Juvenile Justice Regarding Theft in Iran and Root Causes of Theft by Children and Adolescents

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ABSTRACT

Contraceptive Methods are ways of helping men and women to avoid unwanted pregnancies. These include all temporary and permanent measures of pregnancy prevention. Each of these methods of pregnancy prevention has its own advantages and disadvantages; none of them could be used indiscriminately and absolutely for every individual and every family. On the other hand, none of these methods are acceptable by all cultures and communities. Therefore, choosing a method must be carefully decided, taking into account their belief system, culture, and individual needs within their communities. Families should also know the importance prevention, relevant to their age group, family situation, profession and also its relation with their physical and psychological conditions. Thus, in this opportunity, methods of pregnancy prevention and religious decrees regarding them have been discussed. Particularly, withdrawal method which has been one of the most common ways of pregnancy prevention by preventing Zygote formation from the ancient times; and opinions of shi’a and sunni theologians have been considered, consistent with religious principles. After necessary research in ways of contraceptive methods, the conclusion was that there are some ways which are acceptable (mubah), and there are some prohibited (haram) ways. Thus in the prohibited category, there are 2 ways: inherently prohibited, and prohibited by contingency.

INTRODUCTION

Although various contraceptive methods have become commonplace at the global level in recent decades, researches done by anthropologists and ethnologists have demonstrated that from the ancient times, primitive societies nomads, and country dwellers have known many diverse contraceptive methods. A list of old and new methods would include:

1-Infanticide, and abortion
2- Withdrawal method (Azal)
3- Natural way of knowing the “safe period”
4- Using various contraceptive pills
5-I.U.D.
6- Using condoms
7- Tubectomy (closing tubes in women)
8- Vasectomy (closing tubes in men)
9- Norplant (Planting capsules prior to pregnancy)
10- Breast-feeding method
11- Removal of the womb and permanent sterilization.

Thus, in this opportunity a brief discussion of these methods is presented.

2-Infanticide and Abortion:

The traditional method of ignorant masses of the old days for limiting family size was killing the fetus (abortion) or killing the child after birth (infanticide). Unfortunately, this morally wrong tradition of the times of ignorance has become accepted as a means of population control and is being performed legally in medical centers using state facilities in ostensibly advanced countries.

God has revealed in the Qur’an:

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. (Al-Israa:31) [Translation By Yusufali 17:31].

And also it has been revealed in the Quran:

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Lost are those who say their children, from folly, without knowledge, and forbid food which Allah hath provided for them, inventing (lies) against Allah. They have indeed gone astray and heeded no guidance. (Al-Anaam 140)[Translation ByYusufali 6:140].

And again, The Quran says: Say: “Come, I will rehearse what Allah hath (really) prohibited you from”: Join not anything as equal with Him; be good to your parents; kill not your children on a plea of want;- We provide sustenance for you and for them;- come not nigh to shameful deeds. Whether open or secret; take not life, which Allah hath made sacred, except by way of justice and law: thus doth He command you, that ye may learn wisdom.(Al-Anaam151)[Translation ByYusufali 6:151].

Based on the above verses, infanticide is considered one of the greatest and unforgiveable sins in Islam. Further, parents who are found guilty of killing their own children must pay blood compensation (Diya). Shahiid-e Avval in his exalted book has taught:
The ransom for destruction of Zygote upon its entry into the womb is 20 Dinars; and if one ejaculate outside the vagina, the penalty is 10 Dinars. The compensation in Alagheh period 40 Dinars; in Mazagheh period; 60 Dinars upon formation of the bones of the fetus which is the beginning of creation, 80 Dinars; in the fully formed fetus prior to having received spirit, 100 Dinars; And if the fetus has received spirit, it is full ransom for the male fetus and half of that for female. And for the mistaken sexual identity the median of the two should be paid as a penalty which is 750 Dinars.Thus, it becomes clear that the human zygote and fetus are respectable entities like the human beings themselves. No one, even parents, have the right, under no circumstances, by no means, to abort and destroy the fetus; Not even in a condition of illegitimate fertilization of the egg and formation zygote; or God forbid, upon adultery; Or if the fetus formation is upon morally doubtful coition (Vaty-e be Shobheh);no one, even the judge of the Shari’a Law can allow abortion. And if the act of adultery has been proven to the judge, he must wait till the child is born, and then he can issue a judgment about the adultery based on the statutes, or issue an order ofstoning(Rajm).

Therefore, one can conclude that Diya, has a dual character: it has punitive and penal aspects, and the notion that the lawgiver has, solely, called it a punishment, lacks religious and legal basis.The laws of countries such as Egypt and Jordan are good evidences of Diya being both in civil and criminal laws and have not made it into separate categories.

3- Withdrawal (Azal) Method:
Contrary to the previous method, where zygote is destroyed after its formation, in withdrawal method zygote is prevented from being formed. Most theologians and Islamic jurists, based on Islamic Hadiths, have considered this contraceptive method – under certain conditions- acceptable.

3-1 Shi’a law’s perspective on Withdrawal:
The word Azal, literally, means “to prevent”, “to put aside”. But in the context of sexual relations and coition, the meaning is “withdrawal”. Azal means withdrawal of penis just before releasing semen; and ejaculating outside the vagina.

The question here is: If one of the main purposes of marital relations is fulfilling mutual sexual needs, could one of the partners in sexual intercourse “drop-out” and go for withdrawal which is, in a way, aborting coition?

In other word, does one of the parties, especially the husband, has a privileged position in sexual intercourse and withdraw option? Is withdrawal subject to the woman’s consent at the time of intercourse, or perhaps subject to a prior matrimonial conditioning(eshteraat)?Does the type of marriage-permanent or temporary- make a difference? Does it matter if the wife is a slave or a free woman?

The instances of marriage with women with whom withdrawal is permitted according to Shi’at scholars are:

1-With a free woman who is in a temporary marriage,
2-With a free woman who is in a permanent marriage and has given consent to withdrawal,
3-With a free woman whose husband has made it a prior matrimonial condition,
4- With a slave woman who is in a temporary or permanent marriage.
5- In a situation where the sexual act does not fit within common norms and practices, meaning semen is not ejaculated inside the vagina.
6-Under exceptional situations where pregnancy is deemed dangerous for the woman (Najafi, n.d).

But there are differences in Shi’a scholarly sources where a man marries a free woman and wishes to attempt withdrawal at the time of intercourse without her prior consent; and without having it made a condition at the time of marriage. There are two main views:

A- Mashhour’s opinion that allows for withdrawal, yet considers it disdainful,makrouh [18].

B- Sheikh Toussi’s opinion in “Khalaf Va Mabsout, Sheikh Mofiid in “Maghnaeh”, and Ibn Hamzeh in “Vasiileh” which forbid withdrawal.

A) Reasons for withdrawal by men.

Proponents of allowance for withdrawal, like Mashhour, present their arguments on the following bases:
1-Hadith:

1-1 Mohammad Ibn Moslem narrates that: I asked Imam Sadeghabout withdrawal, Imam replied: “Man is free to use his semen as he wishes”

1-2: Imam Sadegh narrates Imam Sadjad stating that he did not see any problem with withdrawal as he recited the following verse:

“When thy Lord drew forth from the Children of Adam - from their loins - their descendants, and made them testify concerning themselves, (saying): “Am I not your Lord (who cherishes and sustains you)?” They said: “Yea! We do testify!” (This), lest ye should say on the Day of Judgment: “Of this we were never mindful”: (Al-A’araaf 172)[Translation ByYusufali 7:172].

1-3: Imam Baagher was asked if the man can withdraw from a free woman. He replied:“There is no objection.

1-4: Man is allowed to withdraw from a free woman, if the husband wishes so. And if he wishes otherwise, she has no right to object.”

The above Hadiths prove that withdrawal is man’s prerogative, and he can act as he wishes. Concerning a free woman who is in the permanent marriage, Mashhour has decreed that withdrawal is man’s choice, especially in the light of the above accurate and reliable Hadith quoted from Mohammad Ibn Moslem asking Imam Bagherabout the free woman. In the Hadith, it has been clearly stated:” despite the woman’s objection”. It, truly, seems woman has no choice on the matter.

1-5: In his authoritative Hadith, Sahiheh, Mohammad Ibn Moslem asked Imam Bagheror Imam Sadegh concerning woman’s objection to withdrawal during intercourse- despite lack of initial agreement at the time of marriage- Imam was scornful about withdrawal:

“Although there is no problem with withdrawal from a slave woman, I do not wish the same as regard to a free woman, unless man has made that a condition at the time of marriage [16].”

2-Clinging to Esaleh Ella Baheh reasoning: Anything is permissible, unless prohibited:

Based on this reasoning, things are good in essence. So long as there hasn’t been any solid evidence for prohibition, one cannot forbid it. Religious scholar Kerky in Jaame-u-l Maghaased, uses this line of reasoning and justifies withdrawal. Based on this reasoning he states that withdrawal is right so long as there hasn’t been any reason for its prohibition [23].

3-Irrelevance of Ejaculation:

This is another reason for allowing withdrawal. Marriage establishes woman’s sexual right as being the right to receive vaginal penetration and not necessarily man’s ejaculation. The evidence for this limited right can be found in the situation where a wife complains about man’s inability in sexual performance and labels him as impotent. But so long as man can prove penetration, marriage is consummated and the wife cannot annul the marriage due to impotence. This shows that woman’s sexual right is limited to receiving vaginal penetration and not necessarily receiving semen inside her womb [14].

One can conclude from the above well known evidences that, during coition, man can withdraw without wife’s consent. Stating this principle means that withdrawal can go on throughout their married life, without having it made a condition in the marriage contract.

B) The reasons for Prohibition of Withdrawal:

Theologians such as in, his book, Khalaaf Va Mabsout; Ibn Hamzeh in Vasiileh; and Sheikh Mofied in Maghnaeh have prohibited Withdrawal [19].

The stated reasons for prohibition of withdrawal include:

1- Consensus 2-Hadith 3- Necessity of Diya payment in case of withdrawal. 4-It’s conflict with the wisdom of marriage. 5- Prohibition of withdrawal because of prudence. 6- Prohibition of withdrawal due to concerns over women’s rights. 7- Withdrawal would weaken marriage and strengthen surrogate motherhood by slaves. 8- Withdrawal weakens female’s right to pleasure, and can be a cause of loss and suffering for her(Najafi, n.d.). 9- Withdrawal is in conflict with the ideal of population increase and continuity of human life on earth.

An Investigation into the reasons for prohibiting Withdrawal:

4. Consensus:

Sheikh Toussi has stated lack of consensus as a reason to decree Withdrawalas haram (Canonically prohibited). However, this is problematic in many ways: First, the principle of consensus as claimed by Sheikh because of the opposition of the majority of the theologians including that of Mashhour’s - allowing for withdrawal- is being undermined in such a way that Sheikh himself has decreed in favor of withdrawal [21]. And also consensus may be needed for prohibiting withdrawal, not for allowing it.
2- Hadith:

Those who favor prohibition of withdrawal use many Hadiths in which “alvad alkhafa” interpretation has been used, including the Hadith which prohibits withdrawal without the permission of a free woman.

Imam Sadegh uttered: “alvad alkhafa” is about coition between man and woman where upon feeling of orgasm (and thus nearness of ejaculation), the man withdraws and pours it out. Therefore, don’t do it because God’s Messenger has prohibited withdrawal. Save a free woman (or slave woman’s master) permit it [28].

Consistent with the above, there is also another Hadith from the exalted Messenger (S) which interprets withdrawal as “Alvad alkhafa”. “Then the Messenger was asked about it, the Messenger of God(S) said: Withdrawal is killing in secret [11].”

Because “Alvad Alkhafa” interpretation means “killing in secret”, it has become one of the most important discourses in Shi’a and Sunni circles. It has caused many Muslim theologians-especially Sunnis- to decree prohibition of contraceptive methods and population control programs, for they see withdrawal as contradictory to Islamic Shari’a law.

Most Sunni theologians have decreed prohibition of withdrawal. As a result, they have banned population control programs. Some of contemporary Shi’a jurists also have opposed methods of birth control and have raised objections against family planning programs. In doing so, they have relied upon such Hadiths- which from a Shi’a perspective are considered weak- and have sought justification through some Quranic Verses. In their view “Vad” means infanticide and withdrawal is like burying female infants alive. Therefore, it is of obvious religious prohibitions and great sins. And because some Hadiths consider withdrawal as a kind of “Vad” and secret killing; they have prohibited withdrawal. This has become manifest reasoning for banning population control programs.“When such an interpretation of withdrawal - which is the simplest and the most natural contraceptive method- is current, any method of family planning or population control can be considered unacceptable [4].” In response, one must say: First, the two stated Hadiths are weak in terms of authenticity. From a legal perspective, especially that of Shi’a jurisprudence, they lack dependability; because several accurate and reliable Hadiths are available favoring withdrawal.

Second: As stated, Hadiths concerning withdrawal, explicitly allow it- even without woman’s consent and permission. Sometimes, they have bluntly approved it without any qualifications. Ultimately, as we disagree with the Hadiths, which use such interpretations as disdains, we take the view that above Hadiths are disdainful toward withdrawal [8]. Third, some have questioned the authenticity of the Hadith and considered the probability of the Hadith being fabricated by Israelites [3].

Jews considered withdrawal equivalent to infanticide and a form of burying children alive. Yet, there are many Sunni Hadiths that quote the Blessed Messenger, Mohammad as saying: “Jewish belief, considering withdrawal a minor mowedeh(a form of burying infants alive) is false and a belief without foundation [13].

Fourth, it has been narrated that a group of believers had a discussion in a meeting. The question was: If Withdrawal should be considered as something similar to mowedeh of the an embryo at the Alagheh and Mazagheh and following stages- the seven stages stated in the Quran- and the Verse(The Quran 81:8(and then infanticide was questioned)applies. Imam Ali (A) was present at the meeting and took the position that Withdrawal cannot be considered mowedeh. He referred to the above Quranic Verse and said: Verily, mowedeh does not apply unless the seven stages are passed[Qomi,1993].As it has been revealed:

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 (foetus) lump; 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 Allah, the best to create!(Al-Momenoun 12-14) [Translation By Yusufali 23:12-14].

As long as the seven stages-stated in the Verse- have not passed, Mowedeh does not apply. Therefore, Withdrawal, which occurs long before establishment of the seed inside womb, cannot be considered infanticide [3].

3- Necessity of Diya payment due to withdrawal:

Because diya payment has been determined as a penalty for withdrawal, some have called for its prohibition. The decree of Diya payment is the view of the following theologians: Sheikh Toussi, Abol-Salah Halaby, Ghaazy Ibn Baradji, Ibn Hamzeh, Ibn Zohreh, Keidary, Allameh in Ghava’ed Va Ershaad, Kashef Alle’am, and it seems that Sahib Sharaay’e supports such view, although he, in the discussion concerning Diya payments, has rejected the notion.

The reason for such an assertion is that there has been a consensus over Sheikh’s self contradiction, and apparently, there is a documentation of a reliable Hadith from Imam Ali (A). The Hadith is about a man creating fear in another man during coition with his wife, which caused early withdrawal and ejaculation despite his intention.

“Thus says the commander of the faithful, Imam Ali (A): The man in coition did not intend to withdraw, so he is blameless. But the man who scared him must pay 5 Dinars(half of the Diya)”.
Based on the above Hadith, in this case, the necessity of Diya payment of ten Dinars for withdrawal, calls for its prohibition. Reference to the above Hadith seems to work due to necessity of Diya payment for withdrawal. But there are several reasons to argue against this line of reasoning.

1. The Hadith is about a situation where fear has caused the early withdrawal and it hasn’t been a voluntary withdrawal. Therefore, applying forced withdrawal to the voluntary withdrawal is false reasoning.

2. Assuming acceptance of the above Hadith as authoritative for prohibition of withdrawal, it contradicts with a much more authoritative Hadith which allows it.

3. In case of contradiction and collapse of the argument, the principle is abolishing Diya and freedom from blame.

4. This Hadith also determines the situation of Consensus. Because first: This consensus has been written, by Sheikh, as a rebuttal to Mashhour’s discussion of Diya. Second: Assuming acceptance of the above consensus, this consensus has been put forward only by Sheikh, as a matter of rebuttal, and it is a sole Hadith and cannot stand against many authoritative Hadiths.

5. Ultimately, it doesn’t explicitly necessitate Diya payment and each part, withdrawal and Diya, are independent categories and require particular causes (Najafi, n.d.).

4) Contradiction of Withdrawal with the wisdom of marriage:

The other reason for prohibition of withdrawal is its contradiction with the wisdom of marriage. According to those who favor prohibition of withdrawal, the main purpose of marriage is begetting children, while withdrawal is not consistent with procreation. Therefore, withdrawal is in contradiction with the spirit of the law and should beharam (canonically prohibited).

This line of reasoning is based on various principles:

1. The main purpose of marriage is begetting children, because the desire for procreation is “instinctual”, and is deeply seated in human nature. Many Hadiths which promote procreation confirms this matter. 3. Imam Kazem is narrated to have allowed withdrawal in dealing with 6 categories of women: Women who are barren, older women, overly talkative women, rude women, those who refuse breast feeding, and slaves. This shows that prohibition or permission of allowance depends on the wisdom of procreation [16].

2. Whatever contradicts this general principle – Islam’s promotion of procreation, population increase, and group continuity- is against religion and should be prohibited. Masturbation is prohibited, for its popularity can reduce procreation and population growth, therefore, holy marriage has been proscribed [15].

3. Withdrawal causes reduction in procreation and birth rate. Because Withdrawal undermines sanctity of marriage, it is considered contradictory to religion and, therefore, must be prohibited.

The views of opponents of this line of reasoning merit some consideration. What follows is a brief review of opposing arguments:

A) The act of withdrawal would have been contradictory to the purpose of the Lawgiver; if the main and only purpose of matrimony were procreation. But purpose of marriage is not limited to procreation. If withdrawal were contradictory to the purpose of marriage, celibacy could have also been contrary to the will of the Lawgiver. And yet marriage for the purpose of procreation is not mandatory [14].

B) One cannot prohibit withdrawal for the reason of endangering continuity of the group, because terminating marriage (divorce) and refraining from coition (celibacy) are allowed. But regarding prohibition of masturbation, one must say that this prohibition has particular reason and doesn’t apply to other situations [14].

C) The notion that prohibition of withdrawal is due to the wisdom of marriage and procreation- and Hadiths have been mentioned to prove it- does not hold true. Because from the Hadiths regarding withdrawal one can learn that: disdain toward withdrawal-whether through total prohibition, or allowing it is for protection of women’s rights, not due to the wisdom of marriage. As one can see in the Hadith [16] of Mohammad Ibn Moslem the matter (allowing) had been subject to conditioning of withdrawal at the time of marriage. The very same subject- prohibition of withdrawal as a matter of protecting women’s rights- proves that many theologians consider prohibition of withdrawal as a matter of women’s rights and not wisdom of marriage or preventing surrogate motherhood [10].

D) Ultimately if one insists on procreation as the sole wisdom and foundation of marriage, we would state that the above assumption is a matter of doubt. And one must refer to the pragmatic principle of assumption of innocence. Thus, the act of withdrawal is allowable (mobah) [27].

5) Prohibition of withdrawal as a matter of prudence:

In “Khalaaf”Sheikh Toussi tries to strengthen the argument for prohibition and states that: Our reason for prohibition is the need for consensus, ekhbar, and way of prudence [19]. Late Mohammad Taghy-e Majlesi in “Sharh-e Man La yazhatat’ul Faghihe”after using ekhbar permitting withdrawal and favors withdrawal, referring to the Nabavy Hadith, Al Azal alvaad’ul” khafa”(withdrawal is murder in secret) says: “val ehtiiat zaaher” (and prudence is manifest) [25].
If the purpose of “Al ehtiiaat Hassana Ala Koll” (prudence is the best of all things) of the act at the level of preference, it is an acceptable notion and consistent with the common ways and the Hadiths. Here the stated purpose of late Majlesi of “prudence” is the same. But if the purpose of prudence is “mandatory” prudence, as apparently meant by Sheikh Toussi”, it is inconsistent with legal norms and principles and thus unacceptable because: First: Despite reliable choices which confirm, explicitly, permission of withdrawal; there is no doubt that the time will come for doing the practical in the name of prudence. Second, the underlying assumption of this principle isesalat’ul adam (the principle of innocence) meaning: the principle is un-prohibition, and in order to prohibit something, the onus is on the one who promotes prohibition.

6) Prohibition of withdrawal as a matter of defending woman’s rights:

In order to prove prohibition of withdrawal, some have reasoned that withdrawal undermines women’s rights, causes their suffering, it is an obstacle to their sexual fulfillment, and thus it is prohibited. This reasoning is objectionable because: As Sahib Javaaher states, it is not man’s duty to satisfy his wife, but it is the other way around [25].

Second: Assuming the acceptance of such a notion (woman’s right), that is not what the question is about, it is irrelevant. The question is whether withdrawal should be prohibited because it prevents pregnancy, and if it is against the Divine command [25].

7- The order of withdrawal and preventing pregnancy woman’s side:

Thus far, the issue of withdrawal as a contraceptive method from the male side was discussed. But, if the woman causes man’s withdrawal, is it acceptable? The answer is that if it means woman preventing the semen being ejaculated inside her womb - woman pulling back at the time of man’s ejaculation or prevent semen from entering the womb by any other means- because it denies man’s right of full sexual pleasure, it is prohibited.

Regarding withdrawal from female side, Sahib Javaaher states:

At the surface of it, the Hadith is about necessity of Diya payment of a third party who scared a man at the time of sexual intercourse, and causes withdrawal and pouring semen outside the vagina; it can also be applied to women causing withdrawal as well. Therefore, it is bidding on the woman to make Diya payment to the man over semen loss caused by withdrawal. Therefore, ordering prohibition of withdrawal caused by woman is about preventing man’s full sexual pleasure, and not preventing procreation. As a result if the man’s consent to withdrawal, or if it had been agreed upon at the time of marriage, withdrawal initiated by woman is allowed and there is no reason for its prohibition. Because the man has, either through consent or initial matrimonial agreement has forfeited his right on the matter. Upon investigation through arguments of proponents of prohibition of withdrawal; With the availability of Ijtihad ; and reliable Hadiths; there is no need for appealing to asl-e amalyandsl-e berat because authoritative Hadiths are explicitly in favor of allowing withdrawal. It is appropriate here to mention few Hadiths that favor permission of withdrawal:

1- Mohammad Ibn Ya’ghub narrates Imam Sadegh: Regarding withdrawal, I asked, Imam replied that it is allowed. It is up to the man where to pour his semen.

2- Mohammad Ibn Moslem who asked Imam Baagher quoted him saying: If the man wishes, he can withdraw from free woman, and if she is not happy about it, she doesn’t have a say on the matter [24].

Mohammad Ibn Moslem narrates that he asked Imam Bagher about a man who has a free woman: can he withdraw from her in coition? His holiness replied that withdrawal is man’s right and he can chose to do it or not [16].

One can conclude from this Hadith that the choice of withdrawal is with the man. The above informative Hadiths suggest that: whether woman agrees to withdrawal or she opposes it; whether withdrawalalis a condition of marriage or not; The above Hadiths are unequivocally clear in terms of man’s right to choose withdrawal. The woman has no right on this matter. Man, in any case (whether in permanent or temporary marriage, with or without her consent, and whether it has been conditioned or not) can choose to withdraw. Of course, concerning the Hadiths which subject withdrawal to consent or conditioning at the time of marriage or, ultimately the Messenger has advised against it, but he has not made it prohibited. To advise against withdrawal means despising it, not forbidding it.

B) Opinions of Sunni Theologians on Withdrawal:

Withdrawal is one of the most controversial topics among Sunni denominations. This issue is dealt with in this discussion, in three major parts:

1- Permission of withdrawal. 2- Disdain for withdrawal. 3- Prohibiting withdrawal.

1- Permission of Withdrawal:

Supporters of this view can be divided in 3 groups:

1- Supporters of absolute permission of withdrawal.

2- Conditional permission pending wife’s consent and permission.
3 - Permission of withdrawal where there is a good reason.

1-1 Absolute permission of withdrawal:

Abu Hamed Ghazaly, a Shafe‘i Sunni, is one of the proponents of this view. He takes the position that withdrawal is absolutely necessary for preventing unwanted pregnancies and for population control. It is necessary without any condition and there is no reason for disdaining or prohibiting it.

In his book, Ehya’e Oloum el-Din, (Reviving Religious Sciences), after reviewing the opinions of various theologians about it, he concluded that withdrawal was allowable (mobah) and added that it may be disdained (makrouh) for three reasons:

1- Disdain due to religious law 2- Disdain due to religious prejudice.
3- Failure in obeying the principle of reaching the ultimate desired goal.

Proponents of permission for withdrawal believe that in the traditions of Sunni Muslims there are also many utterances of the Messenger (S) that allows withdrawal including the statement:

During the Messenger’s lifetime; when the Quran was being revealed; and the gates of revelation were open; and the Messenger was among us, knowing our acts; there were no Verses Prohibiting withdrawal; and the Messenger did not forbid it either. As a result, it becomes clear that withdrawal is allowed, otherwise, it would have been banned. Especially the Messenger(S) was asked about it and he said withdrawal was allowed(Najafi, n.d. Vol.29).

It has been narrated from Jaaber that one day a man came to the presence of the Messenger and asked: I have a slave-girl and I do not wish to have a child with her, should I withdraw at the time of coition with her? The Messenger answered: Do withdraw with her, but whatever is the fate will happen. After a while the man came back saying: The girl is pregnant! The Messenger said: I am God’s servant and His messenger, I told you that fate will determine the outcome(Moslem, n.d.).

1-2 Permission of withdrawal subject the wife’s Permission:

Based on this view, withdrawal from a free woman is not allowed. It is haram (prohibited) to withdraw without her permission, whether she is a minor or not. It is like woman’s withdrawing without man’s permission. If a woman creates an obstacle in her womb/vagina, without man’s consent and permission, this is also prohibited.

The prominent members of Hanafieh sect such as Kasaay, and some from Maleky, Hanbaly, and Abaazieh sects support this view. This is also consistent with the views of Imamieh theologians. But the reason for permission of withdrawal and the condition of wife’s consent is that there is no Quranic Verse Prohibiting it. Unlike some Hadiths, Preventing pregnancy has not been prohibited either. There is no explicit statement in the tradition either. Therefore, the matter needs to be decided and interpreted by an authoritative source (ijtehad) in such a way that the principles of religion are not abandoned.

On the one hand, there are Hadiths confirming permission of withdrawal. But as Kashany, a prominent member of Hanafy sect writes, the reason for necessity of wife’s consent is that coition with ejaculation causes pregnancy. Woman has a right to child bearing, yet withdrawal prevents it. Therefore, withdrawal seems to diminish woman’s right to procreation, therefore it has to be makrouh (disdained). But if withdrawal happens with woman’s consent, there is no reason for disdain. For, she herself has forfeited her rights.

Some have criticized initial conditioning of withdrawal, saying this is against the wisdom of marriage as explained by theologians; that the purpose of marriage is procreation, population increase and assuring continuity of human life on earth. Therefore if someone marries and yet conditions it to withdrawal, he has undermined wife’s right and also the right of the Islamic nation. Because, for the Islamic nation, there is a right accorded to the entire humanity, and this is agreed upon by all religious denominations.

3-1 Permission of withdrawal for a reason:

Some Hanbali Sunnis and their followers believe that withdrawal is permissible where there is a good reason for it; and it is haram (prohibited) in the lack thereof. The good reasons could be: 1- Fear of raising bad children in the times of widespread corruption. 2- When a man is going to a long journey or to a war front and is worried about his future child. 3- When the woman is perceived as nasty and the man intends to separate from her [10]. The interesting point about this line of reasoning is that proponents of this view have spread the reasons so wide; to a degree that any reason or excuse that can look like one the above categories can nullify necessity of woman’s permission and allow for withdrawal.

2- Absolute Disdain for Withdrawal:

Some followers of Maleki sect and Navawi of Shafe’i sect believe in absolute disdaining of withdrawal. They also base their reasoning on the Hadiths from the Messenger who emphasized on population increase; while withdrawal causes population reduction; and also it interrupts women’s pleasure in coition(Navawi, n.d.).
3- Prohibiting Withdrawal:
Followers of Zahery sect led by Ibn Hazam Andolessi, favor absolute prohibition of withdrawal, for it prevents pregnancy and procreation. They state the following reasons:

1- As parents have rights over their children, Islamic nation has also rights over its followers. The nation’s rights over parents override the rights of parents over children.
2- The wisdom of marriage is procreation. Withdrawal endangers group’s continuity and survival.
3- There are Hadiths which forbid withdrawal like the one attributed to Jazamah Bent Vahab. In a lengthy Hadith, the Messenger(S) was asked about withdrawal. He replied that he considered withdrawal equivalent to secret infanticide.
4- Withdrawal is like withholding the flood from a desert in need of water. Woman is like the field, from which grows plants. She has the ability for procreation. Withdrawal destroys such ability [11].

1-3 The Natural method, identifying safe Period:
The purpose of this method is predicting ovulation period and refraining from coition in such a period. In this method body temperature is measured, changes in the vagina is monitored, and one looks for signs of ovulations. The couple refrains from coition three days before and after ovulation period. From Islamic perspective, there is no objection to using this method [9].

2-3 Using Contraceptive pills:
In this method women who don’t wish to become pregnant, use contraceptive pills. Despite claims made by some family planning authorities who insist that there are no side effects, and there are benefits beside preventing pregnancy; Critics claim that Pills could cause headaches and increase possibility of problems with the nervous systems. Even the proponents of the pills themselves don’t recommend it for women over 45 years of age and those with variety of problems such as problems with blood pressure, Diabetes, and problems with nervous system (Bulletin, n.d. P.20).

3-3 Using Intrauterine Device (I.U.D):
I.U.D is a small device made of metal or plastic which is installed in the womb through its opening, it contains Yams hormones. This apparatus is installed by a physician in early days of menstrual period. Its function is to prevent the eggs from nesting in the womb and is effective between 2 to 8 years with 96-99 percent chance of success. From the Islamic perspective, this method can be rejected for two reasons:

1- This device prevents the impregnated egg from nesting.
2- Installation of this device requires professional skill, and the physician has to be able to see and touch woman’s naked genitals. But no one except the woman’s husband is permitted to see and touch her genitals, unless in necessary and urgent situations. Since the operation involves prohibited acts, using I.U.D could pose some problems.

It is important to consider the situation where I.U.D. is the only safe choice, then seeing and touching woman’s genitals by a physician can be justified due to necessity and urgency of the matter. But if the woman can use another method safely without involving someone in a prohibited act- such as exposing her naked genitals to someone rather than her husband- using I.U.D. is problematic.

4-3 Using Condoms:
Condom is a soft piece of rubber which is tightly pulled over man’s penis and prevents the sperm from entering the womb. If used properly, using condom can prevent spread of sexually transmitted diseases such as Gonnorrhea, Syphilis, Chlamydia, AIDS, etc… When condom use is stopped, one can become pregnant. It does not have any side effects and, from Islamic perspective there is no objection to its use [1].

5-3 Closing the Tubes (Tubectomy):
By closing the tubes of egg producing glands to the womb, eggs are stopped from entering the upper part of the womb, and sperms cannot reach the egg carrying tubes. As a result, pregnancy does not occur. This method requires surgery, the operation is done through woman’s belly, and the doctor does not need to see her genitals. But the important point is that it often, or even always, causes the woman to become sterilized. If sterilization is absolutely acceptable, then one can determine Tubectomy as permissible. But if there is any doubt about sterilization, one must make sure impregnating a woman from outside the womb does not label the woman “Sterilized”. It means that if a woman can conceive from outside the womb, theologians don’t call her “barren”. Of course, the question remains whether conception from outside the womb is allowed or prohibited. If it is prohibited, one can use the principle of “Al momtane shar’a, kalmomtane’ aghlan” (what is against reason, is also against religion) and say that this woman is incapable of pregnancy. But religious incapability does not prevent truth of the label “not barren” on the woman. As, the title “barren” over “neutered”-which from the perspective of religion-does not apply [17].
6-3 Closing the Tubes in Men (Vasectomy):

In this method, tubes carrying sperm is closed. As a result, his ejaculated fluid loses its impregnating capability. There are no side effects for him, but in most cases, it results in permanent impotency. Reopening of the tubes is possible less than 50 percent of times. Given what we know about this method, in addition to castration; religious sanctity of the matter can be discussed from two aspects. First touching the genitals of a stranger; second, looking at it. About touching, one can wear gloves and undermine “touching objection”. Yet, the “looking objection” remains. If we acknowledge the “looking objection” and cannot prove the urgency of the operation- which allows for the operation-then we have to forbid Vasectomy (Khomeini 20030).

7-3 Implanting Contraceptive Capsules (Norplant):

In this method 6 narrow, and flexible plastic capsules; 3.2cm long & 2.4mm thick each; containing sexual hormones are planted under woman’s skin after it has been locally desensitized. These capsules are not visible, but one can sense them through touch. They are effective for 5 years and there is just 1 percent possibility of pregnancy. The planted capsules can prevent pregnancy after 24 hours. This method is reversible and pregnancy can occur upon removal of capsules. The capsules can be planted in the first 7 days of menstrual period, 6 weeks after child birth, or immediately after abortion. They must be removed after five years. They also can be removed any time the woman wishes so [5].

8-3 Contraceptive injections:

As a temporary measure, this is an effective contraceptive method. The injection contains contraceptive substance and is injected, monthly or once in three months, into the thigh muscles or into the arms. It is injected in the first 5 days of menstrual period and prevents pregnancy for about 3 months. There is only one percent of pregnancy with this method [5].

9-3 Breastfeeding Method:

In most women, the breastfeeding method is effective, especially between 2 to 4 months past child birth, at least, till the resumption of menstrual period. Using this method is not considered to be a safe method of pregnancy prevention.

10-3 Removal of Womb as Permanent Sterilization:

Finally, another contraceptive method is removal of woman’s womb through surgery and making her 100 percent sterilized, permanently. Theologians have not permitted this method due to the fact that it creates permanent disability by sterilization.

Conclusions:

With a speck of attention at various contraceptive methods and religious decrees regarding them, we can organize them in the three following categories:

1- Methods which are inherently prohibited include: Abortion, methods causing permanent disability, either by closing womb’s tubes or seminal tubes, injections or pills which cause permanent damage or loss in the body. Removal of the womb is a manifest example of permanent loss and is prohibited.

2- Methods which are not essentially prohibited, but are carried out by prohibited means:

like I.U.D., presumably it is effective in stopping the sperm. Because installation of the device necessitates stranger looking at and touching someone’s genitals, its installation then, due to practical conditions, is prohibited. Unless in extremely necessary and urgent situations, the scope of which is beyond this essay.

3- Methods which are allowed (Mobah):

It appears that the unquestionable method is the natural method of identifying fertile periods. Because, in this method, sexual intercourse occurs without any intervention or interruption and there are no chemical drugs or mechanical devices are used. The only challenge is refraining from coition from 4 days before, to 4 days after fertile period (when woman’s body releases eggs). The other method, approved by most theologians, is the Withdrawal method. One can consider Withdrawal as an allowed (mobah) method. Also, using condoms could be considered a permissible method, for there have not been mentionable problems with them. Also in this category, one can mention contraceptive pills and injections which do not cause permanent damage. They could be practical and, from a religious perspective, permissible. As a result, if the arbitrator has to follow family planning and population control policies in particular times, first: Methods which contradict exalted religious principles of Islam must be abandoned immediately, and methods consistent with Islamic culture sought. Second: One must not cause sterilization and the person should remain capable to have children, anytime one
wishes. Third: It should be low cost and done without committing any prohibited acts such as looking or touching stranger’s genitals.

REFERENCES