

RELIGIOUS LAW AND FAMILY PLANNING

AN ATTEMPT is made in this paper to study the attitudes of three main religions in this country, viz., Hinduism, Islam and Christianity, on the issues of procreation and family planning and the bearing of relevant religious attitudes and laws as factors that may hamper or promote governmental policies of family planning.

Hindu attitude

There are several passages in the Hindu scriptures like *Smritis* which extol the ideas of procreation and rearing up of a large family. For example, the *Rig Veda* contains the following prayer to Indra concerning a newly married bride, "O bountiful Indra, may ten sons be born of her and may you make her husband the eleventh" (*dhasasyan puthran adhehi pathim ekadasam kridhi*). Mercifully, however, another *manthra* restricts the blessings to eight children (*ashta varsha, bhavathvancha, subhaga cha pathiviratha*) and the *Taithriya Upanishad* enjoins the pupil, after he finishes his studies with the *acharya*, to marry and "not to snap the thread of successive issues" (*prjathanthum ma vyavach chethseelu*). In the Vedic period, the wife had a privileged and proud place as the mother of brave children and her desire was that her sons should be killers of enemies (*mama puthrah sathruhana tho me dhuhitha virat*). Marriage was a sacrament for the husband as well as the wife. Before marriage, a *dwija* cannot perform *yajna* (*ayajniyaha va esha yaha apa thnikaha*). A man becomes complete only through children (*prajaya hi manushyaha purnaha*), and begetting children was a necessity not merely materially but spiritually also. The son is called *putra* as he saves the father from hell called *put*. As P.V. Kane puts it, "from very ancient times one of the articles of faith was that a man was born with debts, that he owed three debts—to sages, gods and the pitrs [forefathers] and that by brahmacharya [studenthood], by performing yajnas and by procreating sons he is freed from those three debts respectively."¹ It was thus a sacred obligation of a Hindu to beget a son for discharging the debt to the forefathers (*pitri rina*). The *Matsya Purana* gives another reason for begetting several sons—one should desire to have many sons in the hope that one of them may visit Gaya to offer oblations to the forefathers there, as is enjoined on every pious Hindu (*yeshtavya bahavah puthraha yadhyeko gayam vrajat*). Similarly, the *Padma Purana* says, if there is a *Vaishanava* son he purifies and gives succour not only to the ancestors but to the succeeding generations also.

1. *History of Dharmasastra*, vol. II, part I at 560 (1941).

It would thus seem from these versions that traditionally Hindu religion not merely posited the birth of a son as a spiritual necessity for the father as well as his forefathers but favoured begetting several children. Curiously enough, this tendency is further buttressed by the imposition by the *Smrithis* of an apparently purely sexual obligation on a husband to satisfy his wife sexually, especially during her *rithukala*, which means the period from the fifth day after menstruation upto the sixteenth day, which is specified as the period appropriate for begetting children, excluding however from them the first four days, the eleventh and the thirteenth day. Manu states that during the *rithukala*, a man should consort with his wife and that even during other days excepting forbidden days (*parvavarjas*), he should approach her if so desired by her.² Manu's commentator Kulluka quotes a *sloka* from *Parasara* to the effect that if a husband does not approach her during the *rithukala* he will suffer cruelly for the sin of foeticide. Kulluka, however, adds that the obligation (*niyama*) is imposed only on a person who has no son and that otherwise it is optional. Thus Kulluka, by excluding the obligation of sexual congress where the couple have already a son, seems to favour birth control by abstention for such couples. And Manu's caveat that even during non-*rithu* period, the husband should approach the wife if so desired by her, presumably restricts such birth control by abstention only where the wife permits the same.

It is significant to note that the *rithukala* was not merely understood as the period during which sexual congress will lead to child birth; Manu³ goes further and states that such congress during even nights (*i.e.* 4, 6, 8, 10, 12, 14 and 16) are favourable for the birth of sons, while the uneven or odd nights (*i.e.* 5, 7, 9 and 15) are favourable for the birth of daughters. Besides, since the *rithukala* is the period favourable for birth, it is evident that the other days of the non-*rithukala* were understood to constitute the safe period for avoiding birth (excluding, of course, the forbidden days *viz.*, the first four days after menstruation, the eleventh and thirteenth day). And certainly there was no bar on the couple to adopting the method of birth control by restricting intercourse to the safe period.

In this connection, reference may be made to the parallel and strong ascetic tradition among Hindus, which implicitly resulted in birth control. Thus, the *Bhagavatha* states that the *Prachethas*, the sons of Dhakshaprajapathi, under the urging of Narada, refused to marry and beget children as desired by their father and resorted to penance (*thapas*) and that in sheer frustration, Daksha cursed Narada for misdirecting his sons. Similarly, Manu also states that there is no sin in eating meat, in drinking liquor and in carnal intercourse, as this is the natural habit of human beings, but that abstention brings great rewards.⁴

2. See Manu III-45 and V-153.

3. See Manu III-48.

4. *Pravrithiresha bhuthanam nivritisthu mahaphala*; see Manu V-56.

In fact the objective of Hindu scriptures like the *Bhagavatha* is to motivate Hindus towards this *nivrithimarga* as the goal of *moksha* is obtainable only by following the path of renunciation of *kamyakarma* and by doing *nishkamyakarma*, i.e., by following one's ordained duties without seeking wordly results—though they tolerated the *pravrithri marga* (wordly pursuits) as a concession to human weakness. Hence the ideal expounded was that sex was merely a means for begetting children particularly sons (*suthartham thu mythanam*). In fact the *Bhagavatha* often uses the pejorative term *gramyasukha* (villagers' or illiterates' pursuit of pleasure) while referring to sex.

It is significant to note in this connection that no reference is made in the *Smrithis* to contraceptives, presumably due to the feeling that they may lead to extra-marital sex. On the other hand there is strong condemnation of abortion as a heinous sin by the Hindu law-makers. Thus, Manu prescribes that libation of water (*udhakakriya*) given for the benefit of a dead person, should not be offered among others to women who cause abortion.⁵ Yajnavalkya also condemns abortion as a crime even if a woman kills her own child in the womb. He equates the murders of the foetus and of the husband and calls them as heinous crimes (*mahapatake* and prescribes the *thyaga* or abandonment of such a woman.⁶ The *Shanthy Parva* of *Mahabharatha* similarly equates the sin of a pupil who disobeys his preceptor and of those who injure in thought and deed their preceptors or fathers or mothers and of the sons who do not support their parents, with the sin of killing the foetus (*Bhrunahathya Visishtam*—section 108; see also *slokas* 23, 30 and 31). Thus Hindu tradition strongly condemns abortion and considers it a heinous sin and a crime.

Thus it may be summed up that Hindu law givers have condemned abortion but not birth control as such and, by their reference to *rithukala* as the period appropriate for procreation, tacitly seem to approve birth control by abstinence during this period and cohabitation during the safe period. Modern Hindu society also seems to have accepted birth control, especially by way of sterilisation, in case of many children. The fact that there is no express condemnation of birth control, except by way of abortion, on the part of Hindu law givers may well be a reason for the acceptance of birth control by Hindu society.⁷ However, it has to be stated that orthodox sections of Hindus would not favour any method except that of the safe period and are of the view that the other methods are sinful. It may also be noted here that Mahatma Gandhi was opposed

5. See Manu V-90.

6. See also Sukla Das, *Crime and Punishment in Ancient India* 38 (1977).

7. See, however, Sudhir Hendre, *Hindus and Family Planning* (and the message of the Shankaracharya of Dwarakapeeth, published therein) for a virulent attack on the Government of India's family planning programme, mainly on the ground that family planning is adopted mostly by Hindus and would disturb the demographic balance in the country to their detriment and to the advantage of Muslims.

to birth control by methods other than self-control, *i.e.*, by contraceptives, *etc.*

Muslim attitude

It has been noted that in most of the Muslim states in the modern world, "the jurists of Islam have unanimously given their verdicts in favour of the religious validity of birth control, and in fact many of them follow family planning programmes actively. However, in the Indian sub-continent... there are many Muslims who think that family planning and birth control are repugnant to the basic teachings of Islam."⁸ Besides, a leading Pakistani theologian, Maulana Abul Ala Maududi, has written a book condemning family planning as unIslamic. Recently, however, Tahir Mahmood has published a scholarly book, presenting ample evidence, under all the sources of Muslim law, like the *Quran*, the traditions of the Prophet and the opinions of classical jurists, proving that birth control and all current methods of birth control including abortion (the last however to be restricted up to the end of the seventeenth week of pregnancy in cases where abortion is necessary to save the life of the mother) as not in any manner opposed to Islam.⁹

There are specific verdicts of the Prophet, like "smallness of the family is a kind of affluence and its largeness a kind of indigence"; "after two hundred years, the best man shall be he who will be *light backed* in respect of family" and his denunciation of a Jew's statement that "birth control is burying alive in a smaller degree" as a lie. The Prophet said, "The Jew told a lie, the Jew told a lie."¹⁰ Similarly, the Quranic verse "Your women are lands for you; so plough them as you like", has been interpreted by Abu Hanifa, the leader of the Sunni Muslims "What is meant by '*as you like*'? It means, with or without contraception." Similarly, Imam Ghazzali, the second greatest jurist of the Shafei school, remarked: "I have to say that authentic traditions established the permissibility of birth control."¹² It is not necessary for us to refer in detail to the extensive evidence let in by Tahir Mahmood in favour of his thesis. Thus, it is clear that Islam does not merely not oppose family planning, but would even favour it when it is necessary in the interest of society or the health of the mother, or other equitable circumstances like the interests of children themselves in the case of poor families. However, the attitude of the Muslim public may be against family planning, because of a wrong belief that it is opposed to Islamic tenets, as pointed out by Tahir Mahmood, or due to a feeling of insecurity, being a minority in the country.

8. Tahir Mahmood, *Family Planning—The Muslim View Point* 129.

9. *Ibid.*

10. *Id.* at 28.

11. *Id.* at 40.

12. *Id.* at 42.

Christian attitude

Among the Christians the world over, only the Catholics are opposed to contraception, while other sections like the Protestants, and those belonging to the Lutheran Church and the Methodist Church have officially accepted artificial methods of birth control. Thus, it is stated "The Federal Council of Churches of Christ in America approved of artificial methods of birth control by a vote of 24-4 as early as March 1931. Since then numerous other Protestant Churches and sects have followed suit. In 1954 the Synod of the Augustana Lutheran Church, at its meeting in Los Angeles, endorsed birth control. The Methodist Church took unanimous similar action at its general conference in 1956. "In England, the Methodists have expressed similar views",¹³ and the Church of England changed its attitude in favour of birth control in 1958. In that year, the Lambeth Conference gave unanimous approval to contraception, passing a resolution in the following terms: "The Conference believe that the responsibility for deciding upon the number and frequency of children has been laid by God upon the consciences of parents everywhere: that this planning, in such ways as are mutually acceptable to husband and wife in Christian conscience, is a right and important factor in Christian family life and should be the result of positive choice before God. Such responsible parenthood, built on obedience to all the duties of marriage, requires a wise stewardship of the resources and abilities of the family as well as a thoughtful consideration of the varying population needs and problems of society and the claims of future generations."¹⁴ Among the reasons attributed for the change in view, is the anxiety caused by the prospects of over population, "especially in India, Africa and the West Indies, all strongly represented at the Conference."¹⁵ Thus, the representatives of Indian Christians at the conference not merely shared the above views, but seem to have played an active role in canvassing its acceptance.

However, there is strong opposition to artificial birth control measures on the part of the Catholic Church, though the Church's attitude is opposed by a segment of its followers especially in the West. The chief document in this field is the Encyclical *Humanae Vitae* issued by Pope Paul VI on 29 July 1969, wherein he forthrightly "rejected any artificial means of birth control as contrary to the law of God." It states that "each and every marriage act must remain open to the transmission of life," that "there is an inseparable connection which is willed by God and unable to be broken by man on his own initiative, between the two meanings of the conjugal act the unitive meaning and the procreative meaning,...and that man does not have 'unlimited dominion' over his 'generative faculties', because

13. Norman St. John-Stevas, *The Agonising Choice—Birth Control, Religion and the Law* 81 (1971).

14. *Id.* at 75.

15. *Id.* at 242.

of their 'intrinsic ordination towards raising up life, of which God is the principle'.¹⁶ It also appeals to the rulers of different countries to create "an atmosphere favourable to education in chastity" and further tells them: "Do not allow the morality of your peoples to be degraded; do not permit that by legal means practices contrary to the natural and divine law be introduced into that fundamental cell, the family."¹⁷ Thus, the fear that artificial methods of birth control would lead to laxity in sex and jeopardise the integrity of the family, seems to have been a major factor in influencing the decision of the Catholic Church. However, it has been noted that while earlier the church was opposed even to *coitus interruptus*, because of the Biblical story of Onan who was slain by the Lord for having spilled his seed on the ground,¹⁸ the "Encyclical *Humanae Vitae* makes no reference to the sin of Onan."¹⁹ In spite of the dissent expressed by some followers of the Catholic Church, it is adhering to its stand.²⁰ It is not known whether there is any opposition on the part of any section of Indian Catholics to the policy of the church, and what adverse effect it has had in the adoption of family planning methods by these Catholics. However, it is evident that non-Catholic Christians in India have taken to family planning methods.

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16. *Ibid.*

17. *Id.* at 215.

18. St. Augustine declares that intercourse even with "one's legitimate wife is unlawful and wicked where the conception of the offspring is prevented. Onan, the son of Judah, did this and the Lord killed him for it". Quoted in *id.* at 64.

19. *Id.* at 65.

20. Norman St. John-Stevas, *supra* note 13, is one such work by a Catholic who dissents from the Encyclical's view on family planning, though he accepts Catholicism. His personal view is that "Catholics should be free to decide according to their own consciences what methods of birth control to employ." *Id.* at 9.

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