

Divine Sanction and Human Intervention The Issue of Birth-control and Family-planning in the Light of a Twentieth Century Urdū Treatise by an Indian Sufi Shaikh

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Abstract Some aspects concerning the controversial issue of birth-control and family planning as described and prescribed by Muslim authorities are yet to be investigated. A short treatise by a twentieth century traditional Muslim scholar and Sufi master provides the opportunity to address this topic, exploring the ways traditional authorities in the past and present have outlined the clues for providing an orthodox yet surprisingly accommodating answer vis-à-vis a topic of utmost actuality in contemporary society.

Keywords Birth Control. Indian Sufism. Urdu.

A recent article in the *Times of India* reports that after a delay of more than one year, in February 2015 the Indian government will finally release the data from the 2011 Census of India concerning the religious affiliation of the country's rapidly growing population. The reluctance of the government to publish this specific kind of data (those concerning other areas have long been made public!) suggests how religious affiliation is still regarded as a highly charged political and social issue in a country which, while gaining political independence in 1947, was to pass through the traumatic experience of being partitioned on religious grounds. With sensibilities running especially high among members of the two biggest, i.e. Hindu and Muslim, communities, the delay in publishing the data is attributed by most commentators to the fear among Indian politicians that a likely further shift in the ratio between the country's minority Muslim population against the majority Hindu community would raise concerns and potentially cause social tensions, especially in view of a string of elections in federal states with a strong Muslim presence (68.3% in Jammu & Kashmir, 34.2% in Assam). In fact, the unofficial data pertaining to the Census published by the *Indian Express* would confirm that, among other things, the ratio between the two communities has yet again seen a decrease of the percentage of Hindus (78.35% as compared to 80.45% in 2001 and 84.1% during the country's first census in 1951) against a small

but steady increase of the percentage of Muslims (14.2% as compared to 13.4% in 2001, and 9.8% in 1951, that is, shortly after independence) in the country's overall population.

Against this background, the present article intends to address the closely related issue of birth control and family-planning which, in the South Asian context in general and in India in particular, has a long and often painful history going as far back as the early 1950's. However, rather than focusing on its social, medical and political aspects, which since the former Indian prime minister Indira Gandhi's campaign of coercive sterilization during the 1975-77 emergency have kept making national and international headlines, it wants to investigate some aspects concerning the delicate and controversial issue of birth-control and contraception as described and prescribed by Muslim textual authority. Seeking inspiration from a short yet concise and authoritative treatise written by a twentieth century Indian Muslim scholar and Sufi master, the aim is to explore the ways Muslim authorities in the past and the present have provided the clues for defining an orthodox (from an Islamic point of view) yet sometimes surprisingly modern, flexible and accommodating answer vis-à-vis a topic of utmost actuality in India and in contemporary society at large. Scrutinizing some of the statements and opinions expressed by scholarly experts in the course of the history of Islam, both inside and outside South Asia, it emerges that whereas the views held by the learned scholars and jurists are often subtle and nuanced leaving space for interpretation, other aspects are addressed in an almost unequivocal fashion. They hence contradict the widespread perception of a monolithic Islam the authority of which is far too frequently believed to rely on the literal (mis-) interpretations of the primary textual sources (i.e. Qur'ān and Sunna) promulgated by numerous self-declared authorities.

For most of us, the issues of birth-control and family planning are concepts associated with modernity, affecting the lives of individuals, couples and families in contemporary societies increasingly dominated by Western values and a materialistic approach to life. By contrast, nothing seems to be so openly and willingly in contrast with modernity than Islam, too frequently depicted as a conservative and restrictive religion incapable of innovating itself and adjusting to the requirements of the changing times. It may therefore come as a surprise to many that a traditional Sufi authority better known for his intellectual elaborations on doctrinal issues pertaining to the esoteric science may have chosen to focus his attention on such kind of topic. And yet, Shāh Abū'l-Ḥasan Zaid Fārūqī (1906-1993), a renowned spiritual authority (*shaiikh*) in the Indian branch of the Naqshbandiyya, the Mujaddidiyya, a Sufi order whose authorities are best known for their strict Sunni interpretation of both the spiritual path (*ṭarīqa*) and its legal foundation (*sharī'a*), has sought it useful and necessary to express his opinion at this regard, probably not by mere coincidence at a time

when the Indian government had begun to actively promote both male and female sterilization as part of the official family planning program in the mid 60's of the past century. As becomes clear from the opening pages of the treatise, the text was originally intended as a reply to a legal enquiry (*mustaftī*) by Sayyid Niẓām al-Dīn Aḥmad Kāẓimī, a member of Delhi's 'ālim community, concerning the legitimacy for Muslims in the present historical conditions (*fasād-i zamāna*) and according to the requirements of modern times (*ẓarūrat-i waqt*) of resorting to contraception (*mān'-i ḥaml*) and adhering to the government-promoted schemes of family planning (*khāndānī maṣūba-bandī*) (Abū'l-Ḥasan 1969, p. 7). The articulated answer to this query was eventually expanded to become a separate, short treatise on the issue bearing the title *Masla-i ḍabt-i wilādat* (The Problem of Birth Control). Its first edition was published in Safar 1388/May 1968 in 3,000 copies which were sent out to a range of traditional Muslim scholars and academics in India and in neighbouring Pakistan. Touching on a very sensitive issue, it yielded an immediate response from many of the recipients who, although in some cases disagreeing with the author's conclusions, on the whole reacted positively to the scholarly initiative by the respected Naqshbandī shaikh and 'ālim. Some of these opinions and reactions have been collected and included in the book's second edition which was published only a few months later in Dhū'l-Ḥijja 1388/February 1969. Useful as a reference vis-à-vis an issue of utmost actuality at the time of publication, which saw the Muslim community compelled to pronounce itself in the light of the policy of family-planning aggressively promoted by the Indian government during those years, the author carefully avoids any hint to the social and political dimension of the problem, something that lies outside his scope. As he himself declares in the opening pages of the second edition, the intention behind the publication of the text was solely of a scholarly nature attempting to shed some light on the juridical, i.e. legal groundings of this issue.

On the other hand, books and treatises specifically addressing the topic of birth-control and family-planning were not unprecedented in twentieth century Muslim India. Already in the mid-1930's, the influential and controversial Muslim leader Sayyid Abū'l-Alā Maudūdī (1903-1979) wrote extensively on the subject, publishing his thoughts in serialized form in the *Tarjumān al Qur'ān*, a monthly journal concerned with religious and social issues edited during those years by him and his brother from Hyderabad (Deccan). This series was subsequently published in book form in 1943 and again, in a revised edition, in 1962 from Lahore in what by then had become West-Pakistan. Although neither a trained theologian nor a qualified jurist, Maudūdī ventured into a theological discussion to corroborate his strong opposition to any form of birth-control and contraception. In his opinion, this policy was part of a Western plot against Islam aimed at promoting the dissolution of the traditional social order, the imple-

mentation of which would eventually lead to moral degeneration, sexual promiscuity and licentiousness (Maudūdī 1962, p. 79). He takes up the traditional argument that the gift of procreation and sustenance (and hence also the inability of procreation) pertains to the realm of Allāh's exclusive prerogatives, quoting in his support the Qur'anic verses since long cited by those opposed to contraception: *is there a Creator, other than God, to give you sustenance from heaven or earth?* (Sūrat al-fāṭir, Koran 35,3); and: *There is no moving creature on earth but its sustenance dependeth on God* (Sūrat al-Hūd, Koran 11,6), and: *Lost are those who slay their children, from folly, without knowledge, and forbid food which God hath provided for them, inventing lies for God* (Sūrat al-an'ām, Koran 6,140). Many years later, the controversy stirred up by Maudūdī's contribution to the discussion in Pakistan eventually led to the temporary proscription, in 1966, of his book by the government of Pakistan, a decision which, however, was soon after to be revoked. It nevertheless demonstrates the lasting actuality of the problem and at the same time indicates the popularity of Maudūdī's way of addressing the issue.

More recently, the contrasting opinions expressed by the two chief *muftīs* of Delhi, the present *shāhī imām* of the city's historical Shāhjahānī Jama' Masjid, Sayyid Aḥmad Bukhārī and Muftī Mukarram Aḥmad, since 1971 head *imām* of the Fatehpuri Masjid and himself a recognized authority in the Naqshbandī-Mujaddidī order, are indicative of the persistence of different stances on the subject among influential Muslim scholars in India even today. Whereas the former has repeatedly stressed the incompatibility of family-planning with the values of traditional Islam, the latter takes a more balanced stance asserting the need for Muslims to adopt a middle way in life which would take into account what is in practical sense achievable in the present-day circumstances (Weigl 2010, p. 211). Mukarram's position on contraception is hence more differentiated than that of his more politically-oriented contemporary, as he makes a distinction between permanent and temporary measures of contraception, pronouncing himself against the use of the former, but allowing for the conditional use of the latter. Such point of view, as we shall see, comes closer to that held by Shāh Abū'l-Ḥasan himself, and reflects an approach to the topic based on scholarly investigation of the available textual sources.

The statements made by Muftī Mukarram Aḥmad suggest the underlying complexity of the topic of family-planning, contraception and birth-control. As so often happens in Islam in absence of a central authority for the interpretation of the primary textual sources, the issue of birth control and family-planning is defined by contrasting views and positions among the learned interpreters (*mujtahid*) of the Law. With the proliferation of modern techniques of contraception, the fundamental question arises as to which of these should be outrightly rejected as unlawful (*ḥarām*) and which qualify for closer investigation and, once these are identified, whether

the *sharī'a* considers birth control (*ḍabt al-wilādat*) and its range of methods as permissible (*jā'iz*) or not, whether it is permissible within certain limits or whether it should be regarded as altogether unlawful (*ḥarām*). The position held by some conservative authorities is that in Islam there is no room at all for birth control. Based on the authority of the Qur'anic verse: *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* (*Sūrat al-asrā, Koran 17,31*), they assert, in an altogether similar fashion to that of Maudūdī, that it is impossible for a pious Muslim to resort to any kind of practice apt at impeding the course of a divinely prearranged plan or destiny, hence the intervention of human decision to intervene in the course of nature is interpreted as an unlawful limitation of God's power (*qudrat*). It is precisely in view of the contrasting opinions encountered among different strains of Muslim authorities in the present as well as in the past on one side and the desire of many common Muslims to receive an answer to their doubts and queries on the other that Shāh Abū'l-Ḥasan Zaid Fārūqī has deemed it useful and necessary to investigate the issue in some detail. Collecting a considerable amount of material taken from a variety of sources, he refers to a range of authoritative scholarly texts compiled over the centuries in order to investigate and illustrate the issue of birth control from a traditional and orthodox, that is juridical (*fiqhī*), point of view.

If considered within the context of traditional sciences, the problem of birth-control falls within the realm of *fiqh* or Islamic jurisprudence, whose authorities (*fuqahā*, plural of *faqīh*) are responsible for the correct interpretation (*ijtihād*) of the Divine law (*sharī'a*). With concern to the issue of birth-control, Shāh Abū'l-Ḥasan, in a truly scholarly fashion that distinguishes a *faqīh*, begins his discussion by declaring that even though the term birth-control (*ḍabt al-wilādat*) is in itself a new one, not encountered among the *'ulamā* and *fuqahā* of the past, the necessity to apply such unprecedented, modern terminology to an old concept is not to be deemed reproachable (*lā mushāḥat fī'l-istilāḥī*) (Abū'l-Ḥasan 1969, p. 8). Yet, many of the methods of contraception are in one way or the other mentioned in the juridical reference works compiled over time whereas others, more specifically modern ones, have been addressed by contemporary authorities. Thus is established that the source (*aṣl*) moving the reasoning on the use of contraceptives among Muslim scholars is the established practice of *'azl*.

It is generally agreed upon by scholars of Islam that the most acceptable (and hence widely used) method of birth-control and contraception (*man' al-ḥaml*) is that known as *'azl*. The term derives from the Arabic verbal root *'a-za-la*, meaning 'to put away or aside', hence: removal, dismissal. In the specific context, it indicates the *coitus interruptus*, a practice well-known in ancient Arabia the use of which is attested since pre-Islamic times. Nu-

merous prophetic Traditions (*aḥādīth*, plural of *ḥadīth*) confirming its acceptance by the prophet of Islam are included in the canonical collections of prophetic Traditions. The *Saḥīḥain* of al-Bukhārī and Muslim and the *Sunan* collections all contain explicit references to it and the four canonical schools of Sunni Law (*madhāhib*, plural of *madhhab*), i.e. Ḥanafī, Malikī, Shāfi'ī and Ḥanbalī, all have addressed the issue in their authoritative manuals. According to the heads of these four schools, i.e. Abū Ḥanīfa (80/699-148/767), Mālik ibn Anas (93/711-179/795), Muḥammad al-Shāfi'ī (150/767-204/820) and Aḥmad ibn Hanbal (164/780-241/855), the practice of 'azl is either permissible (*jā'iz*) or neutral (*mubāḥ*). Although opinions vary as to the circumstances in which 'azl can or should be practiced, there is a general consensus among the experts in canonical Islamic law (*fuqahā*, plural of *faqīh*) to declare the practice of 'azl as a lawful means of birth-control and contraception. The practice of 'azl is considered to be part of the so-called barrier or temporary/accidental methods (*'ārdī sūrat*), in contrast with the permanent methods of contraception (*dā'imī sūrat*). The former include also the most popular contraceptive used in modern times, i.e. condoms which, in a sense must be considered as a modern evolution of the ancient technique of 'azl.

Perhaps, the scholar who has treated the topic of birth-control in greatest detail is the renowned theologian, jurist and Sufi Abū Ḥamīd al-Ghazālī (450/1058-505/1111) in his *opus magnum*, the *Iḥyā' ulūm al-Dīn* (Revival of the Religious Sciences). To testify the reliance of many Sufi-oriented authorities, both of the past and at present, on the elaborations of this outstanding Muslim scholar, Shāh Abū'l-Ḥasan includes an entire chapter, albeit not written by himself but by his close friend Maulānā Qāḍī Sajjād Ḥusain, then head of the Madrasa 'Āliya at Delhi's Fatepuri mosque, to explaining al-Ghazālī's viewpoint on this issue. This chapter reiterates the well-known stance by the Shāfi'ī jurist al-Ghazālī who in principle agrees that the matter of impregnation should be left with God alone, but would allow for it in case of economic constraints on the side of the man who practices it. Such a position is seen by Abū'l-Ḥasan and Qāḍī Sajjād Ḥusain as what they describe as a pre-modern concession to modernity that clearly goes against the argument that by acting with intention in mind (*niyya*) one violates one of the basic principles of Islam, i.e. the trust in God for sustenance sanctioned by a series of frequently cited Qur'anic passages. As with concern to the apparent contradiction resulting from the statement which on one side condemns the practice of 'azl as 'secret infanticide' and on the other declares its definition as minor infanticide as wrong, al-Ghazālī, who generally accepts 'azl as a permissible practice notes that the use of the term 'secret infanticide' in this context has to be intended equivalent to the phrase dissimulation is concealed infidelity (*shirk al-khafī*), which would indicate a sense of aversion and detestation (*karāhat*) for such practice on behalf of the prophet. Aversion, al-Ghazālī

argues, manifests itself on the occasion of prohibiting something (*tahṛīm*), when purifying oneself from an impurity (*tanzīha*) or as a result of neglect of the inner virtues. Hence, for him to resort to its practice it is respectable, not to practice it is better and the third meaning evinced from it is that to practice 'azl preserves the inner virtue and excellence (*faḍīlat*) of a person. He explains the apparent contradiction as something undesirable (*makrūh*), but not out rightly forbidden (Abū'l-Ḥasan 1969, pp. 12-13).

Yet another scholar of the past who has dedicated much attention to the question of birth-control was the Ḥanbali jurist from Syria, Ibn Qayyim Shams al-Dīn Muḥammad al-Jawzīya (d. 751/1350). In his *Zād al-ma'ād fī hadī khair al-'ibād* (Provisions of the Hereafter on the Teachings of the Best of All People), Ibn Jawzīya has collected what is perhaps the largest amount of prophetic Traditions deemed authentic (*ṣaḥīḥ*) on the issue of 'azl. The majority of these seem to corroborate the view that Muḥammad considered this practice lawful (*ḥalāl*) and permissible (*jawāz*). However, Shāh Abū'l-Ḥasan also cites Ibn Jawzīya as reporting that some among the learned scholars of Islam consider it forbidden (*ḥarām*) on the authority of the often quoted *ḥadīth* listed by Muslim in his *Ṣaḥīḥ*, in which the prophet Muḥammad apparently declared the practice of 'azl as being tantamount to burying a child alive: *then they asked him about [the practice of] 'azl, whereupon he replied: «That is the secret [way of] burying [it] (dhalīka al-wadu al-khafī)»*, whereas 'Abd Allāh ibn Mas'ūd, one of the earliest converts to Islam and among the most intimate companions of the prophet (*ṣaḥāba*), reportedly defined this practice it as minor infanticide (*al-maw'ūdat al-ṣuḡhrā*).

The view that any kind of contraception is to be regarded as *ḥarām* has been strongly endorsed by a group of Muslim scholars around the Andalusian philosopher, theologian and jurist Ibn Ḥazm (384/994-456/1064), probably the best known opponent of contraception among the 'ulamā of the classical age. Ibn Ḥazm condemns all kinds of contraception including 'azl, judging them as being equivalent to infanticide on the basis of the above mentioned prophetic Traditions which, he asserts, although less in number as compared to those in which he apparently condoned or even allowed for practicing 'azl, refer to a later period in the prophet's life and must be considered as having been abrogated, for Muḥammad's later statements hence represent his true opinion (Atighetchi 2007, pp. 79-80). As well-presented the argument of these scholars may appear, Abū'l-Ḥasan comments, this position was never shared by the majority of authorities of the time and has emerged more powerfully only in relatively recent times, during the time of the merging reform movements. They become particularly articulated in the views of the renowned Indian expert of prophetic traditions (*muḥaddith*) Shāh 'Abd al-'Azīz (1159/1746-1824), the eldest and most prominent son of the great scholar and sufi Shāh Walī Allāh, as voiced in his *Fatāwā-yi-'azīzī* (Abū'l-Ḥasan 1969, p. 54). However,

Ibn Jawzīya in his own right comes to the conclusion that it is impossible to compare the above mentioned *ḥadīth* against the reported claim made by 'Abd Allāh ibn Mas'ūd. To support his view, he quotes the following authentic (*ṣaḥīḥ*) Tradition reported by al-Tirmidhī which explicitly contradicts the juxtaposition of the practice of *coitus interruptus* with that of minor infanticide: *Jabīr ibn 'Abd Allāh narrated: «Oh messenger of Allāh! We practice 'azl, but the Jews claim that it is minor infanticide.» So he said: «The Jews lie. When Allāh wants to create it, nothing can prevent Him»*. Thus, Abū'l-Ḥasan agrees favourably with Ibn Jawzīya that judging by this authoritative Tradition alone, Islam would appear to set itself in net contrast with Jewish law which strictly prohibits the practice of *coitus interruptus* (cf. Gen. 38,9-10).

In order to lend support to this position, al-Jawzīya, Imām Kamāl al-Dīn ibn al-Humām (d. 861/1457) and Mullā 'Alī Qārī (d. 1014/1605) all cite a *ḥadīth* which relates the story of a discussion during which 'Umar ibn al-Khattāb (581-644), 'Alī ibn Abī Ṭālib (599-661), Zubair ibn al-'Awāmm (594-656), Sa'd Ibn Abī Waqqāṣ (595-674) and other companions of the prophet (*ṣaḥāba*) were present when the issue of 'azl was raised. All companions agreed that there was no harm in practicing it. When one among the present raised the objection that some people consider this practice as equivalent to minor infanticide (*maw'ūda al-ṣuḡhrā*), 'Alī is said to have replied: «Until the foetus will not pass through seven stages [of development] (Ar.: *iṭwār*, pl. of *ṭaur*), it cannot be considered infanticide». 'Alī is then reported to have recited the famous Qur'anic verses, in which the gradual development of a human being inside a woman's womb is described in a very poetical and suggestive fashion: *Man We did create from a quintessence (of clay); then We placed him as (a drop of) sperm in a place of rest, firmly fixed; then We made the sperm into a clot of congealed blood; then of that clot We made a lump (foetus); then We made out of that lump bones and clothed the bones with flesh; then we developed out of it another creature. So blessed be God, the best to create (Sūrat al-mu'minūn, Koran 23,12-14)*. 'Alī then went on explaining to the others present in the discussion that first there was a quintessence of clay (*sulālat*), then a drop of sperm (*nutfat*), then a clot of congealed blood ('*alqat*), then a lump of flesh (fetus, *mudhghat*) and finally another creature (*khalqan*). On hearing this explanation, 'Umar is said to have praised 'Alī wishing him that Allāh may increase his life span.

On the basis of the quoted Qur'anic verse, 'Alī has thus been able to explain that it is not possible to define the practice of preventing the man's sperm from flowing into the woman's womb as 'child burial' since a new human being cannot be possibly defined as such before going through all the above mentioned seven evolutionary stages. By transferring and adapting this logical deduction to the more contemporary issue of abortion or voluntary interruption of pregnancy (*isqāṭī ḥaml*), most contemporary

'ulamā have declared that abortion is permissible until the foetus has reached the age of 120 days. It is permissible to abort until 120 days after conception, since until that moment the foetus is not fully developed and hence its killing cannot be regarded as infanticide. To support this argument, the following Tradition is cited: [The Creation of] *a human being is put together in the womb of the mother in forty days, then he becomes a clot of thick blood for a similar period, and then a piece of flesh for a similar period. Then Allāh sends an angel who is ordered to write four things... then the soul is breathed into him.* As we can see from the just quoted authoritative *ḥadīth*, Islamic tradition considers the amount of time of three times forty day for a total of 120 days or roughly three months, as the period required for the foetus to develop into a human being which corresponds to approximately the same period considered by legislation in most Western countries as the limit within which abortion can be legally practiced. Hanafi legal opinion, to which our Sufi author subscribes, allows abortion provided it is done within 120 days after impregnation.

Since there are no explicit statements in the Qur'ān concerning the permissibility or impermissibility of 'azl, most scholars tend to take into account the variables involved while making recourse to this practice, such as the conditions of each individual and/or family and changing historical circumstances. A *ḥadīth* related by Abū Huraira and reported by Ibn Mājah says: *Do not use 'azl with your wife without her permission.* The classical position taken by most juridic schools (*madhāhab*, plural of *madhhab*) is to consider 'azl lawful if practiced with the consent of the wife. If the four imām of the principal legal schools of Sunni Islam have agreed on declaring the practice of 'azl as ultimately permissible, this permission appears however to have been made conditional on the consent of the wife (*tazi'i nutfa*, lit.: spoiling of the sperm) whose sexual satisfaction must be guaranteed and safeguarded if recourse to 'azl is to be made and without which 'azl is not permissible (Abū'l-Ḥasan 1969, pp. 18-19).

In view of the deteriorating conditions of time, the reasons put forward for abolishing the original condition of seeking one's wife consent appears reasonable and well pondered. At this regard, Abū'l-Ḥasan reminds the reader of the event described in the Qur'anic chapter of the Cave (*Sūrat al-kahf*, *Koran* 18) concerning Moses and his mysterious companion endowed with divinely inspired science (*'ilm al-ladunnī*), which most esoteric traditions agree to identify with Ḥaḍrat Khidr. When during their common journey they met a young man who was slain by Khidr, Moses said: *Hast thou slain an innocent person who had slain none?* (*Koran* 18,74). On which, Ḥaḍrat Khidr explained to him: *«As for the youth, his parents were people of faith, and we feared that he would grieve them by obstinate rebellion and ingratitude»* (*Koran* 18,80). In a typical Sufi fashion, Shāh Abū'l-Ḥasan observes that the same way Ḥaḍrat Khidr acted on the order of his Lord when he killed the undutiful and wicked (*nā-khalaf*) boy in order to prevent

the blindness caused by the love his father and mother nourished for him to lead to their ruin and death, that same way the learned and savant have applied their subtle discernment and mildness of heart for the sake of the Muslim *'umma*. Hence, the final verdict that in these times of increasing corruption and moral decline, in which the chance that one's own children turn against their parents has become a real danger, there is no more need to guarantee the satisfaction of one's wife in sexual intercourse, but the practice of *'azl* is permissible for the sole sake of preventing pregnancy, without any further condition (Abū'l-Ḥasan 1969, p. 21).

Ibn Humām has supported this view in his writings and Ibn 'Ābidīn quotes two conditions to support his stance on *'azl*, i.e. that both husband and wife be either on a long journey or find themselves in a non-muslim country (*dār al-ḥarb*). He, Tahtawī and al-Mas'ūd declare, moreover, that it is permissible for women to close the mouth of their uterus (*raḥim*) in order to prevent them from becoming pregnant without seeking the consent of their husband (Abū'l-Ḥasan 1969, p. 17).

The third method falling into the category of accidental measures of contraception is that of observing the rhythm of time (*maḥfūḍ zamāna kī ri'āyat*), that is, to limit sexual intercourse to those days during which the women's womb is not receptive to impregnation, a technique known in to modern Western science as Ogino Knauss method. And again, the permissible methods of contraception include the use of the contraceptive pill (*mān'a-i ḥaml golī*), although in the case of this latter it is necessary to seek the advice of an expert medical doctor in order to prevent the woman's health from being affected by any harm or damage (Abū'l-Ḥasan 1969, p. 21).

To sum it up, to resort to these accidental and temporary methods of contraception without any dislike or aversion is permissible. According to both scholars of the past (*mutaqaḍamīn*) and the present (*muta'ākhirīn*) it is permissible without any objection to be practiced by reciprocal consent in the couple. According to most scholars of the modern period, even if practiced by any one member of the couple without seeking the consent of the other these methods are permissible, because of the worsening conditions of the time, in order to prevent an uncontrolled increase in a family's progeny.

The principal permanent or irreversible (*dā'imī*) methods of birth control are male sterilization (*mard kī nasbandī*) or vasectomy and women sterilization (*'aml jarrāhī*), consisting of hysterectomy or tubal ligation. These are modern techniques of birth-control unknown in ancient times, hence no reference to them is found in the primary sources of authority in Islam, neither in the Qur'ān nor in the Sunna nor among the *'ulamā* of the pre-modern period.

Those opposed to the practice of male sterilization quote the Qur'anic verses already mentioned in the context of Maudūdī's argument: *There is*

no moving creature on earth but its subsistence dependeth on God (Sūrat Hūd, Koran 11,6), but also: And in Heaven is your subsistence, as that which ye are promised (Sūrat al-dhāriyāt, Koran 51,22) in support of their view. And the Prophet has said: Marry the child-bearing, loving woman for I shall outnumber the peoples by you on the Day of Resurrection (ḥadīth narrated in Sunan Abū Dā'ūd and al-Nasā'ī¹) that is to say: the Muslim community will excel over the other communities because of the abundance of its progeny. These textual references are used to derive the incumbency on every Muslim to make every effort to increase the number of his offspring, so as to contribute to the excellency, prosperity and happiness of the Muslim 'umma over all other communities. They argue that those who resort to male sterilization because of economic constraints and indigence thereby show his lack of reliance and trust upon God, whereas it is incumbent not to nourish any doubt as with regard to His sustenance. For surely, God is He Who gives all Sustenance (Sūrat al-dhāriyāt, Koran 51,58) and surely, the prosperity and multitude of the community of the messenger of Allāh is desirable. There can be doubt in this, and yet there are some aspects which must be investigated before reaching a definite verdict.

Allāh has established numerous rules and causes for this ephemeral world, to disregard and turn away from these is against the *sunna* and the ways commanded by Him. That precisely was the bond between Him and His messenger and in His treasure-house there will never ever be any want, even if many people fail to understand this, for notwithstanding all this, He has commanded: *Make not thy hand tied to thy neck, nor stretch it forth to its utmost reach, so that thou become blameworthy and destitute. Verily, thy Lord doth provide sustenance and abundance for whom He pleaseth, and He provideth in a just measure. For He doth know and regard all His servants (Sūrat al-isrā, Koran 17,29-30).*

By contrast, according to Shāh Abū'l-Ḥasan (1969) in absence of clear evidence for these practices in the original sources, the contemporary 'ulamā have formulated their legal opinions and judgments through deductive analogy (*qiyās*), a process also called deduction (*istinbāt*) or derivation (*istikhrāj*). He identifies three major positions held at this regard.

The first holds that sterilization is tantamount to permanent castration (*ikhtiṣā'*), since both irrevocably prevent the possibility of impregnation. To adopt this view cannot be corroborated by the fact alone that the testicles (*khuṣya*) are permanently removed, for a castrated man (*khaṣī* or *ākhta*) cannot have regular sexual intercourse (Arabic: *mubāsharat*, Urdu: *ham-bastarī*), whereas for a person that has undergone sterilization the situation is indeed different, since such a person preserves his viral power (*quwwat-i mardī*) intact and is hence able to maintain sexual relations

1 *Al-Sunan al-sughrā, Kitāb al-nikāḥ*, in Siddiqui 1994, 2, 1, p. 314.

with his wife as before. Male sterilization intended as vasectomy does not imply the removal of any part of the body, involves the bilateral disruption of the *vas deferens*, thereby preventing the expulsion of sperm from the penis and thus preventing impregnation of the sexual partner. By contrast, castration not only leads to the permanent perishing of the male sperm, it also brings about a remarkable decrease in virility. Therefore, argues Abū'l-Ḥasan, no analogy can be established between these two actions, there is a huge difference between them (Abū'l-Ḥasan 1969, pp. 22-29).

The second view holds that the practice of sterilization amounts to an intentional alteration in God's creation (*taghīr al-khalq*) and must therefore be regarded as sinful. Those who subscribe to this point of view assert that to resort to such method openly contradicts what is thus sanctioned in the Holy Book: *But Shaiṭān said: «I will take of thy servants a portion marked off... And I will mislead them, and I will create in them false desires; I will order them to slit the ears of cattle, and to deface the fair nature created»* (*Sūrat al-nisā*, Koran 4,118-119). This verse mentions a series of rituals currently practiced among the people of pre-Islamic Arabia, such as slitting the ears of some animals, to mark, hurt or even deface them so as to make them easily recognizable since they have been released for the sake of the (false) gods. And some of them did not release them, so in order to please Satan they altered the creation of God (Abū'l-Ḥasan 1969, pp. 13-15). But what does it actually mean to alter the creation of Allāh? There is some controversy among the learned scholars at this regard. Some have interpreted it as meaning 'intervention in the process God's Creation' (*takhliq*), which by definition is a created and fabricated thing (*āfrīnīsh*). According to this interpretation, the slitting of the ears of those animals mentioned in the above mentioned Qur'anic verse occurs due to deception by *shaiṭān*, thus altering the body of the animals as they were originally created by God. Those who subscribe to this point of view consider the slitting of the ears by analogy an illegitimate intervention in God's act of creation. As an example, Shāh Abū'l-Ḥasan quotes the opinion of Imām Mujāhid ibn Jabr (642-722 AD), author of one of the earliest commentaries (*tafsīr*) on the Qur'ān, according to whom to alter God's creation implies an alteration in the true Divine Law (*Dīn qayim*), because this is the meaning clearly conveyed by the Qur'ān: *So set you thy face steadily and truly to the faith: establish God's handiwork according to the pattern on which He has made mankind: no change [let there be] in the work [wrought by God], that is the standard religion (Dīn qayim), but most among mankind understand not* (*Sūrat al-Rūm*, Koran 30,30). According to Mujāhid (*Tafsīr*, as quoted by Abū'l-Ḥasan 1969, p. 17), the first verse should be interpreted as being introduced by: (*Shaiṭān said:*) *I will deceive them so that they shall alter the true Dīn created by God*. Hence, those who condemn the practice of sterilization as an act equivalent to the alteration of God's creation accept this interpretation claiming that those who resort to such practice alter

God's handiwork and the bodies born out of this creative process, judging it non-permissible (*nā-jā'iz*) and forbidden (*ḥarām*), and hence declaring it an undesirable act bordering with the forbidden (*makrūh taḥrīmī*).

However, Abū'l-Ḥasan considers the proofs and contention of those who subscribe to this point of view as objectionable. First of all, he states, the interpretation and explanation advanced by those who advocate the unlawfulness of sterilization as a method of contraception reflects a position that is in between two positions which, if examined against each other, does not subsist, for there cannot subsist any truth in a position that contradicts itself. Second, the verse quoted refers to the evil inherent to an alteration derived from the deception of *shaitān* and hence does not condemn universally any kind of alteration. To practice sterilization does not entail the removal of any bodily part, whereas, by contrast, the practice of circumcision (*khatna*) effectively implies the amputation of a bodily part and thus an intervention on God's handiwork with permanent consequences. And yet, not only is circumcision not condemned, but is a recommended custom among Muslims since it is an act not perpetrated for the sake of *shaitān* but for the Most Merciful. Women have their ears and noses cut for the purpose of enhancing their beauty with ornaments such as earrings and nose rings, yet the *sharī'a* allows this practice.

Abū'l-Ḥasan (1969, pp. 14-15) goes then on to cite the nineteenth century Syrian jurist Imām Ibn 'Abidīn al-Shāmī (1198/1783-1252/1836), who in his authoritative work on Ḥanafī *fiqh* titled *Radd al-muḥtār 'alā al-durr al-mukhtār* is quoted as writing:

Whatever action is accomplished for the benefit of God's servants, if no harm derives from it, must be declared as permissible by analogy (*qiyās*). Hence, the *'ulamā* have declared the castration of animals for the benefit for men as permissible because it helps making the meat of these animals more tender and tasteful. In addition, it is a common practice among herdsmen to sign the animals of their flock with specific marks of distinction; they do it out of their own needs, not because of any deception by or for the sake of *shaitān*. On the bases of the above mentioned premises, these actions are not sinful, but according to the rules of the *sharī'a* that according to necessity, those things which are forbidden become permissible (*mubāh*).

There derives that those who resort to sterilization do not act for the sake of pleasing *shaitān*, but because outer circumstances compel them to make recourse to it. Abū'l-Ḥasan develops the consequential reasoning that they supposedly do so because they feel that the progeny Allāh has already granted them as much as they can possibly bear and only with utmost difficulty they are capable of facing the expenses for their upbringing, maintenance and education; and since they cannot possibly face the

expenses deriving from a further increase in progeny, any further child would cause great trouble to them forcing them to generate additional income through illegal means. Thus a real danger arises that they will get involved in activities that go against the decrees of Allāh thereby attracting His wrath and anger and making *shaiṭān* happy.

The reasoning adopted by Shāh Abū'l-Ḥasan here follows closely that of al-Ghazālī when he asserts that those who resort to the practice of sterilization do so simply because they are compelled to do so in order to prevent themselves from being forced into a condition of economic constraint which they feel they cannot possibly bear. The condition of such a person hence, it is argued, falls into the category hinted at in several instances in the Qur'ān, thus lending support for such an attitude, as for instance: *No burden do we place on any soul, but that which it can bear* (Sūrat al-a'raf, Koran 7,42). For this reason, Shāh Abū'l-Ḥasan's argument runs, it is impossible to include the practice of male sterilization among those that came into being through the deception of *shaiṭān*, for such a person acts so in order to protect himself from committing sins derived from his incapacity to face the expenses for the upbringing of further children. His act cannot therefore be equivalent to those mentioned in the Qur'anic verse quoted above with regard to the infidel polytheists whose actions were born out of the deception of *shaiṭān*.

The third position on which Abū'l-Ḥasan elaborates is that which holds that the practice of sterilization entails the equivalence with the condition of male sterility or female barrenness, a condition referred to by the Arabic term *'uqm* (dryness), whereas those who cannot have/bear children are referred to as *'aqīm/aqīma*, as sanctioned by the Qur'anic verse: *To God belongs the dominion of the heavens and the earth. He creates what He wills. He bestows children male or female according to His will, or he bestows both males and females, and He leaves barren whom He will, for He is full of knowledge and power* (Sūrat al-shūrā, Koran 42,49-50). For many people, as far as the result and the inherent quality of such action is concerned, sterilization amounts to artificially causing the condition of being sterile or barren. Whoever between husband and wife is sterile or barren cannot possibly beget children. There is neither anything malfunction nor apparently any deformation in their sexual organs (*a'zā*), sexual relations between husband and wife remain outwardly unaffected by it. Those women who agree to undergo surgery for sterilization through and those men who agree to undergo surgery for vasectomy agree to become sterile and barren, so as to prevent them from having children. Apparently, it does not compromise in any way the relation between husband and wife. To conclude whether this method is to be judged, the jurists who dealt with this issue the question arose whether the capacity to bear children should be included among the divine favours (*fuyūd*, pl. of *faiḍ*) bestowed by God upon His creatures and one of the Divine attributes, and whether

those who opt for being sterilized hence put themselves in conflict with this favour. If so, this would be a clear sign of infidelity and, as such, result in being non-permissible. For Abū'l-Ḥasan, although this is true in a certain sense, it is necessary to reflect carefully before pronouncing oneself, because whoever relinquishes any of the divine favours or willingly excludes himself from it, if not outrightly stupid, would be asked for the reason why he had done such a thing. If he comes up with a bad reason, then he is blameworthy for committing a bad act, but if he has done so for any good reason then he surely is not blameworthy, nay if he has done such a thing with an important purpose in mind this is rightful and laudable (*mustaḥaqq*). According to an authentic Tradition, the quality of an action depends on the intention and act of will behind it, on the basis of what is confirmed by a famous *ḥadīth* narrated on the authority of *amīr al-mu'minīn* Abū Ḥafs 'Umar ibn al-Khaṭṭāb, who is reported as saying: *I heard the messenger of Allāh say: «Actions are according to intentions (bi'l-niyyati), and everyone will get what was intended»* (Umm 1999, *ḥadīth* 1). And also: *We did indeed offer the Trust to the heavens and the earth and the mountains: but they refused to undertake it, being afraid thereof: but man undertook it; he was indeed unjust and foolish* (*Sūrat al-ahzāb, Koran 33,72*). Hence, after quoting these two powerful statements taken from the two primary sources of Islamic authority, Abū'l-Ḥasan concludes that a person that decides to undergo surgery for vasectomy cannot apparently be neither unjust nor foolish, nor is his intention in any way evil, so why should he be judged as bad and evil?

Here yet again emerges the surprisingly flexible mental attitude by Shāh Abū'l-Ḥasan, the author of the treatise that provided us with the basis and background for the considerations on the issue of birth-control and contraception made in the present article. Although far from being exhaustive on an issue that would require far more space and expert attention, it hopefully has been able to throw some light on the reasoning adopted by a respected *'ālim* who happens to be also a Sufi distinguished by a deep awareness of the human psyche. Thus, far from limiting himself to adopting the rigid categories of legalistic thinking, his procedure is permeated by that substratum of humanity that distinguishes those capable of combining their erudition in the external sciences (*'ulūm al-zāhir*) with the insight of those endowed with the subtle knowledge of the inner sciences (*'ulūm al-bāṭin*). The controversy whether or not it is licit in Islam to make recourse to different kinds of contraception in different circumstances and family-planning at large has been, still remains and probably will remain a disputed issue among Muslim scholars in South Asia and in the Islamic world at large. From what emerges by looking at the different positions held by different authorities in different historical and, perhaps, cultural contexts, the more generally prohibitive stances are often made by those who use this issue in the context of political and/or ideological discourse,

voicing their opinion in front of a general public and in the context of a public debate that is meant to preserve what is understood to be a set of Islamic values perceived as being under threat now as in the past from forces seen as hostile to Islam and Muslims.

It does therefore come as no surprise that the present investigation has led us to identify and point out the thread of continuity subsisting between the positions of intellectual heavyweights of the past, such as al-Ghazālī, and those of the present, such as the revered twentieth century Naqshbandi shaykh at Delhi. As authoritative representatives of their respective times, although separated by almost a millennium, they stand committed to put their balanced judgement and expertise in the manifold branches of knowledge (*'ilm*) to the service of addressing and answering the urgent problems of mankind through the lenses of perpetual actuality. In this perspective, they represent the middle way that quite naturally shuns any kind of extremism born out of superficiality and ignorance, the root of every kind of fundamentalism.

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