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# The World's Laws on Voluntary Sterilization For Family Planning Purposes

by Jan Stepan
and
Edmund H. Kellogg

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# THE WORLD'S LAWS ON VOLUNTARY STERILIZATION FOR FAMILY PLANNING PURPOSES

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## FOREWORD

This short monograph was prepared in an effort to assist the Second International Conference on Voluntary Sterilization, February 25 - March 1, 1973, in Geneva. In view of the uncertain state of the world's laws on voluntary contraceptive sterilization, it is hoped that this monograph, by pointing out the facts of the situation as it exists, may lead to some improvement. The Conference provides an excellent opportunity to draw attention to the facts.

It is also hoped that this collection of legislation will be of practical assistance to people working in this field of fast growing importance.

The writers have had the benefit of a very great amount of help from around the world. The I.U.S.S.P.'s Commission on Legislation and Fertility, under the Chairmanship of Professor Livi Bacci of Florence, has made available monographs covering the laws of the individual European countries. Members of the various country projects organized by the Law and Population Programme of the Fletcher School have made invaluable individual contributions. Included among these are:

| | | |
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| Professor Dr. Bulent Nuri Esen | - | Turkey |
| Mrs. S. Hanifa | - | Indonesia |
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| Dr. Fernando Estelito Lins | - | Brazil |
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| Professor Jose Sulbrandt | - | Chile |
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| Professor Yang Seungdoo | - | South Korea |

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We are also grateful to the International Planned Parenthood Federation for the information on Moslem law, and to the Harvard Law School Library which put its unique resources at our disposal.

THE WORLD'S LAWS ON VOLUNTARY STERILIZATION

FOR FAMILY PLANNING PURPOSES

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# THE WORLD'S LAWS ON VOLUNTARY STERILIZATION FOR FAMILY PLANNING PURPOSES

## I. INTRODUCTION

The question of voluntary sterilization for purposes of family planning has developed so quickly into a matter of world-wide significance that it has far out-stripped the slow legislative process. The purpose of this paper is to show what the present legal situation is in as many countries of the world as possible, and to indicate the confusion which has arisen as a result of the above developments. We assume that a number of countries may decide, in light of these facts, to bring their legislation up to date. We do not recommend any particular model or preferred approach to the problem, since we believe that each country will develop its own approach. It may, however, be of interest to each country to know what other countries are doing in this field and, in particular, to know what the most recently developed laws provide (e.g. the United Kingdom, the new West German draft law, Singapore, North Carolina, Virginia, etc.).

Until very recently, it seldom occurred to anyone that such a thing as a medical procedure for sterilization, especially of males, which would not adversely affect normal sex relationships, was either possible or desirable. Sterilization was generally used for other purposes, either eugenic (to prevent physically or mentally inadequate progeny) or therapeutic (normally to protect the physical or mental health of a woman). In criminal law, it was dealt with as violent physical assault, presumably castration. The law in all countries dealt (and in most countries still deals) only with these questions. Under these circumstances, a major question was whether, in eugenic cases, sterilization should be compulsory. The activities of the Nazis injected emotional reactions which have made it more difficult to deal rationally with voluntary sterilization.

The world population problem only became pressing after World War II. It has developed suddenly and before a safe, effective, cheap, and generally acceptable contraceptive has been developed. Meanwhile, male and female sterilization techniques, which are surprisingly safe, quick, and relatively inexpensive and acceptable to many people, since they do not interfere with normal sexual activity, have been developed with surprising rapidity. These are already becoming popular both in the developing countries (India) and in developed countres (U.K.). Public opinion appears to be changing quickly in many countries. Tens of thousands of operations are being performed every year in a number of countries, and sterilization is supported by official policy in some, with the government even subsidizing the costs.

These swift developments in turn call for a prompt reappraisal of existing laws, which either do not deal with the matter at all, or worse, do appear to deal with it, but in a highly inappropriate manner. The inappropriateness is best illustrated by the fact that the laws ostensibly applicable in some countries are the criminal laws on assault and heavy bodily injury, which equate the work of a skilled physician on a willing patient under clinical conditions with the most brutal kind of mugging. As a result, these penal provisions are not applied in practice. Only a very small number of cases has been found where prosecution has been instituted, and only one where it has been carried through successfully. In short, there is often a discrepancy between law and practice, or a legal vacuum has been created. The situation is further complicated by the fact that in many countries the idea of sterilization still arouses strong moral, religious, and emotional reactions.

In dealing with this situation, various legal questions arise, especially the question of human rights, and the effect of consent in jurisdictions where sterilization is treated as assault.[1]

As to human rights, the issues now raised are wholly different from the older human rights issue raised by compulsory sterilization. The United Nations has declared that family planning, and the right to determine responsibly the number and spacing of children, is a human right. There is the related assertion that a woman (or a man) has the right to control her (or his) own body. The human rights issue of equality for women is also involved since, with sterilization, the husband can be expected to take as much responsibility as the wife in the family planning process.

Under present conditions the question of whether consent constitutes a defense in a criminal action for assault is the key problem in most jurisdictions. Although it might normally be assumed to constitute a defense, the facts are that this is not always the case.

In dealing with the law in the succeeding sections of this paper, we have tried to:

1. exclude so far as possible, provisions on castration and on eugenic or therapeutic sterilization, which we feel confuse the issue (the exclusion of therapeutic sterilization does not, of course, mean that we are not in agreement that contraceptic sterilization is an essential part of health, which is defined by W.H.O. as "physical, mental and social well-being, and not merely the absence of disease or infirmities.")

2. exclude law on civil damages for assault, negligence, or malpractice. Although these provisions may have an effect, it is felt that they are part of the generally applicable laws of torts and that their inclusion here would again complicate and obscure the main issues.

Finally, we must explain that whereas we have had the facilities of the Harvard Law School Library available to us, and whereas we have been lucky in having had the invaluable collaboration of a great number of correspondents in other countries, we are not certain in every case that we have the latest or most complete and accurate information. The situation is confused since the applicable law may be found in many contexts--e.g. criminal law, health law, etc.. Moreover, the translation of legal provisions into English may not always be correct. Accordingly, we hope that people reading this paper and finding material which is incomplete, inaccurate, or out of date, will have the kindness to write to us so that we can make necessary corrections.

## II. DIFFERENT TYPES OF APPROACH TO VOLUNTARY STERILIZATION UNDER PRESENT LAWS

### A. Jurisdictions Where, in Absence of Applicable Legal Provisions, Voluntary Sterilization is Presumably Permitted

There are a few countries where no law specifically prohibits or authorizes voluntary sterilization and where even the criminal law seems to contain no provision against it. The provisions on "grave bodily injury" in these countries are not broad enough to cover sterilization, even if performed without consent. Therefore, according to the generally accepted maxim nullum crimen sine lege, it would be inadmissible to widen by analogy the impact of the statutory definition of a crime and make consented sterilization a criminal offense.

Thus, Article 172 of the Penal Code of Iran of 1928 deals with bodily injury in language which does not cover sterilization. It reads:

> He who intentionally inflicts an injury or blow to another which causes cutting, breaking, damaging, or disfunctioning of a limb, or ends in permanent sickness or loss of one of the senses, shall be subject to 2 - 10 years of solitary confinement....[2]

The Penal Code of Puerto Rico of 1937, as amended in 1946, defines mayhem in Sec. 671 as follows:

> Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, disfigures his face or permanently renders useless his capacity to hear, see or talk, is guilty of mayhem.

Section 821 of the same code defines assault and battery as:

> The use of any unlawful violence upon the person of another with intent to injure him, whatever be the means or the degree of violence used....[3]

In West Germany, a decision of the Federal Supreme Court on 27 October, 1964, (BGHSt 20, 81) declares:

> There no longer exists any criminal law provision in Germany under which voluntary sterilization would be punishable.[4]

Although the reasoning which led the Court to this conclusion has been criticized, and although judicial decisions in Civil Law countries do not have the force of law, this judgment has been allowed to stand since 1964. No physician has since been punished for performing voluntary sterilization in West Germany,[5] where the practice is not exceptional.

In jurisdictions of this kind, contraceptive sterilization with the consent of the patient and the spouse, must be considered as legal.

## B. Jurisdictions With Specifically Applicable Laws

### 1. Jurisdictions which specifically authorize voluntary sterilization

#### a. with limitations of non-restrictive character

Two states in the U.S.A., Virginia in 1962 and North Carolina in 1963 with later amendments, enacted laws expressly authorizing "a vasectomy, or salpingectomy, or other surgical sexual sterilization procedure"[6] (Virginia) or "a surgical interruption of vas deferens or fallopian tubes"[7] (North Carolina), under the following conditions:

- carried out by a licensed physician or surgeon,
- with a written request from the person concerned, and consent of his or her spouse,
- a medical explanation being given to the patient as to the meaning and consequences of the operation,
- the patient being at least 21 years old (in North Carolina amended to 18 years in 1971),
- with a mandatory lapse of 30 days between the request and the operation, (with special exceptions in Virginia).
- the operation being performed in a licensed hospital (this provision has since been repealed, for both sexes in Virginia, and for vasectomy in North Carolina).

In England and Wales, the National Health Service (Family Planning) Amendment Act of 26 October 1972 introduced a new type of regulation. It is unique since it provides for male sterilization only:

> ...voluntary vasectomy services may be provided by local health authorities...on the same basis as contraception services...accordingly...: A local health authority in England and Wales may, with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for the giving of advice on voluntary vasectomy, the medical examination of persons seeking advice on voluntary vasectomy for the purpose of determiring what advice to give and for treatment of voluntary vasectomy.[8]

Since the statute imposes no limitations or directions, the future development of legal vasectomy in England and Wales will depend upon the practice of the Secretary of State and of the local health authorities.

The legislative technique of the English statute is somewhat similar to the Czechoslovak approach. Sec. 27 of Law No. 20 of 17 March 1966 states:

> Sterilization may be carried out only with the agreement, or at the special request of the person on whom this operation is to be carried out, under conditions laid down by the Ministry of Health.

(These conditions, included in Regulations of the Ministry, are dealt with in subsection b. below, as they contain restrictive limitations.)

Legal provision for sterilization through reform of the criminal law is now under consideration in West Germany. The Federal Ministry of Justice informed the press in October 1971 that a first draft of a bill to reform the criminal law "makes clear that anybody who is 25 years old can be sterilized on request." Persons younger than 25 years can be sterilized on request under special circumstances, e.g. a woman who has already borne 4 children.[9] This draft was based on legislative recommendations made by a broad group of West German legal authorities which were included in the Alternativ-Entwurf (see below, III).[10] However, further legislative history of the draft shows a growing tendency toward restrictions, (and the matter will be dealt with in subsection b. below).

All the limitations found in the above-cited examples can be put into three categories: safeguards of the full and mature consent of the patient (age limit, medical explanation, lapse of time), safeguards of the spouse's interest, and safeguards as to adequate medical treatment. Limitations of this kind do not seriously restrict the right of couples to family planning (except where the age requirement is put too high).

The above limitations, which are dealt with in the following paragraphs, are often combined with limitations of a more restrictive nature.

i. Age Limit: Minimum age is 18 years in Denmark,[11] with particular attention to be given to the decision in the case of persons under 21 years; in Singapore the age is 21 years.[12]

ii. Prescribed Waiting Period: An obligatory lapse of time to assure the possibility of reconsideration, after the request is submitted, was reduced from 30 days to seven days by a 1972 amendment in Singapore. (Denmark, it may be interesting to note, requires that the operation may not be performed later than six months after the authorization. This is presumably to cover possibly changed circumstances.)

iii. Spouse Consent: Consent of spouse is required in several countries, including, for example, Denmark, Singapore, and Japan. In the last named country consent is also required from a person "who, not legally married, possesses marital status" with the applicant.[13]

iv. Proper Medical Conditions: Several countries (among others, Czechoslovakia, Denmark, and Singapore) require that the operation be carried out in hospitals managed or supervised by official authority. (When this condition is required in cases of vasectomy, it is possible that the provision is motivated more for the purpose of official control than for medical purposes.)

b. with limitations of a restrictive character

Several countries, among those few countries which do have laws specifically dealing with sterilization, more or less restrict the access of a mature person (or of the couple) to voluntary sterilization. These restrictions are sometimes in the law itself and are sometimes in the implementing regulations.

Among these countries are: Czechoslovakia,[14] Denmark,[15] Finland,[16] Honduras,[17] Iceland,[18] Norway,[19] Panama,[20] Singapore,[21] Sweden,[22] and Thailand.[23] In South Korea, a voluntary sterilization bill of this type was proposed by 96 representatives in 1965.[24] The present state of proceedings in the West German Parliament shows some restrictive tendencies narrowing the freedom of choice.

Among typical restrictive limitations, the following criteria can be found:

i. Sex of the patient: The United Kingdom law of 1972 appears to be restrictive towards the sterilization of women, but its provisions, which provide for possible government subsidization of operations for males and apparently not for females, seem to be motivated by the comparative inexpensiveness and simplicity of vasectomy. On the other hand, the 1941 statute of Panama allows contraceptive sterilization to be carried out on a woman only. In view of the fact that the previous law had allowed voluntary sterilizations for persons of both sexes, the present law seems to be clearly restrictive in intent, if not actually discriminatory. Chile forbids sterilizing operations on women, but not on men.

ii. Minimum number of children required: The applicant must have a certain number of children in some countries before voluntary sterilization is allowed. Japan requires "several." Five living children are required in Panama, four (three, if the woman concerned is over 35 years) are required by the Czechoslovak 1966 regulation. Under the Singapore 1969 Voluntary Sterilization Act, the applicant had to have three children, but it may be significant that the 1972 amending act lowered this prerequisite to two and, in some cases, even to one. The "Policy Guidelines" (not of a legally binding character) laid down by the Government of India and the Indian states require a minimum of three living children.[25]

A legal requirement that a family considering sterilization be not childless -- or, possibly, that it have one child -- might be taken as showing a legislative motive of protecting the persons concerned against a possible future change of mind and frustration. However, a requirement of three, four, or more children may indicate that demographic considerations were not absent or that each citizen has some duty to bear children for the state.

The West German 1972 draft provides that a woman under 25 years of age, or her husband, can be sterilized if, among other exceptional situations, she has borne "at least four" children. The explanatory comment (p. 39) for this proposition claims that the legislative intent is the protection of mature consent. The report states that a person "who has already had four children, has, as a rule, acquired, with regard to the problem of sterilization, such matureness and experience as the law otherwise presumes only at the age of 25 years." [26]

iii. Social and economic difficulties: The requirement in some laws that a family have a large number of children may be based on the assumption that large families will have financial difficulties. In a number of laws, a socially and economically difficult situation is provided as a criterion for allowing sterilization.

Thus Sec. 4, para. 2, point 23, of the Danish law of 1967, concerning sterilization and castration provides:

> Sterilization may be authorized...when the conditions under which the applicant and his family live make it desirable to prevent the birth of further children. Account shall be taken, in reaching the decision, of the condition of the family, from the point of view of health, housing, and income, and the number of children in the home, and also of the possibility that further children will result in an appreciable deterioration of the situation by harmfully affecting the state of health of the woman, markedly increasing her workload....

It may be noted that the Swedish law of 1941 requires that there be "social considerations," meaning situations where "because of mental derangement or an asocial way of life the subject is found obviously unable to assume responsibility for the proper upbringing of children." This concept indicates the predominantly eugenic character of the Swedish law.

It may be useful to point out once more that this paper does not deal with eugenically motivated sterilization. Therefore some "indications" for voluntary sterilization, typically existing in various statutes, are omitted here, as being not relevant from the family planning viewpoint.

iv. Authorization of sterilization by an official authority or board: This is a frequent prerequisite for the sterilization operation, but it does not occur in the most modern laws (e.g. the Virginia and North Carolina statutes and the 1972 England - Wales Act.) The Danish law (Sec.3, para. 3 of the 1967 statute) even requires a unanimous decision of the authorizing committee. In Honduras, sterilization must be "decided by three competent physicians."

When an official body is constituted to decide if a person can or can not be sterilized, its procedure and decisions are regular administrative matters. However, the statutes often lack provisions as to: a) the extent of discretion given to the board and the extent to which a citizen has a right to sterilization; or b) the right to review or appeal.

The West German Government's explanatory comment to its draft suggests that, instead of a board, the surgeon concerned must decide whether a request for sterilization should or should not be granted. He is to decide on the basis of the given facts, including all the non-medical factors:

> The decision if and to what extent voluntary sterilization for family planning purposes should be carried out, can be left to the doctor. He must compare the specific advantages of this preventive measure...and its specific drawbacks...In each individual case, there must be an examination of the question of whether an operation of such a permanent nature can be justified, in the light of the over-all circumstances of the person in question. This includes the person's age, mental condition, number of children, and conjugal relationship.

The draft contains no provision on what the patient can do if there is a difference of opinion between him and his doctor.

* * * * * * * * * * * * * * *

Specific sterilization laws may include a penal clause containing special penalties for an unauthorized sterilization and/or for operations performed in an unauthorized way. These penalties are considerably milder than the heavy ones imposed by penal codes for the intentional infliction of heavy bodily injury. The question arises as to the relationship between these two penal provisions. Does the milder provision specifically punishing infringement of rules governing voluntary sterilization operations exclude the application of general provisions of the penal codes?

Since both provisions are on the penal law level, the specific provision should normally exclude the general one: lex specialis derogat generali. However, the wording of some of the penal clauses in some of the sterilization statutes may leave some doubt.

Thus, Sec. 16 of the Danish 1967 statute provides: "Any person who illegally carries out sterilization or castration shall be punished by a fine, without prejudice to any more severe penalty to which he may be subject under other legislation."

The Singapore Voluntary Sterilization Act of 1969 states in Sec. 12, para. 1:

> No registered medical practitioner shall be liable civilly or criminally for carrying out treatment for sexual sterilization authorized by the Board under this Act...unless the treatment is carried out in a negligent manner.

2. Jurisdictions which specifically prohibit voluntary sterilization

The military regimes of Kemal in Turkey and of Mussolini in Italy enacted provisions punishing both the person performing the sterilization and the patient. The idea of punishing the person sterilized, although contrary to the contemporary trend of thinking, is logical if the government is thinking in terms of a duty to procreate.

The Turkish Criminal Code of March 1926 provides in Sec. 471:

> Whoever, by his acts, causes a man or woman to become sterile, and any person giving consent to the performance of such acts on himself, shall be punished by imprisonment for six months to two years and by a heavy fine of 100 to 500 liras.

By decision No.6/8305 of 12 June 1967 of the Council of Ministers, regulations were issued allowing sterilization on preventive medical grounds and eugenic sterilization on grounds of serious hereditary disease. There is no provision on sterilization on family planning grounds, although the regulations were issued in pursuance of Sections 3 and 4 of Law No. 557 of 1 April 1965, concerning family planning.

Section 552 of the Italian Penal Code of 19 October 1930 provides:

> Whoever performs acts on persons of either sex, with their consent, intended to render them incapable of procreating, will be punished by imprisonment from six months to two years and with a fine from eight to forty thousand lira.
>
> Whoever gives consent to those acts being performed on himself shall suffer the same punishment.

In the later period of the Hitler era, a provision was enacted in Germany under which the physician performing the sterilization operation, as well as the patient himself were punishable. This provision, deleted in 1946,[27] was characterized by the Federal Supreme Court of Germany in its above cited decision of 1964, as follows:

> The laws relating to sterilization, enacted during the time of National Socialism...were in accord with its ideology under which the procreation of those human beings who were worthless in its opinion, was to be prevented, and the procreation of those, who in its opinion were valuable, was to be encouraged by all means available.

In more recent times, in South Vietnam, Law No. 12 of 22 May 1962 dealing with the protection of morality was adopted. It provides for the following:

> Section 8. It is forbidden to conduct propaganda for, or to encourage, ...the unnatural prevention of pregnancy ...except where the doctor decides otherwise on the basis of clear evidence that the life of the woman will be endangered by delivery.
>
> If found in violation of this article, the main defendant and his accomplices will be subject to a fine from 10,000 to 1,000,000 piastres, or to a confinement of from 1 month to 5 years, or both of these two penalties. As to the crime of pregnancy prevention only one of these penalties is applied.

A few other jurisdictions punish only the person performing the sterilization. Thus, the Penal Code of Nicaragua provides, in Sec. 360:

> The following shall be punishable for grave bodily injury: 1) whoever, without causing death, maliciously (maliciosamente) castrates or renders the reproductive organs (organes generadore) of another person useless, without his consent; 2) whoever commits the same offense against an adult person with his consent.

Sec. 361 provides a less severe punishment for the offense in Sec. 2 above (see also Guatemala and Costa Rica, below, p.14).

There may have been a trend among some states in the U.S.A. to move in this direction, e.g. Kansas,[28] Utah,[29] and Connecticut.[30] However, doubts have been expressed both as to the scope of those provisions and as to their constitutionality.[31] The relevant sections are parts of laws narrowly regulating the compulsory eugenic sterilization of inmates of certain institutions, or of persons found by a court to be mentally abnormal. The Kansas Act provides:

> Except as authorized by this act, every person who shall perform, encourage, assist in or otherwise promote the performance of either of the operations described in this act, for the purpose of destroying the power to procreate the human species, unless the same shall be a medical necessity, shall be fined not less than $100 nor more than five hundred ($500) dollars and imprisoned in the county jail not less than six months nor exceeding one year.

## C. Jurisdictions Where Voluntary Sterilization is Covered Under Criminal Law Provisions on Intentional Grave Bodily Injury

In the great majority of jurisdictions, assuming that they cover voluntary sterilization for family planning purposes at all, the only laws which might be applied are the sections of criminal law dealing with intentional infliction of heavy bodily injury. The key problem is the relevancy of the fact that the "injured" person requests the operation -- i.e., consents to the "injury."

The crime in question appears under terms such as "inflicting grievous bodily harm," "assault," "mayhem," etc., in Common Law jurisdictions; or "coups and blessures volontaires" (intentional wounds and injuries) in the areas of French or formerly French law. Terms such as "intentional infliction of grave corporal injury" are used in most Civil Law countries.

The standard drafting form, especially on the European continent and in Latin America, is as follows.

First there is, in general terms, a definition of the crime of intentional infliction of a (simple) bodily injury. The next provision provides a severe penalty for a "grave" bodily injury and usually includes a listing of very serious injuries to corporal integrity or health. Among them can be found language covering loss of reproductive ability, either in general terms (e.g. "permanent impairment of an organ" or "loss by an organ of its function"), or, more specifically "loss of ability to procreate." Less often, some codes use only very general definitions such as, "heavy bodily injury," "lasting infirmity" or "grievous injury to health." Penalties imposed by law are very heavy, usually several years of imprisonment.

Provisions of two codes are reproduced below as samples of this legislative technique:

The Colombian Penal Code - Law No. 95 of 24 April 1936 - provides:

> Sec. 371. Anyone who, without intent to kill, causes an injury to the body or the health of another or a physical disturbance, shall suffer the punishments specified in the following articles.
>
> .....
>
> Sec. 373. If the injury causes facial disfiguration, curable physical deformity or transitory psychical disturbance, the punishment will be imprisonment for six months to five years and a fine of one hundred to two thousand pesos.
>
> If the disfiguration or deformity be permanent, the punishment shall be imprisonment for one to six years and a fine of one hundred to four thousand pesos.

> Sec. 374. If the injury causes transitory functional impairment of an organ or limb, the punishment shall be penal servitude for two to five years and a fine of two hundred to four thousand pesos. It the functional... impairment be permanent, the punishment shall be penal servitude for two to six years and a fine of two hundred to five thousand pesos.[32]

The Penal Code of the Russian Federal Socialistic Republic of 27 October 1960 provides:

> Sec. 108. Intentional infliction of grave bodily injury. Intentional infliction of bodily injury dangerous to life or resulting in loss of sight, or of hearing, or of any organ, or in loss by an organ of its function, or in mental illness or in any other impairment of health, joined with persistent loss of at least one third of the capacity to work, or when it results in an interruption of pregnancy or permanent disfigurement of the face, shall be punished by deprivation of freedom for a term not exceeding eight years.
>
> The same actions, if they cause the victim's death, or assume the character of torment or torture or are committed by an expecially dangerous recidivist, shall be punished by deprivation of freedom for a term of five to twelve years.[33]

On the scale of violent crimes ranged in order of their social dangerousness and condemnation, criminal infliction of sterility is usually close to the top. The Soviet provision, which is similar to that of many other countries, even covers without differentiation of penalty, both castration (which, of course typically means violent and malicious castration) and sterilization. These provisions subject sterilization, as one of the most serious crimes of brutal violence, to heavy punishment. These provisions were clearly aimed at cases of "malicious" sterilization, carried out against the will of the victim.

The present worldwide legal problem, therefore, is: do these provisions also cover cases of voluntary sterilizations, i.e. operations carried out under professional precautions and at the request of mature persons and for what they consider to be for their benefit? In other words, does request (the consent) of the sterilized person change the situation from brutal, violent attack to a surgical service? "Does consent constitute a defense" - to use the terminology of Common Law countries?

In dealing with this question in the next sections, a distinction must, of course, be made between consented sterilizations in good faith for family planning purposes, and cases where a bodily injury is consented to in bad faith, for such purposes as evading military duty or supporting claims for social security.

1. Jurisdictions whose codes specifically declare consent to be irrelevant.

A few countries expressly legislate on the issue of consent on the part of the victim to heavy bodily injury, and provide that it is not a defense. A few Latin American codes contain specific provisions imposing lighter punishment on bodily injury, if committed with the consent of the injured person (so that the consent is not "fully" exculpating, but is merely an attenuating circumstance).

Thus, the Penal and Police Code of Costa Rica of 1941, having, by its Section 201, No. 2, imposed imprisonment for five to ten years for the intentional privation of another person of sexual functions, provides:

> Sec. 207. Whoever inflicts an injury to another with his consent or at his request, shall be punished by imprisonment for six months to three years.

Similar provisions are to be found in Guatemala (Sec. 317 of Penal Code, Law No. 2164 of 1936) and in Nicaragua (see above, p.11).

Despite the provisions cited, under which even voluntary sterilization operations have to be regarded as criminal acts, the actual situation in these and other Latin American countries is subject to some doubt, according to correspondents from these areas. In fact, public vasectomy programs have been carried out in Costa Rica and in Colombia for the past two years by a charitable fund and have been very well received. Voluntary sterilizations of women are also reported from Costa Rica.[34]

2. Jurisdictions which specifically make consent relevant under certain circumstances.

Criminal laws and codes of some countries provide that the consent of the "victim" exculpates the person inflicting the injury. As a rule, however, this provision applies only with some limitations.

Generally the concept assumes that the criminal responsibility of the "doer" can be excluded only by a consent given by somebody who is authorized to dispose of the interest concerned. (We shall come back to this idea later, under 3/a). Here it should only be pointed out that this approach finds its statutory expression in Art. 24 of the Penal Code of South Korea:

> Conduct which infringes a legal interest with the consent of someone who is authorized to dispose of such interest shall not be punishable, except as otherwise provided by law.

Broad relevancy of consent is conceded by the provision of Sec. 44 of the Uraguayan Penal Code of 1 July 1934, under the heading of "Consent to Injuries":

> Causing bodily injury with the consent of the injured (paciente) is not punishable, except where the object is to elude compliance with the law, or to inflict damage to a third person.

The German Penal Code of 1871, as amended, enacts, in what is now Section 226/a of the West German Penal Code, that "good morals" are a criterion as to the relevancy of consent:

> Whoever inflicts corporal injury with the consent of the injured person, acts illegally (rechtswidrig) only where his act violates good morals (gute sitten).

Similar provisions are contained in the penal codes of Ethiopia (Law of 23 July 1957, Sec. 542, Para. 1/c) and of Greece (Law of 17 August 1950, Sec. 308, para 2--applicable only to "common" bodily injury).

According to the West German Bundesgerichtshof the above German provision has, since 1946, been irrelevant to our issue, as voluntary sterilization cannot be punished under the grave bodily injury provisions at all. Moreover, the "good morals" criterion is increasingly rejected by a large part of West German legal literature. It is asserted the the concept is so broad and vague as to be unconstitutional.[35] Moreover, it would hardly be possible in many countries under present day conditions, to maintain that voluntary sterilization is immoral.

In the countries influenced by the Common Law two types of statutory provision have developed with regard to the relevancy of consent in criminal cases involving surgical operations.

Legal systems similar to the Indian Penal Code, i.e., among others, India, Pakistan, Sri Lanka, Burma, Malaysia, Singapore, include provisions like Sec. 88 of the Indian Code, which are designed to meet the needs of the medical profession:

> Sec. 88. Nothing which is not intended to cause death, is an offence by reason of any harm it may cause or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.[36]

The term "good faith", according to Sec. 52 of the Indian Code, includes due care and attention. The key words are, of course, "for whose benefit it is done." It has been traditionally stressed that the benefit contemplated in this section does not include a pecuniary benefit. What this means, as applied to voluntary sterilizations, is apparently receiving different interpretations in different countries.

In India, more than seven million sterilizations have been performed without any prosecution of a doctor being reported. The interpretation in practice seems to be that consent is what matters.

In Sri Lanka, sterilization as a method of family planning has become a part of the Government's program and the large tea estates have incentive schemes to encourage it. At the same time, there are no specific legal provisions on sterilization as such. Since the criminal code provision is like that of India, the physician concerned would be criminally liable if the "benefit" were to be considered "pecuniary." Yet our legal correspondent in Colombo writes that "it is inconceivable that doctors performing sterilization operations are in any real danger of being prosecuted, particularly after consent to the operation has been obtained."[37]

In India and Sri Lanka at least, it appears that the human right of family planning may include the right to select the means of family planning and to decide what constitutes "benefit".

However, the Vice Chancellor of the University of Malaya, interpreting the Malaysian law which is also very close to the Indian, writes that, in Malaysia, consent would probably not be a defense, unless the purpose of the operation were therapeutic.[38] He adds: "it is doubtful if contraceptive or socio-economic sterilization would be covered, especially as mere pecuniary benefit is not benefit within the meaning of the statute." (See below, under "Religious Law")

On the other hand, the penal codes of several African countries --Ghana, Nigeria, Tanzania, and Zambia--also influenced by the Common Law, contain specific provisions on surgical operations, under which the intended benefit to the patient appears to exclude criminal responsibility for the surgeon. The provisions of these codes are as follows:

> ...performing in good faith...surgical operation upon any person...for his benefit...[Sec. 210 of the Penal Code, Chapter 6, of the laws of the Republic of Zambia, 1965 ed; Sec. 230 of Penal Code of Tanzania of 1945.]
>
> ...performing with good faith and with reasonable care and skill a surgical operation upon any person for his benefit, if the performance of the operation is reasonable, having regard to the patient's state and to all the circumstances of the case. [Sec. 297 of the Criminal Code of 1 June 1916 for Nigeria, excluding the Northern Region.]
>
> ...in good faith, for the purpose or in the course of medical or surgical treatment...[Sec. 42/c of the Criminal Code of Ghana, Act. 29 of 1960.][39]

We do not know how these provisions will be interpreted in connection with voluntary sterilization. Possibly, the question will not be the interpretation of the word "benefit", but whether the operation is or is not a medical treatment of the kind which the statutes were enacted to

protect. The question may be: is voluntary sterilization, performed for family planning purposes and not for therapeutic purposes, a medical treatment? This has sometimes been denied, both by medical and legal authorities - sometime on rather "high flown" grounds and without due regard for the realities of life and for the right of individual couples to decide on their parenthood. To perform voluntary sterilization, it is said, is to pursue ends "alien to the mission of medicine." Elements of paternalism, both legal and medical, may here come into conflict with the family planning principles accepted on the United Nations level.

Mexico should also be mentioned as a country where, at least in the Federal District, consent is covered by a provision which states that all persons over the age of minority have the right "freely to dispose of their bodies and possessions, subject to such limitations as the law may establish" (Art. 24, Title one, Book one, of the New Civil Code of October 1932). Since there is no provision in the Criminal Law which specifically prohibits sterilization, and since Article 14, Title one, Chapter I of the Constitution states that criminal laws are to be interpreted strictly, it appears that voluntary sterilization is not illegal.[40]

3. Jurisdictions where, in the absence of specific provision, effect of consent is a matter of interpretation

In the large majority of countries criminal codes or laws contain no provisions on the effect of consent or on its relevancy or irrelevancy to the issue of criminal responsibility. Thus the question is a matter of doctrinal interpretation in the countries of continental Europe and of Latin America. It should be a matter of case law in the Common Law countries, but judicial decisions are very rare.

a. Civil Law countries

In France, Belgium, and, as it seems, in some countries formerly under French law, the majority of legal theory appears to support the principle that consent of the "victim" of "grave bodily injury," i.e. the sterilization operation, does not exculpate the surgeon. This was also the basis for decision in the only case found in these countries, namely, the French case in 1937 of the "Bordeaux sterilisateurs". This involved a group of people who advocated and practiced voluntary sterilization on ideological grounds. Both French courts declared the consent of the sterilized people to be irrelevant to the criminal responsibility of the accused. (Although the accused were not authorized physicians, this was not the basis of the decision). The reasons for the decision were based on the French doctrine that the patients "could not authorize anybody to violate, on their persons, the rules governing the public order (l'ordre public)."[41]

Austrian authorities have declared that non-therapeutic sterilization is a crime in spite of consent. The reasoning appears to be that the result of the operation diminishes the individual's capacity for achievement ("Leistungsfaehigkeit"), and therefore consent cannot set aside the material unlawfulness ("Rechtswidrigkeit").[42]

On the other hand, in Switzerland, a neighbouring country, whose legal system is similar to the Austrian, voluntary sterilization is practiced, partly under the traditionally sympathetic attitude of physicians. Although under the official view of the Federal Department of Justice[43] only therapeutic sterilization is allowed, some leading authorities on Swiss doctrine declare that consent excludes criminal responsibility, as it abolishes the Rechtswidrigkeit.[44] This concept, which can , perhaps, be translated as "material unlawfulness", is a concept developed mainly in German criminal law. The prerequisite of Rechtswidrigkeit is that, to be criminal, an act must contradict not only a specific criminal law provision, but also the social object protected by that law. It would appear that as world opinion on family planning liberalizes, a growing number of authorities may be willing to deny the Rechtswidrigkeit of a contraceptive sterilization.

The situation still prevalent in the Civil Law area can be roughly summarized thus: legal theory and official legal circles express the opinion that consent does not exclude the criminal responsibility of the surgeon who performs sterilization for family planning purposes. But these expressions virtually never take cognizance of actual practice, of the impact of the growing acceptance of voluntary sterilization as a method of family planning, and of international documents on this subject. In striking contrast to this theory, contraceptual sterilizations are increasingly being performed in many countries, and are never prosecuted. Moreover, there is strong ground to assume that, in some countries, contraceptive sterilizations are frequently performed in collusion between the physician and the patient, under the guise of therapeutic operations.

Examples of this discrepancy from three continents follow:

A communication from Sweden states:

> According to Swedish law a surgeon performing a sterilization with full consent of the patient but not following the requisites of the Sterilization Act of 1941 is guilty of assault according to the Penal Code Ch. 3 Sec. 5, provided that his surgery does not fall among the cases of medical necessity. If he, by one reason or another, is not guilty of assault there is a possibility to punish him...according to Sec. 8 of the Sterilization Act...The consent of the patient is no bar to conviction. In reality, however,... there is only a marginal chance for a prosecutor to obtain a conviction. The defendant almost always successfully claims medical necessity.[45]

A communication from Chile states:

> ...sterilizations...effected for economic and social reasons would be punished under Chilean penal law... consent does not constitute justification and therefore does not exclude from penal responsibility.[46] [However, no prosecutions are known from this country. According to a professor of gynecology at the Medical School of the University of Chile, although most

physcians perform these operations on medical grounds, a number of private practitioners do contraceptive operations without prosecution. See also Brazil, tabulation note 10]

A letter from Djakarta reveals that in Indonesia, where voluntary sterilization has not yet, on religious grounds, been accepted:

> ...there are clinics which provide voluntary tubal ligation and vasectomy and are usually performed on medical grounds with the written consent of the spouse.[47]

Our correspondent in Manila states that there is "some doubt as to whether these [operations] are punishable." He points out that if the legislature had "wished to penalize consented mutilation, it could have said so," as it did in abortion cases.[48]

The discrepancy between official interpretation of the law and its practice in some Civil Law countries becomes more marked when the "principle of legality"--as opposed to opportunity--governs. Under this principle a state prosecutor has no discretion whether to prosecute or not; once he can reasonably believe that a crime has been committed and that he can prove it, he must file a prosecution.

A gradual trend towards acceptance of consent as relevant can be clearly seen in the most recent theoretical statements on criminal law in West Germany. The principle, under which "the freedom of decision of the injured person should be limited only where fundamental socio-ethical values are endangered",[49] as well as the realization that "voluntary sterilization endangers no legally protected value outside of the person concerned," will be increasingly reflected in legislation both in West Germany and in other countries.

b. Common Law countries

Although the state of the law on voluntary sterilization is no less confused in Common Law countries, and although there is a lack of judicial precedents in the U.K. and Canada, legal opinion seems to be less conservative than in some countries of continental Europe.

A few years before the Vasectomy Act 1972 was enacted, the prevailing legal opinion in Great Britain seemed to hold that full consent of the patient legalized sterilization, presuming that the purpose of the operation was legal. Sections 18 and 20 of the Offenses Against the Persons Act of 1861 impose punishment for maiming or causing grievous bodily harm and for unlawfully and maliciously causing wounds. In 1967 the Secretary of the English Medical Defence Union, on the basis of previous reports from both English and Scottish counsel, felt justified in issuing a much quoted statement:

> In view of this opinion we now have no hesitation in advising members of the medical profession in Britain that sterilization carried out merely on the grounds of personal convenience, in other words as a convenient method of birth control, is a legitimate legal undertaking.[50]

As for Canada, the state of general confusion is well explained in K.G. Gray's book on Law and the Practice on Medicine (Toronto, revised edition, 1955). The author ends the part concerning criminal liability (p.45) as follows:

> Where a parent requests sterilization on the sole ground that he is not financially able to support additional children, the surgeon may not operate, even though the parent's contention may be true...It should be stated again however, that this opinion rests upon no reported decision. It is quite conceivable that the courts may decide that a sterilization operation for eugenic or economic reasons is lawful if the parent consents...

It may be added that in Canada, where two states, Alberta and British Columbia, have Sexual Sterilization Acts, under Section 228 of the federal Criminal Code whoever causes bodily harm with intent to wound, maim or disfigure any person, is liable to imprisonment for fourteen years.

In Australia, the number of voluntary sterilizations is believed to be increasing,and the matter is considered one of "ethics or conscience" on the part of the physician.[51]

In Jamaica, where thousands of sterilizations are performed each year, Section 16, Offenses Against the Persons Act 1861, states:

> Whoscever shall unlawfully and maliciously, by any means whatsoever, wound, or cause any grievous bodily harm to any person...with intent in any of the cases aforesaid, to maim, disfigure, or disable any person...shall be guilty of felony, and...liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for a term not exceeding two years, with or without hard labour. [The law has not been invoked for many years, and the Medical Defence Union advises doctors to perform sterilizations if both the patient and the spouse consent. In Government hospitals, tubal ligations are performed free of charge.][52]

Surprisingly, the criminal law aspect of voluntary sterilization does not seem to have been raised directly in any reported case in the U.S.A., but the legal confusion which existed in different states seems to have been substantially cleared up during the last two decades. This

is the result of certain decisions which throw light on the problem indirectly.

E.L. Sagall reports:

> In 1952, the attorney general of Wisconsin warned: 'The consequences to a physician from the performance of an operation of this kind, should the courts hold it illegal, could be serious...' However, in 1968, when faced with this issue again, the Wisconsin attorney general ruled that a physician who performs a non-therapeutic salpingectomy or vasectomy with the consent of the patient was not committing any crime under the state law...[53]

A similar change in attitude has occurred in California. In 1950, the Californian attorney general issued an advisory opinion stating that consentual vasectomies were against public policy and may constitute the crime of mayhem (voluntary mutilation of one's body). This opinion, however, was overruled by the appellate court in Jessin v. County of Shasta, 79 Cal. Rptr. 359 (1969)...[54]

In this decision, although involving a civil litigation, the court found that there was no legal reason why a voluntary sterilization, given competent consent, should not be performed, and that vasectomy does not constitute mayhem.

As reported in the National Disease and Therapeutic Index, in 1971 the number of vasectomies performed in the U.S.A. reached one million.

c. The Socialist States of Eastern Europe

As shown above in connection the R.S.F.S.R. Penal Code, the legislative techniques of dealing with the intentional infliction of grave corporal injury do not differ fundamentally in Eastern and Western Europe.

However, there is a basic concept in Socialist criminal law, common to all the Eastern countries, on the "material condition of social dangerousness" as a prerequisite to criminal responsibility. Under this concept, consent may possibly play a decisive role in cases of this kind.

Under the "material condition of social dangerousness" concept, to be a crime, an act must constitute more than a negligible danger to society. It must: 1. fulfill all the elements of the legal definition of a particular crime (including prerequisites like mens rea, mental sanity, etc.); and it must also: 2. "represent a (not negligible) social danger," taking into account all the circumstances. Only when both components are given, can a person be prosecuted for,

or found guilty of, a crime. Lacking the second requisite, the act in question does not constitute a crime, although it may be an administrative or disciplinary offense.

This peculiar feature may be shown on two Penal Code provisions. The Penal Code of the R.S.F.S.R. of 27 October 1960 provides, in Section 7:

> The concept of crime...Although an act or an omission to act formally contains the indicia of an act covered by the Special Part of the present code, it shall not be a crime, if by reason of its insignificance it does not represent a social danger.

Section 3, para. 2 of the Czechoslovak Penal Code of 1961 provides:

> An act of which the degree of social dangerousness is slight, is not a crime, even if it otherwise fulfills all the elements of a crime.

Under this concept, the existence or absence of various circumstances in otherwise similar acts can substantially change the degree of social dangerousness. Thus intentional deprivation of a person of the capacity to procreate would generally be estimated to be a heinous crime against this person. But the whole picture may be completely changed once the operation is performed at the request of the patient and at a professional level. It may be so changed as to lose the character of a criminal act. In another situation, however, (e.g. sterilization of a young person without consent of spouse) the social danger of a grave bodily harm may still be great. As can be seen, among the many problems arising out of this concept of crime, the most difficult is its breadth, which necessarily results in considerable discretion in its application.

An evaluation of this concept as it affects the sterilization problem under Polish law may be useful:

> It seems that sterilization performed upon a healthy, consenting patient with the sole purpose of preventing unwanted procreation is illegal and punishable under Art. 155, para. I. of the Polish Penal Code... [I]n individual cases criminal prosecution may be dropped or criminal proceedings terminated on the ground of the insignificant degree of social danger of the act. Such decisions can be adopted only on a case by case basis, according to the general idea underlying the application of Art. 26 of the Penal Code.[55]

## D. Religious Law

The effect of religious law is different in different countries. It may in some cases be enforced by the courts. In others, it may influence the judges in their interpretation of the secular law. In other countries, it may have no effect whatever. Because, however, it will probably have some effect in some countries, a word must be said here on the subject.

### 1. Islamic Law

Islamic authorities are not in agreement as to whether Islamic religious law does or does not permit voluntary sterilization.

At the IPPF-sponsored Conference on Islamic attitudes toward planned parenthood at Rabat, Morocco in 1971, the trend was to adopt the findings of the Islamic Research Council in Cairo, which were contrary to voluntary sterilization. Vice Chancellor Ahmad Ibrahim (see p. 17) of the University of Malaya states that "official Muslim opinion in Malaysia is that sterilization is against the principles of Islam." Magdi El-Kammash, writing in Population and Law, by Lee and Larson, ed. Leiden/Durham, North Carolina, 1971, at pp. 314 and 370 says:

> ...the Islamic religion forbids permanent sterilization... ...permanent sterilization is absolutely forbidden...except in case of hereditary disease or malformities that may be transmitted to the offspring. (p. 314); ...Islamic religion forbids sterilization except in justified cases such as physical deformity, psychological or mental illness and incurable or hereditary diseases. The Islamic jurisprudence, Shariah, requires sterilization in such cases... (p. 370)

On the other hand, Al Sheikh Mohammad H. Bhashti of Iran writing in Islamic Attitudes Towards Abortion and Sterilization, published in Birthright, Vol. 7, No. 1, p. 49 (1972), and M. Rafi Ullah Shehab of Pakistan, in a paper submitted to the Rabat Conference, both argue that sterilization is not to be classed as castration, and there is no Islamic law prohibiting it.

As to the effect of Islamic law in the secular courts of an Islamic country, it is unlikely that it would have a direct effect in a country like Lebanon which has secular legislation on grave bodily injury which is, moreover, consistent with the stricter Islamic view. (Lebanon; Sec. 557 of Law of 1 March 1943.) Lebanon's code imposes a high penalty on one who renders an organ of another person "unable to function." In a country like Tunisia, where the bodily injury provision (Sec. 219, Law of 9 July 1913) is based on French law, it would probably result in a decision against the legality of the operation. In Malaysia, where the statute (see above p. 16) specifically authorizes consent as a defense, the finding of the court might still be against the legality of the operation, although the same statute in Sri Lanka, a non-Moslem country, is interpreted in the opposite manner.

On the other hand, in a country like Saudi Arabia, where Islamic criminal law is applied, according to Mr. M.A. Nafisa, Lic. en droit Cairo Univ., L.L.M. Harvard Law School, the Hanbali School of Islamic Law recognizes consent as a defense in bodily injury actions. Thus it is likely that, in the absence of administrative regulations forbidding sterilization operations, consent of the patient would bar the application of Islamic Law penalties, otherwise imposed for bodily injuries. As shown above (p. 20), in Indonesia, the operation is usually justified by medical grounds.

2. The Canon Law of the Roman Catholic Church

There is nothing in the Code of Canon Law which specifically prohibits contraceptive sterilization, but there is a body of official ecclesiastical documents, including the 1968 "Humanae Vitae" encyclical, which are contrary to the practice.[56]

No secular jurisdiction is known which applies Canon Law or Roman Catholic doctrine directly in its secular court decisions, but, it is possible that some judges in Catholic countries which have no specific provisions on sterilization may be influenced by this body of doctrine in interpreting the general law. No particular case of this kind, has, however been found.

3. Jewish Law

In Israel, religious law only applies to questions of personal status which is defined in Article 51 of the Palestine Orders-in-Council 1922 - 1947, as covering marriage, divorce, alimony, etc. The list does not include matters such as sterilization which would presumably fall under the criminal law handled by the secular courts. According to our correspondent in Israel,[57] there appears to be nothing in the secular law on the matter. However, sterilization might easily be a factor in cases involving marriage and divorce, (e.g. can a voluntarily sterilized man marry). These cases are handled in the religious courts and religious law might be applied.[58]

Under Jewish religious law, sterilization in any surgical form is forbidden. This is stated explicitly in the Shulchan Aruch, Eben Haezer, Laws of Piryah Veribyah, 5:11. The Rabbis in Talmudic literature trace the prohibition against impairing the reproductive organs to Leviticus 22:24. (see Tanaitic Commentary of the Sifra. See also Tosefta to Tractate, Makkoth 4:4)

## III. CONCLUSIONS AND COMMENT

A. Except in a few jurisdictions, laws specifically covering voluntary sterilization are either non-existent or outdated. If the subject matter is covered at all, it is under the criminal laws. These laws are, as a rule, so ambiguous as to make the legal situation obscure.

In preparing this monograph, the authors wrote to correspondents all over the world. The letters in reply typically began with a sentence along these lines: "The state of the law governing voluntary sterilization in this country is obscure."

It can be seen from Part II that only a few countries have legislation specifically governing the permissibility of voluntary sterilization and setting forth the conditions under which it may be carried out. Many of the laws which do exist are not satisfactory from the standpoint of present day conditions. Some of them are essentially oriented towards eugenic problems (Scandinavia and Japan). Consequently, family planning sterilizations in countries where such laws are in existence may frequently be carried out under the cloak of eugenic or therapeutic sterilization (see Conclusion D below).

This state of affairs is undesirable, not only from the standpoint of legality, but also from the point of view of family planning and of citizens' rights. Only during the past few years have a few legislatures enacted (or been in the course of enacting) modern non-restrictive laws clearly covering voluntary contraceptive sterilization. These are: Virginia in 1962, North Carolina in 1963, Singapore in 1969 (and again in 1972), and England and Wales by the Family Planning Amendment Act of 1972. West Germany's recent draft also belongs in this category.

B. Despite the obscurity of the laws or the apparent illegality of sterilization in many jurisdictions, its practice is common: it is increasing in many countries, and is sometimes officially sponsored. Thus, such laws are disregarded and prosecutions are not brought.

Popular attitudes toward sterilization for family planning purposes appear to be changing fast. Although in some developing countries which are not aware of population pressures (e.g. some African countries), and in some of the Moslem countries, the idea is not yet accepted, in some of the developed countries, and in those developing countries which are under immediate population pressures, attitudes are becoming favorable. Recent programs in Latin America have met with surprising acceptance.

India, Korea, Sri Lanka and the United Kingdom (and possibly other countries) sponsor programs of voluntary sterilization in one way or another. In all but the United Kingdom (and there only since 1972) there appears to be no legislation which specifically authorizes the operation, and in India and Sri Lanka, the status of the physician is not clear as far as the criminal law is concerned. Since World War II, vast numbers of contraceptive sterilizations have been carried out in countries in which the legal status of the operation was, at best, unclear under criminal law. There appear to have been no prosecutions.

C. Although there have not been any official statements on the subject, it is possible that the right to undergo a voluntary sterilization may eventually be considered as part of the human right of family planning and possibly as part of a basic right to control one's own body.

To illustrate this trend, we quote one of several recent United Nations instruments: the General Assembly Declaration on Social Progress and Development (Resolution No. 2542 (XXIV) adopted on 11 December 1969 by a vote of 119 in favor, one opposed, with 2 abstentions. This was the first U.N. instrument which required governments to provide families with not only the knowledge, but also the means necessary to enable them to exercise their rights to determine freely and responsibly the number and spacing of their children.[59]

D. Voluntary sterilization for family planning purposes should be dealt with entirely separately, and not under a statute designed to deal with eugenic or therapeutic sterilization.

The considerations involved in the various types of case are different. In the eugenic case, some elements of compulsion may be involved, medical "indications" for sterilization may be needed, and the legislature may wish to keep the cases to a minimum. Moreover, human rights considerations militate against the operation.

In contrast to eugenic cases, contraceptive sterilization must involve no element of compulsion,and human rights considerations favor a liberal law. Population pressures may require that the operation be encouraged. Precautionary considerations (e.g. age limitations, consent of spouse, etc.) are of an entirely different nature.

As to therapeutic sterilizations, the old question arises as to whether medical considerations should be regulated by law. The question as to whether and when a surgeon should perform a sterilization operation on a woman for the protection of her life or health, is basically the same as the question as to whether and when he should, on medical grounds, amputate a leg or an arm. It is a question of lex artis, an area where legal regulation is unsuitable, if not improper. Since any legislation at all on the therapeutic aspects of sterilization is probably inappropriate, this field should clearly be kept separate from legislation on contraceptive sterilization. A legislative arrangement which attempts to cover several distinct problems, such as exists in some Scandinavian countries, may result in contraceptive sterilization taking place on false grounds. Both patient and physician may in effect, be in collusion to circumvent a law which is contrary to reality. This seems to be the situation in Japan, which is described as follows:

> While in theory (sterilization) may be performed only in strict compliance with Article 3 of the Law, in practice the Law has been so liberally interpreted as to permit sterilization upon request. An overwhelming majority of sterilizations have been performed on grounds of protection of the mother's life or health.

Statistics of 1965 show that during that year in Japan, 26,334 out of 26,509 voluntary sterilizations were carried out for alleged reasons of protection of mother's life or mother's health.[60]

E. If a government is prepared to adopt a law authorizing voluntary contraceptive sterilization, it should consider what, if any, limitations it desires to impose. Among those which it might consider are:

1. Limitations to prevent a rash decision, such as a minimum age; the requirement that a certain period of time elapse between the application and the operation; or the requirement of a full medical explanation in advance.

As far as an age limit is concerned, it will be noted that several of the existing laws do make some provision of this kind. Presumably, the age should be set at the time when the individual reaches full emotional maturity. The German legislature is now trying to decide between the ages of 25 and 30. On the other hand, Singapore has, in its 1972 amendment, reduced the minimum age to 18. In any event, exceptions should be provided for in special cases (e.g. a certain number of children born before the minimum age is reached).

As to the time lapse requirement, it obviously can not be made to apply in a case where a woman should be sterilized in connection with a delivery or an abortion.

The reason for requiring a full medical explanation is that it constitutes an obvious prerequisite to valid consent.

2. Requirement of consent of spouse, if applicant married.

This would appear essential in contraceptive (but not in eugenic or therapeutic) cases, since the right to have children belongs equally to the spouse, and the applicant alone can not consent to its release. (The U.N.-declared human right belongs to "couples" and not to individuals.)[61] This provision appears in many laws - but, surprisingly, not in all. Provisions may be found desirable to assure that the spouse's consent is voluntary, and also that it has not been unreasonably refused.

3. Requirement of proper medical conditions -- (e.g. licensed hospital, properly trained physician, etc.)

This requirement would, if imposed, have to be made consistent with the medical conditions in existence in the country concerned. Excessive requirements would either be ignored, or would effectively prevent many operations. (A requirement of hospitalization for vasectomies in the Virginia

who felt that the patient was acting improperly for some reason, to follow his own conscience. This should, however, be his personal decision and would not affect the right of the patient to obtain the operation from another physician. The official explanatory report of the West German Government on its current draft appears to indicate that the final decision under the future German law will be in the hands of the physician[62] and not of the patient. This would appear to be somewhat paternalistic under modern conditions. It would also appear that allowing professional organizations, such as medical societies, to prescribe limitations in addition to those of the law, would also be inappropriate.

F. In imposing limitations on the authorization of sterilization, a legislature might consider the desirability of making use of administrative regulations, so as to provide flexibility, and to make it easier to profit promptly from experience gained.

This legislative technique is expedient, provided that the legislature clearly delineates the conditions under which a person may be sterilized on request (such as age, consent of spouse, etc.). This technique may be carried too far if the law delegates the entire regulation to the Ministry of Health, as in Czechoslovakia.

G. It is inappropriate to deal with voluntary contraceptive sterilization under the criminal law on "inflicting grievous bodily harm" or "assault." The significance of full consent must be respected by the criminal law.

It must be recognized, in drafting future legislation, that consent, intelligently given by the patient, is the crucial factor in the legal treatment of contraceptive sterilization. It would be difficult to characterize the situation better than Lord Devlin did ten years ago:

> Sterilization, if done without consent upon a normal person, would be a criminal assault of a most wicked kind; if done with consent, it is another matter ...should not be treated as criminal if it is done... with the consent of the other party and for a purpose which is not otherwise criminal...
>
> ...If it is thought that sterilization, although done by consent, should be prohibited except for grave medical reasons, then it should be made a crime in itself and the law should not try to catch it as a form of assault.[63]

This was written before the concept of family planning as a human right of an individual (or of couples) was clearly formulated. Since then, contraception, far from being "otherwise criminal," has been generally recognized as a valid principle. There is now official acceptence of voluntary contraceptive sterilization, not only in some of the most developed countries (e.g. West Germany, the United Kingdom, and some states

of the U.S.A.) but also in an increasing number of the developing countries which face urgent population pressures (e.g. India, Jamaica, South Korea and Sri Lanka). Although popular attitudes around the world differ greatly, it is nevertheless clear that there is no generally accepted consensus that voluntary contraceptive sterilization is unacceptable or immoral.[64] Under present conditions, and in the light of anticipated future trends, the approach of criminal law to voluntary sterilization should be carefully restricted.

Experience shows that the present overcriminalizing approach is impractical. Criminal provisions on assault and intentional bodily injury were very seldom drafted with anything like the voluntary sterilization question in mind. Attempts to apply them would therefore produce such disproportionate results that the effort is not made. This present state of confusion and legal uncertainty however, may discourage operations which are often desirable. At the same time, desirable limitations, protecting values which society might wish to safeguard, are left uncovered, because they would not fit into the present "heavy bodily injury" concept of law ( e.g. no penal code at present protects the interest of the spouse).

In light of the above, it may be found difficult for a modern legislature to make voluntary contraceptive sterilization a crime in itself. If nevertheless a legislature wishes to do this, then the law should make it clear that sterilization carried out with due consent of the patient is a separate crime, and not the infliction of a bodily injury or an assault.

* * * * * * * * * * * * * * *

What, if any, function should the criminal law play in this field? The answer was recently brought out by the group of West German legal scholars who wrote the German Alternativ-Entwurf (alternative draft to the official German proposal):

> The object of the regulation is to protect young and immature persons against the irreparable consequences of decisions, which they may later regret, at the same time, however, to leave open a free shaping of their personal circumstances...to mature and judicious people.[65]

Accordingly, the motives to the West German governmental bill of 1972 explain:

> The draft is based on the assumption that voluntary sterilization harms no legally protected value outside of the person concerned.[66]

Thus the criminal law might still be applied to protect the patient (and possibly, the spouse) against unauthorized sterilization.

H. Such penal provisions as are found necessary in the future to safeguard voluntary sterilization should:

1. clearly and narrowly describe the forbidden conduct; and

2. provide sanctions in scale with the interest protected.

Some prescribed acts may have to be covered in the criminal law (e.g. failure to observe the minimum age requirement or to obtain the consent of the spouse). Other, less important acts, may be made punishable by administrative measures.

## FOOTNOTES

[1]The writers use the word "jurisdiction" in a sense less common outside the United States, to cover with one term all types of legislative area. This might be one unitary country, or the individual member-states of a federalized country (states, provinces, Laender, Kantone).

[2]Translation by Dr. Parviz Saney, Attorney at Law Legal Counsellor in Tehran, whose letter states: "There are no laws in Iran which would affect voluntary sterilization directly or indirectly...(The penal code) provisions do not cover sterilization...voluntary sterilization does not squarely fit any of the acts defined..." Recently, as reported by the Iranian newspaper Ettelaat on 27 August, 1972, two fathers of large families in Iran received golden coins as awards from a family planning institution for having undergone voluntary sterilizations.

[3]Laws of Puerto Rico. Annotated. Title 32, subtitle 2, part IX through Title 33, Stony Brook, N.Y., 1954. According to Sec. 3, provisions of the code are to be construed according to the fair construction of their terms, with a view to accomplishing its object and promoting justice. Thus the fact that voluntary sterilization has been for a long time a common method of family planning in Puerto Rico may be ignored in interpreting the code.

[4]"...no longer..." i.e. after some amendments to the German Penal Code which were adopted during Hitler's era were repealed following the Second World War.

[5]Explanatory statement of the Federal Government of West Germany to the Draft of a Fifth Law to Reform the Criminal Law of 15 May 1972, (Deutscher Bundestag, 6 Wahlperiode, Drucksache VI/3434, p. 38).

[6]Virginia Code Ann., Tit. 32, Ch. 27, Sec. 32-423 through 427, as amended in 1972.

[7]North Carolina, General Statutes, Ch. 90, Art. 19, Sec. 90-271 through 275, as amended in 1965 and 1971.

[8]For full text of the Act, see Addenda. The new British law may be significant for the additional reason that it is apparently one of the first laws to provide for the subsidization of the operation under such conditions as the local health authority may consider reasonable (Sec. 2B). What the future trends may be in this connection, including the question of health insurance coverage, is an interesting question.
Except in this case, and the special provision for vasectomy in the North Carolina law (p. 5), legal distinctions between the type of sterilization techniques appear to be rare.

[9]Presseerklaerung des Bundesministeriums zum Referentenentwurf des 5. Strafrechtsreformgesetzes vom 22. Oktober 1971, in Aktuelle Dokumente, Abtreibung. Reform des [Sec.]218, Schroeder F.-Ch. ed., Berlin/New York 1972, p. 183 et seq.

[10]Alternativ-Entwurf eines Strafgesetzbuches, Besonderer Teil, Straftaten gegen die Person, Erster Halbband, 1970, p. 53.

[11]Law No. 234 of 3 June 1967.

[12]Voluntary Sterilization Act No. 26 of 1969, amended by Act of 2 May, 1972.

[13]Law No. 156 of 13 July 1948, Sec. 3, para. 1. Full text of the law, as amended, is reproduced in English in International Digest of Health Legislation, Vol. 16, p. 690 et seq. (1965).

[14]Law No. 20 of 17 March 1966. Implementing regulations, now in effect, were issued by Czech Ministry of Health in 1971, by Slovak Ministry of Health in 1972.

[15]See note (11) above.

[16]Law No. 83 of 17 February 1950; now superseded by Law No. 283 on Sterilization of 24 April, 1970.

[17]Decree No. 94 of 25 June 1964 to Promulgate the Fundamental Law with Regard to the Association of Physicians of Honduras, Sec. 110.

[18]Law No. 16, of 13 Jan., 1938.

[19]Law No. 2 of 1 June 1934 and Regulation of 1 October 1950.

[20]Law No. 48 of 13 May 1941 Allowing Sterilization (which superseded Law No. 33 of 16 November 1938).

[21]See note (12) above.

[22]Law No. 282 of 23 May 1941, as amended by Law No. 173 of 20 March 1964.

[23]Regulation issued in 1962 by the Ministry of Public Health (according to an interview with Legal Officer, Ministry of Public Health, of July 1967, see Lee and Larson, Population and Law, Leyden/Durham, 1971. p. 80).

[24]Text of the South Korean draft see in Lee/Larson, Population and Law, p. 57, reproduced from Journal of Population Studies, No. 2, 1966, p. 151 et seq.

[25]Lee/Larson, Population and Law, p. 112.

[26]See note (5) above.

[27]Sec. 226/b of the German Penal Code, inserted into the code in 1943. The Federal Supreme Court comment is at BGHSt 20,81.

[28]Kansas Gen. Stat. Ann., Ch. 76, Sec. 76-155.

[29]Utah Code Ann., Tit. 64, Ch. 10, Sec. 64-10-12.

[30]Connecticut Gen. Stat., Tit. 53, Ch.

[31]Bravenec, L.L., "Voluntary Sterilization as a Crime: Applicability of Assault and Battery and of Mayhem," 6 Journal of Family Law, p. 94 (1966).

[32]English translation reproduced from The Colombian Penal Code (The American Series of Foreign Penal Codes No. 14), Rothman and Co., South Hackensack, N.J., 1967.

[33]English translation reproduced from Soviet Criminal Law and Procedure. The RSFSR Codes. Translated by Berman,H.J. and Spindler, J.W., Cambridge, Ma. 1966.

[34]New York Times, 27 June 1972, p. 6, col. 1.

[35]Wulfhorst, T., "Waere eine Strafbarkeit der freiwilligen Sterilisierung verfassungswidrig?" 22 Neue juristische Wochenschrift, p. 649 (1967).

[36]Act XLV of 6 Oct. 1860.

[37]Reproduced from a manuscript kindly sent by Wickrema Weerasooria, Law and Population Project, Colombo, Sri Lanka.

[38]Communication by Prof. Ahmad Ibrahim, Kuala Lumpur, of 2 Nov. 1972. In this connection an article by Green, L.C.,"Sterilization and the Law," 5 Malaya Law Review, p. 105 et seq. (1963) should be mentioned, which expressed doubts on the legality of family planning sterilization under the English law as well as under the Indian Penal Code models.

[39]Professor K. Bentsi-Enchill, Faculty of Law, Legon, Ghana, writes(communication of 1 September 1972): "The effect of Sec. 42 of the Code...is to make legal what otherwise would be a crime. Consent is therefore the fundamental feature which makes voluntary, as distinct from compulsory, sterilization legal under the Code."

[40]Communication by Lic. Gerardo Cornejo M., Executive Director of Fundacion para Estudios de la Poblacion, Mexico, of 13 September 1972.

[41]La Cour de Cassation, Crim. 1 July 1937, Gaz. Pal. 28 Sept. 1937, Recueil Sirey 1938-1-193, note Tortat.

[42]Nowakowski F., Das oesterreichische Strafrecht in seinen Grundzuegen, Wien 1955, p. 137. In Austria a reported case exists (of 8 May 1934. No. XIV/47 of the Collection of Reports) where the Supreme Court had ruled that voluntary vasectomy or vasoligature constitutes a crime of grave bodily injury. The reasoning was essentially that: a. sterilization is not a medical treatment (i.e. not a healing one); b. no one has the right to dispose of the intactness of his body on grounds of a family planning motive "as it is not an interest recognized by law." The case was, however, considered to be in a less serious class of grave bodily injury

on the basis of the opinion of medical experts, who testified that both vasoligature and vasectomy are "quite positively reversible." Otherwise the act would have been punishable by imprisonment of from 5-10 years.

[43]Wocher, S.A., Die freiwillige operative Unfruchtbarmachung als Methode der Empfaengnisverhuetung in strafrechtlicher Sicht, Dissert. Univ. of Saarland, 1969, p. 113.

[44]In the first place the late Prof. H.G. Pfenninger, "Ist freiwillige Sterilisation strafbar?" 82 Schweizerische Zeitschrift fuer Strafrecht, Revue Penale Suisse, p. 136, with a review of existing literature.

[45]Communication by Dr. G. Erenius, Law Faculty, University of Stockhom, of 14 November 1972.

[46]Communication by Prof. Jose Sulbrandt, of Facultad Latinoamericana de Ciencias Sociales, Santiago, Chile, of 22 November, 1972. Decree No. 226, 15 May 1931, Sec. 226, on Sanitary Code specifically forbids sterilization of females.

[47]Communication by Mrs. S. Hanifa, SH, Faculty of Law, University of Indonesia, Djakarta.

[48]Monograph by Prof. Carmelo V. Sison, of the University of the Philippines, to be published as part of this series.

[49]Jescheck,H-H., Lehrbuch des Strafrechts, Allgemeiner Teil, Berlin 1969, p. 249.

[50]Myers S.W., The Human Body and the Law: A Medico-Legal Study, Edinburgh, 1970, p. 16. Due to the total lack of any British case dealing with the criminal law aspect of voluntary sterilization, a dictum in Bravery v. Bravery (1954) 3 A.E.R. 59, has often been mentioned, where the view was expressed that a sterilization operation, even if done by consent, was unlawful unless done for a good medical reason. However , this was a typical obiter dictum in a divorce case, and by a dissenting judge.

[51]Communication by H.A. Finlay, Associate Professor, Faculty of Law, Monash University, Clayton, Victoria, of 6 June 1972.

[52]Monograph by Robert Rosen, A.B., Harvard Law School, to be published as part of this series.

[53]Sagall, E.L., "Surgical Sexual Sterilization," Trial, July/August 1972, p. 57 et seq. (adapted from Medical Counterpoint, March/April/May 1972).

[54]See in Addenda.

[55]Communication by Dr. Stanislaw Pomorski, Institute of Legal Sciences of the Polish Academy of Science, Warsaw.

[56]Monograph by Barbara Marks, J.D., Member of the New York and Israel Bars, to be published as part of this series.

[57]Statement from Dr. Andre Hillegers, Director of Center of Study on Bio-Ethics, Georgetown University, confirmed by member of the faculty of Weston College, Weston, Ma.

[58]Statement from Rabbi Fox of the Massachusetts Council of Rabbis.

[59]For the human rights aspect of family planning and for the development of the issue on the international law level see: Halderman, J.W., "Programs of the United Nations and Associated Organizations" in Lee/Larson Population and Law, p. 387 et seq.; Lee, L.T., "Law, Human Rights and Population: A Strategy for Action" in 12 Virginia Journal of International Law, No. 3 (April 1972), pp. 309 et seq. A full treatment of this by Prof. D. Partan of Boston University will be published by Sijthoff/Leyden, as Population in the UN System: Developing the Legal Capacity and Programs of UN Agencies.

[60]Muramatsu, "Some Facts About Family Planning in Japan," 1955, as cited in Lee/Larson, Population and Law, p. 22 sq.

[61]Recalling and considering former international documents, the U.N. Conference on Human Rights in Tehran in May 1968 accepted unanimously Resolution No. XVIII on Human Rights Aspects of Family Planning, which says: "...couples have a basic human right to decide freely and responsibly on the number and spacing of their children..."

[62]Document cited in note (5) above, p. 39.

[63]Devlin, P., Samples of Lawmaking, New York/Toronto, 1962, p. 94.

[64]In a short review of the opinions on the moral issue of contraceptive sterilization in the legal writing of recent years the following may be cited as samples: a. Holding that voluntary contraceptual sterilization is immoral--Hanack, E.W., Die strafrechtliche Zulaessigkeit kuenstlicher Unfruchtbarmachungen, Marburg 1959; Moulders-Klein, M.T., Considérations juridiques sur la sterilisation chirurgicale, Annales de droit. Revue trimestrielle du droit Belge, Tome XXVII (1967), p. 3 et seq.; Koffka, E., Wie soll die freiwillige Sterilisierung kuenftlich gesetzlich geregelt werden? in Ehrengabe fuer Bruno Heusinger, Muenchen 1968, p. 355 et seq.; b) Holding voluntary sterilization as not immoral (some asserting it as a right of the person concerned) --a large part of the contemporary literature in German, e.g. the authors of the Alternativ-Entwurf, Wulfhorst, T., see note (35) above; Wocher, S.A., note (43) above; Hoerster, N., Grundsaetzliches zur Strafwuerdigkeit der Gefaelligkeitssterilisation, Juristenzeitung, Vol. 26, 1971, p. 123 sq. An opinion favoring the right to family planning sterilization seems to prevail in England (as expressed by the passing of the Vasectomy Act 1972) as well as in several states of the U.S.A., here reflected even in some judicial decisions indirectly dealing with the issue.

[65]See note (10) and N. Hoersters' article cited in note (60) above.

[66]Note (5) above, p. 39.

| | A | B | | | | C | | | | D |
|---|---|---|---|---|---|---|---|---|---|---|
| | NO PROVISIONS ON VOLUNTARY STERILIZATION (therefore permitted) | SPECIFIC PROVISIONS ON CONTRACEPTIVE VOLUNTARY STERILIZATION | | | | CRIMINAL LAW APPLICABLE TO VOLUNTARY CONTRACEPTIVE STERILIZATION | CONSENT | | | MOSLEM RELIGIOUS LAW (applicable directly as law) |
| | | Legal (with non-restrictive limitations) | Legal (with restrictive limitations) | Illegal | Specific Provision in Criminal Law | Citations to Penal Codes, etc. | Relevant | Relevant with Conditions | Irrelevant | |
| AFGHANISTAN | X[1] | | | | | | | | | X? |
| ALBANIA | | | | | | Sec. 145[2] | | X if lack of social dangerousness | | |
| ALGERIA | | | | | | | | | | |
| ARGENTINA | | | | | | Sec. 91[4] | | | | |
| AUSTRALIA | | | | | | jurisdiction of individual states[5] | | X? | | |
| AUSTRIA | | | | | | Sec. 152,156 | | | X[6] | |
| BARBADOS | | | | | | Sec. XV7 Offences Against the Persons Act | | | | |

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| BELGIUM | | | | | | Sec. 398, 400 | | | X[8] | |
| BOLIVIA | | | | | | Sec. 540. 541[9] | | | X? | |
| BRAZIL | | | | | | Sec. 132,[10] para.2 | X | | | |
| BULGARIA | | | | | | Sec. 128/1,2[11] | | X if lack of social dangerousness | | |
| BURMA | | | | | | Sec. 319,325[12] | | X if for benefit in good faith | | |
| BURUNDI | | | | | | Sec. 47[13] | | | | |
| CAMEROON | | | | | | Sec. 277[14] | | X medical treatment | | |

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| CANADA | | | | | | Sec. 228[15] | | | | |
| CENTRAL AFRICAN REPUBLIC | | | | | | Sec. 309,310[16] | | | | |
| CEYLON--see SRI LANKA | | | | | | | | | | |
| CHILE | | | | prohibited for women[17a] | | Sec. 397,[17] para. 1 | | | | |
| COLUMBIA | | | | | | Sec. 374[18] | X? | | | |
| COSTA RICA | | | | | X | Sec. 201[19] para. 2 | | | X | |
| CZECHOSLOVAKIA | | | X[20] | | | Sec. 222[21] para 1, 89/6/e | | if lack of social dangerousness | | |

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| DENMARK | | | X[22] | | | | | | | |
| DOMINICAN REPUBLIC | | | | | | Sec. 309[23] | | | | |
| ECUADOR | | | | | | Sec. 443[24] | | | | |
| EIRE | | | | | | Sec. 18[24a] | | | | |
| ETHIOPIA | | | | | | Sec. 538/b[25] | | X if not against "good morals" | | |
| FINLAND | | | X[26] | | | | | | | |
| FRANCE | | | | contraceptive propaganda forbidden | | Sec. 309, 310[28] | | | X | |

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| EAST GERMANY | | | | | | Sec. 116[29] | | X if lack of social dangerousness | | |
| WEST GERMANY | X[30] | | | | | Sec. 224,225, 226a | | if not against "good morals" | | |
| GHANA | | | | | | Sec. 69[31] | | X surgical treatment--in good faith--not improper | | |
| GREAT BRITAIN (UK except SCOTLAND) | | | X[32] | | | Sec. 18,20[33] | | X if not for a criminal purpose | | |
| GREECE | | | | | X[34] | Sec. 308,[35] 310/2 | | | X | |
| GUATEMALA | | | | | X[36] | Sec. 310[37] | | | X | |
| HAITI | | | | | | Sec. 255[38] | | | | |

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| HONDURAS | | | X[40] | | | Sec. 414[39] | | | | |
| HUNGARY | | | | | | Sec. 257/3[41] | | X if lack of social dangerousness | | |
| ICELAND | | | X[42] | | | | | | | |
| INDIA | | | | | | Sec. 320,[43] 325,88 | | X if for benefit in good faith | | |
| INDONESIA | | | | | | | | | | X[44] |
| IRAN | X[45] | | | | | | | | | |
| ISRAEL | | | | | | Sec. 238[46] | | | | Jewish law applicable indirectly -see text, p.25. |

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| ITALY | | | | X | X | Sec. 552[47] | | | X punishable despite consent | |
| IVORY COAST | | | | | | Sec. 309,310[48] | | | | |
| JAMAICA | | | | | | Sec. 16[49] | | X | | |
| JAPAN | | | X[50] | | | | | | | |
| JORDAN | | | | | | Sec. 179[51] | | | | |
| NORTH KOREA | | | | | | Sec. 121[52] | | X if lack of social dangerousness | | |
| SOUTH KOREA | | | | | | Sec. 257[53] | | X if person authorized to dispose of a protected interest | | |

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| LEBANON | | | | | | Sec. 557[54] | | | X?[55] | |
| LIBERIA | | | | | | Sec. 242[56] | | | | |
| LUXEMBURG | | | | | | Sec. 398,[57] 400 | | | X | |
| MALAGASY REPUBLIC | | | | | | Sec. 309,310[58] | | | X | |
| MALAWI | | | | | | Sec. 235[59] | | X if surgical operation in good faith | | |
| MALAYSIA | | | | | | Sec. 320[60] | | X if for benefit in good faith | | |
| MALTA | | | | | | Sec. 230/a/ii,[61] 232 | | | | |

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| MEXICO | | | | | | Sec. 292/2[62] | | | | |
| MOROCCO | | | | | | Sec. 402[63] | | | | |
| NEPAL | | | | | | Sec. 320,325,[64] 88 | | X if for benefit in good faith | | |
| NETHERLANDS | | | | | | Sec. 302,303[65] | | | | |
| NEW ZEALAND | | | | | | Sec. 188[66] | | | | |
| NICARAGUA | | | | | X[68] | Sec. 360/1,2[69] 361 | | | X | |
| NIGER | | | | | | Sec. 309,310[69] | | | | |

| | A | B | | | | C | | | | D |
|---|---|---|---|---|---|---|---|---|---|---|
| | NO PROVISIONS ON VOLUNTARY STERILIZATION (therefore permitted) | SPECIFIC PROVISIONS ON CONTRACEPTIVE VOLUNTARY STERILIZATION | | | | CRIMINAL LAW APPLICABLE TO VOLUNTARY CONTRACEPTIVE STERILIZATION | CONSENT | | | MOSLEM RELIGIOUS LAW (applicable directly as law) |
| | | Legal (with non-restrictive limitations) | Legal (with restrictive limitations) | Illegal | Specific Provision in Criminal Law | Citations to Penal Codes, etc. | Relevant | Relevant with Conditions | Irrelevant | |
| NORTHERN NIGERIA | | | | | | Sec. 241/d[70] | | X if for benefit in good faith | | |
| REST OF NIGERIA | | | | | | Sec. 332,297[71] | | X if reasonable o operation, for benefit | | |
| NORWAY | | | X[72] | | | | | | | |
| PAKISTAN | | | | | | Sec. 320,325;[73] 88 | | X if for benefit in good faith | | |
| PANAMA | | | X[74] | | | | | | | |
| PARAGUAY | | | | | | Sec. 341[75] | | | | |
| PERU | | | | | | Sec. 165/2[76] | | | | |

| | A | B | | | | C | | | | D |
|---|---|---|---|---|---|---|---|---|---|---|
| | NO PROVISIONS ON VOLUNTARY STERILIZATION (therefore permitted) | SPECIFIC PROVISIONS ON CONTRACEPTIVE VOLUNTARY STERILIZATION | | | | CRIMINAL LAW APPLICABLE TO VOLUNTARY CONTRACEPTIVE STERILIZATION | CONSENT | | | MOSLEM RELIGIOUS LAW (applicable directly as law) |
| | | Legal (with non-restrictive limitations) | Legal (with restrictive limitations) | Illegal | Specific Provision in Criminal Law | Citations to Penal Codes, etc. | Relevant | Relevant with Conditions | Irrelevant | |
| PHILIPPINES | | | | | | Sec. 263[77] | | | | |
| POLAND | | | | | | Sec. 155/2[78] | | X if lack of social dangerousness | | |
| PORTUGAL | | | | | | Sec. 366[79] | | | X[80] | |
| PUERTO RICO | X[81] | | | | | | | | | |
| ROMANIA | | | | | | Sec. 182[82] | | | | |
| EL SALVADOR | | | | | | Sec. 368[83] | | | | |
| SAUDI ARABIA | X[84] | | | | | | | | | X |

| | A | B | | | | C | | | | D |
|---|---|---|---|---|---|---|---|---|---|---|
| | NO PROVISIONS ON VOLUNTARY STERILIZATION (therefore permitted) | SPECIFIC PROVISIONS ON CONTRACEPTIVE VOLUNTARY STERILIZATION | | | | CRIMINAL LAW APPLICABLE TO VOLUNTARY CONTRACEPTIVE STERILIZATION | CONSENT | | | MOSLEM RELIGIOUS LAW (applicable directly as law) |
| | | Legal (with non-restrictive limitations) | Legal (with restrictive limitations) | Illegal | Specific Provision in Criminal Law | Citations to Penal Codes, etc. | Relevant | Relevant with Conditions | Irrelevant | |
| SINGAPORE | | | X[85] | | | | | | | |
| SOUTH AFRICA | | | | | | | | X? | | |
| SPAIN | | | | | | Sec. 420[87] | | | | |
| SRI LANKA | | | | | | Sec. 311,316;[88] 81 | | X if for benefit in good faith | | |
| SWEDEN | | | X[89] | | | Chap.3, sec. 5 | | | | |
| SWITZERLAND | | | | | | Sec. 122[90] | | X?[91] | | |
| TANZANIA | | | | | | Sec. 222,[92] 230(232) | | X if surgical operation in good faith for benefit | | |

| | A | B | | | | C | | | | D |
|---|---|---|---|---|---|---|---|---|---|---|
| | NO PROVISIONS ON VOLUNTARY STERILIZATION (therefore permitted) | SPECIFIC PROVISIONS ON CONTRACEPTIVE VOLUNTARY STERILIZATION | | | | CRIMINAL LAW APPLICABLE TO VOLUNTARY CONTRACEPTIVE STERILIZATION | CONSENT | | | MOSLEM RELIGIOUS LAW (applicable directly as law) |
| | | Legal (with non-restrictive limitations) | Legal (with restrictive limitations) | Illegal | Specific Provision in Criminal Law | Citations to Penal Codes, etc. | Relevant | Relevant with Conditions | Irrelevant | |
| THAILAND | | | X[93] | | | Sec. 297,[94] para.2 | | | | |
| TUNISIA | | | | | | Sec. 218,219[95] | | | | |
| TURKEY | | | | X[96] | | Sec. 471[97] | | | X punishable despite consent | |
| U.A.R. | | | | | | | | | | X[98] |
| U.S.A.[99] | | X (some states) | X (some states) | X (some states) | X | State legislation | | | | |
| U.S.S.R. (RSFSR) | | | | | | Sec. 108[100] | | X if lack of social dangerousness | | |
| URUGUAY | | | | | | Sec. 317/2[101] 318 | | X | | |

| | A | B | | | | C | | | | D |
|---|---|---|---|---|---|---|---|---|---|---|
| | NO PROVISIONS ON VOLUNTARY STERILIZATION (therefore permitted) | SPECIFIC PROVISIONS ON CONTRACEPTIVE VOLUNTARY STERILIZATION | | | | CRIMINAL LAW APPLICABLE TO VOLUNTARY CONTRACEPTIVE STERILIZATION | CONSENT | | | MOSLEM RELIGIOUS LAW (applicable directly as law) |
| | | Legal (with non-restrictive limitations) | Legal (with restrictive limitations) | Illegal | Specific Provision in Criminal Law | Citations to Penal Codes, etc. | Relevant | Relevant with Conditions | Irrelevant | |
| VENEZUELA | | | | | | Sec. 416[102] | | | | |
| SOUTH VIETNAM | | | | X[103] | | | | | X punishable despite consent | |
| YUGOSLAVIA | | | | | | Sec. 141/2[104] | | X if lack of social dangerousness | | |
| ZAIRE | | | | | | Book 2, Sec.1[105] | | | | |
| ZAMBIA | | | | | | Sec. 202,205;[106] 210(212) | | X if surgical operation is in good faith for benefit | | |

## FOOTNOTES TO TABULATION

[1]According to Wocher, S. A., Die freiwillige operative Unfruchtbarmachung..., Diss. Univ. des Saarlands, 1969, p. 115.

[2]Sec. 145 Albanian Penal Code (Law No. 1.470 of 23 May 1952). Prerequisite of social dangerousness: Sec. 3, para. 2.

[3]Sec. 264, para. 3, 265 Penal Code of Algeria (Ordinance No. 66-156 of 8 June 1966, J. Of. 11 June 1966).

[4]Sec. 91 Penal Code of Argentina (Law No. 11.179 of 1921).

[5]Australian Criminal Law is state law, not federal. See: Howard C., Australian Criminal Law, 2nd ed., 1970.

[6]Sec. 152, 156, and Sec. 4 Austrian Penal Code No. 117 of 25 May 1852, as amended. Austrian Supreme Court,decision of 8 May 1934, No. XIV/47 Coll. of Crim. Dec.

[7]Sec. XV, Act...relating to Offences Against the Person, of 17 February 1868.

[8]Sec. 398, 400 of the Belgian Penal Code of 8 June 1867.

[9]Sec. 540, 541 of the Bolivian Penal Code of 3 November 1834.

[10]Sec. 132, para. 2 of the Brazilian Penal Code (Decreto-Lei No. 1.004 of 21 October 1969), which enters into force Jan 1, 1973. The situation in Brazil is obscure. On one hand, there are various provisions of the criminal law against publicizing treatment to avoid pregnancy (e.g. Decree-Law No. 4113, 14 Feb. 1942, Article 1). Also the Code of Medical Ethics (presumably without the effect of law) authorizes sterilization only on medical grounds after consultation with two additional physicians (Art. 52). The new code provision, cited above, does not mention consent of the patient. However, Prof. Dr. Benjamin Moraes, Professor of Criminal Law of the Faculty of Law the University of Rio, and the final drafter of the new code, states specifically (16 Bulletin of the Regional Council of Medicine of Guanabara, p. 18-19,[1970]) that a surgical operation, including an operation for tubal ligation, with the consent of the patient, is not a crime under the new code.

According to our correspondent in Brazil, in practice, tubal ligations are common although vasectomies are rare. No criminal prosecutions of physicians or patients are known.

[11]Sec. 128, para. 1,2 of the Bulgarian Penal Code (No. 220 of 15 March 1968). Prerequisite of social dangerousness: Sec. 2.

[12]Sec. 319, 325 Penal Code of Burma.

[13]Sec. 47, Penal Code of Burundi of 1940 (Bull. Off. 1940, p. 194).

[14]Sec. 277 Penal Code of Cameroon (Law No. 65-LF-24 of 12 November 1965). Relevancy of consent, where professional services of persons duly authorized to render them.

[15]Sec. 228 Criminal Code of Canada (Chapter 51 Statutes of Canada 1953-1954).

[16]Sec. 309,310 of the Penal Code.

[17]Sec. 397, para. 1 of the Chilean Penal Code of 1874.

[17a]Decree No. 226, 15 May, 1931, Sec. 226 on Sanitary Code.

[18]Sec. 374, para. 2 of the Colombian Penal Code (Law No. 95 of 24 April 1936).

[19]Sec. 201, para. 2,Penal Code of Costa Rica, No. 192 of 30 August 1941, Sec. 207: consent or request of the injured person attenuating only.

[20]Sec. 27 Law No. 20 of 17 March 1966. Implementing regulations: a) of the Czech Ministry of Health of 17 December 1971; No. LP 252.3-19. 11.1971; b) of the Slovak Ministry of Health of 14 April 1972, No. Z-4582/ 1972-B/1).

[21]Sec. 89/6/c, 222/1 of the Czechoslovak Penal Code (Law No. 140 of 29 February 1961). Prerequisite of social dangerousness: Sec. 3.

[22]Law No. 234 of 3 June 1967, concerning sterilization and castration.

[23]Sec. 309 Penal Code of the Dominican Republic of 20 August 1884.

[24]Sec. 443 Penal Code of Ecuador of 22 March 1938.

[24a]Sec. 18, Offences Against the Person Act, 1861.

[25]Sec. 538/b Penal Code of Ethiopia of 23 July 1957. Sec. 542: request of the injured relevant if not against good morals.

[26]Law on Sterilization No. 283 of 24 April 1970; Regulation of Sterilizations No. 360 of 29 May 1970. (English translation published in International Digest of World Legislation, Vol. 19, 1968, pp. 746 et seq.)

[27]Sec. 5 of Law No. 67-1176 of 28 December 1967.

[28]Sec. 309, 310 of the French Penal Code of 13 February 1810. Decision of the French Supreme Court, Crim. 1 July 1937, Gaz. Pal. 28 Sept. 1937, S. 1938-1-193, note Tortat.

[29]Sec. 116 of the East German Penal Code of 12 January 1968. Prerequisite of social dangerousness: Sec. 3, para. 1.

[30]Sec. 224, 225, 226/a of the Penal Code of 15 May 1871 - not applicable to voluntary sterilization acc. to the ruling of the Federal Supreme Court of 27 October 1964, BGHSt 20, 81.

[31]Sec. 69 of the Ghanian Criminal Code (Act. No. 29 of 1960).

[32]National Health Service (Family Planning) Amendment Act 1972 of 26 October 1972.

[33]Sec. 18, 20 of the Offences Against the Person Act of 1861.

[34]Consent "where the act does not violate good morals" expressly stated to be relevant only in cases of simple (i.e. not grave)injury by Sec. 308, para. 2.

[35]Sec. 308, 310/2 of Penal Code (Law No. 1.492 of 17 August 1950).

[36]Under Sec. 317 Penal Code consent attenuating only.

[37]Sec. 310 Penal Code of Guatemala (Law No. 2.164 of 1936).

[38]Sec. 255 of the Haitian Penal Code of 11 August 1835.

[39]Sec. 414 Penal Code of Honduras of 19 January 1906.

[40]Sec. 110 of the Fundamental Law with Regard to the Association of Physicians of Honduras (Decree No. 94 of 25 June 1964).

[41]Sec. 257, para. 3 Penal Code of Hungary (Law No. V. of 1961). Prerequisite of social dangerousness: Sec. 2.

[42]Law No. 16 of 13 January 1938. Covers eugenic and preventive sterilization.

[43]Sec. 320, 325 Indian Penal Code (Act. XLV of 6 October 1860). As to consent of the injured, see Sec. 88.

[44]See Damian,E., Hornick, R. N., "Indonesia's Formal Legal System: An Introduction." 20 American Journal of Comparative Law (1972)pp. 493, 517, and communication by Mrs. S. Hanifa, cited on p. 20 above. (Moslem religious courts do not seem to have jurisdiction over admissibility of sterilization, which is practiced.)

[45]See above p. 5.

[46]Sec. 238 Criminal Code Ordinance 1936, No. 74.

[47]Sec. 552 Penal Code of Italy of 19 October 1930. (Para. 2: anyone who consents to sterilization also punishable.) Sec. 553: punishment for contraceptive propaganda.

[48]Sec. 309 of the French Penal Code which, acc. to Art. 72 of the Constitution, was still in force on the Ivory Coast as of 1 January 1970.

[49]Sec. 16, Offences Against the Person Act of 1861.

[50]Eugenic Protection Law No. 156 of 13 July 1948. English translation in International Digest of Health Legislation, Vol. 16, 1956, pp. 690-699.

[51]Sec. 179 of the Ottoman Penal Code, as amended by Law No. 74 of 1936.

[52]Sec. 121 of the North Korean Penal Code. Prerequisite of social dangerousness: Sec. 7.

[53]Sec. 257 of the South Korean Penal Code. Relating to consent: see Sec. 24.

[54]Sec. 557 of the Lebanese Penal Code (Legislative Decree No. 340/n of 1 March 1943).

[55]Consent relevant only as far as the act does not violate l'ordre public, acc. to F. Ammoun, Rapport général sur la réforme pénale.

[56]Sec. 242 of Title 27 (Penal Law), Liberian Code of Laws of 1956, Cornell Univ. Press, Ithaca, N.Y., 1957.

[57]Sec. 398, 400 Penal Code of Luxemburg of 18 June 1879.

[58]Sec. 309, 310 Penal Code of Malagasy Republic (J. Of. No. 240 of 7 September 1962, p. 1765 et seq.).

[59]Sec. 235 Code of Criminal Law of Malawi (Act of 1 April 1930). Relating to consent: see Sec. 243.

[60]Sec. 320 of the Penal Code of 6 October 1860. As to consent, see Sec. 88.

[61]Sec. 230/a/ii, 232 of the Criminal Code.

[62]Sec. 292, para. 2 of the Federal Penal Code of Mexico of 2 January 1931.

[63]Sec. 402 Penal Code of Morocco of 26 November 1962.

[64]Sec. 320, 325 of the Penal Code of 6 October 1860. As to consent, see Sec. 88.

[65]Sec. 302, 303 of the Penal Code of the Netherlands, No. 35 of 3 March 1881.

[66]Sec. 188 of the Crimes Act 1961.

[67]Sec. 360, para. 2: consent attenuating only.

[68]Sec. 360, para. 1,2,and Sec. 361 Penal Code of Nicaragua, 1891.

[69]Sec. 309, 310 of the Penal Code.

[70]Sec. 241/d of the Penal Code (Laws of Northern Nigeria, in force on 1 October 1963, Chapter 89).

[71]Sec. 1, 297, 332 of the Penal Code Act of 1 June, 1916 (for Lagos, Eastern Nigeria, and Western Nigeria).

[72]Law No. 2 of 1 June 1934, concerning sterilization.

[73]Sec. 320, 325/No. 5 of the Penal Code (Act XLV of 6 October 1860). As to consent of the injured, see Sec. 88.

[74]Law No. 48 of 13 May 1941, permitting sterilization.

[75]Sec. 341 Penal Code of Paraguay of 4 December 1909.

[76]Sec. 165, para. 2 of the Peruvian Penal Code (Law No. 4.868 of 1927).

[77]Sec. 263, Revised Penal Code of Philippines (Act 3.851 of 1930).

[78]Sec. 155, para. 2, Polish Penal Code (Law No. 94 of 19 April 1969). Prerequisite of social dangerousness: Sec. 1.

[79]Sec. 366 of the Portuguese Penal Code of 16 September 1886.

[80]According to a communication of the Attorney General (Wocher, S. A., Die freiwillige operative Unfruchbarmachung..., 1969, p. 107).

[81]See p. 5 above.

[82]Sec. 182 Penal Code of Romania (Law No. 30 of 21 June 1968). Prerequisite of social dangerousness: Sec. 17.

[83]Sec. 368 Penal Code of El Salvador of 1904.

[84]See p. 25 above.

[85]Voluntary Sterilization Act No. 26 of 1969 (The Statutes of the Republic of Singapore, Rev. Edition of Acts, 1970, Vol. V, Chapter 170), amended by Act of 23 March 1972.

[86]See Strauss, S. A., "Bodily Injury and the Defence of Consent," 81 South African Law Journal 1964, p. 179, 189 et seq.

[87]Sec. 420 No. 2 Penal Code of Spain, revised text of 1963 (decree No. 691 of 28 March 1963).

[88]Sec. 311, 316 Penal Code of Ceylon. As to consent of the injured, see Sec. 81.

[89]Law No. 282 of 23 May 1941 concerning sterilization, as amended by Law No. 173 of 20 March 1964. Penal provisions on assault: Chap. 3, Sec. 5 Penal Code of Sweden (Law No. 700 of 21 December 1962).

[90]Sec. 122 of Swiss Penal Code of 21 December 1937.

[91]For contrasting opinions, see p. 19 above.

[92]Sec. 222 of the Penal Code of 1945. As to consent of the injured, see Sec. 230, but see Sec. 232.

[93]Regulation of Ministry of Public Health of 1962, Lee and Larson, Population and Law, p. 80.

[94]Sec. 297, 298 of the Penal Code of Thailand.

[95]Sec. 218, 219 of the Tunisian Penal Code (decree of 9 July 1913).

[96]Decision No. 6/8.305 of 12 June 1967 of the Council of Ministers. (English translation published in International Digest of World Legislation, Vol. 19, 1968, pp. 426 et seq.).

[97]Sec. 471 of the Turkish Criminal Code (Law No. 765 of 1 March 1926). Consent to the sterilization is also punishable.

[98]See p. 24 et seq. above, and Lee and Larson, Population and Law, p.369 et seq.

[99]Regulation of voluntary sterilization, including criminal law provisions, is a matter of states', not Federal, legislation.

[100]Sec. 108 Penal Code of R.S.F.S.R. of 28 October 1960. Prerequisite of social dangerousness: Sec. 7.

[101]Sec. 317, para. 2, 318 Penal Code of Uruguay (Law No. 9.155 of 4 December 1933). As to consent, see Sec. 44.

[102]Sec. 416 of the Penal Code of Venezuela of 27 June 1964.

[103]Sec. 8 of the Law on Protection of Morality (No. 12 of 22 May 1962). Person undergoing sterilization for contraceptive purposes also punishable.

[104]Sec. 141, para. 2 Yugoslav Penal Code (Law No. 13/1951). Prerequisite of social dangerousness: Sec. 4.

[105]Book II, Sec. 1 Penal Code (Bull. Off. 1896, p. 4).

[106]Sec. 202, 210 Penal Code of Zambia (Chap. 6 of the Laws of Republic of Zambia, 1965 ed.). As to consent of the injured, see Sec. 210 (but see Sec. 212).

## ADDENDA

## EXCERPTS FROM RECENT STERILIZATION STATUTES, ETC.

### 1. UNITED STATES - 1962

Virginia Sterilization Statute
(Va. Code Ann. Tit. 32, Ch. 27, Sec. 32 et seq.)

CHAPTER 21.

SEXUAL STERILIZATION.

. . .

Sec. 32 - 423. Sexual sterilization of person twenty-one years of age or older.--It shall be lawful for any physician or surgeon licensed by this State, when so requested by any person who has attained the age of twenty-one years, to perform, upon such person a vasectomy, or salpingectomy, or other surgical sexual sterilization procedure as the case may be, provided a request in writing is made by such person and by his or her spouse, if there be one, prior to the performance of such surgical operation and provided further, that prior to or at the time of such request a full and reasonable medical explanation is given by such physician or surgeon to such person as to the meaning and consequences of such operation. No such request shall be necessary for the spouse of the person requesting such surgical operation if the person requesting such operation shall state in writing under oath that his or her spouse has disappeared or that they have been separated continually for a period of more than one year prior thereto. Provided, however, no vasectomy shall be performed pursuant to the provisions of this section prior to thirty days from the date of consent or request therefor; provided further that no salpingectomy or other irrevocable surgical sexual sterilization procedure shall be performed prior to thirty days from the date of consent or request therefor on any female who has not theretofore given birth to a child.

## 2. CZECHOSLOVAKIA - 1966

(Sec. 27, Law No. 20 of 17 March 1966)

> Sterilization may be carried out only with the consent, or at the special request of, the person on whom this operation is to be performed, under conditions laid down by the Ministry of Health.

Implementing regulations now in force were issued by the Czech and Slovak Ministries of Health in 1971 and 1972 respectively; see footnote 20 to Tabulation.

## 3. SINGAPORE - 1969

Voluntary Sterilization Act No. 26 of 1969

. . .

> 5.--(1) Notwithstanding the provisions of any written law, but subject to the provisions of this section, it shall be lawful for a registered medical practitioner, acting on the authorisation of the Board, to carry out treatment for sexual sterilization.
>
> (2) The Board may authorise treatment for sexual sterilization on any applicant of twenty-one years of age, or over, if--
>
> (a) the applicant applies to the Board in writing requesting treatment for sexual sterilization and giving consent to such treatment;
>
> (b) such request is accompanied by a consent in writing of the wife or husband, if there is one, of the applicant; and
>
> (c) the applicant is the father or mother, as the case may be, of three or more existing children.
>
> (3) The Board may authorise treatment for sexual sterilization of a person under the age of twenty-one years if--
>
> (a) the parent or parents, if they are living, or the guardian of that person, if there is no parent living, applies in writing to the Board requesting such treatment and certifies consent to such treatment;
>
> (b) that person is afflicted with any hereditary form of illness that is recurrent, mental deficiency or epilepsy; and
>
> (c) the Board considers that the treatment is in the best interest of that person and of society generally.

(4) The Board shall not authorise treatment for sexual sterilization to be carried out unless a period of thirty days has elapsed from the date of the request in writing to the Board by the applicant for such treatment; and the applicant may at any time during that period and before the treatment is carried out withdraw his request for, or consent to, such treatment.

(5) At the time the request in writing is made by the applicant to the Board, and before the period of thirty days has begun to run, the Board shall interview the applicant and give to the applicant a full and reasonable medical explanation as to the meaning and consequences of such treatment and the applicant shall certify to the Board, in such form as the Board may decide, that he clearly understands the meaning and consequences of such treatment.

(6) Subsection (4) of this section shall not apply to a case where the applicant is a mother of three or more existing children who, being pregnant, is in an approved institution for the purpose--

(a) of having treatment for termination of pregnancy under the Abortion Act; or

(b) of delivering a child,

and treatment for sexual sterilization may accordingly be carried out immediately after such abortion or birth, as the case may be, so long as the provisions of paragraphs (a) and (b) of subsection (2) of this section are complied with.

6. Notwithstanding the provisions of subsection (1) of section 5 of this Act a registered medical practitioner, acting in consultation with another registered medical practitioner, may, without the authorisation of the Board, carry out treatment for sexual sterilization on any person where the registered medical practitioners are of the opinion, formed in good faith, that such treatment is necessary on medical or therapeutic grounds and such treatment shall be permitted under this Act and in such a case section 7 of this Act shall not apply to such treatment.

7. Every treatment for sexual sterilization, other than treatment permitted under section 6 of this Act, shall be carried out in a Government hospital or in an approved institution.

. . .

(5) Treatment for sexual sterilization, when authorised by the Board under this Act, may be carried out by any registered medical practitioner.

## 4. GREAT BRITAIN - 1972

NATIONAL HEALTH SERVICE
(FAMILY PLANNING)
AMENDMENT ACT 1972

. . .

"(2A) A local health authority in England or Wales may, with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for the giving of advice on voluntary vasectomy, the medical examination of persons seeking advice on voluntary vasectomy for the purpose of determining what advice to give and for treatment for voluntary vasectomy.

(2B) A local health authority may, with the approval of the Secretary of State, recover from persons to whom advice is given, or treatment provided, under subsection (2A) above or from such persons of any class or description such charges (if any) as the authority consider reasonable, having regard to the means of those persons"

## 5. WEST GERMANY - 1972

GOVERNMENT DRAFT AMENDMENT FOR CRIMINAL CODE
(5 Str. R. G. )

Deutscher Bundestag Drucksache VI/3434
6th electoral period

A) Objective of the Draft Law.
...As to voluntary sterilization, a state of legal uncertainty exists at the present time, impeding medical practice.

B) Solution:
...The Bill permits voluntary sterilization without any limitation, provided that the person concerned is at least twenty-five years old.

. . .

Section 226/b

Prerequisites for Sterilization

(1) When performed by a physician, sterilization is not punishable as a grave bodily injury, provided that the person sterilized (herinafter: the person concerned) consents and is not less than twenty-five years old.
(2) Where the person concerned is less than twenty-five years old, a sterilization performed by a physician is not punishable as a grave bodily injury, if such a person consents to the operation and

1) if, on the basis of the current status of medical knowledge, the sterilization of a woman is indicated to prevent danger to her life or to the state of her health, or
2) if the woman concerned has borne not fewer than four children, or
3) if, on the basis of the current status of medical knowledge there is reason to believe that, owing to hereditary predisposition, an otherwise irremediable serious damage to health will occur among the progeny, and the person concerned is not less than eighteen years old, or
4) if the man concerned is married to a woman with respect to whom the conditions set forth under 1, 2, or 3 exist.

(3) The consent to sterilization must be given by the person concerned, if not otherwise provided in para. 4.
(4) A sterilization under paragraph 2, subparagraph 1 above, can be carried out on a woman without her consent, provided:

1) this treatment is necessary to prevent an otherwise unavoidable danger of death or of total breakdown of her health, and
2) the woman, owing to her condition, will not be able to give valid consent in a foreseeable period of time.

The consent is to be obtained from the guardian of the woman concerned or from a guardian especially appointed by proper authority for this purpose...

(5) If the person concerned is a minor, in addition to his or her own consent, the consent of the guardian shall also be required...
(6) A consent shall be invalid if the persons whose consent is necessary have not been given an explanation of the significance of the sterilization and of its consequences.
(7) Sterilization, as understood in this law, is a treatment carried out for the elimination of the ability to procreate or to become pregnant. Castration of a man is not a sterilization under this code.

. . .

Section 226/c

Consultation with an Advisory Officer; Authorization by a Court

(1) Where the person concerned is less than twenty-five years old, sterilization can be carried out only after an advisory officer, officially recognized for this purpose, has affirmed that:

1) the person concerned has consulted him;
2) ..and the significance and consequences of sterilization have been explained to those persons whose consent is necessary.

(2) A consent given under the provision of Sec. 226/b, para. 4, shall require, to be valid, an authorization by a guardianship court. The court must hear the concerned person in person. The judicial decision which authorizes the sterilization shall become effective only after it becomes final.

. . .

CASE LAW: UNITED STATES ( CALIFORNIA) - 1969

Judicial Decision on Admissibility of Voluntary Sterilization for Family Planning Purposes

Jessin v. County of Shasta, 79 Cal. Rptr. 359

Court of Appeal, Third District, July 11, 1969

...The confusion in this area of the law stems from a 1950 opinion of the Attorney General. (15 Ops.Cal.Atty.Gen. 100.) The Department of Corrections had inquired as to whether it could authorize the performance of sterilization operations upon prison inmates in certain situations. The opinion concluded that the presently established policy of this state forbids the performance either with or without his consent, unless it is clearly shown that the life of the patient is in grave danger and may be lost because of a failure to perform such operation (with three exceptions not applicable here). In his opinion the Attorney General stated (at p. 103):

"Thus, since the law forbids mayhem and criminal abortions and specifically declares it to be a felony for one to assist in the prevention of conception, we are of the opinion that non-therapeutic sterilization operations are contrary to the established policy of this state in that they are violative of the state's social interest in the maintenance of the birth rate."

The trial court found this opinion to be "archaic and illogical when written," and found that "voluntary sterilization operations could not possibly be construed to constitute the crime of mayhem as defined in the Penal Code." (See Pen.Code, Sec. 203; see also, Pen.Code, Sec. 7) We agree, as will presently be explained.

. . .

"Where not prohibited by statute, the matter would appear to be one of individual conscience. The question of whether the state can now control the subject may be questioned in view of the fact that the giving of information, instruction and medical advice to married persons as to the means of preventing conception is now clothed in a cloak of constitutional protection. (Griswold v. Connecticut (1965) 381 U.S. 479...)

. . .

...we conclude that there is no legislative policy or any other overriding public policy proscribing consensual vasectomy in this state. Nor does there appear to be any other good legal reason why such a voluntary operation, given competent consent, should not be performed. In fact, the few cases in this area indicate that it is an acceptable method of family planning, while Griswold indicates that it may fall within constitutional protection. We adopt the ruling of the Shaheen case and hold that California has no public policy prohibiting consensual sterilization operations, and further hold that nontherapeutic surgical sterilization operations are legal in this state where competent consent has been given.

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