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Law and Population Growth in Iran

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LAW AND POPULATION GROWTH IN IRAN

I. INTRODUCTION

The problems associated with population growth should be studied, especially in traditional societies, in their relevant socio-cultural context. By approaching the study from this point of view the historical and social roots of the problem will be revealed, thus bringing light to the uncertain question of how to deal with population growth and movement. Such a study will also tend to make clear that in traditional societies, and especially in matters related to basic cultural and religious feelings of the people, law is but a poor instrument in the service of social control and attitude change. However, the ineffectiveness of law in this regard should not be exaggerated. We know that the beliefs and customs of a society come into existence basically because at a certain point of time they served, or were supposed to serve, certain needs of the society. We also know that when those needs are changed or satisfied through other means and methods, the older concepts and attitudes which are no longer functional will automatically fade away, thus bringing about changes in the behavior patterns of the people. Because there was no dependable organization to provide medical advice and help for the sick, for centuries the masses of people in Iran resorted to magical rites and practices.¹ However, with the introduction of modern medical practices and the establishment of hospitals and clinics in even the remote towns and villages, the magical beliefs and practices have almost but died out. In this process, the impact of the laws, which, while being used as a tool for establishing health services and providing treatment and care for the people have indirectly induced attitude change, cannot be overestimated.

In a similar vein, one of the basic reasons for the existence of large families in Iran has been the fact that children are traditionally regarded as a source of support and security for the parents in their old age. Here again, the law, by creating a system of social security, including old-age pensions, will have an undeniable impact on the traditional notions and will most probably cause a reduction in the average size of Iranian families. Regardless of whether the impact of laws is large or small in relation to other social forces at work in a country, in order to make the best use of law we should begin by gaining a knowledge of the existing rules and regulations and the way they interact with each other. Hence, the collection and analysis of all laws relevant to family planning and population is the first logical step for the decision makers of a country to take in attempting to develop policies which will affect attitude change and population trends.

¹See in general Henri Massé, Persian Beliefs and Customs, particularly Chapter XII on popular medicine, pp. 320-342 (New Haven, Human Relations Area Files, 1954).

In the following pages I shall deal, first with the socio-cultural factors affecting population, then with the actual dimensions of the population problem in Iran, and what is currently being done about it. Finally, a brief review of the major laws affecting population will be presented, followed by a series of recommendations for legal reform in the field of population law.

II. THE SOCIO-CULTURAL BACKGROUND AFFECTING POPULATION IN IRAN

A. The Zoroastrian Heritage

The traditional value system of Iran can best be described as pronatalist in nature. In the Zoroastrian system of beliefs, a large part of which is embodied, in many places almost intact, in the beliefs of the Shi'a sect, Iran's version of Islam, strong emphasis is put on the role and importance of children. This is particularly true in regards to male children. To secure happiness and affluence for the family, Zoroastrians used to keep the fire in their small familial fire temples burning continuously. The responsibility for keeping the fire alive, rested, as it still does today, on the shoulders of the male children. They were also entrusted with the task of performing the religious rites and ceremonies which are deemed necessary to enable the souls of the departed to enter heaven. In accordance with these beliefs, and the important role assigned to sons in all other aspects of social life, male children were given numerous advantages over the female children, including the right to a greater share of the inheritance. So important was the role of male children in performing the religious rites and practices that as a rule childless families would adopt a son to perform the necessary ceremonies. The adopted son was (and is) called "pol-gazar", translated as "bridge-layer," because by means of his performance of religious prayers and ceremonies, the deceased would become able to cross the bridge to heaven. The "pol-gozar" had a certain share in the inheritance of the deceased.

Because of the important role attributed to children, particularly sons, not only in discharging the religious duties of the family but also in providing support and comfort in general, fertility has always been a real concern of the Iranian people. Chardin, who visited Iran in the seventeenth century, reported that "sterility is the greatest disaster in the Orient; there is nothing in the world that a woman will not do to be rid of her disability."² The same observation has been made by other travelers who visited Iran in other periods. Massé, for instance, notes that "[i]n the Orient, a sterile woman has always been the object of scorn." This same theme and idea, translated into folk tales and proverbs, is still quite alive and influences the patterns of social behavior. It is said about a childless woman that "ojaghesh khamoshe," literally meaning that "her fireplace is extinguished," thus referring to the old Zoroastrian concept that she has no children, especially sons, to keep the fire in the family temple alive.

B. Belief in Predetermination

As in the very earliest of times, a strong belief prevails in the minds of the masses that the world and the conditions of man's existence are predetermined by God and/or other supernatural forces. Simply put, there is the belief that a man can do nothing contrary to the dictates of his destiny,

²Chardin, Voyages de Chevalier Chardin en Perse et autres lieux de l'Orient, Vol. IV, p. 441 (1811).

no matter how strong and determined he is. This deep-felt belief in pre-determination is reflected, in lesser or greater degrees, in almost all the literature which an Iranian is exposed to. The theme begins being conveyed in the tales told to little children, when the impact is greatest. This early learning tends to activate conditioned responses in the unconscious for years to come, against which it is difficult to use logical reasoning. The belief in predetermination is then constantly reinforced in the books a child has to study, by conversations he hears at home, and in literary pieces he reads for pleasure. In short, it is re-emphasized in all the manifestations of the cultural heritage of his society. The proverbs which are the shorthand translations of group experiences are quoted quite often, and in all occasions as the authoritative formulae for solving all kinds of problems. Here again, destiny always plays a very dominant role. In fact, it is an accepted custom for people who promise to do some task like fix the pipes or service the car, to finish their promise with the expression "Ensha-Allah" (If God wills). In Iran, such a statement is not just a matter of expression; it manifests a deep-rooted feeling.

The belief in predetermination in general, and in matters related to family planning and population growth in particular, therefore, is a very important factor to reckon with. The proverb "Whoever gives teeth, gives bread," has a soothing effect on the poor families who, knowingly or otherwise, keep producing more and more children. Because everything is in the hands of God, not only is the upkeep and education of the children not to be a cause of worry for the parents, but even the death of a child should not bring too much sorrow to the living. Childbirth, itself, is regarded as a religious experience with very important implications. To quote Massé again: "From the day of conception on, a woman has one foot in this world and one foot in the other."³ However, he goes on to state that:

Every woman who gives birth to a child receives absolution from a sin; the more she suffers, the more her sins are redeemed. . . . If she dies in childbirth, she is regarded as a martyr (thus going to heaven). A child who dies in infancy lives on in Paradise, and intercedes with God in behalf of his parents.⁴

C. Social Realities

In Iran, until very recent times, the great majority of the people lacked any sense of security. With the exception of government employees, the great majority of the people, *i.e.*, laborers, farmers, and people who are self-employed, like barbers, butchers, grocery men, etc., were not covered by any of the social security measures. This fact, which to a large extent remains true today, must be regarded as one of the main factors

³Massé, op. cit., note 1 above, p. 12.

⁴Ibid., p. 13.

conducive to population growth. Culturally, religiously and legally, children are bound to take care of their parents during old age. In a society where nobody really felt financially and emotionally secure, this view must have acted, as it will continue to do until the mental and emotional habits of the people are changed, as a strong incentive for having more sons, and, in general, more children. In fact, the pro-natalist cultural values are themselves but a function of the social conditions and values which have existed in Iran for centuries. Wilson, who also traveled and recorded his experience in this country, notes:

The birth of a girl is not a particularly happy event. There are no receptions or congratulations, as there are when a son is born. They say 'she has been given by God; let us resign ourselves to his will.' One of the reasons for this attitude is that marriage takes a daughter away, whereas a son will sustain his parents in his (sic) old age and his wife will wait on them.⁵

With the passage of the Workers Social Insurance Law fourteen years ago, most workers came under the coverage of social insurance. Farmers are also partially covered by the Farmers Social Insurance Law, which was passed in 1969. However, to provide a deeper sense of security which could offset, to some extent, the incentive for having more children, we need to extend the sphere of coverage of the social security laws, both in terms of quantity and quality.

D. Islamic Heritage

The Islamic traditions have established strong roots in Iran. But as mentioned before, they have been altered somewhat to encompass the old established Persian values and beliefs. These changes are evidenced in the beliefs of the Shi'a religion. Even though there are passages in the Koran, such as the following, Islam on the whole is not vigorously pro-natalist, and does not overemphasize marriage and fertility. True, it is said in the Koran that "Your women are a tillage for you; so come unto your tillage as you wish, and forward for your souls,"⁶ and also that one is to "Marry the spouseless among you, and your slaves and handmaidens that are righteous; if they are poor, God will enrich them of His bounty." However, it is added in the same Sura, "And let those who find not the means to marry be abstinent till God enriches them of His Bounty."⁷ As regards children, they are, as in other religions, considered a source of joy. Nevertheless, there are several passages in the Koran which put emphasis on other aspects of a man's life, and the importance of proper education for the children.

⁵S. G. Wilson, Persian Life and Customs, p. 261, (2d ed., 1896).

⁶Sura "Cow," Verse 223 (Arberry, transl., Oxford University Press).

⁷Verses 32 and 33 of the Sura "Light" (same translation).

Wealth and sons are the adornment of the present world; but the abiding things, the deeds of righteousness, are better with God in reward, and better in hope.⁸

Again:

It is not your wealth nor your children that shall bring you nigh in nearness to us, except for him who believes, and does righteousness.⁹

O believers, among your wives and children there is an enemy to you; so beware of them. . .Your wealth and your children are only a trial, and with God is a mighty wage.¹⁰

O believers, let not your possessions neither your children divert you from God's remembrance, who so does that, they are the losers.¹¹

And finally:

Decked out fair to men is the love of lusts--women, children, heaped up heaps of gold and silver, horses of mark, cattle and tillage. That is the enjoyment of the present life, but God, with Him is the fairest resort.¹²

It seems that the stress laid on religious duties of the believer, in contrast to just enjoying the presence of children and other worldly pleasures, and the realistic alarm voiced several times in the holy book that if the children are not well educated they can become one's worst enemy, can be used in Islamic societies, with much advantage, to spread and strengthen a spirit and attitude harmonious with the objectives of family planning and population policy.

⁸verse 46 of the Sura "Cave."

⁹verse 37 of the Sura "Sheba."

¹⁰verses 14 and 15 of the Sura "Mutual Fraud."

¹¹verse 9 of the Sura "The Hypocrites."

¹²verse 10 of the Sura "The House of Imran."

III. THE SCOPE OF THE POPULATION PROBLEM IN IRAN

Against the brief summary of cultural and social values and needs which have an impact on fertility behavior, we should study the actual dimensions of population growth in Iran, and the measures adopted by the government to minimize or solve the problem.

A. Character of the Population Problem

When a comparison is made between the two general censuses carried out in Iran in recent years, the momentum of population growth becomes evident. The first general census (1956) showed the total population of Iran to be 18,954,704 persons. Ten years later (1966) the second census showed that Iran's population had increased to 25,781,095. That would place the annual rate of increase in population during those ten years at 2.9 per cent. Estimates for 1971 put the annual rate of natural increase at 3.2 per cent--one of the world's highest. Remembering that Iran covers some 1,648,000 square kilometers, of which only 70,000 square kilometers are under cultivation, this would bring the density of the population based on 1966 figures to 365 persons per square kilometer.

The two basic causes for the increase in the population of Iran--besides the socio-cultural factors which should be considered as constant in the decade under study--are the decrease in infant mortality and the increase in the life expectancy of the people. These changes are, in turn, due to better health conditions and improvements in the diet of the people.

The comparison of the results of the said two censuses also showed the following.¹³

1. Town-Village Population

The percentage of people who live in towns increased from 31.4 in 1956 to 39.1 in 1966. Migration to the central province, which includes the capital, Tehran, whose population grew by 80 per cent, was one of the main factors in the reflected increase in the percentage of town people. The disequilibrium in the distribution of the population in the towns and villages, has, of course, many social and economic implications. However, as far as the family planning question is concerned, it should be noted that the migrants from rural areas usually bring the pregnancy models of those areas to the towns, and this tends to increase the average number of children in town families from 5 to 6 to a much higher figure. Because of migration, more attention should be paid to family planning programs in towns.

¹³The data presented here are taken from an article by Dr. Mehdi Amani, head of the Demography Department of Tehran University.

2. Population Structure

A glance at the population structure of Iran by age shows that it is largely composed of young people. In 1956 and 1966 the percentage of population under 15 years of age was 42.2 and 46.3, respectively. The figures reflect the increase in the number of children per family and the general decline in the mortality rate. They also show that there are great segments of the population which are not economically productive. This factor makes the population problem much more acute.

3. Literacy

Illiteracy is still high in Iran. However, men have a better literacy rate than women, and towns enjoy higher literacy rates than rural areas. With the extensive use of Literacy Corps and other government measures, like the new proclamation by His Imperial Majesty the Shahanshah that primary and secondary schooling be obligatory and free for all children, the rate of illiteracy will, no doubt, decrease. Nevertheless, illiteracy is still a real problem to be considered in the development of family planning activities. The following table shows the literacy rate for men and women above age 10 in towns and rural areas:

| <u>Year</u> | <u>Sex</u> | <u>Total</u> | <u>Towns</u> | <u>Villages</u> |
|-------------|---------------|--------------|--------------|-----------------|
| 1956 | Men | 22.2 | 45.2 | 10.8 |
| | Women | 7.3 | 20.6 | 1.0 |
| | Men and Women | 14.9 | 22.3 | 6.0 |
| 1966 | Men | 40.6 | 62.3 | 25.6 |
| | Women | 18.0 | 38.0 | 4.3 |
| | Men and Women | 29.6 | 50.8 | 15.3 |

The low level of literacy (remembering that it is one of the best means of mass communication) makes it more difficult to implement family planning programs, which emphasize spacing children, especially in rural areas. This necessitates incurring the substantial cost of sending teams of family planning experts to these areas to instruct the population.

4. Economic Activities

The level of involvement in economic activity has been strongest amongst younger people. In 1966, 68.7 per cent for the age group 15-19 were working, and 46 per cent of the people older than 64 were active. The economic activity of women in the period under study has been very low indeed, i.e., 9.2

and 12.6 per cent for the years 1956 and 1966, respectively. Another point to be considered is that the percentage of active people in all age groups has been very high, and this is to a very large extent due to involvement in occupations which may not be economically productive.

5. Marriage

Information derived from the 1956 and 1966 censuses point to two important aspects of marriage in Iran: the widespread practice of marriage and the relatively high percentage of early marriages. If we take the marital status of people over 50 years of age, we realize that the percentage of unmarried people at this age and over is much lower in Iran than in an industrial society like France. The statistics also show that unmarried people at the age of 50 are fewer in villages than in towns and fewer amongst women than men. As a whole, it seems, according to the 1956 and 1966 censuses, that marriage has become more common during the past 10 years. The following table shows the percentage of 50-year-old unmarried people in towns and villages:

| <u>Year</u> | <u>Men</u> | | | <u>Women</u> | | |
|-------------|--------------|-------------|----------------|--------------|-------------|----------------|
| | <u>Total</u> | <u>Town</u> | <u>Village</u> | <u>Total</u> | <u>Town</u> | <u>Village</u> |
| 1956 | 2.1 | 2.8 | 1.8 | 1.0 | 1.3 | 0.8 |
| 1966 | 1.5 | 2.1 | 1.2 | 0.8 | 1.2 | 0.6 |

Another aspect of marriage in Iran is the high percentage of early marriages, *i.e.*, marriages in the 15-19 year-old age group. A comparison with France, an industrial country, is instructive (figures in percentages).

| <u>Year</u> | <u>Iran</u> | | <u>France (1960)</u> | |
|-------------|-------------|--------------|----------------------|--------------|
| | <u>Men</u> | <u>Women</u> | <u>Men</u> | <u>Women</u> |
| 1956 | 7 | 41 | 0.5 | 4 |
| 1966 | 6 | 47 | - | - |

As it is clear from the table above, in the year 1956 the early marriages were 14 and 10.3 times more frequent in Iran than in France, for men and women respectively.

6. Birth and Mortality Rates

The birth rate is quite high in Iran. It amounts to 50 per thousand. In rural areas the birth rate is still higher and according to surveys carried out by the Health Research Institute of the University of Tehran it reaches to 62 per thousand in some areas. The general mortality rate is also rather high in Iran. The figure given by statistics is 18 per thousand whereas

in industrial countries it is between 7 to 12 per thousand. The mortality rate among children, which is a more important index, is as follows:

| | |
|------------------|------------------|
| Rural areas | 162 per thousand |
| Towns | 101 per thousand |
| Average for Iran | 139 per thousand |

Child mortality rates in industrial countries vary between 12 to 25 per thousand.

The average life expectancy in Iran according to statistics is as follows:

| | |
|-------------------------|------------|
| Average life expectancy | 51.5 years |
| Rural areas | 47.5 " |
| Towns | 57.5 " |

7. Population Growth Rate

By comparing the mortality rate of 18 per thousand with the 50 per thousand increase in the number of children, one may put the natural growth rate at 32 per thousand, a figure which is comparable to the rates of neighboring countries. It should be noted that the expansion of lands under cultivation in the 1960-65 period has been 12 per thousand. That means that the population growth rate exceeds the growth of cultivated land at a rate of 27 per thousand. This, of course, is alarming.

According to a method of estimating future population growth used by the Demography Department of the University of Tehran, the population of Iran will grow as follows if the family planning programs are not carried out on a large scale:

| <u>Year</u> | <u>Population</u> |
|-------------|-------------------|
| 1971 | 29,600,000 |
| 1976 | 35,000,000 |
| 1981 | 42,000,000 |
| 1986 | 51,000,000 |

B. A Brief History of Government Policies and Actions

While the first public instruction on family planning was undertaken by some maternal-and-child-health clinics as early as 1953, the first evidences of official government interest in population growth and family planning date from 1960. This burgeoning interest came as a result of concern which grew out of demographic studies made as a follow-up to the 1956 census. These studies revealed, much to the alarm of the Government, that the yearly rates of increase in the population were climbing rapidly. By 1966 several reports--one of them prepared by the Population Council¹⁴-- had been made concerning studies related to the population growth problem, and officials of the Ministry of Health initiated visits to survey similar problems in Egypt and Pakistan. These efforts led to the creation of an undersecretary for family planning within the Ministry of Health. The undersecretary was charged with formulating a specific plan for a family planning program. The first program, which was designed to utilize Iran's physicians to the maximum feasible extent as a way of providing family planning services, was commenced in April 1967.

Because of the serious influence which current rates of population growth have on the overall development of the country, a more aggressive population policy was adopted in May of 1970. The ultimate goal is to reduce the annual rate of population increase to 1 per cent over the next 20 years.

One of the salient features of family planning programs in Iran has been the use of all available means and channels of communication for disseminating the family planning message. High school and university students, twenty-three thousand members of the Revolutionary Corps, Military Personnel, teachers, Women's Organization branches, promoters of agriculture, housekeeping, and religion, the heads and members of Rural Cooperatives, Rural Houses of Culture, and the members of the House of Equity, have all been given training on the subject of family planning and help to spread the word about the raison d'etre and objectives of family planning programs to those who are not yet aware of the program. In addition, nearly 7,500 doctors, midwives, nurses and aides, and over 17,000 people who are engaged in technical work in hospitals and other types of medical activity, have attended special courses on family planning methods and are actively participating in promoting the Government's policy objectives.

¹⁴For a brief summary see, "Iran Report on Population Growth and Family Planning," *Studies in Family Planning*, Vol. 1, No. 20, pp. 3-6 (June 1967).

IV. LAWS DIRECTLY AFFECTING BIRTH

A. Contraception

With one potential exception, there are no laws in the Iranian legal system which would prohibit the dissemination of either the knowledge or means for limiting fertility. That exception is Article 213 of the Penal Code, which forbids the production and keeping of written materials, graphs, paintings, photographs, printed matter, advertisements, films or any other things which are against public morality and decency. However, at the end of this anti-obscenity article there is a provision exempting materials sold to people over 18 years of age, if they are of scientific interest or used for the same purpose. Thus, no attempt is made to ban general publicity on family planning. Indeed, to do so would run counter to the Government's strong policy favoring limiting population growth.

As part of the Government's national family planning program a unit for motivation and communication was established in 1969. At first its activities were confined to the production of public displays. But radio and television are now being used to convey the family planning message. In as much as many of the citizens live in rural villages efforts have been made to reach them. To this end mobile audio visual units have been developed, each designed to project films, slides, and film strips with appropriate sound recording in local dialect.

The importation of oral contraceptives was permitted as early as 1961. Attempts are presently being made to stimulate local production of pills. It is expected that in the near future local pill manufacturing will begin soon, thus alleviating the present necessity of importing them. Under the present scheme import duties are charged for the importation of pills as well as condoms.

Condoms are presently sold in most towns by street vendors or in various types of shops. In theory the oral contraceptive pills are to be sold in pharmacies under prescription, but the regulation is not strictly enforced and generally a pharmacist will sell the pill to customers he knows. However, most pills are distributed through official or semi-official health service channels, such as at the health clinics, and they are either free or at government subsidized low prices. The latter fact tends to discourage commercial efforts to market the pills.

Though the intrauterine contraceptive device (IUD) was introduced along with the pill in the early 1960s, it has never gained popularity. It is estimated that pill users outnumber IUD acceptors by a ratio of 20/1. Reasons for this are various. Among those cited are: limited numbers of doctors and midwives trained to insert IUDs; reluctance of rural women to submit to a pelvic examination by a male physician; and the fairly widespread opinion that the IUD is not suitable for many women. Where IUDs are available they must be inserted in a clinic by trained medical personnel.

Iran Family Planning Results for 1967-1971 in Six-Month Intervals

| Fixed Clinics ^a Reporting and Total | Month | Patients Seen | Condoms Distributed ^b | IUDs Inserted ^c | Pill Cycles Distributed ^d | New Pill Patients ^e |
|---|------------|---------------|----------------------------------|----------------------------|--------------------------------------|--------------------------------|
| 160 | April 1968 | 15,361 | - | 797 | 8,588 | - |
| 235 | Oct. 1968 | 39,653 | - | 848 | 27,691 | 784 |
| 400/444 | April 1969 | 84,399 | - | 845 | 72,501 | 17,260 |
| 469/554 | Oct. 1969 | 120,710 | - | 1,175 | 105,520 | 19,110 |
| 574/683 | April 1970 | 151,807 | 4,411 | 1,320 | 134,405 | 22,226 |
| 775/981 | Oct. 1970 | 183,322 | 4,983 | 941 | 169,509 | 24,907 |
| 917/1,068 | April 1971 | 231,798 | 8,168 | 1,220 | 212,957 | 31,606 |
| 1,056/1,200 | Oct. 1971 | 268,538 | 9,703 | 1,001 | 251,628 | 34,293 |

^aHealth Corps Units are included in this table.

^bIn dozens. Earlier figures not cited because of inaccuracy.

^cUp to March 1968 approximately 16,000 IUDs were inserted. Total insertions since January 1967: 61,557--expulsions, removals, and reinsertions excluded.

^dIn addition, commercial sales have increased from about 50,000 in March 1968 to about 100,000 in July 1971.

^eFigures prior to September 1968 not available.

Source: Iran, Country Profiles, p. 15 (New York: The Population Council, 1972).

There are 2050 clinical centers in the country where free advice and family planning methods are given to people at minimal cost. The figures show that in 1972 approximately 6.5 million contacts were made with people in the country who came to these centers in search of advice or services. It is estimated that the Government's family planning programs have reduced the number of births by 6 in every thousand. The ultimate goal of the Government, however, is much more ambitious.

As a final note, it should be remembered that irrespective of the extent of the conscious efforts of the Government and certain private organizations in the area of family planning, the fact remains that there are still many incentives for having larger families, based on the social needs and attitudes of the people and also in the laws and regulations that affect those needs and attitudes either directly or indirectly. For example, though of importance to this whole question, little is known of the fertility-related implication of current social-insurance workers-benefits, and income-tax policies, let alone those related to contraception, sterilization, and abortion. Such studies are needed.¹⁵

¹⁵At the request of the Government, the International Labor Office conducted a study of the Social Insurance Organization in 1971. Report to the Government of Iran on the Incorporation of Family Planning Care within the Medical Services of the Social Insurance Organization, Doc. No. ILO/FPA/Iran/R.28 (1971).

B. Abortion

Though induced abortion has been practiced since ancient times in Iran, except in cases where the pregnancy presents a real danger to the life of the mother, the practice is currently illegal. Anyone who performs an abortion in the absence of the excepted circumstances is subject to imprisonment from one to three years.¹⁶ Higher penalties are imposed on physicians, midwives, surgeons and pharmacists who perform illegal abortions.¹⁷ Despite the restrictive nature of the law, there is some evidence that the current rate of induced abortions is between 15 and 25 per cent of the total number of pregnancies. In a survey among IUD acceptors in Abadan, 23 per cent of the women admitted to one or more induced abortions.¹⁸ Prosecutions for violations of the criminal abortion law are very uncommon.

Under the Penal Code, abortion is permissible where the procedure is used to save the life of the mother. The physician who proposes to perform the abortion must have the concurring approval of two other physicians, and he must make a report of the operation to the High Council of the Iran Medical Association within 24 hours.¹⁹

As the expectations and behavior of the people change, the legal restrictions have ceased to be taken seriously. It is known, though not openly admitted to, that a number of abortions are performed in the larger cities, in hospitals and doctors' private clinics. As a result, a great deal of discussion has surfaced, particularly in women's journals and among the medical profession, concerning the advisability of legalizing the practice of abortion in Iran.

C. Sterilization

Sterilization as a means of "social defence" or prevention of future criminality is not provided for in the Iranian criminal system. As regards voluntary sterilization for family planning purposes, there is nothing in the law to forbid it. Most of the sterilizations have been tubal ligations rather than vasectomies. But the total number of sterilizations is insignificant from the demographic point of view. Usually a written consent executed by the person who is to undergo the sterilization is needed in order to bar any future claims of coercion against the doctor. However, theoretically, mere consent, even oral, will absolve the operating doctor of any responsibility in this regard.

¹⁶Penal Code, Art. 181.

¹⁷Ibid., Art. 183.

¹⁸Population and Family Planning in Iran, U.N. Doc. No. TAO/IRA/60, pp. 66, 67 (New York: United Nations, April 7, 1971).

¹⁹Penal Code, Art. 183.

V. FAMILY LAW AFFECTING POPULATION

A. Minimum Marriage Age

According to Article 1041 of the Civil Code of Iran the marriage of females under 15 years of age and males under 18 is generally forbidden. However, in the same article it is provided that in cases where the Attorney General deems necessary a court can grant exceptions to the minimum age requirement. In no case, however, can the exception be accorded to females and males less than 13 and 15 years of age, respectively.

In practice, the minimum age requirement for marriage means only that people who are below the legal age cannot have their marriage registered in the Public Registers. For this reason, and others, the law has not been successful in curbing the frequency of marriage of persons under the legal age. In fact, in many villages, and among many tribes, girls that are 7 or 8 years old are married in accordance with the existing social norms and customs.

The code provision relating to minimum marriage age is a good example of a law which is contrary to public expectations and social needs, basically financial in nature, and hence is ineffective in achieving the objectives for which it was created. For the same reason, it is possible to predict that the new law, which will increase the minimum marriage age to 18 and 21 for females and males respectively, will achieve little success in and of itself in changing the social habits of the people with respect to early marriages. As usual, if a social institution has an important social function, and the law is trying to change that institution without creating other means and practices which have the same functions and satisfy the same needs, we can expect not a solution for the social problem, but rather the emergence of other difficulties. In the case at hand, what the law will tend to do is not to solve the problem of early marriages. Instead, the law will tend to create a new problem by substantially increasing the number of illegal marriages which are wholly valid and natural according to social customs and religious beliefs of the people.

B. Polygamy

According to the tenets of the Islamic religion a man may marry four permanent wives and, in some sects, as many temporary wives as he can afford. As regards permanent marriages, the Koranic rule is that a man can marry more than once only if he is able to treat the spouses with equal justice. This provision for equal justice, however, has been interpreted as meaning that the man should not financially discriminate against any of his wives.

The Iranian Civil Code, which was passed partly in 1928 and partly in 1934-35, is based, theoretically and structurally, on the French Civil Code. However, in matters relating to personal status, including marriage, divorce, inheritance, etc., the rules and regulations of the Islamic law, and especially those of the Shi'a Sect, were incorporated, almost in toto. into the

Iranian Civil Code. Thus, the Islamic rule concerning polygamy was accepted in the new legal system, and it was quite common to see two or three women married to the same man.

In 1967, a new law, titled the Family Protection Law was passed. This law does not explicitly abrogate the right of Iranian males to marry more than one wife, but conditions the validity of the second marriage on receiving permission to marry again from the Family Court. This new rule has not totally eliminated the practice of polygamy in Iran, but it has seemingly diminished its scope. (The reduction in the number of polygamous marriages may very well be also the result of the introduction and acceptance of western models of social behavior in recent years.) According to Article 14 of the new law, if a man marries a second time without having first acquired the permission of the court, he will be subjected to from 6 months to two years of corrective punishment. The restriction also applies to temporary marriages.

C. Conditions for the Validity of a Marriage

To be valid a marriage should be accompanied by the consent of the parties. However, in the case of girls below age 18 who have not previously married, the permission of the father, or in his absence, the grandfather, is also necessary.²⁰ Marriage between certain classes of relatives is forbidden.²¹ A man who divorces his wife three times, and marries her again after the first two divorces, is barred from marrying her after the third divorce unless she is first married to somebody else, gets a divorce from that person and decides to marry the first husband again.²²

A Moslem woman cannot marry a non-Moslem.²³ If a woman wants to marry an alien, the validity of the marriage depends on obtaining special permission from the Government.²⁴ This means that if an Iranian Moslem woman wants to marry a non-Moslem foreigner, the prospective husband must first convert to Islam and then acquire special permission from the Ministry of Internal Affairs.

Aside from the substantive requirements that affect the validity of the marriage, there are procedural rules which do not affect the validity of a marriage, but which should be observed if the fact of marriage is to be honored as an authentic legal act. According to the Civil Code, a man and a woman can personally express their intention to be married, and this

²⁰Civil Code, Art. 1043.

²¹Ibid., Arts. 1045-1056.

²²Ibid., Art. 1057.

²³Ibid., Art. 1059.

²⁴Ibid., Art. 1060.

will make them man and wife. However, secular marriages are almost unheard of, and as a general rule, the "Mulla," or the religious leader of the people, administers the formalities of marriage according to Islamic principles.

All marriages should be registered in the public registers and reflected on the identity cards of the couples. If a man marries a woman or divorces her without notifying a Notary Public who keeps the registers, he is subject to conviction under the law and from 1 to 6 months of corrective imprisonment. The same punishment will be imposed on any Mulla who administers the ceremonies for a marriage or divorce, without having the fact registered with a Notary Public.²⁵

In addition to the consent of the parties, the duration of the marriage, as well as the consideration paid or given by the husband for the enjoyment of marriage, must be specified before a temporary marriage becomes valid.

D. Annulment of Marriage

Either the husband or the wife can annul the marriage contract if certain conditions exist. Insanity is the only condition which, if present in either of the parties, gives the other the right to an annulment. The following defects in the husband, if they disable him from discharging his marital duties, will give the wife the right to annulment: 1) impotency, provided it still exists after a year from the time the wife brings her petition to the court; 2) being castrated; 3) having the sex organ cut off.²⁶ The husband has a right to annul the marriage if the following defects exist in the wife: 1) a protrusion of the vagina; 2) black leprosy; 3) leprosy; 4) connection of the vaginal and anal passages; 5) being crippled; 6) being blind in both eyes.²⁷

The defects of the wife give the husband the right to cancellation only if they existed at the time of the marriage. Impotency, however, gives the wife the right even though it appears after the marriage contract.²⁸ Moreover, if a special quality or condition has been specified as existing in one of the parties, and the said quality is non-existent, it gives the other party the right to annulment. In a temporary marriage, the marriage is automatically dissolved at the end of the marriage period.

²⁵Marriage Law of 1931-1937, Art. 1.

²⁶Civil Code, Art. 1122.

²⁷Ibid., Art. 1123.

²⁸Ibid., Arts. 1125-1126.

E. Divorce

According to the provisions of the Civil Code dealing with divorce, which are derived from Islamic principles, a man may divorce his wife any time he wishes,²⁹ provided she is not in the middle of her period, or in the "clean" period immediately after intercourse.³⁰

With the passage of the Family Protection Law in 1967, certain other conditions were provided as grounds which will give rise to an action for divorce. These conditions are: 1) conviction of either the wife or the husband to 5 years of imprisonment; 2) any harmful addiction, which in the opinion of the court, is detrimental to the foundations of the family life; 3) marriage of the husband to another woman without the consent of his present wife; 4) desertion by either of the parties; and 5) the conviction of either of the parties of a crime detrimental to the prestige of the family, or the other party.

The changes that have been wrought by the Family Protection Law are as follows:

1. The wife may also apply to the courts for divorce if any of the above mentioned conditions exist. Formerly, the wife lacked the ability to seek a divorce.

2. The new law has not actually limited the former right of the husband to divorce his wife any time he wishes. The language used in the new law provides that besides the grounds provided in the Civil Code, the other conditions specified in the Family Protection Law, and cited above, give either party the right to apply for a divorce.³¹

3. The basic change accomplished by the new law is that a man can no longer divorce his wife automatically. Divorce has to be preceded by court proceedings and the issuance of a non-reconciliation certificate. The same rules, of course, hold true when a wife wants to divorce her husband.

4. Another innovation of the new law is that the court should in all cases, except those where there is mutual agreement to divorce, send the application first to a board of arbitration chosen by the parties in order to reconcile the differences. If this proves impossible, the court then issues a non-reconciliation certificate.

²⁹Ibid., Art. 1133.

³⁰Ibid., Arts. 1140-1141.

³¹Family Protection Law, Art. 11.

5. Since in Islam only the husband can divorce, the certificate issued by the court is not the equivalent of a divorce. It only implies that the court now orders the husband to divorce his wife; if he does not comply with the court's order, he will be subject to punishment.

Since the passage of the Family Protection Law, the number of divorces has increased considerably. This, to a large extent, reflects the fact that before the enactment of the Family Protection Law women would tolerate almost any condition arising out of their relations with their husbands because they knew quite well that they could do nothing short of using sheer force to make him agree to a divorce.

F. Financial Obligations of the Couple

1. Mahr or dower

Traditionally, and according to the law, as consideration for the marriage contract, a certain amount of money or something of value, should be specified as "Mahr" or dower of the wife. Theoretically, the dower belongs to the wife as soon as the marriage ceremonies take place, and she can do with it whatever she likes.³² However, in practice only when a wife is divorced does she ask for the dower. Another fact is that among the richer classes, the magnitude of the dower is regarded as sign of social prestige for the bride and her family. That is why astronomical figures sometimes are specified in the marriage contract as the sum of the wife's dower. In recent years, however, the tendency is growing, albeit very slowly, among the educated people to avoid stipulating any "Mahr" in the marriage contract.

It should be remembered in this regard, that marriage is still a very important social occasion which calls for extravagant festivities and hence great expense for the related families. Thus, dower works to some extent as an obstacle against marriage in general.

2. Maintenance of the Family

It is the duty of the husband to give support and maintenance to the family.³³ If he does not provide for the wife and the court cannot force him to do so, she can apply for a divorce.³⁴ If he is still not willing either to provide for the wife or divorce her, he will face a conviction under the Penal Code and from 3 months to 1 year of corrective imprisonment.³⁵

³²Civil Code, Art. 1082.

³³Ibid., Arts. 1106, 1107.

³⁴Ibid., Arts. 1111-1112 and 1129.

³⁵Penal Code, Art. 214.

3. Alimony

The obligation of the husband to support his divorced wife is only temporary. It varies according to the kind of divorce given and to the condition of the divorced wife. However, the maintenance of the children is always the responsibility of the man if he is of means. If the children reside with their mother after a divorce, the husband has the continuing duty to pay for their support and maintenance.

4. Maintenance of Certain Relatives

A point of much importance with regards to family planning programs, though not related directly to the mutual duties of husband and wife, is the fact that in Iran people are obligated by law to provide for their next of kin who are related on the vertical line, whether descending or ascending.³⁶ This responsibility is, of course, conditioned on whether they have the means to do so without causing their own family or themselves any hardship.

In the case of one's parents, it is provided specifically, that they should be maintained by their children.³⁷ As we shall see later on, parents also inherit automatically from their children, i.e. they have a definite share of their estate.

³⁶Civil Code, Art. 1196.

³⁷Ibid., Art. 1200.

VI. LAWS ON ECONOMIC FACTORS RELATED TO FAMILY

A. Maternity Benefits

According to Article 51 of the Social Insurance Law, women employees are entitled to a "pregnancy allowance" if they have been insured for a year prior to the birth of the child and have paid their insurance contribution for the equivalent of at least 100 working days during that time. A maternity leave is granted for up to four weeks prior to delivery and two weeks after if the mother chooses not to work during that period. During her leave the maternity allowance will be paid at a rate equivalent to 80 per cent of her salary or wages, with payment to cover 42 days. The period covered by the allowance may be extended if a physician so advises, but during the extra period of rest the mother's maternity allowance will be calculated at 40 per cent of her wage. Female employees of the Tehran Municipality are entitled to 60 days of maternity leave.

A working woman or a wife of a worker covered by the insurance scheme may also benefit from allowances granted for meeting the costs of: 1) medical examination and treatment before and after birth; 2) necessary treatment and assistance during birth--whether in a hospital, clinic or at home; and, 3) the layette. Under the provisions of Circular No. 131 (1966) the by-laws of the Social Insurance Organization the woman can receive 2,000 rials for delivery costs, 500 rials for layette, and 2,500 as an infant allowance. (Articles 5 and 6 of By-Laws).

B. Social Security Laws

Laws specifically governing social security in Iran are relatively new. For decades, government employees have been covered by a general state retirement plan which provides that if the employee works for a certain number of years (usually 30 years), he will be entitled to a retirement pension. The funds used for the payment of retirement pensions were and are collected from contributions made by the Government and the civil servant, from whose salary the retirement dues are deducted each month during the course of employment.

At a time when no other social security laws existed in Iran, the retirement pension program for government employees acted as a strong incentive for people to get a job in one of the government organizations and agencies. Today, the government pay is quite low in comparison with what the people in the private sector make. However, because of the past realities which are translated into cultural values and expectations, many people still aspire to become employed by the Government. Employment with the Government also entitles the civil servant to medical insurance and treatment. The coverage, however, is not complete and requires the government employee to go to special doctors and treatment centers which usually are not of the best quality. The fact remains, however, that no matter how meager the privileges of government employment, it still attracts many people. And this in a salient way signifies the role of social security laws and

facilities, or their absence, in influencing social behavior. It also shows that the need for security against financial difficulties and disease, especially in old age, is a very powerful element relating to the quality and form of the whole social order.

The Social Insurance Law was passed in 1960 and amended in 1968. This law covers all workers and their immediate family with respect to occupational diseases, accidents caused on the job, pregnancies and childbirth, disabilities and old-age pensions. There is also a marriage allowance available, if certain conditions are fulfilled, the amount being based on the worker's average salary.³⁸

A family allowance is also paid to workers who 1) have worked in the same workshop for at least two years, 2) have more than one child, and 3) the children are below 12 years of age, or engaged exclusively in studying, in which case their family allowance is paid up to the age of 18. The amount of the family allowance is 100 Rials per month for each of the children from the second child on.

To solve the many problems encountered in practice, several by-laws have been passed since the time of the passage of the original Social Insurance Laws. However, the Social Insurance Regulations have not achieved general coverage yet as far as the actual workers in the country are concerned. For example, self-employed workers and petty-shop owners are not yet covered under the social security schemes. Moreover, the means and facilities are, in many respects, inadequate.

In 1969, the Farmers Social Insurance Law was enacted on a 5 year trial basis and subsequently a by-law was passed to clarify the respective obligations of the insurer and the insured. The obligations of the farmer are enumerated in Article 3 of the said by-law, as well as Article 2 of the law itself. The law does not provide for an old age pension, does not yet cover all farmers, and like the workers' social insurance laws, the treatment and privileges it offers are not adequate in all respects.

In view of the important impact that a sense of emotional and financial security would have on the behavior of people in general by bringing about a reduction in fertility, it seems apparent that the widening of coverage of the social insurance laws, both in quality and quantity, can play a significant role in achieving the objectives of the Iranian family planning programs.

C. Laws on Descent and Distribution of Property

Under Iranian law, a person can, by will, dispose of one-third of his property without any restrictions. If he decides to bequeath more than

³⁸Social Insurance Law, Art. 71.

that portion, the validity of the will as it applies to that extra portion depends on the consent of the legal heirs. It should be noted, however, that the limitation referred to above affects the transfer of property after the death of the testator. In other words, a person may give away as much of his property as he wishes during his lifetime.

If a person dies intestate, that is, without making a will, certain special rules and principles govern the transfer of his or her estate. As a general rule people inherit from each other either because of blood relationship or marriage.³⁹ People who inherit through blood relationship are divided into three categories: 1) parents, children and grandchildren; 2) grandparents, brothers, sisters and their children; and 3) paternal uncles and aunts, maternal uncles and aunts, and their children.⁴⁰ Members of the lower categories inherit only when there is no surviving member of the higher categories.⁴¹ According to the law, men and sons receive greater shares than do women and daughters. The shares of the estate which are to be inherited by females are equal to one-half of those received by the males.

³⁹Civil Code, Art. 861.

⁴⁰Ibid., Art. 862.

⁴¹Ibid., Art. 863.

VII. CONCLUSIONS AND RECOMMENDATIONS

In view of the foregoing discussions, it seems clear that in Iran, as in many other traditional societies, the impact of laws on the social behavior of the people is not, per se, very definitive. What matters most to the people, especially in areas related to family planning and fertility reduction, is what their religion and cultural heritage have advocated for centuries. This fact should not, of course, dissuade the policy makers of Iran from using the formal machinery of social control in order to achieve the desired goals. There are two reasons why this is so.

First, in areas where the socio-cultural roots of a social behavior are very strong, e.g., polygamy or early marriages, the government should educate the people toward the acceptance of new contemporary rules and values. Here of course laws can be used as one of the most effective means of education. It should be noted in this respect that verbal education or the transmitting of words and values in abstract will not be enough. What is needed, instead, is the realization by the majority of the people that their needs and requirements can be better fulfilled now through the adoption of other, presumably better, concepts and values.

Second, in educating the public, the traditional means and symbols of education should be used. For example, in a village the words of the "mulla," or the village head, have much more effect on the attitude of the people than, say, an official communiqué from the Ministry of Health or an article written by a western-educated columnist.

Recognition of the importance of family planning as a human right is of recent origin. Less than a decade has passed since the Tehran Conference proclaimed that "parents" or "couples" have the "basic human right to decide freely and responsibly on the number and spacing of their children." The emphasis placed on family planning in the Proclamation of Tehran (1968) was reiterated in the General Assembly's Declaration on Social Progress and Development (1969). Article 4 states emphatically that:

The family as a basic unit of society and the natural environment for the growth and well-being of all its members, particularly children and youth, should be assisted and protected so that it may fully assume its responsibilities within the community. Parents have the exclusive right to determine freely and responsibly the number and spacing of their children.

To make the exercise of the right a reality Article 22(b) requires that "the knowledge and means" necessary to enable couples to practice family planning be provided. In light of the foregoing discussions and the U.N. declarations and resolutions on matters relating to population the following recommendations arise out of this study, with due consideration given to the particular needs and conditions of Iran.

A. Sex Education

If parents are going to exercise their right of family planning "freely and responsibly," they should have adequate and reliable knowledge about the human sexual drives and the act of procreation. It is indeed surprising that we educate our children on how all sorts of animals reproduce, but leave them completely on their own to learn, usually in devious and harmful ways, the facts about matters concerning human sexual relations and reproduction. It has been shown in many countries that by providing meaningful and constructive sex education not only are the objectives of the family planning programs advanced, but also, in a much more extended way, the psychological and physical health of the population is increased through the elimination of long-established sexual taboos.

Today, in many countries, including those which are our own neighbors, sex education has become an integral part of the general education to which every child of school age is exposed. It is time that we provided the same kind of knowledge for our own children. The question may arise whether there is any legal barrier against doing this. No real legal barriers exist. There is language in Article 213 (repeated) of the Penal Code to the effect that anyone who imports or produces written material, paintings, pictures, newspaper advertisements, signs, movies, or any other material which offends either public decency or morality has committed a punishable offense. However, it can be convincingly argued today that sex education is no longer repulsive to public decency or morality. Moreover, an exception is provided in the same Article which can be used to exonerate sex education materials completely. The last paragraph of the same Article provides that the anticipated punishment does not apply to cases where the enumerated material is used for scientific purposes. This can obviously apply to materials which are used for educational purposes.

B. Liberalization of Abortion Laws

No issue in the field of family planning is as highly charged with deeply felt emotions and responses as the question of abortion. The moral issue involved in purposely terminating the chances for life of a viable fetus in the face of the dubious desirability of childbirth when it causes psychological or economic hardship for the parents, or simply when the child is not wanted, has not been and is not likely to be resolved one way or the other. The plain fact is, however, that abortion is practiced and as such should be considered a social reality. The question that remains, then, is whether by calling abortion a crime we have been able to eliminate it completely or at least reduce its incidence. The answer is that we have not.

The fact of the matter is that if the need for having an abortion is strongly felt by a pregnant woman, she will have one no matter what the possible consequences of her act would be according to the law. The only difference is that by treating abortion as a criminal act, we deprive the pregnant woman of all the professional care and assistance she should receive and force her to seek help from people who most probably are not as qualified or decent as would otherwise be the case. Thus, she must seek

an abortion under conditions that, because of the lack of adequate tools and facilities, make the operation far more dangerous, and leave her vulnerable to all sorts of abuse. It follows then that it is more logical to admit the existence of certain facts. First, we must accept the fact that if a pregnant woman reaches the stage where she feels, despite strong emotional involvement, that she does not want to have the child, nothing will stop her from having an abortion no matter how serious the punishment provided by the law. Second, the problem is not really solved by stigmatizing abortion and labeling it a crime. Simply put, more critical problems are created. Third, even if the fear of the possible application of legal sanctions were effective in preventing the expectant mother from seeking an abortion, it is more than likely that the unwanted child born under such unfavorable conditions will not have a healthy family life; the trauma of his birth and upbringing is likely to leave deep scars in his personality and diminish his chances to live a happy and productive life. In the light of these considerations, it seems reasonable to follow the example of other nations in this respect and liberalize our abortion laws. Apparently to achieve this same objective, Article 42 of the new Penal Code (1973) provides that:

The following acts are not considered as criminal,

* * *

2. Any surgical or medical operation which is necessary, carried out with the consent of the person concerned or his (or her) parents, guardians or legal representatives, and with due consideration of technical and scientific criteria.

However, no matter what was meant by the drafters of the new Code, Article 42 cannot be construed to have altered the significance of the existing articles of the Penal Code which specifically declare abortion a punishable act. Abortion is still a crime in Iran. It is, therefore, recommended that a new law be passed that explicitly abrogates the relevant abortion articles of the Penal Code and specify that not only critical health reasons, but also socio-economic and psychological considerations give rise to sufficient grounds for abortion, and that abortions be performed under the supervision of one or two specialized professionals.

C. Rectification of the Family Protection Laws

In the context of the socio-cultural matrix of life in Iran, a strong sense of insecurity on the part of the women may act as a powerful incentive for having more children. If this is the case, and I believe it is, then certain basic modifications in the existing family protection laws seem necessary to alleviate the women's feeling of insecurity.

1. Equality in Divorce

I have explained that even with the passage in 1967 of the Family Protection Law, a man can still, albeit through the intervention of the courts, divorce his wife any time he so desires. In other words, the courts cannot reject an application for divorce filed by the husband even though he does not present justifiable cause. On the other hand, the right of the wife to ask for divorce is limited to circumstances and conditions set out in the Family Protection Law. In order to provide for equal opportunity in this respect, it is recommended that the reference in the Family Protection Law to grounds for divorce anticipated in the Civil Code be deleted and identical conditions be provided for man and wife alike.

2. Provision for Sufficient Alimony and Support

The only possible economic means of existence for a divorced woman who has no riches of her own are her "mahr" or dower and alimony to which she is entitled for a short period of time. "Mahr" is the financial obligation which arises on the part of the husband toward the wife when she agrees to marry him. Theoretically, she can ask for the "mahr" any time after the consummation of the marriage. However, the question of actual payment usually arises after a divorce. A few important points should be considered in this respect.

(a) Since the right of a woman to get a divorce is limited to certain cases under the law, and in practice it is very difficult for a woman to get a divorce unless the husband agrees, what usually happens is that the woman gives up her right to dower in return for the consent of the husband. Another factor which works to the favor of the unwilling husband is the unjust legal provision in Article 1169 of the Civil Code to the effect that the children will remain in the custody of their father after the ages of 2 and 7, for boys and girls respectively. The guardianship of the father is automatic and as such does not require the establishment in court of his psychological, ethical or financial ability to raise the children. Since the mother is normally much more attached to the children, in many cases she is willing to relinquish her right to the "mahr" in return for the guardianship of the children.

(b) Assuming for the moment that the wife is able to get a divorce and a decision against the husband for the payment of the "mahr," in practice it is next to impossible to force the husband to abide by his obligations if he is unwilling to do so. Before the passage in 1973 of the new law "Prohibition of Arrest for Non-payment of Debts," it was theoretically possible, and psychologically effective, to threaten the husband with imprisonment if he refused to pay up his debts. Since the passage of the said law, however, it is no longer possible to put a person in jail if he fails to pay his debts. In divorce cases, the new rule has meant that there is nothing a divorced wife can do legally to get her "dower" when the husband is reluctant to fulfill his duties. This is also true in cases of non-payment of alimony, as we shall see in a moment.

(c) According to one of the rules of Islamic law, reflected in the Civil Code, the husband is bound to pay alimony up to the time of delivery if the divorced wife is pregnant, and for three months in cases of "revocable" divorces.⁴² In "definite" or final divorces, no alimony is provided by the law.

Considering the social realities of life and the status of women in Iran, the legal provisions related to alimony seem quite unjust if not inadequate. On one hand, the chances of a divorced woman to remarry, hence the prospects of receiving support in a new family setting, are in most cases next to none. On the other, with the high rate of unemployment, and the privileged position of men in getting jobs, it is very difficult for a divorced woman to find satisfactory and sustaining employment. It should also be remembered in this respect that since women usually stay at home during the period of married life, they lose touch with the employment market, and their skills as professionals, if they have acquired any before marrying, diminish. The legal provision is also unjust because in the context of social life in Iran the woman usually stays at home spending all her energies taking care of the children and the household. Nonetheless, her work is never accounted for as contributing, in any significant way, to the economic well-being of the family. Any possible accumulation of wealth, culturally and legally, is attributed only to the economic activities of the husband outside the home. The net result is that when a woman is divorced after years of "hard labor"--and this is still true for the majority of Iranian women--she cannot claim any part of the property. Under such conditions, the divorced woman will be left penniless, as well as jobless and insecure.

To remedy the miserable reality just described, different measures seem practicable at different levels. The most elementary solution would be, of course, to uplift the status of women, both as human beings and as significant contributors to the economic well-being of the society. The concept of women as being economically productive can be used, logically, to create the need for some basic protective legislation. For example, effective social security coverage could be provided them by making obligatory deductions from the salary of the husband in cases where the woman is not engaged in salaried work. However, before this problem can be solved in a meaningful institutional manner, certain interim measures can be adopted to mitigate the problem.

Women should be educated to realize their legal rights and position in this area. They should be encouraged to forgo the superficial protection of the "dower"--a useless protection which bears the stigma of the times when women were sold for money--in return for a meaningful and realistic alimony agreement which would continue until the divorced wife remarries or gets a job which can sustain her. The law also should be changed to provide

⁴²Civil Code, Arts. 1109 and 1151.

for at least one year of obligatory alimony in cases where there is no alimony agreement and the divorced woman does not have a job, or the pay is not enough to adequately sustain her.

In an attempt to resolve the dilemma created by the fact that no matter how tightly formulated the financial obligations of the husband under the present law there is nothing one can do to pressure him to face up to those obligations, it is suggested that the law of "Prohibition of Arrest for Non-payment of Debts" be modified so as to permit the imprisonment of the husband, who, though financially able, refuses to pay the alimony or the dower. This is not an ideal but rather a necessary measure. In fact, I am inclined to suggest that such a refusal, if made by men who can afford the payment, should be considered a punishable crime. In a legal system where the punishment provided for a simple shoplifting is between 6 months to 2 years of "corrective imprisonment," it would be only just, it seems to me, to provide for the punishment of the husband if he refuses to discharge his financial obligations towards the woman. The imposition of the penalty would, of course, be conditioned on the filing of a complaint by the divorced wife, and would cease if the complaint is withdrawn.

3. Abolition of Polygamous Marriages

According to a particular interpretation of the Koran, as reflected in different articles of the Civil Code,⁴³ an Iranian man can marry four permanent and as many temporary wives as he wishes. The Family Protection Law of 1967, in trying to restrict this right, has provided that a married man who is desirous of marrying again should obtain prior permission from a court. The court will issue the permission when it is satisfied, after proper investigation, that the man is financially able to support the second wife and emotionally capable of treating both spouses justly and in like manner.⁴⁴ If a married man disregards this provision and marries a second time without having first obtained permission from the court, he becomes subject to punishment. However, because the offence is of a personal nature, the prosecution will not begin if the wife chooses not to file a complaint.

The possibility of a man marrying a second wife is discriminatory and under present conditions definitely unjustifiable. In order to create equal opportunities for man and wife, therefore, it is suggested that the law be changed to forbid second marriages except in cases where the wife is an

⁴³The Koranic verse that allows marriage to more than one wife, provides that if the man is unable to treat the wives equally, he should restrict himself to just one spouse.

⁴⁴Family Protection Law, Art. 14.

invalid or unable to produce children, and in these cases a court hearing and permission should precede the second marriage. The two exceptions seem to be necessary under present conditions, the alternative being that the man may force a divorce on his invalid or sterile wife, who in that case would be unable to support herself.

D. Equalization of Other Rights and Opportunities

If the high rate of population growth in Iran is in part related to the relatively low status of women--as we think it is--then every measure that helps ameliorate the present position of women in Iran will also tend to have an impact on the reduction of the population growth rate, as well as on the modernization and democratization of all social institutions in the country.

The present legal system, which is based in large part on Islamic law, creates many inequalities which could well be justified in the context of earlier tribal and patriarchal communities for which that law was originally formulated. But these are quite anomalous when considered in the light of the roles of men and women in modern society and the many comprehensive plans this country has to grant complete social and political equality to women. I do not intend to explain every such inequality here. Suffice it to describe a couple of representative examples. One is the inequality in the sharing of inheritance between males and females. According to the Iranian Civil Code, the shares of the daughter and wife are half the shares of the son and husband, respectively, from the inheritance. This fact can be explained in the context of a special historical epoch, when upon the death of the father the older son assumed responsibility for the upkeep and maintenance of the members of the family, including his sisters. Today, however, when we are trying to redefine the man-woman roles so as to be more consistent with the establishment of a democratic society, such discrepancies cannot be logically maintained.

Another example of inequality is the automatic assumption of guardianship by the father over the children. According to Article 1169 of the Civil Code, the mother has priority in guardianship over children only up to the ages of 2 and 7 for boys and girls, respectively. Beyond these ages, however, the guardianship rests solely with the father. To be sure, it is provided in the law (Article 1173 of the Civil Code) that if because of negligence or moral turpitude on the part of the father there is real fear for physical or emotional safety of the child, the court, on the request of the child's relatives, his appointed guardian or the Attorney General, can take any steps it deems necessary to provide for the guardianship of the child. However, given the realities of social life in Iran, it would be unrealistic to assume that the divorced mother can go to court and easily obtain a decision granting the guardianship to her, even in cases where there is good cause for such a decision. Because Iran is still essentially a traditional, patriarchal society and public attitude still heavily favors a father's guardianship--"because he can better maintain and protect the children"--the courts would be very reluctant to turn this duty over to the mother.

In fact, because the mother is often convinced of the validity of socio-cultural rationale supporting the law, she usually chooses not to go to court to ask for guardianship even in cases where the staying with the father is clearly detrimental to the child. However, with the changing conceptions among certain classes of people concerning the welfare and rearing of children, it is becoming more clear that in many instances the divorced mother is much better qualified to attend to the emotional and intellectual needs of the child. It is therefore recommended that the law concerning the automatic guardianship of the father be rescinded and a new law be passed to provide for the Family Court, which will hear family relations and divorce-related cases, to decide in each individual case, with a view toward the interests of the child, whether the father or the mother should assume guardianship.

I would like to emphasize strongly that in such areas where the inequalities in the rights and opportunities of men and women are directly derived from religious sources, if we try to change the laws without having first prepared the ground for the intellectual and emotional comprehension on the part of the masses of the reason and desirability of the change, we will be confronted with aroused sensitivities and possibly the overt reaction of the people. It is suggested, therefore, that the changes which are deemed necessary, should be effected along with, and preferably a little after, an educational process which will lead the people to accept a different interpretation of religious precepts, or ideas which are thought to be such.

E. Creation of an Adequate System of Social Security

As was pointed out in the preceding pages of this monograph, one of the most important socio-cultural incentives for having larger families is a pervasive feeling of insecurity based on the realistic apprehension that one's future, financially or otherwise, cannot be predicted. In order to counter this pervasive attitude, it is recommended that the scope of the existing regulations of the Social Insurance Organization be expanded, qualitatively as well as quantitatively, to provide for adequate and meaningful coverage for every individual, including every housewife who does not earn a wage. Eventually, I believe, the success of all our efforts on family planning and fertility reduction will depend, in large part, on our ability to alleviate the sense of insecurity which acts as a strong cultural, and in many instances unconscious incentive to have large families. The establishment of a good social security system is one of the ways to achieve this goal.

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