or her physician.

1. Oral Contraceptives

Birth control pills prevent conception by inhibiting ovulation. The pills alter hormonal levels and suppress the hormonal signal from the gland for the ovaries to release an ovum. These pills are taken orally on a precise schedule for 20 or more days during each menstrual cycle.

Since all such pills inhibit ovulation, there is absolutely no problem in using them. However, the individual must consult the physician about possible side-effects.

There are some pills which work after the intercourse has taken place, for example, the 'morning-after pill' or the recently developed RU486 pill. Since in our definition, pregnancy begins at implantation, use of any pill which may prevent implantation is alright. Therefore, the pills like the 'morning-after' and RU486 may be taken after the intercourse BUT not after feeling or knowing that pregnancy has already occurred.

2. Depo-Provera

Depo-Provera works exactly like the pills, but instead of taking it orally it is injected once every three months. This and other similar contraceptive methods by injection are also permissible.

3. Intrauterine Devices (IUD)

IUDs are plastic or metal objects, in a variety of shapes, that are implanted inside the uterus. The medical experts do not exactly know how IUD works. Presently there are two opinions: one says that IUD prevents fertilization; and the other says that it prevents the fertilized ovum from implantation onto the uterus. Since the *shari'* pregnancy begins at implantation, there is no problem in using IUD as a birth control device irrespective of the above differences among the medical experts.

4. Barrier Devices

All barrier devices prevent the sperm from entering the uterus. This is done by sheathing the penis with a condom, or by covering the cervix with a diaphragm, cervical cap, or vaginal sponge. The use of spermicidal substances which kill the sperm before reaching the ovum is also a barrier device. There is absolutely no problem in using these contraceptives either.

5. Abstinence During Fertile Period

There are three basic procedures to predict ovulation so that sexual intercourse can be avoided during the approximately six days of a woman's most fertile monthly phase. These three methods are as follows:

(a) Ovulation Method: A woman learns to recognize the fertile time by checking the difference in the constitution of the cervical mucus discharge. The cervical mucus discharge signals the highly fertile period; and thus avoiding sex during the fertile days prevents pregnancy.

(b) Rhythm Method: A method similar to the first, but it depends on observing the monthly cycles for a whole year to determine the fertile days.

(c) Temperature: In this method, besides keeping a calendar record of her cycle, a woman also takes her temperature daily to detect ovulation. She can know her ovulation whenever her basal body temperature increases.

6. Withdrawal (Coitus Interruptus)

Coitus interruptus means withdrawing the penis just before ejaculation. This was the most common method of birth control before the invention of modern devices.

Muhammad bin Muslim and 'Abdur Rahman bin Abi 'Abdillah Maymun asked Imam Ja'far as-Sadiq about withdrawal. The Imam said, "It is up to the man; he may spill it wherever he wants."¹⁷ However, in another *hadith*, Muhammad bin Muslim quotes the fifth or the sixth Imam as follows: "In case of a slave-girl, it is allowed, however, in case of a free woman, I dislike it unless it had been so stipulated at the time of marriage."¹⁸

Based on this *hadith*, the majority of our mujtahids believe that coitus interruptus is allowed but *makruh* without the wife's consent.¹⁹

All methods mentioned above do not involve surgical operation and they are also reversible. A woman (or man) using these methods can stop using them at anytime in order to have a child.

7. Sterilization

Sterilization involves surgical operation.

Sterilization in men, known as vasectomy, means the severing or blocking of the tube in the male reproductive tract. This tube or duct passes sperm from the testes to the prostate and other reproductive organs.

Sterilization in women, known as tubal ligation, involves the blocking or severing of the fallopian tubes

which transport the ovum.

The permissibility of sterilization depends on whether or not it is reversible. At present, the rate of reversibility (40%) is not good enough to make sterilization permissible. Greater success may be achieved with improved micro surgical techniques. And until we achieve at least 80 percent reversibility, it is difficult to permit sterilization.

Can a woman practice birth control without the consent of her husband?

The wife has full right to the use of contraceptives even without the approval of her husband. [20](#) However, she should not use a method which may come in the way of her husband's conjugal rights. For example, she cannot force him to use condom or practice coitus interruptus.

This rule is based upon the principle that the extent of the husband's conjugal rights over his wife is just that she should be sexually available, responsive, and cooperative. This right does not extend to that of bearing children for him. Bearing children or not is a personal decision of the woman; and therefore, she may use contraceptives provided they do not come in the way of her husband's conjugal rights.

This was the legal aspect of the *shari'ah*. But on a practical level, such decisions are best made with mutual consultation between the husband and the wife; otherwise, it could lead to misunderstanding and mistrust. The legal aspect is to protect the basic rights of women; but in the real world, man and woman must base their life on love, mercy and cooperation as the Qur'an says,

"And We have created between you love and mercy."(30:21)

D. Abortion

Islam's approach to the issue of birth control and abortion is very balanced. It allows women to prevent pregnancy but forbids them to terminate it. Abortion after the implantation of the fertilized ovum in the womb is absolutely forbidden and is considered a crime against the law of God, and the fetus.

From the Islamic point of view, the illegitimacy of aborting a fetus does not depend on the issue of whether the fetus has the status of a human being or not. Although Islam does not recognize the fetus as a human being, it still gives to it the right of a possible life.

Abortion has become common in the Western world for various reasons

1. sometimes it is a matter of choice between a child and a career;
2. sometimes it is a matter of choice between a child and a luxurious life-style;
3. sometimes it is because of the child's illegitimacy;

4. sometimes it is because of the wrong sex of the child;

5. sometimes it is because of rape.

All these justifications are unacceptable from the Islamic point of view. The first two excuses reflect the selfish nature of this materialistic society. Allah says,

"Do not kill your children because of (fear of) poverty. We will provide for you and them." (6: 152)

"Do not kill your children for fear of poverty; We will provide for them and you. Surely the killing (of children) is a great error." (17:31)

The third excuse is a by-product of illicit sexual relations which Islam strongly condemns. The fourth reason is no less evil and cruel than the pre-Islamic Arab custom of burying baby girls alive.

As for the fifth case involving rape, the lady should use the morning after pill or RU486 immediately after the sexual assault in order to prevent the possible implantation of a fertilized ovum. But if pregnancy is established, then Islam does not allow abortion.

In such cases, Islam says that why abort the child for the crime of the father? As for the reputation of the woman, Islam strongly condemns the people who look down upon the rape victim; instead of reviling her, they should be sympathetic to her.

Modern technology (like ultra sound scan) has made it possible to know whether or not a child has a defect long before he is born. Some people justify the abortion of a defective fetus. The present mujtahids do not allow such abortions; they say that the parents should pray and hope for a normal and healthy child.

There are many examples where the prediction of the doctors have been proven wrong! In other words, what our mujtahids are saying is that take preventative measures before going for pregnancy; but once pregnancy has taken place, you are not allowed to abort a fetus even if it is defective.

The *shari'ah* allows abortion only when doctors declare with reasonable certainty that the continuation of pregnancy will endanger the woman's life. This permission is based on the principle of the lesser of the two evils known in Islamic legal terminology as the principle of *al-ahamm wa 'l-muhimm* (the more important and the less important).

The Prophet said, "When two forbidden things come [upon a person] together, then the lesser will be sacrificed for the greater." In the present case, one is faced with two forbidden things: either abort the unborn child or let a living woman die. Obviously, the latter is greater than the former; therefore, abortion is allowed to save the live person.

1. See Instruction on Respect for Human Life in Its Origin and the Dignity of Procreation: Replies to Certain Questions of the Day, Vatican City, 1987.

- [2.](#) See the footnote in al-Mizan, vol. 8 (English translation) p. 104.
- [3.](#) Nahju'l-Balaghah, saying No., 141; Tuhaf, p. 214.
- [4.](#) Wasa'il, vol. 14, p. 105.
- [5.](#) I have used the terms "shari' definition," "urfi (common) definition," and "ilmi (scientific) definition" to simplify the matter for the non-specialist readers, however, in the terminology of fiqh, the three definitions or perceptives are known as "al-'urfu 'sh-shari'," "al-'urfu 'l-'amm," and "al-'urfu 'l-khass" respectively. The specialist reader may refer to Shaykh Murtaza al-Ansari's al-Makasib, p. 193 for further details on definitions and perceptions in the shari'ah.
- [6.](#) This is based on the Qur'an, see 23: 12-14.
- [7.](#) Wasa'il, vol. 19, pp. 169, 237-240.
- [8.](#) Wasa'il, vol. 19, p. 240. Also see p. 238, 242
- [9.](#) Sharaya'u l-Islam, p. 1042; an-Nihayah, p. 778.
- [10.](#) Tabsirah, p. 216; Sharh Lum'a, vol. 2, p. 444; Tahrir, vol. 2. p. 597.
- [11.](#) After publication of the first edition of this book. it was my great pleasure to see in the late Ayatullah al-Khu'i's lecture a statement which completely concurs with my definition of pregnancy. He said. "The criterion in applying the [word] 'pregnant' for a woman is correct only after the settling down (istiqrar) of the sperm in her womb because just the entering of the sperm in her womb does not make her pregnant." See al-Gharawi, Mirza 'Ali, at-Tanqih fi Sharhi l-'Urwati l-Wuthqa (notes of the fiqh lectures of al-Khu'i), vol. 7 (Najaf: al-Adab Press, 1988) p. 206.
- [12.](#) See the Qur'an, 19:22; 31:14; 46:15.
- [13.](#) A close physician friend of mine pointed out to me that pregnancy in the fallopian tube (known as tubal pregnancy) is possible. However, this information does not affect our argument because tubal pregnancy is not a normal pregnancy. In the matter of definitions, abnormal possibilities are not taken into consideration. More so in abnormalities like tubal pregnancy: the fallopian tube is not big enough for development of a fetus, and the tubal pregnancy has to be surgically aborted otherwise the mother might end up losing her own life.
- [14.](#) Apparently, the expression 'istiqraru 'n-nutfa fi 'r-rahm' in the writings of Islamic jurists refers to this implantation of the fertilized ovum onto the wall of the uterus.) "By keeping in mind what has been said above, is it permissible to use a medicine or a device which prevents the fertilized ovum from implanting itself onto the wall of the uterus?" Ayatullah al-Khu'i replied that: "What is forbidden is to abort the sperm after its settling down, whereas [to prevent pregnancy] before that is alright. However, to specify the minor and major premises of both these issues is upon the individual himself." (Personal correspondence dated 24 Rabs' II, 1407 (1987).
- [15.](#) In light of the statement of the late Ayatullah al-Khu'i quoted on p. 116 of this edition, he also believed that the settling down of the sperm occurs after its return from the fallopian tube.
- [16.](#) Grobstein, Science and the Unborn, p. 58-9.
- [17.](#) Wasa'il, vol. 14, p. 105.
- [18.](#) Wasa'il, vol. 14, p. 106.
- [19.](#) Sharh Lum'a, vol. 2, p. 28; al-'Urwah, p. 628; Minhaj, vol. 2, p. 267.
- [20.](#) Minhaj, vol. 2, p. 276.

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