

Family Planning and Progeny as a means of enacting the Maqāsid al-Sharī'ah: A Critical analysis of the positions of Gamal Eldin Attia, Abul Faḍl Moḥsin Ebrāhīm and 'Abdel Raḥīm Omrān

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by

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14 November 2018

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DECLARATION

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Abstract

This study will research one of the objectives of *Maqāsid al-Sharī'ah* (Objectives of the Islamic Law) namely *Ḥifẓ al-Nasl* better known as the protection of progeny as well as family planning.

1. *Sharī'ah* (Islamic Law) has provided the principles that govern any human activity and ensures protection of life, ease and pleasure. The *Qur'ān* and the *Sunnah* (Prophetic tradition) both emphasize flexibility and general principles and guidelines that may be applied to all areas of life. Thus, issues relating to marriage, protection of progeny, sexuality, and even contraception in Islām have also been accommodated in the *Qur'ān* and *Sunnah*. Moreover, contraception in relation to family planning have a long history in Islām and has significance within the broader Islamic ethos of marriage and sexuality.

This study aims to sketch the historical development of *Maqāsid al-Sharī'ah* as well as its formulation and subsequent development.

This study investigates the views of various Muslim scholars on *Ḥifẓ al-Nasl* (Protection of Progeny), and examines Islamic discourse on family planning.

This study critically compares and assesses the views of Gamal Eldin Attia, Abul Faḍl Moḥsin Ebrāhīm and 'Abdel Raḥīm Omrān on the protection of progeny and family planning in relation to the *Maqāsid al-Sharī'ah*. On this basis it offers recommendations for further Islamic discourse on family planning.

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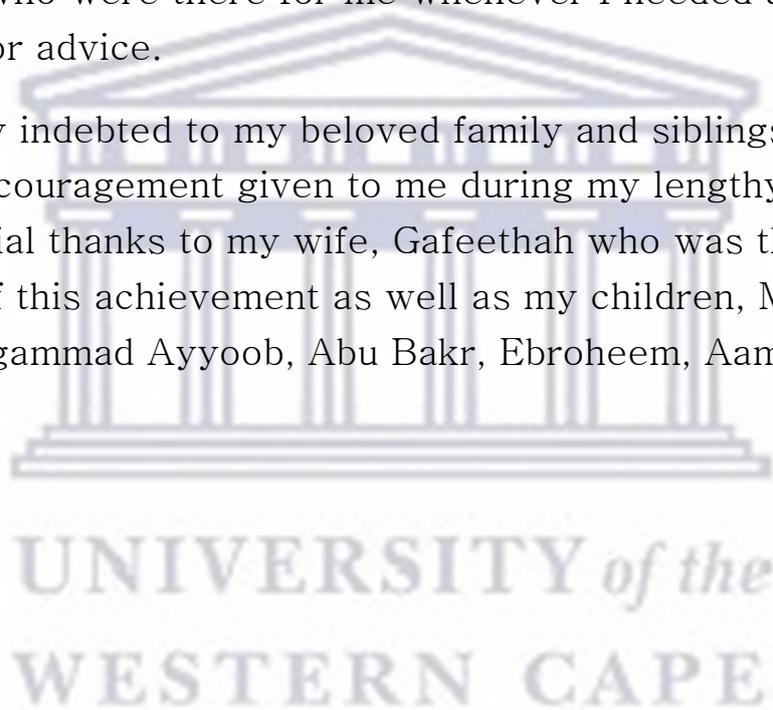
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Dedication

This book is dedicated to my beloved parents, Ḥājjah Shireen Ceres and the Late Ḥājj Moegammad Yusuf Ceres without whom, after the blessings of Allāh, all this would not be possible.

“O My Lord! Bestow your Mercy on them, as they reared me when I was young.” (Qurān: 17:24)



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List of Abbreviations

A.H.-After the Hijrah

ART-Artificial Reproductive Technologies

A.S.-‘Alayhi Salaam (May Allāh’s Peace be Upon Him)

C.E. Christian Era

D. (died)

EHC-Emergency Hormonal Contraception

IUCD-Copper T intra-uterine contraceptive device

IUD-intra-uterine device

IUS-Intrauterine System

MOHFW-Ministry of Health and Family Welfare

NFP-Natural Family Planning

PBUH-Peace and Blessings be Upon Him

R.A.-Raḍiyallāhu ‘Anhu (May Allāh be Pleased with Him)

SAW-Sallallahu ‘Alayhi Wasallam (Peace and Blessings be Upon Him)

SOFDEPI-society for Family Development and Education of the Philippines

WMA-World Medical Association

Glossary

Amaliyyah (practical)

'Alaqah (a clot of congealed blood)

Ādāb (habit)

Aḥādīth (traditions)

Al-akhdh bil-ashbāb (to have recourse to expedients)

Al-'azl (coitus interruptus, withdrawal) *Al-'azl* (coitus interruptus, withdrawal)

Al-biḍ' (part of)

Dārul- 'Ulūm (home of Knowledge)

Darūriyyāt (essentials)

Da'wah (propagation)

Dīnī (promotion and preservation of religious values)

Dunyawī (human interest pertaining to this world)

Dīyah for *nuṭfah* (compensation for the sperm).

Exigencies (*Ḥajīyyāt*)

Fatwā (verdict)

Fitrah (natural character)

Fuqahā (Jurists)

Ghusl (ceremonial bath)

Al-Ghaylah (suckling of a child by a pregnant mother or the practice of having relations with a lactating wife)

Ḥadānah (Custody)

Ḥarām (forbidden)

Ḥifẓ al-māl (preservation of wealth)

Ḥifẓ al-nafs (preservation of life).

Ḥifẓ al-Nasl (protection of progeny as well as family planning)

Al-Ḥifẓ wa al-ibqā' (protection and preservation)

Hujjah al-Islām (proof of Islām)

Iddah (that is the waiting period imposed on a divorced or death of a woman's husband before being allowed to remarry)

Al- 'ilmu bi al-aḥkām al-shar'iyyah al-'amaliyyah min adillatihā al-tafṣīliyyah (knowledge of practical revealed rulings extracted from detailed evidences)

Ijmā' (consensus)

Ijtihād (is a technical term of Islamic law that describes the process of making a legal decision by independent interpretation of the legal sources, the Qur'ān and the Sunnah)

'Itiqādiyyah (theological)

'Iẓām (then it is bones)

Al-'ird (honour)

Jumhūr (that is the decision of the majority of the theologians in the four schools)

Jumhūr al-fuqahā or *'āmmat al-ulamā* or simply *al-jumhūr* (majority of theologians)

Karāha tanzīhiyyah (being less than impeccable)

Kathrah (multitude)

Kathrat al-ḥaraj (excessive hardship)

Khalīfah (successor)

Khilāf al-awla (opposite to what is better or greater)

Khutbah (ceremony)

Madhhab (school of thought)

Makrūh tanzīhī (lighter degree of dislike)

Masāliḥ al-‘ibād (human public interest)

Maṣlahah (Consideration of Public Interest)

Mawaddah (love and affection)

Maqāsid al-Sharī’ah (Higher Purposes/Objectives/Intents of Islamic Law)

Mubāḥ (permitted absolutely)

Mudgha (a foetal lump)

Muftī (a Muslim legal expert who is empowered to give rulings on religious matters)

Muhājirūn (migrants to *Madīnah*)

Al-madhāhib al-fiqhiyyah (schools of jurisprudence)

Nasab (*Progeny*)

Nuṣṣ (text from the Qur’ān or Sunnah)

Nuṭfah (semen)

Al-nafs (self)

Qadar (predestination)

Qillatul ḥaraj mu'īnun 'aladdīn (fewer children would protect against economic difficulties, which in turn is good for piety)

Qiwāmah (assigned guardianship)

Qiyās (analogous reasoning)

Raḥmah (mercy)

Rizq (ability of Allāh to provide for His people)

Ṣaḥābah (Companions)

Ṣaḥīḥ (correct)

Sakan (sense of harmony or repose)

Sharī'ah (Islamic divine law)

Shayṭān (Satan)

Shī'ah (*Shī'ah* Muslims believe that just as a prophet is appointed by Allāh alone, only Allāh has the prerogative to appoint the successor to his Prophet. They believe Allāh chose Alī to be Muḥammad's *Khalīfah* (successor), infallible, the first caliph [head of state] of Islām.)

Al-shirk al-aṣghar (hidden polytheism)

Subḥānahū Wata'ālā (Glory be to Allāh the Exalted)

Sunnah plural Sunan (Prophetic tradition or example, in terms of behaviour and speech)

Sunnī (the Muslims of the branch of Islām that adheres to the orthodox tradition and acknowledges the first four caliphs as rightful successors of Muḥammad.)

Tābi'ūn (followers of the Companions)

Taḥsīniyyāt (Refinements)

Tawakkul (reliance on Allāh)

‘Ulamā (knowledgeable theologians)

Ummah (Islamic nation)

‘Umūm al-balwa’ (inescapable necessity)

‘Ushr (hardship)

Wa’d (infanticide)

Wakālah (it is a process whereby a person empowers another person to perform some task or act on behalf of him)

al-wa’d al-khafī (hidden infanticide)

Yusr (ease)



The Arabic Alphabet

Name	Phonetic Symbol	Name	Phonetic Symbol
ا	alif a	ض	dad ḍ
ب	ba' b	ط	ta' t
ت	ta' t	ظ	za' z
ث	tha' th	ع	`ayn `a
ج	jim j	غ	ghayn gh
ح	ha' ḥ	ف	fa' f
خ	kha' kh	ق	qaf q
د	dal d	ك	kaf k
ذ	dhal dh	ل	lam l
ر	ra' r	م	mim m
ز	za' z	ن	nun n
س	sin s	و	waw w
ش	shin sh	ه	ha' h
ص	sad ṣ	ي	ya' y

Vowels

ا	a	fatha	a
و	u	damma	u
ي	i	kasra	i

Monothongs

ا	ā
و	ū
ي	ī

Chapter 1

1.1 Introduction

There is a need to place the study within a particular social context, and that Muslims need to come to terms with new forms of family planning that were not available previously such as reversible contraception which is categorized into hormonal and non hormonal contraception. Non hormonal contraception includes the Barrier (these are physical barriers that prevent the sperm from coming into contact with the egg, thereby preventing fertilization example, male condom and the female condom) and Mechanical methods (without hormones and with hormones). The hormonal contraception includes the contraceptive pill, the contraceptive patch, injections and contraceptive implant. The irreversible contraception includes Tubal ligation, vasectomy and non-surgical sterilization. More detail will be discussed in chapter 3 of the thesis. Therefore, it places a challenge one needs to respond to.

Ḥifẓ al-Nasl (Protection of Progeny) is one of the core objectives of *Maqāsid al-Sharī'ah* and with it goes the issue of family planning. There has always been a great debate between *‘Ulamā* (Muslim scholars) about the validity of family planning which is argued through the need for the protection of progeny. This study will take the discourse forward using three Muslim scholars involved in the debate.

1.2 Muslim Discourse on progeny and family planning

Muslim discourse on family planning needs to be understood not only in terms of the *Qur’ān* or *Aḥādīth* (plural of *ḥadīth* sayings of the Prophet {SAW}) but in terms of *Maqāsid al-Sharī'ah* and its view on progeny. Procreation in Islām is strongly recommended. Though there are situations and circumstances that litigate the

practice of *al-‘azl*. This would not mean to negate *Tawakkul* (reliance on Allāh). It must be understood that practicing *al-‘azl* does not negate the *Maqāsiq al-Sharī’ah*, namely *al-nasal* (progeny). This will be discussed in more detail in chapter 2 of this thesis.

I am not the first one to address issues around family planning; in fact, there is a vibrant Muslim discourse on family planning. There is difference of opinion with some people who say that we need to move with the times and other conservatives who argue that we need more offspring not taking into account issues around demography. This will be discussed in detail in chapter 3 of this thesis.

1.3 The three selected scholars

In order to demarcate this study, I selected three scholars. The three selected scholars are also involved in the debate around issues of family planning and progeny connected with *Maqāsid al-Sharī’ah*.

Dr. Gamal Eldin Attia is a PhD graduate from Geneva University (1959). He introduced new conceptions into *Maqāsid al-Sharī’ah* focusing on the preservation of progeny. He views progeny different from the traditional approach (Attia 2007: 124). He views *Maqāsid al-Sharī’ah* in a more practical way. He produced the book: *Towards Realization of the Higher Intents of Islamic Law into Maqāsid al-Sharī’ah: A Functional Approach* (Attia 2007: xiii). He elaborates on progeny by emphasising the relation between sexes that eventually leads to procreation and the resultant intend is the preservation of progeny and that is related in achieving harmony, affection and compassion between the couples (Attia 2007: 125–126) . More detail will be provided in chapter 4 of this thesis.

Dr. Abul Faḍl Moḥsin Ebrāhīm hails from the Seychelles. He obtained his M.A. and PhD degrees in Religion from Temple University in Philadelphia and did his basic Islamic studies at the Aleemiyah Institute in Karachi, Pakistan. He completed his Bachelor of Theology Degree at Al –Azhar University in Cairo. His earlier works *Abortion, Birth Control and Surrogate Motherhood – An Islamic Perspective* was published in 1989 (Ebrāhīm 2008: book cover). In his work *an Introduction to Islamic Medical Jurisprudence*, he wrote extensively on the usage of artificial reproductive technologies (ART), and he proposed strongly that infertile couples revert to the (ART) technique. He also has a good analysis of reversible and irreversible contraception. The reason why I chose him is because of his intensive approach to artificial reproductive technologies (ART) in the Islamic set up. He also has a strong Islamic background because he graduated from two Islamic Institutions as well. More detail will be provided in chapter 5 of the thesis.

Professor ‘Abdel Raḥīm Omrān is an authority on family planning. His famous publication is *Family Planning in the Legacy of Islam*. In this work he views family planning from *Qur’ān* and *Sunnah* (sayings and actions of the Prophet {SAW}) as well as the views of opponents and proponents of family planning. He also examines the status of women in Islām. He views the ideas of the various legal schools of jurisprudence as well as the interpretation of twentieth century ‘*Ulamā*. He also looks at procreation and the value of children. He sees chemical therapy, surgical treatment and artificial insemination as solutions to infertility. The reason why I chose him is because of his approach to contemporary terms such as health care, increase on population control, rapid urbanization as well as the usage of modern contraception and examines it from an Islamic point of view. More detail will be provided in chapter 6 of the thesis.

1.4 Statement of the Research Problem

On this basis, the research problem that will be investigated in this study is how the positions adopted by Gamal Eldin Attia, Abul Faḍl Moḥsin Ebrāhīm, and ‘Abdel Raḥīm Omrān on the question as to whether or not family planning contributes to the protection of *Nasab* (progeny) as one of the core goals of *Maqāsid al-Sharī’ah* may be assessed.

I will basically describe, compare and assess their views. I will also assess internal consistency, coherence and whether their arguments can do justice to a particular text in the Qur’ān or *Aḥādīth* as well as taking into consideration the *Maqāsid al-Sharī’ah*.

I will also assess if there is a possibility that these scholars can take the debate forward.

1.5 Methodology

This thesis is a literature based study.

I will collect sources and offer a brief introduction to *Maqāsid al-Sharī’ah* in chapter 2. I will basically repeat what other people say. I will focus on classical texts and make sure these are authoritative. I will also use the inductive as well as the deductive method to analyse the work of scholars.

In chapter 3 I will offer a broad overview on contemporary Muslim discourse on progeny and family planning that will place the positions adopted by the three selected scholars within a broader context.

In chapter 4, 5 and 6 I will offer a brief introduction on each of my selected scholars. I will then offer a detailed description and critical analysis of their views. I will assess their views in terms of internal consistency and coherence and will also make use of the

available secondary literature to engage in a critical conversation on their views within their respective schools of Muslim theology.

In chapter 7 I will give a critical comparison of the views of the three selected scholars and outline some similarities and differences between them.

In chapter 8 I will engage in conclusive remarks and look at the way forward on Muslim progeny and family planning.

1.6 Limitations of the study:

The research deals with three main subjects namely *Maqāsid al-Sharī'ah*, progeny and family planning. The interpretation of the various '*Ulamā*' is very vast if we include both the *Sunni* and *Shi'a* scholars. This study concentrated mostly on the *Sunni* interpretation because the three scholars under discussion Gamal Eldin Attia, Abul Faḍl Moḥsin Ebrāhīm, and 'Abdel Raḥim Omrān all work from a Sunni perspective. I used contemporary scholars which is more applicable to the theme of the thesis. I limited the research to male scholars only due to non availability of female scholars on the subject of *Maqāsid al-Sharī'ah* in terms of family planning and progeny.

Chapter 2

Maqāsid al-Sharī'ah: Historical background and subsequent development of this formulation of the goals of *Maqāsid al-Sharī'ah*.

2.1 Introduction

In this chapter I will discuss Islamic Law and its development into *Maqāsid al-Sharī'ah*.

2.2 A Definition of Islamic law

Islamic law and jurisprudence, being a divine legal system and final revelation to humankind, encompasses all aspects of human needs and is deemed suitable for application till the day of Judgement. In some important aspects the textual evidences from the *Qur'ān* and *Sunnah* only provide general rules and principles thus allowing wide room for *Ijtihād* (process of making a legal decision by independent interpretation of the legal sources, the *Qur'ān* and the *Sunnah*) and considerations of needs and circumstances of different locations and time.

According to Jasser Auda, “the term ‘Islamic law’ is commonly used in literature written in the English language in reference to the four different Arabic terms, namely, *fiqh* (comprehension), *sharī'ah* (a way of life), *qānūn* (principle), ‘urf (custom)” (Ramadān 2005: 28 as cited in Auda 2008: 57). Auda mentions that “*fiqh* is used in the *Qur'ān* and *Ḥadīth* in various forms to refer to understanding, comprehension, and gaining knowledge of the religion in general” (Auda 2008: 57). He alludes to the fact that “since the end of the era of the imāms of the Islamic schools of law/ thought, the word *fiqh* has been typically defined as, ‘knowledge of practical revealed rulings extracted from detailed evidences’ (*al- ‘ilmu bi al-aḥkām al-shar’iyyah al- ‘amaliyyah min adillatihā al-tafṣīliyyah*)” (Auda 2008: 56- 57). He also points out that “*fiqh* is limited to ‘practical’ (*‘amaliyyah*) versus theological

(*i'tiqādiyyah*) issues. 'Detailed evidences' include verses from the *Qur'ān* and narrations of *ḥadīth*". Auda's translation of "the word *Sharī'ah* is similar to Ramadān's translation which is 'a way of life' (Ramadān 1999: 28 as cited in Auda 2008: 56– 57).

Auda considers "the purpose of the Islamic law (*maqāsid al-Sharī'ah al-Islāmīyah*) to be the basic fundamental principle and methodology in his system-based analysis" (Auda: 2008: 55). According to Auda (2008: 55), "the effectiveness of a system is measured based on its fulfilment of its (manmade or 'natural') purpose, the effectiveness of the system of Islamic law is assessed based on its fulfilment of its purpose" (*Maqāsid*) (Auda 2008: 55).

The *Maqāsid al-Sharī'ah* has gradually captured the attention of modern Muslim scholars in solving contemporary issues. *Maqāsid al-Sharī'ah* provides a guideline in *Ijtihād* (process of making a legal decision by independent interpretation of the legal sources, the *Qur'ān* and the *Sunnah*) in order to solve issues creatively by complying with the will of the Lawgiver. *Maqāsid al-Sharī'ah* as an independent discipline can be viewed not only as a general principle of law, but, more importantly, it is also a philosophy of law or a value system governing the Islamic worldview. Ibn 'Āshūr defined *Maqāsid al-Sharī'ah* as: "***The purposes and wisdom observed by the Lawgiver in almost all aspects of legal rulings***". (Ibn 'Āshūr 2001: 251) He also explained the "importance of knowledge of the *Maqāsid al-Sharī'ah* for the *mujtahid* (a person accepted as an original authority in Islamic law) not only in understanding and interpreting the texts but to find solutions to new problems faced by the Muslims not deliberated by the texts" (Ibn 'Āshūr 2001: 183–184).

2.3 Historical background and subsequent development of Islamic law formulation

According to Berghout “the maturation process of Islamic law commenced from the first stage of laying down its foundations and vision during the Prophetic time passing through the second stage that ended slightly after the first century of the Islamic calendar. This was followed by the third stage that lasted for approximately two and a half centuries, from the beginning of the second century of the Islamic era up to the middle of the fourth century. This followed by the fourth stage, that of the slowing down of potentialities and qualities of *Ijtihād*, which according to some scholars lasted, from the end of the fifth century up to our present day” (Berghout 2005: 12). This was known as the period of *ḥlāq* (restriction).

According to Berghout, “during the first three stages of the maturation process, Islamic law has been dynamic and vital in providing solutions to different problems and matters of concern to different Muslim communities and cities of their time. An example of this vitality and efficiency can be seen in the work of a great mind like Imām al-Shāfi’ī (D. 204 A.H.) who was once able to develop two sets of doctrines many different and alternative opinions and rulings to the same issue or matter” (Berghout 2005: 12). Hallaq argues that, “Shāfi’ī himself was well known for having elaborated two sets of doctrine, one during his early life, known as the old doctrine (*al-qawl al-qadīm*), and the other later on in his career, known as the new doctrine (*al-qawl al-jadīd*). And like the three Ḥanafite masters, he too was notorious for holding at times more than one opinion even with the new doctrine” (Hallaq 2001: 123).

It is evident that the capability and quality of *Ijtihād* (independent reasoning) was behind the far reaching achievements of Islamic

law. It was men like Shāfi'ī (D. 204) (*al-Risālah* 2000), Mālik (D. 795 C.E.) (*al-Muwatta'* 1336 A.H.), Abū Hanīfah (D. 150 A.H.) (*Husn al-Taqaḍī* n.d), Ahmad Ibn Ḥanbal (D. 855) (*al-Musnad al-Imām* n.d.), al-Juwaynī (*al-Burhān fī 'Usūl al-Fiq* 1418A.H/1998 C.E.) and al-Ghazālī (D.1111) (*al-Mankhūl fī Ta'liqāt al-'Usūl* 1400) who undertook the task of interpreting the texts of *Sharī'ah* and developing methods and systems of legal reasoning. Thus they left a very rich legacy and wisdom pertaining to Islamic law that Muslims are still presently using in order to get inspirations and derive solutions to some of their existing problems and situations.

2.4 The Objectives of *Sharī'ah* (*Maqāsid al-Sharī'ah*)

“To understand *Sharī'ah*, one really needs to comprehend the objectives of the *Sharī'ah* (Famously known as *Maqāsid al-Sharī'ah*). Indeed, *Maqāsid al-Sharī'ah* allows flexibility, dynamism and creativity in social policy” (*Mumisa 2002, Hallaq 2004*). According to Chapra, “Imām al-Ghazālī (D.1111) states, that ***the objectives of the Sharī'ah is to promote the well-being of all mankind, which lies in safeguarding their faith (dīn), their human self (nafs), their intellect ('aql) their progeny (nasl) and their wealth (māl). Whatever ensures the safeguard of these five serves public interest is desirable***” (Chapra 2000: 118).

According to Nyazee, “Al-Shātībī (D.1388 C.E.) approves al-Ghazālī's (D. 1111) list and sequence, thereby indicating that they are the most preferable in terms of their harmony with the essence of *Sharī'ah*. Generally, *Sharī'ah* is predicated on benefits of the individual and that of the community, and its laws are designed so as to protect these benefits, and facilitate improvement and perfection of human living conditions on earth. This perfection corresponds to the purposes of the Hereafter. In other words, each of the worldly purposes (preservation of faith,

life, intellect, progeny, and wealth) are meant to serve the single religious purpose of the Hereafter” (Nyazee 2000: 165).

“*Sharī’ah* in all its teachings aims at the attainment of good, welfare, advantage, benefits and warding off of evil as well as injury and loss for wealth” (Khan & Ghifārī 1992: 176).

According to Kamālī, “[i]t is generally held that the *Sharī’ah* in all its parts aim at securing a benefit for the people or protecting them against corruption and evil in various degrees. The *Sharī’ah* prescribes issues such as *wājib* (obligatory), *mandūb* (recommended) and *mubāh* (permissible) and the *Sharī’ah* aims at realising the benefit and welfare of humankind. On the other side *makrūh* (reprehensible) and *ḥarām* (forbidden) aim at preventing corruption and evil” (Kamālī 1989). “As a principle, each matter that increases the welfare of people from the *Sharī’ah* point of view is considered as *maṣlaḥah* or utility. Similarly, each matter that decreases the welfare of people from the *Sharī’ah* point of view is considered as *mafsadah* or disutility. This meaning is observed in Al-Ghazālī’s definition of *maṣlaḥah*: ‘...**preservation of Sharī’ah objectives and the Sharī’ah objectives for the (welfare of) creation are five matters. They are the preservation of the religion, life, mind, offspring and wealth. And everything that leads to the preservation of these five foundations is considered maṣlaḥah, and everything that leads to the disruption of these foundations is mafsadah, and its removal is maṣlaḥah**’. (al-Masri, et al. 1999: 24-26).”

“The uppermost objectives of the *Sharī’ah* rest within the concept of compassion and guidance, that seeks to establish justice, eliminate prejudice and alleviate hardship. It promotes cooperation and mutual support within the family and society at large. This is manifested in the realisation of *maṣlaḥah* (public interest) which the Islamic scholars have generally considered to be the all-pervasive value and objective of the *Sharī’ah* and is to all intents and purposes synonymous with compassion. *Maṣlaḥah* sometimes

connotes the same meaning as *maqāsid* and the scholars have used the two terms almost interchangeably” (‘Abdel Kader 2003: 163–174.).

To further shed light on the discussion of the objectives of *Shari’ah*, especially with regard to their application in the promotion of public interest, I will discuss the principles of *maṣlahah*, serving as an important tool to uphold *Shari’ah*.

2.5 The Concept of *Maṣlahah* (Consideration of Public Interest) and *Shari’ah* Objectives

“The concept of *maṣlahah* has been discussed at length by several jurists. However, the two most prominent of them are Al-Ghazālī and Al-Shātībī. The former is considered as the one who first gave the original formation of the concept from its rudimentary form, whilst the latter developed and refined the concept” (Khan 1997: Vol. 14: 155–171; Zarqā 1984). “Al-Shātībī is also considered as the first jurist to write on the subject as a new independent theory, particularly in his book *Al-Muwāfaqāt Fi ‘Usūl al-Shari’ah*” (Shibir 2000). “Other jurists who have discussed the same subject include al-Juwaynī (*al-Burhān fī ‘Usūl al-Fiqh*) (D. 1085 C.E.), al-‘Izz al-Dīn Ibn ‘Abd al-Salām (1262 C.E.) (*Qawā’id al-Aḥkām fī Masāliḥ al-Anām*), Ibn Khaldūn (D.1406 C.E.) (*al-Muqaddimah*) and Ibn al-Qayyim al-Jawziyyah (D. C.E. 1350) (*I’lām al-Muwaqqi’in*)” (al-Masri 1999; Khan & Ghifārī 1992). According to Zarqā, “the institution of *maṣlahah* is derived from the survey and scrutiny of all Islāmic teachings and injunctions available in the *Qur’ān* and *Ḥadīth*” (Zarqā 1984).

“*Maṣlahah* is a juristic device that has been used in Islamic legal theory to promote public benefit and prevent social evils or corruption. Al-Ghazālī defines *maṣlahah* as follows: ‘As for *maṣlahah*, it is essentially an expression for the acquisition of benefit or the repulsion of injury or harm, but that is not what we mean by it,

because the acquisition of benefit and the repulsion of harm represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by maṣlaḥah, however, is the preservation of the ends of Sharī'ah" (Nyazee 2000: 180).

"Al-Ghazālī reinforces the importance of 'preservation of the ends of Sharī'ah' or the objectives of Sharī'ah (including the protection of faith, life, progeny, intellect and wealth) as the fundamental meaning of maṣlaḥah" (Hallaq 2004).

"[A]l-Shātībī (D. 1388 C.E.), in his book, *al-Muwāfaqāt* defines "*maṣlaḥah* as a principle which concerns the subsistence of human life, the completion of [humankind's] livelihood and the acquisition of what his emotional and intellectual qualities require of him, in an absolute sense" (Hallaq 2004). "[T]he human interests embodied in the preservation of progeny, human reason and material wealth are to be treated as of subordinate importance in comparison with human life" (Attia 2007: 19). "Al-Shātībī has in fact singled out *maṣlaḥah* as being the only overriding objective of Sharī'ah which is broad enough to comprise all measures that are deemed beneficial to people, including administration of justice and 'ibādah (worship)" (Kamālī 1999). "Al-Shātībī further classifies *maṣlaḥah* into three categories, which he calls the essentials (*darūriyyāt*), the complementary (*hājiyyāt*) and the embellishments (*tahsīniyyāt*)" (Kamālī 1989).

2.6 Classification of categories according to the concept of *Maṣlaḥah* as listed by Zarqā:

According to Zarqā, "the classification of categories in an Islamic framework into either *ḥalāl* or *ḥarām* is not enough to determine an order of priorities for such projects. Thus, bringing the concept of *maṣlaḥah* into the framework is necessary. The concept can determine the order of priorities in an Islamic framework and thus, entails a ranking of projects into three main categories.

They are:

- Essentials (*Darūriyyāt*)
- Exigencies (*Ḥajīyyāt*)
- Refinements (*Taḥsīniyyāt*)” (Zarqā 1982: 85–105)

The classification of these categories based on the concept of *maṣlahah* has been suggested by Zarqā. Which he divided into divisions which are:

- “Complementaries (*Mukammilāt*) of Necessities (*Ḥajīyyāt*)
- Conveniences (*Rāḥāt*)
- Complementaries of Conveniences
- Refinements (*Taḥsīniyyāt*)
- Complementaries of Refinements” (Zarqā 1982: 85–105)

“Based on the concept of *maṣlahah*, projects could also be classified into five categories. These five categories are related to the protection, improvement and amelioration of [humankind’s] five basic elements namely, religion, life, mind, offspring, and wealth” (al-Masrī: 1999). According to al-Zuḥayli, “these five elements are not equal in importance. Some are more important than others, but each of them is essential. The elements, in order of priority according to the *Mālikiyyah* and the *Shāfi’iyyah*, are:

- Religion (*Dīn*)
- Life (*Nafs*)
- Mind (*Aql*)
- Offspring (*Nasab*)
- Wealth (*Māl*)” (al-Zuḥayli: 1998)

According to al-Zuḥayli, “the [prioritisations] of these five elements by the *Ḥanafīyyah* are as follows:

- Religion (*Dīn*)

- Life (*Nafs*)
- Offspring (*Nasab*)
- Mind (*Aql*)
- Wealth (*Māl*)” (Al-Zuhaylī: 1998)

Afar (1992) describes “the same order as the *Mālikiyyah* and the *Shāfi’iyyah* and classifies projects into one of these five essential elements. On the other hand, Zarqā (1982) equates all the five elements in terms of importance as their maintenance and preservation are all compulsory in Islām. This is another important difference between both of them. It seems [that] the *Shari’ah* does assign different [weights] to these five elements. Al-Qaradāwī (2000) provides a good explanation of the issue and he is of the opinion of the *Mālikiyyah* and the *Shāfi’iyyah*”. Al-Shātibī adheres to the opinion of the *Mālikiyyah* and Al-Ghazālī adheres to the opinion of the *Shāfi’iyyah*.

Ibn Taymiyyah notes that the five essentials proposed by his “predecessors are derived from the punishments imposed on those who violate them, as a result of which he classes them as means of averting harm” (Ibn Taymiyyah 1961, 1966: Vol. 11, p. 343 as cited in Attia 2007: 79). Contemporary scholars like Yusuf al-Qaradāwī (1997: 71–76 as cited in Attia 2007: 84), Ahmad al-Raysūnī (1992: 57, 314 as cited in Attia 2007: 86) and others all of whom propose justice, equality, freedom, and social, economic and political rights among the higher intents of the Law, and limiting them to five is a personal interpretation put forth by Abū Ḥāmid al-Ghazālī who based his enumeration on the prescribed punishment in Islām which were instituted for the purpose of safeguarding these *maqāsid*.

2.7 The categories of *maṣlahah* are briefly discussed below:

2.7.1 *Darūriyyāt* (The essentials or necessities)

“The *darūriyyāt* is defined as interests of lives which people essentially depend upon, comprising the five aforementioned objectives of *Shari’ah*: faith (*dīn*); life (*nafs*), intellect (*‘aql*), progeny (*nasab*), and wealth (*māl*). According to Kamālī (1999), the *darūriyyāt* elements are by definition absolutely necessary for the proper functioning of religious and mundane affairs of individuals. A prominent Islamic scholar, Sa’id Ramadān al-Būṭī affirms that the protection of these five essentials reflects the effective way of preserving *Maqāsid al Sharī’ah* (as outlined in its objectives or *Maqāsid*)” (Hallaq 2004). According to Hallaq (2004), “the essentials are maintained by two means: on the one hand, they are enhanced and strengthened, while on the other, all potential harm that may arise to affect them is averted”. He further argues that “protection of life and intellect are examples of important elements of essentials which can be enhanced by providing proper food, shelter, clothes and education etc” (Hallaq 2004). “On the other hand, any potential harm that might threaten these *darūriyyāt* may be averted by means of penal law or punishment such as prohibition of alcohol, or dumping toxic waste that may cause harm to intellect and life respectively” (Hallaq 2004). “This category includes those projects that are required for bringing into existence and maintaining the very existence of mans’ five essential elements i.e. religion, life, mind, offspring and wealth” (Hallaq 2004). “This includes projects that are necessary for protecting these elements from destruction” (Khan & Ghifārī 1992). “This also includes projects that are necessary for the achievement of the maintenance and protection of these five elements. This is due to an established Islamic legal maxim: Whatever is indispensable for the performance of an obligation is also obligatory” (Zarqā 1982). We could summarise the *darūriyyāt*

(necessities) into main areas as identified by Afar (1992) which is relevant to family planning as follows:

- “Provision of staple foods and what are necessary for their existence and continuity. This includes production of fertilizer, basic agricultural instruments and machines and distribution services.
- Provision of clean water and basic public utilities. This includes establishment of institutions and organisations responsible for this job.
- Basic education. It is obligatory for the government and society to ensure that both knowledge of fard al-ayn (individual obligation) and fard al-kifāyah (social obligation) in each discipline is adequately provided. This will also entail the establishment of relevant institutions such as schools, mosques, universities and other educational centres.
- Production of basic apparel to protect Man’s well-being. This includes summer and winter clothes and costumes for specific work that ensure the safety of the workers.
- Accommodation that are suitable for the local environment and provide protection and rest for the households (family institution). This also includes the production of basic home appliances and furniture.
- Basic transportation and communication means. They are essential for the people to carry out their work and obligations towards themselves, their families and their communities.
- Health services to protect and preserve two essential elements of Man i.e., Life and Mind. The protection of the environment falls under this category.
- Institutions for maintaining and preserving Islāmic law, justice and order in the society. Some of the examples are law councils, courts, police stations, and zakāh institutions.

- National safety and defence. It is obligatory for Muslims to protect their very existence by making preparation in terms of military weapons and instruments. This should be done up to the level that they have the ability to ensure their sovereignty and furthermore, exercise their right in Islām. It is worth mentioning here that projects that fall under this category of *maṣlahah* are considered obligatory to be undertaken in Islām” (Afar 1992: 85–105).

2.7.2 *Hājiyyāt* (The complementary or conveniences)

The *Hājiyyāt* supplements the essential interests and refer to interests which, if neglected, lead to hardship but not to total disruption of the normal order of life. In other words, these interests, other than the five essentials, are needed in order to alleviate hardship, so that life may be free from distress and predicament. “Projects that are not vital to the preservation of the five essential elements, but rather, are needed to relieve or remove impediments and hardship (facing the five elements) in life should fall under this category of *maṣlahah*” (Zarqā 1984: 85). According to Zarqā, “as a general principle, projects that contribute to the advancement of the essential areas and make Man’s activities easier and remove the difficulties facing them are convenience projects”. I will list a few examples mentioned by Zarqā which is as follows:

- “Promotion of physical education to strengthen the body and enhance one’s health (Notice that the protection of life and mind is a necessity).
- Production of quality foods and good clothes.
- Comfortable houses and cars.
- Improvement in transportation and communication.

- Advancement in educational level, etc” (Afar 1992; Zarqā 1984).

An example can also be seen in the sphere of family planning where the *Shari’ah* validated certain cases “such as to preserve a women’s beauty and health for her husband’s continued enjoyment, protect the wife’s health and life from the risk associated with child-birth, to avoid excessive hardship because of an excess of children and to avoid genuine financial difficulty” (Ebrāhīm 2008: 60).

2.7.3 *Tahsīniyyāt* (Embellishments or refinements)

“*Tahsīniyyāt* consists of all things that enhance human morals and manners. Their disruption though neither disruptive to life nor entail hardship but a people devoid of them will be lowered in the estimation of right thinking and right natured people. *Tahsīniyyāt* in this sense denotes the idea of good habits and an Islamic code of morality” (Masūd 1977: 241-244).

“An analogous situation in the *Shari’ah* is the case of necessity of having a *dīn* (religion) for people. To safeguard this very vital *maṣlahah* for man, the *Shari’ah* puts practical measures by which *dīn* [religion] can be nurtured and enhanced. For instance, it ordains Muslims to uphold the laws of obligatory *ibādah* (worship) for consolidation of their sense of religious belief. To enable Muslims to perform the *ibādah* (worship) at all times, even if they are sick, various facilitating rules, such as praying in a sitting position, and performing *tayammum* when ablution is impossible, are allowed as part of *hājīyyāt*. To enable Muslims to achieve more excellence in worshipping Allāh, *Sunnah* prayers are recommended as part of *tahsīniyyāt*” (Masūd 1977: 241-244).

One of the vital needs is housing, the existence of windows to allow for ventilation in the house is complementary to it, and to

equip the house with facilities, such as furniture and beds are required to enhance the quality of the house. A day to day example that illustrates the existence of this hierarchy of human *maṣlahah* in the *Sharī'ah* paradigm is the following:

- “Objects of enjoyment and ornamentation e.g., flowers, perfumes, luxurious items and jewellery.
- Building and housing decorations
- Recreation centres
- Landscaping, etc (Zarqā 1982).

“Many scholars including Kamālī (1989), Chapra (2000), Nyazee (2000), Mumisa (2002) and Ḥallaq (2004) assert that the above classification of *maṣlahah* is related and deep rooted to the objectives of the *Sharī'ah*, aiming to ensure the interests of society are preserved in the best fashion in this world and for the Hereafter. In their view, such classifications imply how the methodology of *maṣlahah* can be used to derive new rulings from *Sharī'ah*, to meet the changing needs of society and to solve various contemporary problems related to social and economic endeavours” (al-Qaradāwī et al. 1998). Thus, the principles of *maṣlahah* can contribute to the establishment of guidelines for moral judgement and balance the individual self-interest with social interest. According to Zarqā (1982), “the discharge of projects under this category is either recommended or permissible in Islām”.

2.8 Rules governing the three categories of *maṣlahah*

The rules governing the relationships amongst the Three Categories of *maṣlahah* are as follows:

- “Necessities are fundamental to conveniences and refinements. Thus, issues under necessities should be preferred to those of conveniences and refinements.

Recommended and permissible projects could not be perceived as having precedence, in any situation, over obligatory matters.

- Deficiency in necessities causes deficiency in conveniences and refinements in an immutable manner.
- Deficiency in conveniences and refinement does not necessarily affect necessities.
- An absolute deficiency in conveniences and refinements may cause deficiency to some extent to necessities.
- Society should keep up conveniences and refinements for the proper maintenance of necessities.
- Refinements are the complement of conveniences whilst conveniences are the complement of necessities.
- If refinements are chosen over conveniences, this practice may be *makrūh* (reprehensible) or *khilāf al-awla* (opposite to what is better or greater). Nonetheless, Conveniences should be given more weight than refinements for evaluation purposes” (Meera, N.D.; Khan & Ghifari 1992).

2.9 What Constitutes Human Interest (*maslahah*)

“According to al-Ghazālī, human *maslahah* has two-faces:

2.9.1 *Dīnī* (promotion and preservation of religious values) or the human interest in the hereafter and,

2.9.2 *Dunyawī* (human interest pertaining to this world)” (Nyazee 1994: 240).

“The two types described above ultimately yield five major purposes of the *Shari’ah* namely religion, life, progeny, and intellect, and wealth. They are called the five basic principles (*kulliyāt al-Khams*)” (Nyazee 2000: 240). “This is the most popular itemization of human vital interest as outlined by al-Ghazālī and elaborated by al-Shātibi. Nevertheless, other scholars,

such as Ahmad al-Khamlīshī (Wujhat Naẓar 1998: Vol. 2, 126), al-Qaradāwī (*Madkhal li Dirāsah al-Sharī'ah* 1990: 62), al-Raysūnī (*Naẓariyyah al-Maqāsid Inda al-Imām al-Shāṭibī* 1992: 47-57, 314), and some other contemporary authorities maintain that such a construction being a result of human *ijtihād* cannot be taken as conclusive (or even exclusive), it can be expanded to include other vital human interest within its ambit as *‘ird* (human dignity), justice, equality, freedom, socio-political and economic right of human beings” (Attia 2007: 83, 84).

2.10 Legislative measures to safeguard the *maqāsid*

2.10.1 Protection and preservation (*al-ḥifẓ wa al-ibqā'*) of necessities (*darūriyyāt*)

“The *Sharī'ah* in order to bring about the realization of the five basic human interests provides two kinds of measures, by way of its rules and regulations:

- That which affirms its elements and establishes its foundations
- That which repels actual or expected disharmony” (Masūd 1977: 241-244).

“This represents both the positive and negative aspects of the *Sharī'ah* rules in many areas that are fundamentally designed to promote and preserve the above mentioned human interests. For instance, religion is secured and promoted by the creation of conditions that facilitate worship and establish other pillars of Islamic ideology and its rules of ethics. On the other hand, things that corrupt religion or disrupt it, such as the propagation of deviationist teachings and superstitious beliefs, are made unlawful” (Abū Yahya 1985: 170-171). “And for defending religion, *jihād* (a regulated form of armed struggle) is commanded, but not terrorism and militancy” (Ḥaneef 2005: 166-174).

“To promote human life, and to endue its creation, subsistence and proliferation, the *Sharī’ah* allows marriage and encourages other measures by which the quality of human life can be enhanced” (Abū Yaḥya 1985: 172). “And to protect human life from destruction, the *Qur’ān* in the most absolute terms condemns killing of a human being without any justification” [as Allāh say in the *Qur’ān*: ***‘And there is (saving of) life for you in the law of equality in punishment, O you people of understanding, that you may become righteous’*** (Qur’ān: 2:179)] (Ḥaneef 2000: 1–8).

“It does not only sanctify the life of a living person but also that of a foetus in a mother’s womb unless its continued existence endangers the life of the mother” (Ḥaneef 2000: 1–8).

“To promote family values (or posterity), the *Sharī’ah* supports the establishment of a healthy family and disapproves celibacy” [as Allāh says in the *Qur’ān*: ***‘And if you fear that you will not deal justly with the orphan girls, then marry those that please you of (other) women, two or three or four. But if you fear that you will not be just, then marry only one or those your right hand possesses. That is more suitable that you may not (incline to injustice)’*** (Qur’ān: 4: 3).] (Ḥaneef 2000: 1–8).

“It also disapproves broken marriages but if a marriage conflict becomes intolerable, the *Sharī’ah* allows separation. To protect family values and the family institution, it categorically prohibits all forms of sexual promiscuity” [Allāh says in the *Qur’ān*: ***‘The (unmarried) woman or (unmarried) man found guilty of sexual intercourse, lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allāh, if you should believe in Allāh and the last Day. And let a group of the believers witness their punishment’*** (Qur’ān: 24: 2).] (Shātībī, et al. 1975: Vol. 2, p. 10).

“To promote human intellect, the provision for education is made mandatory” (Shātībī, et al. 1975: Vol. 2, p. 10). [(The Prophet SAW) said that it is incumbent upon Muslims to seek knowledge (*Ibn Mājah n.d: 39*).] To protect the human mind from corruption,

the consumption of what corrupts it has been made *ḥarām*, such as alcoholic beverages, ecstasy pills and drugs etc” (Shātibī, et al. 1975: Vol. 2, p. 10). [as Allāh says in the *Qur’ān*: **“O you who have believed, indeed, intoxicants, gambling, (sacrificing on) stone alters (to other than Allāh) and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful”** (Qur’ān: 5: 90).]

“The promotion of wealth, its creation and circulation are strongly encouraged in Islām” (Shātibī, et al. 1975: Vol. 2, p. 10). [Allāh say in the *Qur’ān*: **“Those who consume interest cannot stand (on the day of Resurrection) except as one stands who is being beaten by Satan into insanity. That is because they say, “Trade is (just) like interest.” But Allāh has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rest with Allāh. But whoever returns to (dealing in interest or usury) those are the companions of the fire; they will abide eternally therein”** (Qur’ān: 2: 275).] “And to protect an individual’s property, its misappropriation and unlawful acquisition from others’ possession has been declared *ḥarām* and punishable by the *Sharī’ah*” (Shātibī, et al. 1975: Vol. 2, p. 10). [Allāh says in the *Qur’ān*: **“Indeed, the penalty for those who wage war against Allāh and his Messenger and strive upon earth (to cause) corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment”** (Qur’ān: 5: 33).] [And Allāh says in the *Qur’ān*: **“As for the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent (punishment) from Allāh. And Allāh is Exalted in Might and Wise”** (Qur’ān: 5: 38).] (Shātibī, et al. 1975: Vol. 2, p. 10)

2.10.2 Required considerations of exigencies in human life (*Hājiyyāt*)

“This constitutes the purpose behind those provisions of the *Sharī’ah* which provides ease in case of difficulty and which

eliminates or reduces hardship from people's lives'. As Ibn 'Āshūr defines them as: ***“That which the Muslim community needs, for satisfaction of their well-beings and managing their affairs in a better way because the non-existence of hājīyyāt though does not lead to the total disruption of social order, it definitely affects its orderly functioning”*** (Ibn 'Āshūr, et al. 1999: 223). For example, if a sick person is required to fast in the month of *Ramadān*, it may be very hard on him or even be impossible for him to do so. Accordingly, “the *Sharī'ah* affords such a person the option of postponing the days during which he due to illness cannot fast” (Qur'ān: 2:184). In business transactions also, “the *Sharī'ah* has allowed a variety of contracts and trading practices on the doctrine of *'umūm al-balwa'* (inescapable necessity) if an objectionable element in a business otherwise cannot be avoided at all. For instance, a negligible rate of non-*ḥalāl* income that an investor gets by way of dividend is tolerated on account of unavoidable situations” (<http://www.islamicfinancenews.com/glossary/umum-balwa> by Dr Zulkarnain Mohamad Sori, et. al, date accessed 16-10-2016). “Similarly, in the area of human custom and habit (*ādāb*), the *Sharī'ah* allows the incorporation of any local custom into the body of Islamic law in meeting human needs so long as it is not otherwise prohibited. It likewise allows a divorce in case a marriage conflict becomes intolerable” (Abū Yaḥyā 1985: 174-175). [Such dispensation is justified on the bases of a unique feature of legislation in the *Qur'ān*] as explained by the following verses:

“Allāh has not created any hardship over you in matters of religion”

(Qur'an: 22: 78) (Abū Yaḥyā 1985: 174-175).

“Allāh desires ease for you. He does not desire hardship for you”

(Qur'an: 2: 185) (Abū Yaḥyā 1985: 174-175).

2.10.3 Provisions for embellishments (*tahsīniyyāt*)

The *Sharī'ah* also enacts other measures whose aim is “to improve the quality of human life, human conduct and morals, and beautify the conditions under which life is lived. As al-Shātībī defines *tahsīniyyāt* as: **‘Those Sharī'ah provisions whose end goal is to adopt what conforms to the best of customs and to avoid those manners that are repulsive to wise people’** (Al-Shātībī, et al. n.d: Vol. 2, p.11).

“*Tahsīniyyāt* include laws pertaining to cleanliness of body, clothes and environment, the covering of the private parts (*awrah*), the method of getting rid of impurities, the performance of extra acts of worship (*nawāfil*) such as voluntary fasting and charity and so on. Ethics and norms that Muslims should observe during peace and war, and the etiquettes with which they should conform in their habitual acts, such as eating and drinking decorum by which they should abide by in their social encounters, all fall within the realm of *tahsīniyyāt*” (Ibn ‘Āshūr 1999: Vol.2, p. 175–176). In a nutshell all approved measures by which man can advance the quality of his spiritual, moral and material life will continue the provision for *tahsīniyyāt* (attaining excellence in every domain).

“It is clear that the *Sharī'ah* aspires towards establishing and preserving human interest” (Al-Ghazālī 1985: 32–75). The entire teachings of *Sharī'ah* are meant to provide the necessary guidelines, principles, values and ways which are suitable and capable of achieving what is in the best interest and benefit of people. As a practical manifestation and response to the appeals and aspirations of the *Sharī'ah* a comprehensive and rich legal system had been introduced and developed by Muslim scholars and jurists, particularly in the days of glory and balanced civilizational development of the Muslim society. In later stages this guided legal system came to be known as *al-Fiqh al-Islāmī* or what we term today as Islamic law. This legal system, as a human

endeavour that had been guided by the principles and teachings of *Shari'ah* has matured and enriched its legal legacy throughout the course of Islamic history. In its development and maturation process, Islamic law has consumed huge efforts and long stages of systematic and gradual accumulation and wisdom.

2.11 Practical examples in modern life that can enhance better living by applying legislative measures to safeguard the *Maqāsid al-Shari'ah*.

In relation to the preservation of human life, there are millions who die annually as a result of famines and malnutrition and who fall short of the essentials. There are millions of displaced, homeless persons for whom not enough housing is available and are consequently exposed to the bitter cold in winter and the scorching heat in the summer. At the opposite extreme, we find that which goes beyond that which merely enhances the quality of life; there are millions who live lives of extravagance, wastefulness and surfeit, whether on the level of food, clothing or housing.

In relation to preservation of religion, we see people who fall short of the essentials in that they either have no religion whatsoever, or have a kind of theoretical faith but engage in no kind of worship or devotion. On the other hand, we see people who going beyond what could be considered enhancements, take their religion to extremes, using rigid points of view and cutting themselves off from worldly life in the belief that this is what is required of them in order to draw near to Allāh.

“In the preservation of progeny, there are people whose most essential needs are unmet due to circumstances which prevent them from procreation. That can either be due to giving the woman a chance to rest between pregnancies, if either or both

partners have a disease which can be transmitted, to safeguard the woman's health and if the husband's finances are insufficient to support more children" (Al-Sharabāṣṣī 1965: 110-11).

2.12 *Maqāsid al-Sharī'ah* framework and centrality of humankind's interests

2.12.1 *Maqāsid al-Sharī'ah* framework and the Nature of *Sharī'ah*

While the previous analysis indicates significant distinctions in the debate on what *Maqāsid al-Sharī'ah* is, including evidence of how it has expanded and contracted by scholars through the formative and later periods of Islamic law, scholars are generally in consensus that amongst the celebrated achievement of the Islamic intellectual and scientific movement of the past is the invention of the theory of *Maqāsid al-Sharī'ah*. In fact, the *Maqāsid al-Sharī'ah* paradigm was not only an approach for legal thinking and *Ijtihād* but also shown its ability to be a mature and well-structured system for social-cultural and civilizational orientation of the Muslim community to achieve its goal as a vicegerent community or community of vicegerents of Allāh. Looking into the essence and implications of *Maqāsid al-Sharī'ah* from a civilizational perspective reflects its depth as an ethical as well as epistemological system for community transformation and construction.

"*Sharī'ah* means the path to follow Allāh's law. It is comprehensive and its holistic approach guide the individual in most daily matters example, rules and regulations, all public and private behaviour. It has regulations for personal hygiene, diet, sexual conduct and elements of child rearing etc. It also prescribes specific rules for prayers, fasting, giving to the poor and many other religious matters. *Sharī'ah* can also be used in larger situations than guiding an individual's behaviour. It can be used for how an individual act

in society and how one group interacts with another. It can also be used to settle border disputes between nations or within nations. It can also be used to settle international disputes, conflicts and wars. This law does not exclude any knowledge from other sources and is viewed by the Muslim world as a vehicle to solve all problems, civil, criminal and international” (Denis J. Wiechman, et al., *Islamic law: Myths and Realities*) [Http://www.Muslim – Canada.Org/Islām Myth](http://www.Muslim-Canada.Org/Islām%20Myth). Date accessed 16/07/2016

In fact, “*Sharī’ah* is considered as an entire way of life that includes, among others, the creed and belief system, the legislations and rules, the ethics and morals and the entire worldview of Islām. According to Berghout, Islamic law deals with rulings and judgements pertaining to practical actions and deeds of Muslims; such as worship, transactions of all sorts, crimes and punishments, family and inheritance, international relation and legal policy. *Sharī’ah* on the other hand deals with a broader range of issues that include belief, moralities, virtues and principles of guidance, economic, political, cultural and civilizational matters that concern not only the Muslim community but the entire humanity” (*Berghout 2005: 18*).

According to Berghout, “within the general Qur’ānic framework, the *Maqāsid* idea appears to be more than a mere theory for legal theorization and *Ijtihād*”. According to him it entails the following:

- A framework for “theoretical and practical knowledge of worship and spiritual advancement,
- Theoretical and practical knowledge of intellectual development,
- Theoretical and practical knowledge of ethical and behavioural development,
- Theoretical and practical knowledge of civilizational progress and growth,

- Theoretical and practical knowledge of social change and *da'wah* (propagation) transformation,
- Theoretical and practical knowledge of *ta'aruf* (acquaintance) and civilized exchange and interaction,
- Theoretical and practical knowledge about *Shuhūd* (testimony), *Qudwah* (exemplary) and *Qiyādah* (leadership)” (Berghout 2005: 17).

“Adopting the idea of the purpose of humankind in this world, which is worshiping Allāh, and integrating it into the *Maqāsidi* framework, would rejuvenate its function as an approach for intellectual and civilizational renewal of the *Ummah*. Thinking along these lines would enhance the idea of developing methods of dealing with those who are addressed and targeted by the *Sharī'ah* (*al-Mukallafūna Bil-Kitāb*) responsible for obeying the *Sharī'ah*. In this respect, the study of the *Mukallaf* (accountable person) as an individual and society becomes of more merit and interest on the effective and proper implementation of *Sharī'ah* rulings and injunctions. In other words, there is a need to study the social context of the *mukallaf* which implies the possibility of developing the above sciences within the framework of *Maqāsidi* especially in its integrated and broad sense. In line with this, there is a need to consider adopting the various techniques, methods and tools used in human, social and behavioural sciences as long as they don't contradict the essence of the *Sharī'ah* or the general norms and principles of Islām. This move would provide an opportunity to develop a more dynamic and effective *Maqāsidi* system for civilizational *Ijtihād*. Additionally, the review of the *Maqāsidi* framework and the integration of the knowledge and principles pertaining to man's purpose in this world would create a more integrated approach for dynamic *Ijtihād*” (Berghout 2005: 17).

Although the idea of *Maqāsid* was mainly geared towards legal thinking and *ijtihād* in its *Usūlī* and *Fiqhī* context, one still can sense its comprehensive nature as an approach and a framework for civilizational contemplary *Ijtihād* and practice. Therefore, there is a need to revisit the idea of *Maqāsid* and re-invent it in a broader perspective that would focus more on civilizational and contemplary aspects of the text of *Sharī'ah*. In this respect, the framework of *Maqāsid* and its approach should include concepts, principles and guidelines pertaining to man and to the universe as a source of knowledge and laws.

According to Berghout, “it becomes very clear that we are currently more than any time in need for creative civilizational *Ijtihād* (process of making a legal decision by independent interpretation of the legal sources, the *Qur'ān* and the *Sunnah*) that can renew the originality, vitality and efficiency of Islām and its *Sharī'ah*. It is our responsibility to undertake the task of providing the necessary conditions, means, instruments, resources and skills that are required in bringing up new scholars and jurists who can renew the dynamism and vitality of Islamic law taking into consideration the new global civilizational realities of our time” (Berghout 2005: 15).

Pondering thoroughly over the teachings of Islām and the development of Islamic civilisation ever since its advent shows the extent to which the *Sharī'ah* (the revealed law) indelibly influenced the creed, worldview, personality, culture and social fabric of Muslims. This impact of *Sharī'ah* is not only seen in certain areas of Muslim life but touches a very wide spectrum of activities.

2.12.2 *Sharī'ah* and humankind's interests

“Attributing such an importance to *Sharī'ah* reflects the significance of its objectives. In fact, all objectives of *Sharī'ah*

revolve around man's interest in this world and in the hereafter. In this respect, the most important thing that needs to be clarified is the role of *Maqāsid* in any new legal, intellectual and civilizational renewal of the *Ummah*. Surveying the legal texts pertaining to the issue of the objectives of *Sharī'ah* reveals that one of the main goals of *Sharī'ah* is to serve and protect the interests of people. Indeed, Islām as a monotheistic universal religion has always been an advocator of human public interest (*maṣāliḥ al- 'ibād*)" (al- 'Āmidī 1914). "In the framework and spirit of the *Sharī'ah* (The divine law) of Islām, public interest and the well-being of humanity, be it in this world or in the hereafter, becomes one of the most vital issues of more merit and value. It is clear that the entire *Sharī'ah* of Islām runs through the vein of human interest. Whatever is for the benefit and success of humankind in this world and in the hereafter the *Sharī'ah* always supports it and provides the necessary means, principles and values to establish and preserve it" (al- 'Āmidī 1914).

One can take the example of a "man [or woman] in this world who strives to achieve justice, equality, dignity, honour, freedom, tolerance, mercy, peace, security, stability, moderation and co-existence and balance in human life the *Sharī'ah* of Islām does not only speak of these values but also sets the necessary guidelines, principles and ways that can ensure their realization in human context and reality" (Berghout 2005: 16). To support this claim Berghout (2005: 16) uses the following verses of the *Qur'ān*:

"Verily! Allāh command that you should render back the trusts to those whom they are due; and when you judge between humankind, that you judge with justice" (Qur'ān: 4: 58) (Berghout 2005: 16).

"We sent you not, but as a mercy for all creatures" (Qur'ān: 21: 107) (Berghout 2005: 16).

“If anyone killed a person not in retaliation of murder or (and) for spreading mischief in the land, it would be as if he killed the whole humankind. And if anyone saved a life, it would be as if he saved the life of the whole humankind” (Qur’ān: 5: 32) (Berghout 2005: 16).

“O you who believe! Enter into peace wholeheartedly; and follow not the footsteps of the Evil one” (Qur’ān: 2: 208) (Berghout 2005: 16).

“And indeed We have honoured the Children of Ādam, and We have carried them on land and sea, and have provided them with lawful good things and have preferred them above many of those whom We have created with a marked preferment” (Qur’ān: 17: 70) (Berghout 2005: 16).

“Allāh does not forbid you to deal justly and kindly with those who fought not against you on account of religion nor drove you out of your homes. Verily Allāh loves those who deal with equity” (Qur’ān: 60: 8) (Berghout 2005: 16).

“O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily the most honourable of you with Allāh is that believer who has At-Taqwa (God consciousness)” (Qur’ān: 49:13) (Berghout 2005: 16).

“But seek, with that wealth which Allāh has bestowed on you, the home of the hereafter, and forget not your portion of lawful enjoyment in this world; and do good, as Allāh has been good to you, and seek not mischief in the land; for verily Allāh loves not those who do mischief” (Qur’ān: 28: 77) (Berghout 2005: 16).

According to Ebrāhīm, “Islamic medical jurisprudence can play a key role in challenges faced by modern medical technology for example, with regards to the preservation of health, getting rid of harmful things and safeguarding against harm” (Ebrāhīm 2008: 29). “Jurisprudence takes into consideration the vulnerable condition of the patient and accords him/her certain concessions in matters

pertaining to the *farā'id* (obligatory acts of worship)” (Ebrāhīm 2008: 29).

“The *Shari'ah* of Islām hasn't not only made [humankind]'s interest as its main objectives but also has provided us with the core characteristics of its vision and way of establishing this interest and applying it to human context. According to many Qur'anic verses and prophetic traditions, the *Shari'ah* of Islām is the *Shari'ah* of mercy, lightening and ease. Most of the *Shari'ah* commandments are meant to remove burden and yokes from people. They are intended to ease and lighten the sufferings and difficulties that people encounter in their life” (Ibn Nujaym 1980). The following verses by Berghout shed some light on this point. Allāh says: **“For (the Messenger of Allāh) he commands them what is just and forbids them what is evil; he allows them as lawful what is good and prohibits them from what is bad and impure; He releases them from heavy burdens and from the yokes that are upon them”** (Qur'ān: 7: 157) (Berghout 2005: 17).

“Allah intends every facility for you; He does not want to put you to difficulties” (Qur'ān: 2: 185) (Berghout 2005: 17).

“Our discussion about [humankind]'s interest as the main purpose of *Shari'ah* it is important to refer to the views of some classical Muslim scholars. Indeed, anything that falls within the framework of protecting human public interest (*maṣāliḥ al- 'ibād*) constitutes the core of the *Shari'ah* objectives (*Maqāsid al-Shari'ah*)” (Al-Juwaynī, et al. 1399 A.H.: 180–185). Imām al-Ghazālī splendidly argues that: **“Maṣlaḥah (public interest) is the protection of the objectives of the Law (shar') which consists of five values: preservation of religion, of life, of intellect, of progeny and of wealth. What assures the protection of these five values is maṣlaḥah, and whatever leads to its lost is considered mafsadah (mischief) and its prevention and removal is maṣlaḥah”** (al-Ghazālī 1870: 286–287).

2.13 Chapter Summary

In this chapter I explained the *maqāsid* framework and how it can be enacted within a contemporary context without violating the *Sharī'ah*, specifically to family planning and progeny. The historical background of *Sharī'ah* law was explained starting from its maturation stage, the first stage until the fourth stage and the slowing down of the *ijtihād* process.

An explanation of the objectives of the *Sharī'ah* together with the concept of *maṣlaḥah* was expounded on. The significance of the concept of *maṣlaḥah* and doctrine of *maqāsid* (objectives) *al-Sharī'ah* as put forward predominantly by al-Ghazālī and al-Shātībī which have a great impact on the inductive and deductive procedure in an Islamic framework was expanded on and how effective it can be used in modern time. The classical and contemporary scholars' work was used in this regard to illustrate the function of Islamic law without violating the *Sharī'ah*. A descriptive method was followed to discuss the definition and classification of issues according to the concept of *maṣlaḥah* in terms of the Islamic jurisprudence. The rules governing the relationships amongst the three categories of *maṣlaḥah* were mentioned, as well as to what constitute human interest (*maṣlaḥah*) and legislative measures to safeguard the *maqāsid*.

Inductive and deductive methods were applied as well as the analytical method to thoroughly examine and analyse the literature of Muslim scholars related to the topic.

Information gathered in this chapter will be used in chapter three where I will discuss how family planning can be enacted within *Maqāsid al-Sharī'ah*; namely progeny. The focal evidences will be the *Qur'ān* and *Sunnah* as to whether or not family planning can be

practiced, views of the theologians and jurists on progeny and family planning will be analysed and assessed.



Chapter 3

Islamic discourse on family planning and progeny

3.1 Introduction

In this chapter I will discuss the Islamic debate on family planning and progeny and how it is interrelated into the Maqasidic framework. I will discuss progeny in Islām as a fundamental component to support procreation of the species and its co-existence in personal, spousal, family and societal levels.

3.2 *Maqāsid al-Sharī'ah*: as they pertain to progeny

The family in all civilised societies seem to be the nucleus of society and has always been among the most important links in human organisation throughout history. The family is unequalled in terms of importance to any other modern social unit including political parties, unions and societies.

“Imām al-Ghazālī and Al-Shāṭibī who have written on the subject of *maqāsid al-sharī'ah* have tended to view the preservation of progeny (or the species) as the primary intent of marriage, though it may also have other, secondary intents” (*Al-Alim 1991: 403-414, 459-465*).

I will aim to examine the *maqasid* within what is described by Attia as the framework of the four realms of the individual, the family, the *Ummah* and wider humanity and list each of these intents separately among the *maqāsid al-sharī'ah* pertaining to the realm of the family which will become clearer in this chapter. This will pave the way to explain the disparity in points of views.

3.3 Progeny in Islām

3.3.1 The *maqāsid* as pertaining to the family: –

“Ordering the relations between the sexes
 Preservation of the progeny
 Achieving harmony and affection
 The preservation of family lineage
 Preservation of personal piety within the family
 Ordering the institutional aspects of the family
 Ordering the financial aspect of the family” (Attia 2007: 125–130).

An example of procreation which results in these Allāh-given dispositions is the sexual instinct which ensures the preservation of the species and which is found not only in humankind, but in animals and plants as well. Such observations lead to the conclusion that the preservation of the various species is among the intents of creation. This intent of creation is paralleled in the intents of the Law by the restriction of sexual relationships to the contexts of marriage, the encouragement of procreation, the granting of sympathy, affection and compassion between spouses, as well as the safeguarding of family lineage and honour which are dealt with in the contexts of our discussion.

3.3.2 Ordering the relations between the spouses

The objectives of the Law (*shar'*) have been keen to confine relations between the sexes within a single, organised framework, namely, marriage, and have established detailed rulings relating thereto. If complete relations between the sexes lead to procreation, thereby helping to fulfil the intent of preserving progeny, then Islamic law affirms this intent by declaring the legitimate form of such relations to be one that exists between two individuals of opposite gender, since this alone will lead to procreation. In order to achieve the intent of preservation of progeny, Islamic law prohibits both homosexual and lesbian

relationships, as Allāh states, *“And among His signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between your affection and mercy. Verily, in that are indeed signs for a people who reflect.”* (Qur’ān: 30: 21). Allāh also prohibits the burying alive of female infants and abortion, as Allāh states, *“Kill not your children for fear of want, we provide sustenance for them and for you”* (Qur’ān: 17: 31), and treats procreation as one of the requirements of the marriage contract, as Allāh states, *“And Allāh has made for you mates from amongst yourselves and made for you, out of them, children and grandchildren”* (Qur’ān: 16: 72), therefore making it impermissible for the man to engage in coitus interruptus without the wife’s consent. My view will be discussed after analysing the three selected scholars, in addition to the views of the classical scholars, as to the permissibility of coitus interruptus without the wife’s consent.

3.3.3 Preservation of the progeny

Ibn ‘Āshūr notes that “the male in the Ummah must be protected from emasculation, and not refrain from relationships with women by remaining single” (Ibn ‘Āshūr 1978: 81). He also mentions that “females must be protected from undergoing hysterectomies since they involve the removal of the organ by means of which they give birth, as a method of contraception preventing pregnancy by hindering the process of conception” (Ibn ‘Āshūr 1978: 81). Procreation is classed among the essentials overall for the preservation of the species, the achievement of this intent in individual cases may still be classed as the exigencies. Some husbands and wives may not be distressed to fall within the category of those referred to in the *Qur’ān* when it states that Allāh, *“causes to be barren whomever He wills.”* (Qur’ān: 42: 50). And for those who do find this to be a source of hardship, Islamic law provided the option of divorce and remarriage or polygamy in order to meet this need.

3.3.4 Achieving harmony and affection

In order not to confine the relationship between the sexes to a mere physical connection, Islamic law alerts us to the fact that among the *maqāsid* of this relationship is for each of the partners to find repose in the other, and that there be affection and compassion between them.

“In order to achieve this intent, Islamic law has issued rules concerning living together as a couple in kindness and harmony, rules of etiquette governing sexual intercourse, as well as other rulings which provide the possibility of a family atmosphere filled with warmth, tenderness and refined humankind sentiments”.

“Some of the rulings referred to here, represents the bare essentials, such as a sense of harmony or repose (*sakan*) while others, such as those having to do with an atmosphere of affection (*al-mawaddah*) fall into the class of exigencies (after all, are all marriages based on love?), or as in the case of compassion (*al-rahmah*), in the category of enhancements” (Al-Alim 1991: 412–413).

3.3.5 Preservation of family lineage

“*‘Usūl* scholars who viewed the preservation of family lineage as belonging to the universals of Islamic law classed it among the essentials. Ibn ‘Āshūr concludes that it should be classed among the exigencies despite his appreciation of the opposing points of view.” (Ibn ‘Āshūr 1999: 81–82). Ibn ‘Āshūr is the first scholar to have stated that if the preservation of human lineage is the maintenance of the ability to ascribe offspring to their parents –for the sake of which regulations concerning marriage have been instituted and adultery prohibited with a legally prescribed punishment for those who engage in it. He states that the five universals [that is the five essential *maqāsid* of Islamic law] allow for the preservation of the interests of the *Ummah* alongside the

interests of its individual members. Ibn ‘Āshūr makes it clear that preservation of the family lineage in this sense, in view of what occurs when it is undermined, relates to the exigencies and enhancements as well” (Ibn ‘Āshūr 1999: 80–83,139).

3.3.6 Personal piety within the family

The importance of personal piety, striving to pass down such piety from one generation to the next is the responsibility of the head of the family. It is his duty to provide this kind of nurture. As for the success or failure of his efforts depend on the responses of his wife and children, who are personally responsible for their own choices.

“It was customary for prophets to call those closest to them, their wives and their children to embrace faith in Allāh and to ask Allāh to rightly guide them. We see this clearly in the stories of Prophet Ebrāhīm (A.S.) [Abraham PBUH] and Prophet Ya’qūb (A.S.) [Jacob PBUH]. Some of the prophets were unsuccessful in this endeavour, among them Nūḥ (A.S.) [Noah PBUH] and Lūt (A.S.) [Lot PBUH] Islamic legal rulings impose this responsibility on the head of the family from its very inception by requiring him to choose a mate with religious sensibility and to instruct his wife and children in matters of doctrine, worship and morals. For this reason, a generous reward is promised to those who fulfil this obligation as *Allāh* says in the *Qur’ān*: “***And order thy family to pray, and persevere therein***” (Qur’ān: 20:132). The results to which the loss of personal piety in the family can lead by way of corruption, fragmentation and poor upbringing for the generations that will bear responsibility for the future” (Attia 2007: 129,130). We hold the view that the preservation of personal piety in the family should be classed among the essentials.

3.3.7 Ordering the institutional aspects of the family

The family as an institution is viewed as permanent rather than temporary, and relations among those members are ordered by rights and responsibilities. The family is led by its head who is assigned guardianship (*qiwāmah*) and who consults with his wife concerning the family's affairs. (Omrān:130) The noun *qiwāmah* as used here is based on the Qur'anic verse which states that ***“men shall take full care of women with the bounties which Allāh has bestowed more abundantly on the former than on the latter, and with what they may spend out of their possessions”*** (Qur'ān: 4: 34). In this context, the spouses follow an approach laid out by Islamic law for arbitration in the event of a dispute between them and for severing the marital bond if the dispute becomes insoluble. This organization is not restricted to the nuclear family, consisting only of the parents and their children, but applies equally to what has come to be termed the extended family which includes relatives and in-laws. Islamic law has established arrangements for relations among all these various parties.

“Islamic law contains detailed rulings pertaining to emotional and social relationships, including the husband's rights over his wife, the wife's rights over her husband, parent's rights over their children and children's rights over their parents, as well as relatives rights over one another. Such rulings also cover areas such as prohibitions both permanent and temporary, rulings pertaining to the waiting period for a divorced woman or widow before she may remarry and guardianship of orphans” (Attia 130: 2007).

3.3.8 Ordering the financial aspect of the family

“Islamic law encompasses the most explicit, detailed financial aspects of the family, a feature by virtue of which Islamic law

surpasses all other systems, both those which preceded it and those which have emerged since the advent of Islām, not limiting itself to ordering the family's social and emotional affairs. Hence, we have, for example, the dowry which the groom commits himself to provide for the bride and the amount of which is written into the marriage contract, followed by expenses of various types which are to be provided for wives, children, divorced wives, nannies, wet nurses, relatives; the manner in which an inheritance is to be distributed, wills made out on behalf of next-of-kin, family endowments, the requirements that the male relatives of someone who has committed involuntary manslaughter pay the blood money on his or her behalf, rulings pertaining to guardianship over money" (Attia 2007: 131).

"In order to explain the Islamic perspective on family planning, contraception and abortion, it is necessary to have a broader grasp of some of the fundamentals of Islām, which forms part of some of the essential Islamic teachings about Allāh and humanity and the basis for an Islamic approach to address ethical concerns and contemporary challengers of population growth, family planning and human well-being" (Ejibi 2006: 132).

"It is not uncommon for family planning programs to become politicized in Muslim societies" (Donohue and Esposito 1982 16-17). "In recent history, opposition groups in a number of countries have rejected their governments' organized family planning program as a political move, invoking Islām in support of their position. History has shown that pragmatism eventually prevails. Within days of the Islamic revolution in Iran, for example, Iran's new leaders dismantled the country's family planning program on the grounds that it was a Western plot. Ten years later, as Iran struggled to provide for the basic needs of its growing population, its Islamic government reversed the policy and established one of

the most successful family planning programs in the developing world” (Donohue and Esposito 1982: 16–17). “It is heartening to note therefore that Islām takes consideration in the promotion of the mother and the child through the reproductive health and family planning program of the government” (Tahi 1977: 293).

“A *fatwā* (legal verdict) was announced to determine the position of Islām on family planning. The Society for Family Development and Education of the Philippines SOFDEPI (2009) introduced birth spacing which “promotes the health of the mother and the child” and therefore ‘enables the couple to ensure the well-being of the family, education of the children, and quality life’. “The legal verdict (*Fatwā*) accepts vasectomy and *al-‘azl* (withdrawal) and other modern methods of family planning in extreme situations as endorsed in a verdict by Shaltout the former Grand Imām of Al-Azhar on contraception, on an individual basis for health, social and economic reasons and rejects the idea of enforcing family planning by promulgation of a national law committing the whole nation to restrict childbearing” (Shaltout 1959: Al-Azhar Press as cited in Omrān 1992: 226). Due to the *fatwā*, “The Society for Family Development and Education of the Philippines, Inc. did not hesitate to train a team of trainers and spokespersons in every province in the Autonomous Region in Muslim Mindanao (ARMM) on Reproductive Health and Family Planning. They developed training materials. They involved the *‘ālimāt* (women religious organisation), the community leaders and the health providers in the dissemination of the information on reproductive health and family planning. They involved everybody including the *madāris* (schools) and the Society for the Family Development and Education of the Philippines (SOFDEPI). Thus, the whole community was able to correct the misinformation on family planning methods and the negative attitude of some of their Muslim brothers and sisters towards family planning programs of

the government. The organization is addressing the lack of Family Planning services” (‘Uthmān 2009).

The *Qur’ān* views marriage as sacred and identifies the husband and wife as the principals of family formation (Omrān 1992: 13)

3.4 Islamic faith and family planning

“There are many misconceptions in the Western world about Islām. For example, women are not allowed to leave their homes. They are forced into arranged marriages, could be executed for adultery and are prohibited to practice family planning” (al-Sharabāṣṣī 2013: 45). Islām permits women to work in an Islamic environment, observing the rules of the *Shari’ah*. There are some instances where it is necessary on them to assist men in their responsibilities if it became difficult on men to fully sustain the family. This is why they go out and seek for a job in order to satisfy the basic needs of the family.

“Societies are dynamic and so are Muslim societies throughout the world. Islām supports family planning, and many Muslim women work, participate in public affairs, and make free and informed choices about their reproductive health. Many Muslim countries in the world, from Africa, Europe, the Middle East, and South East Asia have governments that support family planning programs, although there is tremendous need for these services to be sensitized among those who have not yet recognized the practice. According to Mistry” (Mistry 1999: Vol. 3, pp. 1-33), “Islām does not have one central authority for making religious interpretations. Islamic texts do not generally oppose family planning. In fact, there exists a long history of contraception in Islām. From pre-Islamic times to the Prophet Muḥammad’s (SAW) time where his Companions are said to have used *al-‘azl* (coitus interruptus)” (Mosha, et al. 2013:

<https://bmcpublihealth.biomedcentral.com/articles/10.1186/1471-2458-13-523>)

Date accessed 20/02/2018

“Muslim communities believe that there are many misconceptions about family planning and the level of awareness is low” (Ministry of Health and Family Welfare MOHFW: 2001). “Family planning and children spacing are not only allowed, but were also practiced by the Companions during the Prophet’s (SAW) lifetime. The benefit thereof is to give room for the mother to fully recover from the previous childbirth and to allow the infant to enjoy the company and care from the mother” (Khalifah 1959: 41-49).

3.4.1 Level of knowledge on family planning among Muslims

Islām is strongly pro-family and regards children as a gift from Allāh (Ṣaḥīdullah 1962). Muslim sexual ethics forbid out of wedlock sex. It’s teachings on birth control should be understood within the context of husband and wife. There is no single attitude on contraception within Islām; however, the majority of the Jurists of the classical schools of Islamic law permit it.

According to a BBC article the following has been quoted:

“Resistance to birth control was reflected in 2005 when a conference involving 40 Islamic scholars from 21 countries urged fresh efforts to push population planning and better reproductive health services. Although all the participants were in favour of promoting the use of contraceptives for married couples, they were reluctant to make it part of their joint declaration for fear of reprisals from the more conservative Islamic scholars in their respective countries”.

<https://www.bbc.co.uk/religion/religions/islam/islamethics/contraception.shtml>

Date Accessed 23/10/2019

According to Rai, “Islām as a social system, culture and civilization, considers the family as a basic unit of the society (Rai 2008). Therefore, the *Qur’ān*, view marriage as sacred and identifies the husband and wife as the principle source of family formation.

The *Qur’ān* has a number of references to marriage, including the following:

“And one of Allāh’s signs is that He has created for you mates from yourselves that you may dwell in tranquillity with them, and has ordained between you Love and Mercy” (Qur’ān: 30: 21).

“It is He who created you from a single soul and there from did make his mate that he might dwell in tranquillity with her” (Qur’ān: 7:189).

“And Allāh has made for you mates from yourselves and made for you out of them, children and grandchildren” (Qur’ān: 16:72).

My understanding of these verses suggest that tranquillity is an important purpose of family life and is achieved through marriage. While procreation is expected in marriage to maintain the human race, sexual relations in marriage need not always be for the purpose of having children. Other religions imply that procreation is the exclusive purpose of sexual relations. From the Islamic point of view, when procreation takes place, it should support and endorse tranquillity rather than disrupt it. Family Planning helps families achieve tranquillity by having children when they want them and when they are prepared to have them. Because of the importance of family in Muslim societies, legal schools from various Islamic schools of jurisprudence and from various locales have given considerable attention to contraception.

3.4.2 Justification for family planning in Islamic Jurisprudence

“Islām as a religion of moderation upholds the principles of ‘liberty’ or ‘permissibility’ that is; everything is lawful unless

explicitly designated otherwise in the *Qur'ān* or in the Prophet Muḥammad's *Sunnah* (tradition)" (Maḥzarul Islām and Saidul Ḥasan: 2000: 513–526). "The *Qur'ān* does not prohibit birth control, nor does it forbid a husband or wife to space pregnancies or limit their number, the silence of the *Qur'ān* on family planning is not a matter of omission by Allāh, as he is 'All-Knowing' and Islām is understood to be timeless. Therefore, Muslims must refer to the *Sunnah* of the Prophet (SAW) as the second source of Islamic *Sharī'ah*. The proponents of family planning also note that *coitus interruptus*, or withdrawal, was practised during the era of the Prophet (SAW) by his Companions" (Musallam 1986).

"The common or *jumhūr* position among the schools of jurisprudence in Islām on the legality of *al-ʿazl* as a family planning method exist and the majority of Muslim theologians from diverse schools of Islamic jurisprudence agree that withdrawal is permissible with the wife's consent. In Islām, a wife has the right to both sexual pleasure and reproduction. Some jurists argue that ejaculation is essential for a woman to have orgasm; therefore, it is necessary to have prior consent from a wife before practicing withdrawal" (al-ʿAsqalānī 1988: Vol. 9, pp. 245, 246 as cited in Omrān 1992: 153). In all its institutions and regulations, Islām addresses itself to reason and keeps in harmony with man's (*fiṭrah*) natural character. It never fails to demonstrate its great compassion for its people, nor does it ever seek to impose undue burdens and intolerable restrictions upon them.

Balogun (2007) specifically referred to the following quotes from the *Qur'ān*:

"Allāh desires for you ease; He desires no hardship for you" (*Qur'ān*: 2:185).

"And has not laid upon you in religion any hardship" (*Qur'ān*: 22:78).

“Allāh desires to lighten your burden, for man was created weak”
(Qur’ān: 4: 28).

Islām could be sympathetic to family planning if spacing pregnancies and limiting their number made the mother more physically fit and the father more financially at ease. These actions do not violate any prohibition in the *Qur’ān* or in the Prophet Muḥammad’s (SAW) *Sunnah* (tradition). If excessive fertility leads to proven health risks for mothers and children, or economic hardship and embarrassment for the father, or the inability of parents to raise their children properly, Muslims would be allowed to regulate their fertility in such a way as to reduce these hardships. Some Muslims question the economic justification for family planning on the grounds that it contradicts the Islamic belief of *tawakkul* (reliance on Allāh) and *rizq* (provision by Allāh). Balogun (2007) argued that the jurists found no such relationship and made the economic reasons legal. Regarding the health justification of family planning, ‘Abdel Raḥīm Omrān wrote:

“Warding off the risks posed to the health of mothers and children by additional pregnancies is the most common reason for accepting contraception in Islamic jurisprudence” (Omrān 1992: 111-112).

Legal scholars interpret the *Qur’ān*’s recommendation of two years of breastfeeding and the Prophet’s (SAW) recommendation against pregnancy during lactation as an endorsement for child spacing (Ebrāhīm 1988). Rather than avoiding intercourse for two full years, which would be a hardship, couples can use contraception. Legal scholars who interpret Islām as permitting contraception assume that the method would be safe and practiced only for good reasons. For example, it does not allow the use of contraception to avoid female offspring. It should also be noted that while the great majority of the theologians believe contraception is sanctioned in

Islām, they limit the practice to temporary methods of family planning. Faḏlur Raḥmān, the Director of the Islamic Research Institute, Khalīfah ‘Abdul Ḥakīm and Muḥammad Ṣahidullah have approved the use of modern contraceptives as a temporary measure and have expressed some reservations regarding the permanent methods of female and male sterilization. Mawḏūdī and Shāfī of *Dārul-‘Ulūm*, who oppose sterilization as a family planning method consider the practice as interfering with Allāh’s will and attempting to change what *Allāh* has created. According Griffiths, “some Muslims disapprove of male sterilization in particular based on its mistaken analogy to castration, which is prohibited by *Sunnah*” (Griffiths 2001: Vol. 33, pp. 339–359).

3.4.3 Family planning and contraception among Muslims

“Despite the wide range of effective family planning methods available to women in developed countries, unintended pregnancies continue to occur in large numbers and rates of sexually transmitted infections remain high. A number of factors can affect a woman’s access to, or effective use of, contraception. The barriers to effective use of contraception have been well documented. According to Ḥakīm (1959) among these barriers are personal beliefs and values that can be shaped by both religion and culture” (Ḥakīm 1959: 41–49).

Sahidullah (1962) says that, “the introduction of modern contraceptives, the restructuring of family planning programmes, endorsements and international agreements on birth spacing, all have given new impulses to old paradigms on the subject. In this context of introducing modern family planning, Muslims and Islamic countries have always been under debate and critique.

There are several Islamic countries that have not only presented many success stories in this regard, but have achieved control over their fertility rate and population growth rate” (Sahidullah

1962). Maharishi noted that “governments around the world including many in the Islamic world endorse family planning programmes to facilitate individuals and couples to decide for themselves the number and timing of their children. These family planning programmes have carried the slogan of improving the health of women and children besides slowing down population growth in countries where an overwhelming growth was considered a barrier to social-economic development. It is important to note that most Islamic countries endorsed the Programme of action of the United Nations 1994 International Conference on Population and Development, and the 2000 Millennium Development Summit Declaration which called for universal access to family planning information and services” (Maharishi 2004). Mufti indicated that “most families consider contraception as a government need, rather than to their advantage” (Mufti 2005).

3.4.4 Sources of knowledge of family planning methods

Communication plays a vital role in ensuring the knowledge for choice of family planning methods. Effective communication empowers people to seek what is best for their own health and to exercise their right to good quality health care. Buckley emphasizes that “people make many of their biggest family planning decisions, including whether to control their fertility and whether to use a family planning method, before ever seeking contraception” (Buckley 2001). “In order to make informed choices, most people need to know a lot about family planning long before they decide to visit a health care provider. According to Orgocka, the sources of information for women on contraceptives are magazines, personal relations, mass media and health personnel” (Orgocka 2004:

www.tandfonline.com/doi/abs/1080/1468181042000243349).

Date accessed 20/02/2018

“The major source of knowledge on family planning methods among Muslims are the mass media (35.0%) followed by health personnel (31.3%), magazines (20.0%) and personal relations i.e. spouse friends and relatives (13.8%). These limit the number of people to assess the information about contraception especially those residing in slums. The majority of the Muslims do not have any information concerning the use of family planning. Most Muslim youth lack basic ideas on contraception since they are not allowed to come into contact with them” (ORG: 2010).

3.4.5 Family Planning according to medical ethics

Ndola Prata (2007) argues that “expansion of family planning is still needed”. She proposes that “couples should be provided with tools to reach their desired family size”. According to Prata, “family planning can have a significant impact on maternal and child mortality by decreasing fertility and optimizing child spacing which will eventually lead to slow population growth”. Prata also mentions that “family planning is an effective public health intervention with multiple individual and societal benefits”. She emphasizes that “family planning does not limit rights but gives people choices by providing them with the necessary tools to control the timing and number of children they wish to have” (Prata: 2007: <http://www.jstor.org/stable/27503993> date accessed 21/02/2007). Date accessed 21/02/2018

The WMA (World Medical Association) recognizes that “unwanted pregnancies and those that are spaced too closely can have adverse effects on the health of a woman and her children, which may include the premature deaths of women. Consequently, existing children in the family can also suffer starvation, neglect or abandonment resulting in their death or impaired health, when families are unable to provide for all their children. Social

functioning and the ability to reach their full potential can also be impaired” (World Medical Association 2018).

<http://www.wma.net/policies-post/wma-statement-on-family-planning-and-the-right-of-a-c13> date accessed 21/02/2018

3.5 Contraception methods

According to Omrān “[i]t is true that early scholars of Islamic law did not mention other methods because *al-‘azl* was the method known to them at the time and before their time” (Omrān 1992: 7). Omrān alludes by referring to “analogous reasoning (*qiyās*) alternative methods of contraception can be allowed as long as the purpose is to prevent pregnancy” (Omrān 1992: 7). Omrān indicates that, “[s]ome of these methods may be barriers used by the man or the woman, or medicines prescribed by physicians for temporary contraception. There is no harm in allowing, by analogy, the modern methods as long as they will not destroy fecundity or the ability to procreate” (Omrān 1992: 7).

3.5.1 “Natural Family Planning (NFP)

- Withdrawal method
 - This involves the male engaged in sexual intercourse to withdraw his penis from the vagina of his spouse prior to ejaculation.
- Ovulation method
 - This requires checking the woman’s cervical mucus around the days just before and just after ovulation. When a woman is most likely to become pregnant, the cervical mucus is stretchy, clear and slick and during this time looks and feels much like an uncooked egg white.
- Symptothermal method
 - This requires the woman to take her temperature each day with a special thermometer and to write it down on

a chart. At the time of ovulation, a woman's temperature will slightly rise.

- Both the ovulation and symptothermal methods can be 90% to 98% effective (2 to 10 pregnancies per 100 couples) when they are practiced correctly” (American Academy of Family Physicians. (2000). *Natural Family Planning. What is natural family planning?*).

<http://familydoctor.org/online/famdocen/home/women/contraceptive/126.html>. date accessed 26/02/2018

3.6 Reversible contraception

Reversible contraception is categorized into non-hormonal and hormonal contraception.

3.6.1 “Non-Hormonal Contraception

Non-hormonal contraception prevents sperm fertilizing an egg, or preventing the implantation of a fertilized egg into the lining of the womb. The main methods are:

- Barrier method
- Mechanical methods” (Ebrāhīm 2008: 50)

3.6.1.1 Barrier methods

“These are physical barriers that actually prevent the sperm from coming into contact with the egg, thereby preventing fertilization.

- Male condom
 - A condom is a thin sheath, usually made out of latex, which is rolled onto an erected penis before sexual contact.
- Female condom

- A female condom (femidom) is a thin, soft polyurethane pouch, which is fitted inside the vagina before sex. It has an inner ring that goes into the upper part of the vagina, and an outer one, which should be visible. The female condom is less likely to tear than the male condom.
- The diaphragm and the cap
 - The diaphragm and cap are devices made of thin, soft rubber that are inserted into the upper part of the vagina to cover the cervix (neck of the womb). They act as a barrier to sperm.
- Sponge
 - This is a small sponge impregnated with a spermicidal gel or cream. It is moistened with water before use, and then inserted high into the vagina to cover the cervix. It has to be left in place for at least six hours after sex, and can be left up to 30 hours, although there is a risk of infection if left for longer than that.
- Spermicides
 - These are creams, gels or pessaries (dissolvable tablets) inserted into the vagina that contain a chemical that kills sperm” (Ebrāhīm 2008: 50–51).

3.6.1.2 Mechanical method

“There are two types of mechanical methods:

1. Without hormones

- The Copper T intra-uterine contraceptive device (IUCD) or coil
- This is a small device that is shaped in the form of a “T”. The vertical arm of the Copper T IUCD contain some copper, which stops fertilization by preventing

sperm from making their way up through the uterus into the fallopian tubes. However, if fertilization occurs, the device prevents the embryo from attaching to the uterine wall. The Copper T IUCD can be kept inside the uterus for up to 10 years.

2. With hormones

- Progestasert intra-uterine device (IUD)

This IUD is a small plastic T-shaped device which contains the hormone progesterone. The progesterone causes the cervical mucus to thicken so sperm cannot reach the egg, and it changes the lining of the uterus so that a fertilized egg cannot successfully implant. The Progestasert IUD can be kept inside the uterus for one year.

- Intrauterine System or IUS (Mirena)

The IUS is a small T-shaped device. Each day, it releases a small amount of a hormone similar to progesterone called levonorgestrel that causes the cervical mucus to thicken so sperm cannot reach the egg. The IUS can be kept inside the uterus for up to five years” (Ebrāhīm 2008: 51–52).

3.6.2 Hormonal contraception

“During the woman’s monthly cycle, hormones released by the brain cause one of the ovaries to release an egg. What usually happens is that around that time, the ovaries release further hormones, including oestrogen and progesterone. These are responsible for many of the changes in a woman’s body during the menstrual cycle. Their levels in the blood also affect the release of further hormones from the brain.

Hormonal contraceptives are synthetic (manufactured) versions of hormones that mimic the action of oestrogen and progesterone on

the body. Making use of any such contraceptives inhibits ovulation making conception highly unlikely” (Ebrāhīm 2008: 52).

- “The pill

The combined contraceptive pill contains the female hormones oestrogen and progesterone. It stops the ovaries from releasing an egg each month, thickens the mucus at the cervix making it more difficult for sperm to enter the womb, and makes the lining of the womb unsuitable for a fertilized egg to implant on to.

- Progesterone-only pill

The progesterone-only pill, unlike the combined oral contraceptives, has only one hormone, progesterone, instead of both oestrogen and progesterone. It caters for the contraceptive needs of the woman who cannot tolerate the taking of oestrogen. This pill does not affect the milk supply of mothers who breastfeed.

- Contraceptive patch

The contraceptive patch, also called Evra, is a small beige patch applied to the skin like a sticky plaster, which protect against pregnancy. It can be applied to the abdomen, buttocks, upper arm, or upper torso. The woman has to change the patch each week for a schedule of 3 weeks on and 1 week off. This patch is effective as it works by slowly releasing a combination of oestrogen and progestin hormones through the skin to prevent ovulation (release of an egg from the ovary) and it also thickens the cervical mucus, creating a barrier to prevent sperm from entering the uterus.

- Injections

Depo-Provera injection contains progestin and is injected into one of the large muscles, such as the buttocks or upper arm. This injection can provide contraception for up to three

months. The other injection, namely, Nuristerate, is a two monthly injection.

- Post-coital pill

Post-coital pill is a sort of emergency hormonal contraception (EHC). It is a two-tablet treatment containing the progesterone. It caters for the contraceptive needs of the women who cannot tolerate the taking of oestrogen. This pill does not affect the milk supply of mothers who breastfeed.

- Implants

Implanon is a narrow flexible rod about the size of a match (40mmx2mm). It is inserted under the skin of the upper arm. The rod releases a constant amount of progesterone to give contraception for up to three years. The contraceptive effect is reversed soon after the implant is removed. Another implant, namely, Norplant, involves the insertion of 3 rods to affect contraception for up to 5 years” (Ebrahim 2008: 51-54).

3.7 Irreversible Contraception

“Irreversible contraception is accomplished through sterilisation of either the man or woman for the permanent prevention of fertilisation.

- Tubal ligation

This is an operation performed on women under general anaesthetic, usually as day case surgery. The fallopian tubes are cut, tied or blocked, often through keyhole surgery (laparoscopically) to stop eggs from going down to her uterus.

- Vasectomy

Men are sterilised by a minor surgical procedure called a vasectomy usually under local anaesthetic. It involves cutting

or tying the tubes (vas deferens) which carry sperm from the testicles to the penis.

- Non-surgical sterilization (Assured permanent birth control system)

This is a non-surgical method of sterilizing women. Essure is a permanent birth control method in which tiny metal coils are placed in a woman's fallopian tubes. Over time, scar tissue grows in and around these coils resulting in blocking the tubes so that sperm cannot reach a woman's eggs.

- Hysterectomy

This involves major surgery for the removal of the womb, after which pregnancy becomes permanently impossible

- Non-surgical methods of sterilizing women. (Essure Permanent Birth Control System)

This is a non-surgical method of sterilizing women. Essure is a permanent birth control method in which tiny metal coils are placed in a woman's fallopian tubes. Over time, scar tissue grows in and around these coils resulting in blocking the tubes so that sperm cannot reach a woman's eggs"

(Ebrāhīm 2008: 54-55).

3.8 The *Qur'anic* reference to progeny and family planning

"There is no *nuṣṣ* (text) of prohibition of birth control in the *Qur'ān*. According to the rules of jurisprudence, the silence of the *Qur'ān* on some issue is not a matter of omission on the part of the Lawgiver for He is All-Knowing; neither can it be because there was no population problem at the time; as *al- 'azl* is meant for all times" (Omrān 1992: 85). "The silence of the *Qur'ān* on family planning has been interpreted by many theologians to mean that the *Qur'ān* does not prohibit its practice" (Omrān 1992: 85). This is evident in the views of the former Grand Imām of Al-Azhar,

Sheikh Jād al-Ḥaḡ who states that, “[a] thorough review of the *Qur’ān* revealed no text (*nuss*) prohibited the prevention of pregnancy or diminution of the number of children” (Jād al-Ḥaḡ 1980 as cited in Omrān 1992: 6). He also points out that, “[i]f we examine the *Qur’ān* or the *Sunnah*, we find no text prohibiting sterilization, i.e. rendering a man or a woman unable to procreate totally and permanently by surgery or chemical or other means” (Jād al-Ḥaḡ 1980 as cited in Omrān 1992: 188).

Despite of this the *Qur’ān* has been used by both opponents and proponents of family planning in support of their respective opinions. There is nothing wrong in there being different interpretations, but the problem is that some people in each group start with a preconceived opinion for which support from the *Qur’ān* is sought. Being convinced of their own opinion and failing to find clear supporting text, they sometimes overstate the meaning of verses to give the appearance of support for their view. The correct method is to start with the *Qur’ān* and the major works of its tafsīr (interpretation) as well as the *Sunnah* (tradition), and then formulate opinion (Omrān 1992:86).

3.9 *Aḥādīth* (traditions) reference to progeny and family planning

There is no doubt that *al-‘azl* was being practiced by Muslims at the time of the Prophet (SAW) and that some of the devout Companions did practice it as a contraceptive measure. This was repeatedly mentioned to the Prophet (SAW) who did not prohibit the practice. The *Qur’ān* was being revealed at the time and no prohibition was pronounced. Some *aḥādīth* (traditions) are mentioned as follows:

3.9.1 Traditions denoting tacit approval by the Prophet (SAW) of *al- 'azl*

According to Omrān, many of the “traditions concerning *al- 'azl* addressed two components simultaneously” which can be categorized as “the behavioural component which is the act of withdrawal to avoid pregnancy; and the belief component which emphasizes predestination, i.e. that the will of Allāh has ascendancy over man’s will and results of his action”. Omrān affirms “that despite the practice of *al- 'azl*, pregnancy could occur. This is much like the principle of ‘(Play) with her and rely on Allāh’ where the behavioural component is to tie up the camel and the belief component deals with trust in Allāh that the camel will not go astray despite (playing) with her” (Omrān 99:120).

On the authority of Abū Sa’īd (R.A.): The Prophet (SAW) was asked about *al- 'azl* and he said **“Do as as you wish! Whatever Allāh has ordained will be, not all the semen produces a child.”** (Ibn Ḥanbal n.d.: 389)

Modern medicine confirms that only one sperm is needed to fertilize the woman’s ovum; more in multiple pregnancy. Each ejaculation contains several million sperm (Omrān 1992: 120).

Muslim (1385 A.H.: 464), Abū Dāwūd (al-Sijistānī 1985: 295) and Mālik (1336 A.H.: 594), reported also on the authority of Abū Sa’īd (R.A.) who said: *Al-a’zīl* was mentioned to the Prophet (SAW). He asked: **“Lā ’alaikum ’allā taf ’alū”** meaning ‘Why do you do that?’ (He did not say: **“Do not do that!”**) **“No soul fated to be created but will be created”**. (Muslim, et al. 1385 A.H.: 464)

“Lā ’alaikum allā taf ’alū” is open to two meanings. One supports the practice of *al- 'azl* as follows: ‘There is no disfavour in not doing it’, meaning that had it been prohibited, the Prophet would have explicitly prohibited it by saying ‘Do not do it.’ The other

interpretation by Ibn Sīrīn and al-Ḥasan al-Baṣrī is that it is closer to a reprimand, with the meaning emerging as ‘You have not to do it,’ i.e. ‘Don’t do it.’ The latter interpretation was not accepted by the majority of jurists as Imām Ibn Ḥajar explains in his *Fatḥh al-Bārī*, a commentary on *Ṣaḥīḥ al-Bukhārī*, (al- ‘Asqalānī 1988: Vol. 9, p. 247 as cited in Omrān 1992: 128).

On the authority of Jābir Ibn ‘Abdullah (R.A.) who said: A man came to the Prophet (SAW) and said: ***“I have a mate and I practice al-‘azl with her.”*** The Prophet (SAW) said: ***“This will not prevent something that Allāh wills.”*** The man came back after a time and said: ***“Messenger of Allāh! The mate that I mentioned to you has conceived.”*** The Prophet (SAW) said: ***“I am Allāh’s slave and messenger.”*** Authenticated by Muslim (Muslim 1385: Vol. 1, p. 465)

In his comments on this tradition, Imām al-Nawawī explains “that semen may spill in before withdrawal and cause pregnancy. He uses the argument to defy those who disclaim a child conceived while *al- ‘azl* was consistently practiced”. (Al-Nawawī no date: Vol. 10, pp. 11, 13).

If one has a critical analysis of the above traditions, then one observes that:” all these traditions the Prophet (SAW) did not prohibit *al- ‘azl* but moved directly to the question of predestination”. (Omrān 92:121)

3.9.2 Tradition in which sanction was verbalised by the Prophet (SAW)

In all the preceding traditions, there is neither a prohibition nor verbalised approval. There is at least one authenticated tradition in which the Prophet (SAW) did specifically mention *al- ‘azl* by name, sanctioning it. Muslim was told by Aḥmad Ibn ‘Abdullah ibn Yūnus, who was told by Zuhair who was told by Abū al-Zubair on the authority of Jābir who said that a man came to the Prophet and

said: *“I have a mate who serves us and water our palm trees. I consort with her lawfully but do not like her to get pregnant.”* The Prophet said: *“Practice al- ‘azl with her if you wish. What is pre-ordained for her will certainly befall her”*. After some time, the man came back and said *“the mate has conceived”*. The Prophet said: *“I told you what is pre-ordained will befall her”*. Authenticated by Muslim (Muslim 1385: Vol. 1, p. 465), Ibn Mājah (Ibn Mājah n.d.: Vol. 1, p. 620) and Ibn Ḥanbal (Ibn Ḥanbal n.d.: Vol. 3, p. 338)

This tradition is singled out as an important step to the permissibility of *al- ‘azl* by both early and late theologians because it is the one tradition in which the Prophet (SAW) mentions *al- ‘azl* by name in form denoting sanction. The important issue is that the man did not mention *al- ‘azl* in his question. He merely did not want his mate to get pregnant. The fact that the Prophet (SAW) mentioned *al- ‘azl* by name spontaneously indicates that the practice was on the minds of the people at the time and he wanted to clarify its permissibility.

3.9.3 *Al- ‘azl* and ‘your wives are as tilth unto you’

Allāh says in the *Qur’ān*: *“Your wives are as tilth unto you, so approach your tilth how you wish”*. (Qur’ān 2: 223)

“The primary purpose of this verse is to allow various approaches to marital relations except for sodomy which is prohibited. Some, focusing literally on the expression tilth, have taken the verse to mean that, since wives are tilth, they have to be cultivated or impregnated as frequently as possible.”(Omrān 92:123)

This quotation sustains those who propose procreation as the ultimate purpose of marriage so that Prophet Muḥammad (SAW) can boast of the number of his nation before other nations.

Proponents argue, what Allāh means by saying *“plough them as you wish?”* To this, they reply the answer given by Abū Ḥanīfah:

“He means you have the option of cohabiting with your wives with or without coitus interruptus”.

“This unequivocal answer of Imām Abū Ḥanīfah, is conveyed to us by a highly respected authority on the interpretation of the *Qur’ān*, Imām Abū Bakr al-Jaṣṣāṣ in his ‘*Aḥkām al-Qur’ān*” (al-Jaṣṣāṣ: 1335: Part One 535). “Though there cannot be an iota of doubt of the veracity of Imām Abū Ḥanīfah’s interpretation conveyed to us by Imām Jaṣṣāṣ” (Maḥmūd 1977: 17).

3.9.4 *Al- ‘azl* is allowed with a wife’s consent

Several *aḥādīth* (traditions) make it clear that *al-a’z*l is allowed only with a wife’s consent.

On the authority of Abū Hurairah who reported that the Prophet (SAW) said: **“*al- ‘Azl is not allowed without the consent of the (free) wife*”**. (authenticated by Abū Dāwūd al-Sijistānī 1985: 295)

Ibn Muḥairīz (R.A.) reported that Abū Sa’īd al-Khudrī (R.A.) was asked about whether he heard the Prophet (SAW) mention *al- ‘azl* by name and he replied by referring to the battle of *Banū al-Mustaliq* where some of the Companions wanted to practice *al- ‘azl*. We said: **“Do we do that while the Prophet (SAW) is among us, should we not ask him?”** So we asked him and he said: **“Lā ’alaikum ’allā taf ’alū** (There is no disfavour in not doing it). **No soul fated to come into being till the day of judgement but comes into being”** (Muslim, et al. 1385A.H: 464).

3.9.5 *Al- ‘azl* as hidden Infanticide and *al-ghaylah* (suckling of a child by a pregnant mother or the practice of having relations with a lactating wife)

On the authority of Asmā Bint Zaid al-Sakn (R.A) said: **“I heard the Prophet (SAW) said: “Do not kill your children unconsciously, for *al-ghaylah* will have in the future the same effect as when a horseman is**

overtaken (by an opponent) and thrown off his horse” (Authenticated by Abū Dāwūd al-Sijistānī 1985: 295).

“This tradition (*Ḥadīth*) strongly discourages *al-ghaylah*. This seems to be a form of personal *Ijtihād* (independent reasoning) by the Prophet (SAW) who felt at that time that *al-ghaylah* was a serious assault on the child. The question then arises; how can a couple avoid pregnancy in the two-year interval after a child is born? They can completely abstain from sex, which will be imposing unnecessary difficulty on both of them. The alternative is contraception, hence the hint that the *Qur’ān* upholds natural fertility control, they assume” (Omrān 1992: 97).

Judāmah Bint Wahb al-Asadiyyah (R.A.) narrated: “*I was amongst others in the Prophet’s (SAW) audience while he was saying: “I almost prohibited al-ghaylah (that is having relations with a lactating wife) but then I considered the Romans and Persians and found that they used to suckle their children by their pregnant mothers without ill effects”*. Then they asked him about *al-‘azl* and he said, “it is hidden infanticide (*al-wa’d al-khafī*)” (Authenticated by al-Nasā’ī 1959/1378 A.H.: Vol. 2, pp. 83–84).

This Tradition (*Ḥadīth*) when compared with the report of Asmā Bint Zaid wherein *al-ghaylah* is strongly discouraged seems to contradict each other. Imām al-Nawawī considers this to be a form of independent reasoning (*ijtihād*) by the Prophet (SAW) who felt, at the time, that the Arabs fear of *al-ghaylah* was exaggerated. Al-Nawawī considers that the main thrust of the tradition is that *al-ghaylah* is not prohibited but is discouraged (al-Nawawī n.d.: 16–17).

3.9.6 Traditions (*aḥādīth*) denying that *al-‘azl* is minor infanticide (*al-maw’ūdatu al-ṣuḡhrā*)

Jābir Ibn ‘Abdullah (R.A.) reported: “*We practiced al-‘azl and the Jews claimed it was minor infanticides. The Prophet (SAW) was asked*

about this, who categorically denied such a contention and said that the Jews had lied. He added, “If Allāh wills its creation you cannot stop him” (Authenticated by al-Tirmidhī n.d.: 135).

This *Ḥadīth* explicitly denies *al-‘azl* as infanticide as the Jews who lived side by side with the companions in Madīnah equated it with, calling it minor infanticide (*al-maw’ūdatu al-ṣughrā*). There is a passage in the Bible which refers to the “**sin of Onan**” (Genesis 38 as cited in (Ebrāhīm 1988: 66). This passage tells us that Onan was destroyed because he **‘spilled the semen on the ground’**

A critical analysis of the two *aḥādīth* (traditions):

Judāmah Bint Wahb al-Asadiyyah (R.A.) narrated: *I was amongst others in the Prophet’s (SAW) audience while he was saying: “I almost prohibited al-ghaylah (that is having relations with a lactating wife) but then I considered the Romans and Persians and found that they used to suckle their children by their pregnant mothers without ill effects”*. Then they asked him about *al-‘azl* and he said, **“it is hidden infanticide (al-wa’d al-khafī)”** (Authenticated by al-Nasā’ī 1959/1378 A.H.: Vol.2. pp. 83-84).

Jābir Ibn ‘Abdullah (R.A.) reported: *“We practiced al-‘azl and the Jews claimed it was minor infanticides. The Prophet (SAW) was asked about this, who categorically denied such a contention and said that the Jews had lied. He added, “If Allāh wills its creation you cannot stop him”* (Authenticated by al-Tirmidhī n.d.: 135).

The two *Aḥādīth* (traditions) (Judāmah and Jābir) seems to be contradicting each other. Muslim scholars have attempted to explain this contradiction in several ways, for example, Imām Ghazālī emphasized that reliable *aḥādīth* (traditions) confirming the permissibility of *al-‘azl* also existed. “He also recalled *Khalīfah Alī’s* (R.A) rejection of the description of *al-‘azl* as a minor infanticide based on the seven stages ‘first it is a product of wet earth, then it is a drop of seed (*nuṭfah*), then it is a clot of

congealed blood (*alaqah*), then it is a foetal lump (*mudgha*), then it is bones (*i'zām*), which are then clothed with flesh (*lahm*), then it becomes another creature (*khalqan ākhar*) in foetal development before *wa'd* could be claimed” (Omrān 92:137).

He also added that *al- 'azl* was not like *wa'd* or abortion because it does not constitute a crime against a being already in existence. Also the statement “it is minor infanticide” may be like the Prophet’s (SAW) remark about subtle disbelief (*al-shirk al-khafī*) which may be undesirable (*Makrūh*) but not illegal (al-Ghazālī 1302 A.H.: Vol. 2, 53).

Al-Shawkānī summarizing previous opinions stressed that Judāmah’s *ḥadīth* (al-Nasā’ī 1959/1378 A.H.: Vol.2. pp. 83, 84) did not actually entail prohibition, that Jabir’s tradition (Tirmidhī n.d.: 135) and others like it confirmed tacit approval by the Prophet (SAW) since he knew about *al- 'azl* and did not prohibit it, and that Judāmah’s *ḥadīth* (tradition) (al-Nasā’ī 1959/1378 A.H.: Vol.2. pp. 83-84) could be weakened because the part on *al- 'azl* was omitted by the four *Sunan* compilations (al-Shawkānī 1357 A.H.: Vol. 6, 346 as cited in Omrān 92:139).

Ibn Ḥajar on his commentary on Bukhārī, *Fath al-Bārī*, points out that some scholars regard the *Ḥadīth* (tradition) narrated by Judāmah (al-Nasā’ī 1959/1378 A.H.: Vol. 2, pp. 83-84 as cited Omrān 92:138) as *ḍa’if* (weak) in view of the fact that it contradicts a number of authentic *aḥādīth* (traditions) on the prevalent issue and these scholars question how it could be possible for the Prophet (SAW) to belie the Jews and then elsewhere hold the same opinion. Ibn Ḥajar proceeds further in mentioning that Ibn al-Qayyim al-Jawziyyah explained that the Jews were belied in view of the fact that they were under false

illusion that pregnancy could not occur if *al-‘azl* were practiced, equating it to infanticide. The Jews were belied and informed that *al-‘azl* does not necessarily prevent pregnancy if Allāh intends it to happen, whereas if Allāh does not will creation then *al-‘azl* cannot be regarded as true infanticide. Ibn al-Qayyim also reflected on the distinction between ‘hidden’ infanticide in Judāmah’s *ḥadīth* (tradition) (al-Nasā’ī 1959/1378 A.H.: Vol. 2, pp. 83–84) and ‘minor’ infanticide in the *ḥadīth* (tradition) (Tirmidhī n.d. 135) in which the Prophet (SAW) criticized the Jews. In the latter it denotes an actual murder, while ‘hidden’ involves no such action. Ibn Ḥajar added that “both, *al-‘azl* and *wa’d* have the same intention, that is, to avoid additional children. While *wa’d* combines both intention and the actual murder, *al-‘azl* stops at the level of intention which is no crime. That is why it is called hidden” (al-‘Asqalānī 1988: Vol. 9, p. 253–254).

From the above discussions it can most certainly be deduced that there is no concrete contradiction between Judāmah’s (al-Nasā’ī 1959/1378 A.H.: Vol.2. pp. 83–84) and Jābir’s (Tirmidhī n.d.: 135) narrations. Judāmah’s *ḥadīth* (tradition) does not explicitly mention prohibition against *al-‘azl*. This theory can be formulated in our minds that the Prophet (SAW) was demonstrating that although such a practice was undesirable yet we may not classify it as prohibited.

3.9.7 Traditions giving preference of a prolific wife

On the authority of Ma’qil ibn Yasār (R.A) said: ***“A man came to the Prophet (SAW) to ask his advice about a wealthy woman, who came from a prestigious family but, was infertile. He asked the Prophet (SAW) ‘Should I marry her?’ The Prophet (SAW) did not agree with him. He came back twice with the same response. On the third time the Prophet (SAW) said: “Marry the affectionate prolific woman, for I shall boast of you before other nations”.*** Authenticated by Abū Dāwūd and al-Nasā’ī (al-Nasā’ī, et. al: 1959/1378 A.H.: Vol. 2, pp. 83, 84)

Family planning proponents, while accepting the preference where possible for a prolific wife who can give her husband the number of children he desires, raise a number of issues:

They believe that a barren woman should not become an outcast. In the first place being infertile is not always her fault. Allāh says in the *Qur'ān*: **“And He (Allāh) makes barren whom he wills”**. (*Qur'ān*: 42: 50)

While some women and men are born infertile, in some situations it may have resulted from acquired diseases. In 40 per cent of cases the reason for infertility lies with the husband not the wife (Omrān 1992 108–109).

If we have to select the fertile, how can we judge whether or not a virgin is fertile? (Anwārul-Ḥaq 1976: 50) Judging a woman's fecundity by her sister's is not medically accurate, since her sister's infertility does not necessarily mean she too is infertile.

No jurist in Islām has judged that a barren woman should not be married, or if she is married and does not carry children, that she should be divorced (al-Najjār 1986: 34–35).

Some theologians believe that the Prophet (SAW), in discouraging the man who sought his permission to marry a barren but rich and prestigious woman, may have sensed that the interest of the man lay in the woman's wealth and prestige. These are not primary reasons for marriage in Islām (Atay: 1974: Rabat Proceedings, Vol. 2, pp. 173, 174).

Most of the Prophet's wives, including Sayyidah Â'ishah (R.A) did not give him children (Omrān 1992: 109).

Proponents of family planning feel that a barren woman should have a chance to enjoy marital life. They strongly advise that

treatment and control of infertility should be an integral part of family planning (Omrān 1992: 109).

According to Omrān (1992) the Prophet predicted a multitude of *Muslims* that would be ineffective, vulnerable and no match to its opponents. For the multitude to be more Islamic and acceptable to the Prophet (SAW), it must satisfy certain requirements strictly and completely. The Prophet (SAW) said: ***“Nations are about [in the future] to gather together to fall upon you as [hungry] people would fall upon a tray of food to eat”. The Companions asked if that would be because of their small numbers at the time and the Prophet (SAW) replied “No! You will be of great multitude; but you will be scum like that carried down by a torrent (that has no control over itself). And Allāh will take fear of you from the breasts of your enemy and cast enervation (wahan) into your hearts”.*** He was asked the meaning of enervation and he replied: ***“Love of the world and dislike of death”.*** Authenticated by Abū Dāwūd in his *Sunan* (al-Sijistānī 1985)

Thus a multitude that should be promoted should be a multitude of quality. Muslim demographers, physicians, social scientists and development specialists warn that rapid population growth in many Muslim countries is an obstacle to spiritual, social, economic and technological development (Abonnour 1976 as cited in Omrān 1992: 104–112). In addition to this Omrān (1992) states that the requirements for Islamic multitude is a multitude in high moral character, a multitude that is not built on reproductive risks to mothers and children, a multitude of recognized scientific excellence, a multitude of political prestige that is a deterrent to its enemies, a multitude that produces more than it consumes (no international debts), a multitude that is co-ordinated, if not totally unified (at least no intra-Islamic conflicts or wars) (Omrān 1992: 112).

3.10 The experience of the Companions with *al-‘azl* (Jābir’s tradition)

There is no doubt that *al-‘azl* was practiced by Muslims at the time of the Prophet (SAW) and that some of the devout Companions did practice it as a contraceptive measure. This was repeatedly mentioned to the Prophet (SAW) who did not prohibit the practice. The *Qur’ān* was being revealed at the time and no prohibition was pronounced.

On the authority of Jābir Ibn ‘Abdullah he said: ***“We the (Companions of the Prophet) used to practice al-‘azl during the time of the Prophet while the Qur’ān was being revealed”***.

Authenticated by al-Bukhārī in his *Sahīh*, Muslim in his *Ṣahīh*, Tirmidhī in his *Sunan*, Ibn Mājah in his *Sunan* and Aḥmad Ibn Ḥanbal in his *Musnad*. (al-Bukhārī, et. al: n.d. Vol. 2, p. 784)

Muslim (Muslim: 1385A.H: Vol. 1, p. 465) reports another form related to Jābir (R.A.) who said: ***“We used to practice al-a’zl during the time of the Prophet (SAW). The Prophet (SAW) came to know about it, but did not forbid us doing it”***.

These authenticated traditions reveal clearly that the Companions used to practice *al-‘azl* with no prohibition either from the Prophet (SAW) or the *Qur’ān*. In these traditions Jābir (R.A.) was not reporting a story but introduced a ruling of sanctioning. This may be clearer in a form reported by Aḥmad Ibn Ḥanbal in his *Musnad* that ‘Atā’ heard Jābir being asked about the permissibility of *al-‘azl* and he (Jābir R.A.) said: ***“We used to do it”***.

Opinions or rulings of that sort made by a Companion about a matter known to the Prophet (SAW) have the same force as those enunciated by the Prophet (SAW) himself.

Imām Shawkānī in *Nayl al-Awtār* says: ***“The majority of scholars concerned with the sources of jurisprudence (ahl al-‘usūl) agree with***

what is stated in *al-Fath*, namely that: “When the Companion of the Prophet (SAW) relates an opinion or ruling to the time of the Prophet (SAW), then that ruling acquires the validity of one related to the Prophet (SAW), because, he said, the Prophet (SAW) must apparently have known of it and approved it”. There are several reports confirming the Prophet’s (SAW) knowledge of *al-‘azl*. Muslim related on the authority of Jābir (R.A.) who said: “We used to practice *al-‘azl* at the time of the Prophet (SAW). The Prophet (SAW) came to know of it and did not forbid us doing it.” (Al-Shawkānī 1357AH: Vol. 5, pp. 197–201 as cited in Omrān 92:118)

“Many authorities (al-Taḥāwī 1333AH: Vol. 1, pp. 370–374), (Ibn al-Qayyim 1950: Vol. 4, pp. 16–18), (al-Ghazālī n.d.: Vol. 2, p. 54), use the above traditions to conclude the permissibility of *al-‘azl* for contraception in Islām.”

The following list of Companions known to have practice or approved *al-‘azl* is compiled from several sources including:

Abū Hurairah in *Sunan Abī Dāwūd* by (al-Sijistānī 1985: 295); Abū Sa’id al-Khudrī in *Musnad Ibn Ḥanbal* (Ibn Ḥanbal n.d.: 389); ‘Abdullah Ibn ‘Abbās [Prophet’s (SAW) cousin] in *Sunan al-Kubrā* by al-Baihaqī (al-Baihaqī 1353 A.H.: Vol. 7, p. 230); ‘Alī Ibn Abī Tālib (son-in-law and cousin of the Prophet) in *Iḥyā al-‘Ulūm al-Dīn* by al-Ghazālī (al-Ghazālī 1302 A.H.: Vol.2, p. 53); Jābir Ibn ‘Abdullah in *Ṣaḥīḥ al-Bukhārī* (al-Bukhārī 1983: Vol. 2, p. 784), *Ṣaḥīḥ Muslim* (Muslim 1385 A.H.: Vol. 1, p. 465), *Sunan al-Tirmidhī* (al-Tirmidhī n.d.: 135), *Sunan Ibn Mājah* (Ibn Mājah n.d.: Vol. 1, p. 620), *Musnad Ibn Ḥanbal* (Ibn Ḥanbal n.d.: 388) and Zayd Ibn Thābit in *al-Muwatta’* by Imām Mālik (Mālik 1336A.H.: Vol. 2, pp. 595, 596).

The fact that the Companions sanctioned and some actually practiced it with the Prophet’s (SAW) knowledge and approval is considered by the majority of theologians unequivocal in the

permissibility of *al-‘azl*. The fact that the *tābi’ūn* (followers of the Companions) continued to sanction and practiced contraception is unequivocal in continued permissibility after the death of the Prophet (SAW). Imām Mālik who is a disciple of the *tābi’ūn* (followers of the Companions) continued to sanction *al-‘azl* (Mālik 1918: Vol. 2, p. 595).

Not all the Companions practiced *al-‘azl* and some of them even disliked it. Those who disliked *al-‘azl* are as follows:

‘Abdullah Ibn ‘Umar, Abū Bakr, ‘Uthmān Ibn ‘Affān and some *muhājirūn* (migrants to *Madīnah*). Even if many more Companions disliked *al-‘azl* does not make it prohibited, because the practice, while allowed, was not mandatory (Omrān 1992: 119, 120).

3.11 Analysis and interpretations by some classical jurists on *al-‘azl*

The majority of jurists and theologians allow *al-‘azl* either absolutely (al-Ghazālī, et al.: 1302 A.H.: Vol. 2, p. 53–54) or with a qualification that is less than impeccable and has an edge of *‘karāhah tanzīhiyyah’* (lighter degree of disfavour) (al-Nawawī n.d.: Vol. 10, p. 9–10).

A second group, which is in the minority and is represented mainly by Ibn Ḥazm (Ibn Ḥazm 1352: Vol. 10, p. 71), prohibited it absolutely basing their opposition primarily on Judāmah’s *ḥadīth* (tradition) (al-Nasā’ī 1959/1378 A.H.: Vol.2, pp. 83–84). Let us give analyses and interpretations by some of the most celebrated classical jurists.

Abū Ja’far al-Taḥāwī (D.933) said, in his *Sharḥ Ma’ānī al-Āthār*, after analysing several *ahādīth* (traditions), that these and other traditions of the Prophet indicate that *al-‘azl* is not held in disfavour. He said that when the Prophet (SAW) was asked about it, he did not command his companions against it, but said ‘There is

no disfavour in not doing it, it is destiny'. Al-Taḥāwī (1370 A.H.: Vol. 3, p.34) explained that if Allāh has willed that a child be created nothing can stand in His way; Allāh would then cause some of the semen to reach the correct place and conception would result. If Allāh has decreed that no child should be created out of the liquid, then it would not make any difference whether the liquid reached its place or not (al-Taḥāwī 1370 A.H.: Vol. 3, p.34).

Al-Ghazālī (D.1111) who is known as the proof of Islām (hujjah al-Islām) concluded that *al-‘azl* was permitted absolutely (*mubāḥ*). Prohibition in Islām requires an explicit text (*nuṣṣ*) from the *Qur’ān* or *Sunnah*, or analogous reasoning in which case a text on which to base the prohibition must exist. None of these exist for *al-‘azl*. He added that there is a basis for a different kind of analogy, namely abstention from marriage, or from sexual intercourse after marriage, or from ejaculation in intercourse. All these acts are considered less than meritorious but they are still lawful. All these abstentions, he explained, have the same results, namely avoidance of pregnancy. For pregnancy has four determinants (1) marriage, (2) intercourse, (3) patience until ejaculation, and (4) actual ejaculation allowing the semen to reach the womb. To prevent pregnancy, abstention from the fourth is like abstention from the third (*al-‘azl*) which is like abstention from the second, which is in turn like abstention from the first (marriage) (al-Ghazālī 1302 A.H. Vol. 2, p. 53).

Ibn al-Qayyim (D.1350) quoted several of the *aḥādīth* (traditions) on *al-‘azl* in his celebrated work *Zād al-Ma’ād fī hadī Khair al-‘Ibād* and concluded that: **“Now all these *aḥādīth* (traditions) of the Prophet (SAW) are authentic, unambiguous and clear”**. They show that *al-‘azl* is permissible. He also referred to *al-Shāfi’ī* as saying: **“We have reported on the authority of many of the companions of the Prophet (SAW) that they have allowed *al-‘azl* and found nothing wrong about it”**. (Ibn al-Qayyim 1950: Vol. 4, pp. 16-18).

Ibn Ḥajar al-‘Asqalānī (D.1449) gave this subject considerable attention in his commentary on *Saḥīḥ al-Bukhārī* (called *Fath al-Bārī*) in which he affirmed the permissibility of *al-‘azl*. He considered Jābir’s *aḥādīth* (traditions) binding because the Prophet (SAW) knew about the matter and did not prohibit it. Also binding was the fact that the Prophet (SAW) explicitly allowed it (Muslim, et al.: 1385: Vol. 1, p. 465). Other *aḥādīth* (traditions) make *al-‘azl* less than impeccable (al-‘Asqalānī 1988: Vol. 9, pp. 245, 246).

The views of these jurists were shared by many other theologians who devoted considerable space to discussing *al-‘azl*. They include al-Shawkānī of the nineteenth century C.E. in his *Nayl al-Awtār* (al-Shawkānī 1357 A.H.: Vol. 6, pp. 346–350), al-Zabīdī of the eighteenth century C.E. in his commentary on *Ḥiyā’ ‘Ulūm al-Dīn* (al-Zabīdī n.d.: Vol. 5, pp.) and Ibn al-Humām of the fifteenth century C.E. in his *Sharḥ Fath al-Qadīr* (Ibn al-Humām 1315 A.H.: Vol. 2, pp. 494, 495).

3.11.1 Arguments against *al-‘azl* based on Judāmah’s *aḥādīth* (traditions)

The leading prohibitor of *al-‘azl* is Imām Ibn Ḥazm who lived in Andalusia (Islamic Spain) and died in 1063 C.E. His refutation is cited in several works of Islamic jurisprudence, although he failed to convince other theologians of his time. Ibn Ḥazm’s idea represents the official opinion of the short lived *Zāhirī school* and appear in his book *al-Muḥallā* (Ibn Ḥazm 1352 A.H.: Vol. 10, pp. 70, 71).

Ibn Ḥazm invoked a fundamental ruling in Islamic jurisprudence that the primary assumption in all things is that they are allowed until they are prohibited by the text. The absence of a prohibiting text is an important argument for those who hold *al-‘azl* to be permissible and therefore he proceeded to presume the existence of such a text in Judāmah’s *ḥadīth* (tradition) (al-Nasā’ī 1959/1378

A.H.: Vol. 2, pp. 83–84). He argued that the *ḥadīth* (tradition) reported by Judāmah confirms the prohibition of *al-‘azl* and must, be of a later date, having the effect of abrogating all the other traditions which allow *al-‘azl*. While he produced no historical proof, he challenged those who claimed otherwise to provide the dated proof. He considered the other *aḥādīth* (traditions) as not genuine (Ibn Ḥazm 1352 A.H.: Vol. 10, pp. 70, 71). Ibn Ḥazm also referred to the dual meaning in Abū Sa’id (R.A.) *ḥadīth* (tradition) and quoted Ibn Sīrīn as claiming that it was closer to prohibition. Paradoxically, he acknowledged as valid the *aḥādīth* (traditions) reporting the permissibility of *al-‘azl* by Jābir, Ibn ‘Abbās, Sa’d Ibn Abī Waqqās, Zayd Ibn Thābit and Ibn Mas’ūd, but glossed over them without comment (Ibn Ḥazm 1352 A.H.: Vol. 10, pp. 70, 71).

3.11.2 Refutation of prohibition

Ibn Ḥazm’s arguments were refuted repeatedly and in some detail by early theologians. Opposing him were al-Ghazālī (D.1111) and Ibn al-Qayyim (D.1350). Later came al-Zabīdī (D.1790) and Shawkānī (D.1830) and, in contemporary times, Madkūr (published 1965) and al-Būṭī (published 1976).

“More than a century before Ibn Ḥazm, Ja’far al-Ṭaḥāwī (D.933) suggested that the Prophet (SAW) may have used the phrase that is *al-wa’d al-khafī* (hidden infanticide) early in his mission in congruence with the Jewish law in the absence of any revealed ruling abrogating it. When the Prophet (SAW) was informed through revelation that the clot was made into another creature (Chapter 23: 12–14) he realized that *al-‘azl* was permissible” (al-Ṭaḥāwī 1333 A.H.: Vol. 2, pp. 372–374). “This was mere speculation by al-Ṭaḥāwī. He was challenged by Ibn Rushd and Ibn al-‘Arabī on the grounds that the Prophet (SAW) could not have maintained something according to Jewish law and then

categorically denied something similar” (Ibn Rushd and Ibn al-‘Arabī as cited in al-‘Asqalānī’s *Fatḥ*: Vol. 9, p. 248).

Al-Baihaqī (D.1066) in his *al-Sunan al-Kubrā* concluded that the reporters allowing *al-‘azl* were greater in number and more trustworthy than those against it. He also concluded that while *al-‘azl* might have some *karāhah tanzīhiyyah* (disfavour) it was not prohibited (al-Baihaqī 1353 A.H.: Vol. 7, p. 232).

Al-Ghazālī (D.1111) was very methodical in dealing with Judāmah’s ḥahīth (tradition). He stressed that reliable *aḥādīth* (traditions) confirming the permissibility of *al-‘azl* also existed, that the phrase *al-wa’d al-khafī* (hidden infanticide) in the *ḥadīth* (tradition) had the same connotation as in the phrase ‘dissimulation is *al-shirking al-aṣghar* (hidden polytheism)’ and that this would presuppose disfavour rather than interdiction. He recalled Imām Alī’s rejection of the description of *al-‘azl* as minor infanticide-based on the seven stages in foetal development before *wa’d* could be claimed. Al-Ghazālī added that *al-‘azl* was not like *wa’d* or abortion because it does not constitute a crime against a being already in existence (al-Ghazālī 1302: Vol. 2, p. 53).

Al-Nawawī (D.1272) in his commentary on *Ṣaḥīḥ Muslim*, championed the concept of reconciling the two sets of traditions. Although the concept was mentioned before by al-Baihaqī (D.1066) (al-Baihaqī 1353: 232), al-Nawawī’s statement was significant because of his prominence as an ultra-conservative. He considered the disallowing traditions should be taken to mean lighter degree of disfavour (*karāhah tanzīhiyyah*) and not prohibited, while the ‘allowing’ traditions negate prohibition but do not cancel disfavour. “That is why he started his summary of the evidence by saying that *al-‘azl*, to us, is disfavour (*makrūh*) under all circumstances’. It is because of this statement that some

consider that al-Nawawī was opposed to *al-‘azl* when in fact he allows it with disfavour” (al-Nawawī n.d.: Vol. 10, pp. 9, 10).

It’s worth mentioning that disfavour or failing to do the more meritorious (*karāhah tanzīhiyyah*) means that the act is lawful; it involves no sin and does not invoke reprimand. It is therefore wrong to translate the word as ‘blameworthy’ as it is sometimes reported in the English language. It is disfavoured or more simply disliked.

Ibn al-Qayyim (D.1350) refuted the views of those prohibiting *al-‘azl* and mentioned Ibn Ḥazm by name. He reviewed theologians’ attempting to reconcile Judāmah’s tradition and other traditions. One group takes the traditions collectively to mean permissibility with some disfavour. Others maintained that the Jews claimed only that pregnancy could never occur with *al-‘azl*, a contention that it is similar to curtailing progeny by *wa’d*. Denying this claim, the Prophet (SAW) said: “If **Allāh** willed its creation, nothing could stop Him” (Authenticated by Muslim 1385: Vol. 1, p. 464).

Ibn al-Qayyim then rejected Ibn Ḥazm’s claim that Judāmah’s *ḥadīth* (tradition) abrogated several other *aḥādīth* traditions. For that Ibn Ḥazm needed dates which were impossible to establish (Ibn al-Qayyim 1950: Vol. 4, pp. 17, 18).

Al-‘Irāqī (the father) took Judāmah’s tradition to mean ejaculation outside the womb of the pregnant woman, thus depriving the foetus of the semen which nourishes it, and may result in its loss (*wa’d*). This would be regarded as a biological error. Al-Ḥafīz al-‘Irāqī (the father) in his Juristic ability is best evidenced in his attempt to differentiate between ‘hidden’ infanticide in Judāmah’s tradition (al-Nasā’ī 1959/1378 A.H.: Vol. 2, pp. 83–84) and ‘minor’ infanticide (al-Tirmidhī n.d.: 135). In his opinion, reference to *al-‘azl* as infanticide amounted to figure of speech meaning only to

intend avoiding pregnancy (al-ʿIrāqī: n.d.: Vol. 7, p. 59 as cited in Omrān 138).

Al-Ḥāfiẓ al-ʿIrāqī (the son) (d. fifteen century C.E.) in collaboration with his father ʿAbd al-Raḥmān Ibn al-Ḥusain al-ʿIrāqī, made a brief case in *Sharḥ al-Tathrīb*, for *al-ʿazl*. They reviewed two Shāfiʿī opinions regarding the free woman, namely ‘if she consents, *al-ʿazl* is permitted. If she does not, then the correct way (*al-ṣaḥīḥ*) adopted by al-Ghazālī (1302: Vol. 2, pp. 53, 54) and al-Nawawī (n.d. Vol. 1, p. 464) is permissibility. Both al-ʿIrāqīs (father and son) disagreed with them and rejected Ibn Ḥibbān’s view, in particular, which was based on Judāmah’s tradition. They did not find any proof in the tradition to support prohibition. They stated that their *madhhab* is to allow *al-ʿazl* liberally with no dependence on a wife’s consent (al-ʿIrāqī’s *Tarḥ al-Tathrīb*: Vol. 7, p. 59–63 as cited in Omrān 1992: 161).

Al-ʿIrāqī’s (the father) juristic ability is best evidence in his attempt to differentiate between ‘hidden’ infanticide in Judāmah’s *ḥadīth* (tradition) (al-Nasāʾī 1959/1378 A.H.: Vol. 2, pp. 83–84) and ‘minor’ infanticide (al-Tirmidhī n.d.: 135) in Jābir’s *ḥadīth* (tradition). Minor infanticide according to al-ʿIrāqī (the father) refers to killing a live born child, whereas hidden infanticide is not actual infanticide. In his opinion, reference to *al-ʿazl* as infanticide amounted to figure of speech meaning only to intend avoiding pregnancy (al-ʿIrāqī n.d.: Vol. 7, p. 59).

A detailed account appears in Ibn Ḥajar’s (D.1449) *Fath al-Bārī*, a commentary on *Ṣaḥīḥ al-Bukhārī*. He founded that Judāmah’s *ḥadīth* (tradition) does not actually prohibit *al-ʿazl*. He affirmed that calling *al-ʿazl* ‘hidden infanticide’ was a figure of speech which did not make it *ḥarām* (prohibited). He also reflected, as did other theologians like al-ʿIrāqī, on the distinction between ‘hidden’ infanticide in Judāmah’s *ḥadīth* (tradition) and ‘minor’ infanticide in

the *ahādīth* (traditions) in which the Prophet (SAW) criticized the Jews. In the latter it denotes an actual murder, while ‘hidden’ involves no such action. He added that both *al-‘azl* and *wa’d* (infanticide) have the same intention, i.e. to avoid additional children. While *wa’d* combines both intention and the actual murder, *al-‘azl* stops at the level of intention which is no crime. That is why it is called ‘hidden’ (al-‘Asqalānī 1988: Vol. 9, pp. 248, 249).

Ibn al-Humām (D.1457) in his *Sharḥ Faḥ al-Qadīr* provided a short but impressive account indicating that *al-‘azl* has been permitted by the majority of the ‘*Ulamā* (knowledgeable theologians) even though some Companions disliked it because of Judāmah’s *ḥadīth* (tradition). Then he pronounced that the appropriate conclusion (*ṣaḥīḥ*) is permissibility. He found that “Judāmah’s *ḥadīth* (tradition) had been properly counteracted by the report on the stages of foetal development by Alī in the presence of ‘Umar” (Ibn al-Humām 1315 A.H.: Vol. 2, p. 203).

Al-Shawkānī (D.1830) in his *Nayl al-Awṭār* summarized previous views and emphasized that “Judāmah’s *ḥadīth* (tradition) did not entail prohibition; that Jābir’s *ḥadīth* (tradition) and others like it confirmed tacit approval by the Prophet (SAW) since he knew about *al-‘azl* and did not prohibit it; and that Judāmah’s *ḥadīth* (tradition) could be weakened because the part on *al-‘azl* was omitted from the four *Sunan* compilations” (al-Shawkānī 1357 A.H.: Vol. 6, 346).

3.12 Contemporary scholars on family planning

Many books by theologians have been devoted to the position of Islām on family planning and birth control. Most popular are those by Sharabāṣṣī, al-Najjar, Sallam Madkūr and al-Būṭī who supports *al-‘azl* and modern contraceptives but not permanent sterilization.

3.12.1 Sharabāṣṣī's views on family planning

Sheikh Ahmad al-Sharabāṣṣī, Professor at Al-Azhar, wrote on Islām and contraception and was a member of the international committee authenticating the Arabic proceedings of the Rabat Conference. He is the author of several books on *fiqh* including one on the *Sunnī* school. Sharabāṣṣī's book, Religion and Family Planning, deals with issues of religion, marriage and family planning, multitude and size of population, plus views on contraception, abortion and sterilization. The book makes a case for contraception, presenting a number of traditions on *al- 'azl*, in addition to its use of analogous reasoning to sanction modern methods. He expounds on acceptable reasons for the use of contraception which includes the following as listed by Omrān:

- “The existence of infectious diseases that may affect progeny.
- Health conditions that could be aggravated by pregnancy.
- Pregnancies at short intervals.
- The preservation of the woman's beauty or fitness.
- Avoiding the economic hardships associated with raising large families” (Sharabāṣṣī 1965: 57-80 as cited in Omrān 92: 209-210).

Sharabāṣṣī is inclined to sanction only temporary sterilization and not permanent.

However, Sheikh Aḥmad Ebrāhīm (Ebrāhīm 1936: dissertation) in his dissertation found no juristic objection to sanction permanent sterilization.

3.12.2 Sallam Madkūr's views on family planning

“Mohammad S. Madkūr, Professor of *Shari'ah* at Cairo University, lists three plausible solutions- all acceptable to *Islām* to the

population problem: development of resources, emigration and family planning” (Omrān 92: 210).

The author reviewed juristic opinion and concludes that, with the exception of the *Zāhirī* school, the majority of the jurists in each school sanction family planning. He concludes that in the case of abortion that there is agreement on its prohibition after ensoulment, with differences among the legal schools as to its permissibility before that. In addition to that, he further points out that in cases of compelling danger to a woman’s life, abortion is allowed at any time. He also disallows sterilization except in cases of hereditary diseases or mental illness. He stresses the need to make the views of Islām on family planning known to Muslims everywhere and urged that government support such a campaign (Madkūr 1965: 49–57 as cited in Omrān 99: 210).

3.12.3 Al-Būtī’s views on family planning

“Sa’id Ramadān al-Būtī, Professor and Dean of *Sharī’ah* in Syria and prolific writer on Islām and contemporary problems, vehemently objects to the family planning movement in his book while presenting a solid and well researched juristic argument in support of family planning practice including abortion before 40 days (Omrān 1992: 210). Al-Būtī used the principle of analogous deduction to sanction new methods of contraception” (al-Būtī 1975: 20, 22, 23, 24 as cited in Omrān 1992: 140).

According to Omrān, “[i]n theological terms the book is well-researched and presented in an innovative fashion, dividing the subject matter into two components: pre-pregnancy, where preventive measures (contraception and sterilization) can be applied, and post-pregnancy where curative measures (abortion) can be applied” (Omrān 1992: 210).

“Each measure is discussed from the sociological, theological and legal point of view. Each measure is also discussed in relation to three rights: the right of the foetus, the right of the parents and the right of society” (Omrān 1992: 210). Dr al-Būtī mentions that the practice of *al-’azl* is lawful (and by analogous reasoning, the use of modern contraceptives with only disfavour *karāha tanzīhiyyah*). He explains this sanction of *al-’azl* as follows:

- “The right of the fetus does not apply because the semen in itself does not constitute a fetus and therefore does not command the rights of inheritance or independent personality.
- The right of parents is satisfied by exercising their free choice to postpone or limit the number of their children.
- The right of society does not apply because society has no claim on the semen before fertilization. But, for the ruler to force the people to cease procreation would be an encroachment on society’s rights” (Al-Būtī 1975: 73–76 and 89–100 as cited in Omrān 1992: 210–211).

According to Omrān, “[s]terilization is disallowed by Dr al-Būtī who equates it with changing Allāh’s creation, on the grounds that it would affect man’s sexual power and women’s ability to bear children” (Al-Būtī 1975: 34 as cited in Omrān 1992: 211).

3.12.4 Al-Najjār’s views on family planning

“Abdul Raḥmān al-Najjar, Director of Mosques and *Da’wah* in Egypt’s Ministry of Religious Affairs wrote a booklet comprising a brief account on the family and society, value of children, family planning in Islām, the views of the *Sunnī* school, some of the recent *fatwās* (verdicts) and some questions and answers dealing with multitude, predestination (*tawakkul*) and whether contraception is *wa’d* (infanticide)” (al-Najjar 1986 as cited in Omrān 1992: 213).

According to Omrān, “Sheikh al-Najjār sanctions contraception without reservation, but he prohibits sterilization. While he conceded that some jurist allow abortion before ensoulment, he himself finds it safer to prohibit it throughout. He emphatically rules out that contraception is *wa’d* or contradictory to *rizq* andā predestination (*tawakkul*). He refutes claims for unrestricted multitude and calls for quality that would make the Prophet (SAW) proud of his nation”(Omrān 1992: 213).

“His booklet offers mosque *Imāms* a model *jumu’ah* ceremony (*khutbah*) to follow. The first concept dealt with is the importance of the family in Islamic society, delineating foundations for a good marriage. These are the comforts (*sakan*), the love and friendship (*mawaddah*), the mercy (*rahmah*) and the responsibility (*masū’liyyah*). Children are valued but Prophets have prayed only for good (*sālih*) children. *Islām* did not specify a number for children, leaving it to the physical, social and economic ability of the parents. Society also has a vested interest in this and its welfare should be considered” (al-Najjar1986 as cited in Omrān 1992: 213).

“In order to correlate the number of children to needs and abilities, Sheikh al-Najjār’s model continues, family planning is allowed. This enables parents to bring up a healthy, pious and well-educated generation that can defend *Islām* against its enemies. Contraception is particularly relevant in case of existing or feared health problems or expected economic hardships” (al-Najjar1986 as cited in Omrān 1992: 213).

“In the second part of the ceremony (*khutbah*) the concept of quality is emphasized as well as the concept of ‘no harm and no harassment’ emphasizing that *Islām* is a religion of ease (*yusr*) not hardship (*usr*)” (Al-Najjār 1986: 48 as cited in Omrān 1992: 213).

The concept of quality, as opposed to quantity, is far more beneficial to the society based on the *ḥadīth* by Abū Dāwūd in his *Sunan* (al-Sijistānī 1985). Omrān explains quality as requirements of Islamic multitude in accordance with the spirit of the *al-Sharī'ah* as a multitude of high moral character, a multitude of recognized scientific excellence, a multitude of political prestige that is a deterrent to its enemies, a multitude that produces more than it consumes (no international debts), a multitude that is coordinated, if not totally unified (at least no intra-Islamic conflicts or wars), a multitude that is not built on reproductive risks to mothers and children (Omrān 1992: 112).

3.13 Contemporary scholars discouraging family planning

Theologians opposed to family planning

3.13.1 Maulānā Maudūdī

Maudūdī, a religious leader in Pakistan with significant contribution to Islamic thought, launched a fierce attack on family planning in his book *The Birth Control Movement*. His views provoked a strong reaction to family planning proponents (Maudūdī 1982: 209 as cited in Omrān 1992: 209). According to Wajihuddīn Aḥmad, Maudūdī gives little juristic basis for his opposition to the family planning movement in view that he bases his case against family planning almost entirely on secular grounds, giving the usual arguments and supporting them from secular writers on the issue of family planning. (Aḥmed 1974: Vol.1, 337-339 as cited in Omrān).

Less than one-tenth of Maudūdī's book is devoted to theological views. Maudūdī concedes that the *Qur'ān* has no clear prohibition on contraception and argues that those who control their births are no less losers than those who kill their children, and refer to the Qur'ānic verse:

“Indeed, losers are those who have killed their children, foolishly, and have forbidden that which Allāh bestowed upon them [of rizq], inventing a lie against Allāh”. (Qur’ān: 6:140 as cited in Omrān 1992: 207)

“He argues that birth control falls within the forbidden change of Allāh’s creation. The *Qur’ān* reports that the devil said:

‘And surely I will command them and they will change Allāh’s creation’.
(Qur’ān: 4:119)

According to Maudūdī, “the verse on ***wives as a tilth unto their husbands***’ is a call for procreation and stands clearly against contraception”(Jones, Gavin W., Mehtab S. Karim 2005: 51 and Omrān 1992: 207).

Maudūdī’s survey of traditions was not comprehensive in relation to the *Sunnah*. An example is the tradition reported by Abū Sa’īd in which the Prophet asked ***‘Do you really do it’*** (and he did not say ***‘Do Not Do It’***). According to Omrān, “Maudūdī unintentionally omitted that part of the tradition in parentheses, although it is reported as such in *Sahīh Muslim*. In addition to that he claimed that had the Prophet (SAW) known of the family planning movement he would have prohibited birth control categorically (Maudūdī 1982: 209 as cited in Omrān 1992: 207)”. I agree with Omrān, in which he refutes Maudūdī’s claim stating “that it would be a trespass on the authority of the Prophet (SAW) and a violation of a basic precept of Islām, namely that it is applicable for all times. (Maudūdī 1982: 209 as cited in Omrān 1992: 207)”.

3.13.2 Sheikh Aḥmed Saḥnūn

At the Rabat Conference in 1971, Sheikh Saḥnūn of Morocco’s Ministry of Education presented a paper on ‘Abortion and Sterilization’ which incorporated many of the arguments against family planning.

“He conceded that the Companions practiced *al-a’zl* with the Prophet’s (SAW) full knowledge but charged that a contradictory tradition existed. That tradition related in *al-Bukhārī* on the authority of Abū Saīd al-Khudrī reports the Prophet as asking three times, on being told of the practice of *al-a’zl* by some of the Companions. The fact that the Prophet (SAW) reported the question suggests disapproval. This latter tradition is reported in *al-Bukhārī* which Saḥnūn gives credence over all other collections, thus the traditions reporting that the Prophet knew about the practice and approved it are less authentic in Saḥnūn’s opinion although they were reported in *Saḥīḥ Muslim* (Saḥnūn 1974: 402–417 as cited in Omrān 1992: 208)”.

According to Saḥnūn, “sterilization is characterized as an alteration of Allāh’s design and order, a defiance of His will, and a weakening of the strength of the Islamic nation through the reduction of its numbers. Despite the vast difference between abortion and sterilization, he felt that each led to the depletion and eventually, extermination of the human race (Saḥnūn 1974: 402–417 as cited in Omrān 1992: 209)”.

3.13.3 Sheikh Abū Zahra

“Abū Zahra, Professor at the Law Faculty of Cairo University and author of several books on early theologians”, published a bitter critique of family planning in *Liwā al-Islām* magazine in 1962. He began by referring to “the verse in the *Qur’ān* which deals with killing children out of poverty” or fear of poverty in which Allāh says: ***‘Kill not your children, on plea of want, we provide sustenance for you and for them’*** (Qur’ān: 6: 151) (Abū Zahra 1962: 101–102 as cited in Jones, Gavin W., Mehtab S. Karim 2005: 52).

And Allāh also says: ***“Kill not your children for fear of want, we provide sustenance for them and for you.”*** (Qur’ān: 17: 31)

“Abū Zahra interpreted ‘killing’ “is referred to include both (*wa’d*) infanticide and abortion” since that involves the slaying of a human being’s (soul) which Allāh has prohibited”. According to Omrān “he claimed indirectly that this “encompasses birth control because it implies denying God’s ability to provide (*rizq*)” (Abū Zahra 1962: 101–102 as cited in Jones, Gavin W., Mehtab S. Karim 2005: 52 and Omrān 1992: 204).

“He concludes that the text of the *Qur’ān* suggests prohibition of birth control through sterilization or other means in fear of poverty or because of it” (Abū Zahra 1962: Vol. 16, no. 11 as cited in Jones, Gavin W., Mehtab S. Karim 2005: 52 Omrān 1992: 204).

Abū Zahra acknowledges that the prevention of pregnancy was found in the past ages as it also happened during the time of the Prophet (SAW) when the Jews used to practice *al-‘azl* about which he was informed. He said: ***“If Allāh wills its creation you cannot stop him”***. (al-Tirmidhī n.d :135) Abū Zahra inferred from the above statement, the disapproval of the Prophet (SAW) and claimed that *al-‘azl* spread from the Jews to some Muslims. Some Muslims reported: ***“We used to practice al-‘azl at the time of the Prophet (SAW)”***. Abū Zahra believed it was logical that they practiced *al-‘azl* and discussed it among themselves, but they kept it from the Prophet (SAW) (Abū Zahra 1962: 101–102 as cited in Jones and Karim 2005: 52 and Omrān 1992: 205”).

He then stated that the jurist “should classify *al-‘azl* in the category of forgivable things and that its permissibility is *istithnā’* (exceptional). Birth control is allowed only for individual and only personal reasons. He restricted individual use to specified situations. (Karim: 2005: 52)

- When the woman is too sick to sustain repeated pregnancies, in which case birth control is allowed, provided that a reliable Muslim physician recommends it.
- When the man or wife has a hereditary disease and fears its transmission to progeny in which case he must stop procreation.

As Omrān categorically refers to the concluding remarks by Abū Zahra who emphasize “that children are the human wealth and the source for national development, hence, their numbers should be increased rather than decreased. He concluded that the call for birth control or family planning is ‘foreign’ in its origin and ‘foreign’ in its consequences” (Abū Zahra 1962: Vol. 16, no. 11 as cited in Karim 2005: 52 and Omrān 1992: 204–205)”.

3.14 Family planning in view of legal schools of thought

3.14.1 The *jumhūr al-fuqahā* (majority of theologians) position in Islām

According to Omrān “the *jumhūr al-fuqahā* or ‘*āmmat al-ulamā*’ or simply *al-jumhūr* (majority of theologians) from almost all schools of Islamic jurisprudence agree that *al-‘azl* is permissible with a wife’s consent. The predominant dissent to this *jumhūr* (majority of theologians) position comes from the *Ẓāhirī madhhab*. Some dissent exists also inside the schools” (Omrān 1992: 153).

“The strength of support for the *jumhūr* (majority of theologians) position can be seen in the views of jurists from the different schools as illustrated in the following passages from Imām Ibn Ḥajar in *Fath al-Bārī* (Ibn Ḥajar 1325 A.H.: 244–249 as cited in Omrān 1992: 161) and al-Bājī in *al-Muntaqā*” (al-Bājī no date: Vol. 4, pp. 141–143 as cited in Omrān 1992:153).

“Ibn Ḥajar quoted earlier theologians ‘referring to Ibn ‘Abdul-Barr’ who asserted that there was agreement among jurists [*‘Ulamā*] (knowledgeable theologians) that *al-‘azl* is permissible with a wife’s permission because coitus is her right and she can demand it. Ibn Ḥajar confirms that such *ijma*’ [‘consensus’] was also reported by Ibn Hubairah (al-‘Asqalānī 1988: Vol. 9, 247 as cited in Omrān 92:153). Imām al-Bājī (D. 494 A.H.) from the *Mālikī* school has a similar statement namely that the *jumhūr* (majority of theologians) are in agreement that *al-‘azl* is permissible with a wife’s consent” (al-Bājī n.d.: Vol. 4, pp. 141-3 and cited in Omrān 92:153).

“There are still enough honest differences of opinion to distinguish one school from another”. Likewise variations exist within schools whereby a minority of theologians may express views different from the majority opinion of their school and cross over to share opinions with other schools. This is a welcome occurrence because all schools stem from the same origin” (Omrān 92:153).

Omrān points out that, “(i)n almost every *madhhab* (school of thought) there are a few jurists who disallow *al-‘azl*. Occasionally opponents of family planning seek out these dissenting views and present them as the representative position of the concerned schools. This is deceptive” (Omrān 1992: 153).

“Ibn Ḥajar Al-Asqalānī (D. 1449 C.E.) made it clear in his commentary of *Fath al-Bārī*, that *al-‘azl* was allowed and noted the works of other theologians both inside and outside the Shafi’ī school and noted the wife’s consent by the majority of the latter theologians as the woman has the right to intercourse but not ejaculation” (al-‘Asqalānī: 1988: 244-9: as cited in Omrān: 1992: 161).

According to Omrān “all schools of *fiqh* consider the *Qur’ān* and *Ḥadīth* (Traditions) as their ‘original’ sources merely differing in relation to some interpretations, the validity of other sources of jurisprudence and the methodology of formulating a ruling”

Several schools of Islamic *fiqh* originated over a long period of time each bearing the name of the leading jurist, its founder or *Imām*. “These schools are called *madhāhib* which literally means ‘path or ways’. “The schools merely represent different ways of interpretation and are not different sects, denominations or religions”(Omrān: 1992: 146).

The ‘*Ulamā* (knowledgeable theologians) and *Fuqahā* (Jurists) proceeded to systemize Islamic *fiqh* through a process of qualified inquiry known as *ijtihād* (independent reasoning).

3.14.1.1 The *Ḥanafī madhhab*

According to Omrān “(the overwhelming opinion) of this school is to allow *al-‘azl* as a contraceptive measure with minor differences as to the requirement of a wife’s consent. “The more popular view is that it is not permissible without a wife’s permission”(Omrān 1992: 153). “Later jurists, ‘like Ibn Abdin’ (D.1836 C.E.) bypassed the wife’s consent during religious decline (bad times) and in fear of begetting delinquent children” (Ibn Abdin 1870: *Radd* : 586 and *Minhāt*: vol. 3 pp. 214–215 as cited in Omrān 1992: 154).

According to Omrān, “Abdul Majīd Saleem, the Grand Mufti of Egypt, pronounced a legal *fatwa* in 1937 summarizing the *Ḥanafī* school of law, in it he confirmed that the use of *al-‘azl* or other measures to prevent pregnancy is allowed with consent of the spouse. He added that, “such consent could be bypassed in times of religious decay to avoid having delinquent children”(Saleem 1937: *Fatwa*, 81 regd, 43, Vol. 20, no. 7 as cited in Omrān 1992: 155).

“The meaning of ‘bad times’: In the first three centuries of Islām, the Arab conquests led to the rise of a new and vigorous empire within whose borders commerce, learning, and a new civilized community developed. At the beginning of the tenth century (C.E.), when foreign armies caused disintegration of society, civil wars and the rise of petty dynasties. Bedouin assaults caused the disruption of economic activity and resulted in the bad times. These are the combined conditions that civilized men in the Islamic urban communities experienced and was called bad times. The fears of bad times were more complex than the simple fear of famine. Even in the worst of times the urban population was never pressed against the limits of existence for very long. The concept ‘bad times’ was used by old and urban communities with a clear idea of what a civilized level of existence was. The consequent need for extra toil to earn a living, and the possibility of being driven by necessity to engage in immoral or illegal transactions, were matters of concern” (Musallam 1986: 119).

According to Omrān, “communities in many areas of the world are a bad influence on children and detract from good behaviour including neglect of religious practices, drug abuse, promiscuity, repulsion of parents as old-fashioned, etc. That is why the later *Ḥanafī* jurists found it quite permissible to avoid pregnancy (even without the spouse’s consent) in situations and circumstances that militate against properly raising a child in a manner that would do honour to the Prophet (SAW)” (Omrān 1992: 39).

Imām Abū Ḥanīfah and both his students, Abū Yūsuf and Muḥammad al-Shaybānī, representing the earlier school, allowed *al-‘azl* with a wife’s consent as stated by al-Khawārizmī in his *‘Jām’i Masānīd al-Imām al-‘Aẓam’* (al-Khawārizmī 1322 A.H.: Vol. 2, p. 118-119 as cited in Omrān 1992: 154).

According to Omrān, “Ibn Nujaim (D. 1562 C.E.) in his *‘al-Baḥr al-Rā’iq’* confirmed that the correct theological opinion is (allowing) *al-‘azl* with a wife’s consent. He endorsed the ruling that consent could be bypassed in (times of religious decay) and (he) also (added) that **‘women can block the mouth of the uterus’** (to prevent the semen from reaching the uterus, which was the prevailing custom during his period) (1562 C.E.). This was permissible with the husband’s consent. This is (the very) first reference to the use of ‘pessary’ in early times” (Ibn Nujaim 1562 C.E.: Vol. 3, p. 214–215 as cited in Omrān 1992: 154).

“Ibn ‘Ābidīn in his *Rad al-Muḥtār* (nineteenth century jurist) ‘echoed’ the views of the later jurists “in allowing *al-‘azl* with the consent of the spouse, a consent that can be cancelled in bad times, including when the couple ‘undertakes’ a lengthy ‘and difficult’ journey. He also ‘made reference’ to “the changing ruling with changing time” (Ibn ‘Ābidīn 1404 A.H.: Vol. 2, p. 412 as cited in Omrān 1992: 154).

3.14.1.2 The Shāfi’ī madhhab

The majority view of the *Shāfi’ī* school is that *al-‘azl* is allowed even without the wife’s consent although the act itself is *makrūh tanzihī* (lightly disfavoured). “They argue that the woman has the right to intercourse, but not to ejaculation. Several jurists cross over and adopt the *jumhūr* (that is the decision of the majority of the theologians in the four schools) position of requiring the wife’s consent. A few totally disallow *al-‘azl*” (Omrān 1992: 159).

According to Omrān, “Imām al-Shāfi’ī, the founder of the school is recognized for his liberal views on family planning. Ibn al-Qayyim (Ibn al-Qayyim n.d.: 8–9 as cited in Omrān 1992: 159) quotes him as saying: **“We report on several of the Prophet’s (SAW) Companions that they allowed *al-‘azl* and found nothing wrong with it.”**

Al-Fairūzabādī al-Shīrāzī (n.d.: Vol. 2, p. 66 as cited in Omrān 1992: 159) was one of the early jurists who crossed over and adopted the common position of allowing *al-‘azl* only with a wife’s consent. He says: “In the case of the free wife, if it is with her consent, then *al-‘azl* is allowed; if not, there are two opinions, one view is to allow it because she has the right to intercourse but not to ejaculation. The second view is to disallow it because of progeny”.

According to Omrān, “Al-Ghazālī (D. 1111 C.E.) provided the first detailed interpretative account on *al-a’zl*. Contemporary thinkers find in it all the elements of a modern thesis on the subject”. He is of the opinion that the “correct view is ‘that of’ liberal permissibility” (Omrān 1992: 159). He added that “those who dislike it, attach their disfavour as *makrūh tanzīhī* (lighter degree of dislike). (He therefore) “allows *al-‘azl* for health and economic reasons and even to preserve the woman’s beauty for the continued enjoyment of her husband. He felt that fewer children would protect against economic ‘difficulties’, which in turn is good for piety (*qillatul ḥaraj mu’inun ‘aladdīn*)” (al-Ghazālī 1302 A.H.: Vol. 2, p. 53-54 as cited in Omrān 1992: 160).

Imām Nawawī states that this act is *makrūh* (undesirable or not commendable). But if his wife (the free woman) consents to it then it is not ḥarām (forbidden) and if she does not give her consent, then the correct opinion is that it is still not ḥarām, although *makrūh* (al-Nawawī: n.d. Vol. 1, p. 464).

“(A) number of *Shāfi’ī* jurists did not agree (totally) with the majority” opinion of the *Shāfi’ī* school of thought and forcefully prohibit(ed) *al-‘azl* on the grounds of Judāmah’s *ḥadīth*” (al-Nasā’ī 1959/1378 A.H.: vol. 2, pp. 83-84) These include al-Imād, Ibn Yūnus, Ibn ‘Abd al-Salām and Ibn Ḥibbān (Omrān 1992: 162).

3.14.1.3 The Mālikī mathhab

Imām Mālik (D.795), the founder of this school, explicitly states in his *al-Muwatta'*, which became the majority opinion of the Mālikī school that, “No man has the right to practice *al-‘azl* without the [free] wife’s consent” (Mālik 1336 A.H.: Vol. 2, p. 594–596 as cited in Omrān 1992: 155). “Some jurists also introduced the concept of compensating the wife if she so wishes” (Omrān 1992: 155). Al-Dardīr, a jurist of later times, mentions monetary arrangements as compensation for her consent. He says: “The free wife may consent to her husband [to practice coitus interruptus] free or for some small or large compensation” (al-Dardīr 1355 A.H.: Vol. 2, p. 266 as cited in Omrān 1992: 158).

According to Omrān, Al-Qurṭubī mentions in his *al-Jāmi' li Ahkām al-Qur'ān* that, “the drop of seed is not a thing in actual fact, and therefore no wrong is done by the woman if she expels it, unless it is already lodged in the woman’s uterus. It is for all purposes as though it is still in the man’s loins” (al-Qurṭubī 1967: Vol. 12, p. 8 as cited in Omrān 1992: 156). Omrān said that, “thus he (Al-Qurṭubī) allows the expulsion of semen subsequent to having reached the uterus, but prior to implantation or lodging in the uterus”. This clearly illustrates the early Islamic medical practice “of prescribing ointment for men and greasy suppositories for women to help the semen seep out of the vagina”, thus prohibiting it from reaching the uterus via the cervical canal (Omrān 1992: 156).

3.14.1.4 The Ḥanbalī madhhab

The majority of the Ḥanbalī jurists only allow *al-‘azl* (withdrawal) subject to the wife’s consent irrespective of whether she is young or old. In certain extreme situations this consent could be ignored. Some even “made it mandatory to practice *al-‘azl* in enemy

territory” (so that the child would not be enslaved). (Omrān 1992: 162).

Imām Aḥmad Ibn Ḥanbal (D. 855 C.E.), the founder of this school, in his *Musnad* only “allowed *al-‘azl* (with) a wife’s consent” (Ibn Ḥanbal: n.d.: 388 as cited in Omrān 1992: 162). Ibn Qudāmah (D. 1223 C.E.) in his *al-Mughnī* is of the opinion “that *al-‘azl* is a lighter degree of disliked (*makrūh tanzīhī*). He further points out that “there is justification, such as being in enemy territory and there is need to have relations, then he can practice” (*al-‘azl*). Nevertheless, he “insist on the need for a wife’s permission because she has the right to progeny and contraception would harm her” (Ibn Qudāmah n.d.: Vol. 8, p. 132–134 as cited in Omrān 1992: 162–163). According to Omrān, “(a) later jurist of similar name, is Ibn al-Qudāmah al-Maqdisī who died fifty years after the death of Ibn al-Qudāmah and agreed with all of Ibn al-Qudāmah’s views in his commentary on Al-Muqni’ called *Al-Sharḥ al-Kabīr*” (Ibn al-Qudāmah al-Maqdisī n.d.: Vol. 8, pp. 132–134 as cited in Omrān 1992: 163).

It has become evident from all the relevant findings that has been gathered thus, that *al-‘azl* (coitus interruptus) is permissible with a slight degree of dislike attached to it, and subject to the wife’s consent, provided it is undertaken for genuine *Shar’ī* reasons. Otherwise, besides depriving her right to progeny, it would also amount to denying her complete sexual fulfilment by the sudden withdrawal from her. Nevertheless, this too could be overlooked in extenuating circumstances, especially when Muslims are in enemy territory and fear of being captured as prisoners of war exists.

3.14.2 A summary of the *Shī'ite* school of thought

3.14.2.1 The *Zaydī* school (*Shī'ite*)

Majority position

“The majority position of the *Zaydī* school is that *al-‘azl* is permissible as a contraceptive measure with jurists differing as to where permissibility is subject to a wife’s consent. The *Zaydī* view is close to the *Shāfi‘ī*” (Omrān 1992: 165).

3.14.2.2 The *Imāmī* (Twelvers) school (*Shī'ite*)

Majority position

According to Omrān (1992), “the majority position of the *Imāmī* school (almost consensus) is in agreement with the *jumhūr* (majority) position, i.e. *al-‘azl* is permissible subject to a wife’s consent. The *Imāmī* jurists add, however, that consent can be obtained at the time of the marriage contract, once and for all. *Al-‘azl* is legal thereafter, even if the wife changes her mind. So important is a wife’s consent that a few jurists allowed monetary compensation to the wife every time the husband violates this condition, a position very much similar to the *Mālikī* school except that the compensation here is fixed at ten dinars and is called *diyāh* for *nuṭfah* (compensation for the sperm)” (Omrān 1992: 165).

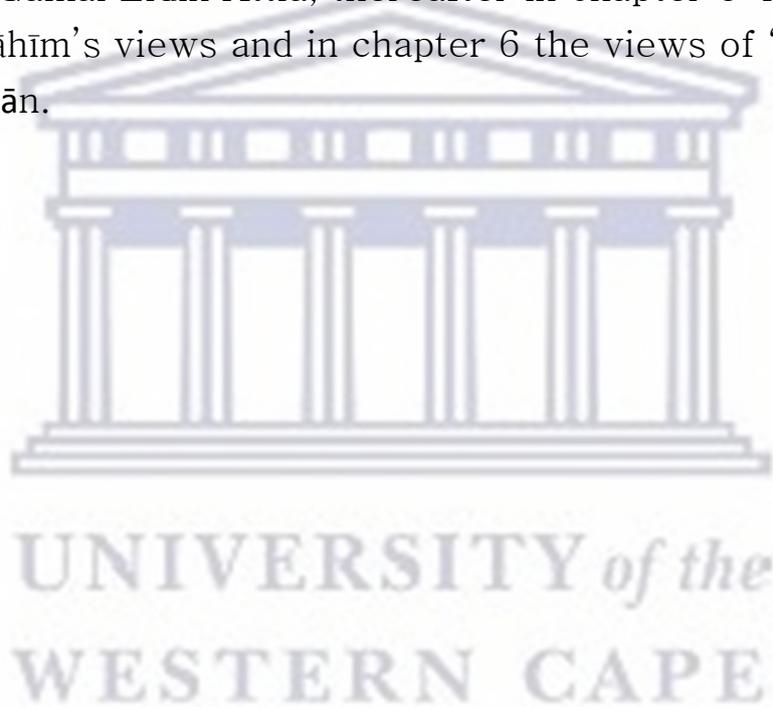
3.15 Chapter summary

In this chapter I expounded on the majority position of the *al-madhāhib al-fiqhiyyah* (schools of jurisprudence) on the permissibility of *al-‘azl* which can become of paramount importance for the sustainability of life on earth within the Maqāsidic framework.

It also gives substantive evidence from the majority position on the permissibility of *al-‘azl* with a wife’s consent and without her consent at times of religious decline.

This chapter paved the way for identifying the permissibility of family planning, which will assist in assessing the views of the three adopted scholars namely, Gamal Eldin Attia, ‘Abdul Faḍl Moḥsin Ebrāhīm and ‘Abdel Raḥmīn Omrān in the next chapters.

In chapter 4 I will have an in depth discussion on the views adopted by Gamal Eldin Attia, thereafter in chapter 5 ‘Abdul Faḍl Moḥsin Ebrāhīm’s views and in chapter 6 the views of ‘Abdel Raḥmīn Omrān.



Chapter 4

The position adopted by Gamal Eldin Attia on progeny and family planning

4.1 Introduction

In this chapter I will discuss a brief background of Gamal Eldin Attia and then discuss his views on family planning and progeny related to *Maqāsid al-Sharī'ah* as well as an assessment of his views.

Gamal Eldin Attia holds a Ph.D. in law from Geneva University (1959). He held posts at the University of Qatar for a number of years and acted as an academic consultant for the International Institute of Islamic Thought, where he supervised academic theses, research projects, seminars and conferences. He has become a leading figure in the field of *Maqāsid al-Sharī'ah*. He has introduced a new conception of *Maqāsid al-Sharī'ah*. He proposed an alternative by conceiving the *Maqāsid al-Sharī'ah* in terms of the preservation of progeny by dividing it into four areas: the individual, the family, the greater Muslim community, and humankind as a whole. He considers applying *Maqāsid al-Sharī'ah* in a more practical way. Attia expands on *Nasab* (progeny) by explaining the relations between sexes that leads to procreation thereby helping to fulfil the intent of preserving progeny and that it is related to achieving harmony, affection and compassion (Attia 2007: 126). The reason I chose him in my study on family planning is because he gives a *maqāsid* view on multitude.

4.2 Attia's views on preservation of the progeny

The term employed for progeny refers to one of the universals of the Law, have differed from one scholar to another over time, from *al-biḍ* (part of), to *al-nasl* (progeny) to *al-nasab* (family lineage) and *al-'ird* (honour)(al-Qarrāfī 1997: 304 as cited in Attia

2007: 117). According to Attia, *al-nasl*, *al-biḍ'* and *al-nasab* are both used interchangeably (Attia 2007: 117).

Attia views the subject related to the “preservation of progeny” differently “from the traditional approach,” as he “examines family related rulings in the context of viewing the family as one of the spheres for which we are searching for general *maqāsid al-Sharī'ah*” (Attia 2007: 124). According to Attia, “Ordering Relations Between the Sexes”, “Preservation of Progeny (or the species)”, “Achieving Harmony, Affection and Compassion”, “The Preservation of Family Lineage”, “Preservation of Personal Piety Within the Family”, “Ordering the Institutional Aspects of the Family” and “Ordering the Financial Aspect of the Family” should be classed among the essentials rather than the exigencies” (2007: 125-130).

“Although procreation is classed among the essentials overall for the preservation of the species, the achievement of this intent in individual cases may still nevertheless be classed among the exigencies. After all, some husbands and wives may not fall within the category of those referred to in the *Qur'ān* when it states that ‘*Allāh causes to be barren whomever He wills...*’ (Qur'ān: 42: 50). And for those who find this to be a source of hardship, Islamic law provides the option of divorce and remarriage or polygamy in order to meet this need” (Attia 2007: 126).

“It is for the sake of achieving the intent of maintaining people’s lineage that Islamic law prohibits both adultery and adoption; it is likewise the basis for legal rulings pertaining to the *‘iddah*, or the waiting period imposed on a married or divorced woman before being allowed to remarry, concealing the fact that one is pregnant, confirmation and disavowal of family lineage” (Ibn ‘Āshūr 1999: 162-164 as cited in Attia 2007: 127).

Attia (2007: 125) mentions that “(i)f complete relations between the sexes lead to procreation, which help to fulfil the intent of preserving progeny, then Islamic law affirms this intent by declaring the legitimate form of such relations to be one that exists between two individuals of opposite genders, since this alone will lead to procreation” (Attia:2007: 125). He rejects deviant relations, “even if they provide a kind of sexual pleasure” like both homosexual and lesbian relationships, which does not lead to procreation” (Attia 2007:125).

According to Attia, “the preservation of family lineage, honour (and the faculty of reason) are intrinsic to the makeup of human beings, whom God has honoured and favoured above all other creatures, and to whom He has made the rest of the creation subservient” (Attia 2007: 32).

“(T)he preservation of family lineage in the sense of the ability to attribute children to their parents is to be considered among the exigencies for both the children and parents: for the children, given what this ensures for them by way of the meeting of their needs and a beneficial, wholesome upbringing, and for the parents, given what this ensures for them by way of the pride which the tribe can take in its members and the preservation of the family” (Ibn ‘Āshūr 1999: 81–82 as cited in Attia 2007: 129).

According to Attia, “Ibn ‘Āshūr notes that ‘the males in the *Ummah* must be protected from emasculation, for example, and not to refrain from relationships with women by remaining single, etc. Similarly, females must be protected from undergoing hysterectomies since they involve the removal of the organ by means of which they give birth, and from the spread of the phenomenon of preventing pregnancy at the time of conception” (Ibn ‘Āshūr 1999: 81 as cited in Attia 2007: 126). This appears to

be a reference to methods of contraception which prevent pregnancy by hindering the process of conception.

4.3 Attia's views on family planning

Gamal Eldin Attia does not mention family planning in his works. He views multitude as protection of progeny. He also points out that those who have written on the subject of *Maqāsid al-Sharī'ah* have tended to view the preservation (or the species) as the primary intent of marriage, though it may also have other, secondary, intents (al-Shāṭibī 1975: Vol. 2, p. 396 as cited in Attia 2007: 124).

Gamal Eldin Attia looks at procreation and the multitude of the human race in a different light as many Islamic scholars do. Attia (2007: 223) verifies some of the premises which set Islām apart from other systems of thought and which make up the ideological dimension of the Islamic economy which he lists as:

- “Sovereignty and the right to be worshipped and served belong to Allāh alone, may He be praised and exalted.
- Material wealth belongs to Allāh and has been given to us as a trust,
- The goal of existence on Earth in particular, have been subjected to human beings and placed at their service in order for them to fulfil their roles as Allāh's trustees and to complete the process of populating and developing the Earth,
- Allāh's placing of human beings in the role of trustees on Earth applies to humanity as a whole and not a distinction conferred upon one group over another, and
- What a human being acquires as a result of his or her labour grants him no distinction over others, just as the loss of what one has gained implies no deficiency in the individual

concerned nor does it detract from his or her human or social rights” (al-Ghazālī 1990, as cited in Attia 2007: 223).

Attia mentions that Islamic law “encourages marriage, prohibits the burying alive of female infants and abortion, and treats procreation as one of the requirements of the marriage contract; hence, it is not permissible for the man to engage in *coitus interruptus* without his wife’s consent” (Attia 2007: 126).

“To realize the above objectives, [he states that] the *Shari’ah* through its various legislations:

- Encourages marriage, tolerates polygamy as an alternative for sexual promiscuity.
- Promotes procreation (if the requirements for multitude are met) and prohibits abortion.
- Enacts mutual law of spousal marital obligations.
- Prescribes the requirement of *iddah* (the waiting period of a woman after the death of her husband) for the women.
- Obligates child-rearing and child education.
- Provides a well-structured law for regulating interpersonal relationship among the family members.
- Take care of financial need of the wife, children and other family members” (Attia 2007: 125-130).

According to Attia (2007: 139) populating and developing the earth and the *Ummah’s* wealth is the intent that grows out of the *Maqāsid al-Shari’ah* for all of humanity, namely the population and development of the earth. He added that “it is embodied in the population and development of that portion of Planet Earth that falls under the *Ummah’s* sovereignty” (Attia 2007: 139).

4.4 Assessment of his views

According to my understanding Attia's views results in the following which he cites in al-Ghazālī in his *Ḥiyā' U'lūm al-Dīn*:

“The bearing of children,” which is “a means of drawing near to God, “acting in harmony with God’s love by striving to reproduce in order to ensure the survival of the human race”, “seeking the love of the Prophet (SAW) by maximizing the number of those in whom he can take pride on the Day of Resurrection”, “seeking blessing through the supplications to be offered on one’s behalf by one’s righteous children after one has died,” and “seeking the intercession of which one will be the beneficiary if any of one’s children dies young”.

“Fortifying oneself against the wiles of Satan by breaking the power of one’s physical longings and warding off the havoc that can be wrought by one’s passion, lowering one’s glance [when in the presence of members of the opposite sex other than one’s spouse], and chastity”

“Reviving one’s spirit and enjoying each other’s companionship, looking upon one another, and bantering with each other, all of which gladdens the heart and strengthens it for worship” and relieving oneself of the preoccupation with housekeeping and various other domestic tasks”.

According to Attia, “[t]he assistance provided by marriage] in the struggle to discipline and tame one’s lower self (*al-nafs*) through the consideration and regard one shows toward one’s wife, the care one provides for them, fulfilment of the duties entailed by one’s responsibility for them, ensuring that they receive their due, patient endurance of their moral failings, offenses and insults, striving to reform them, improve them and guide them onto the path of the true religion, working hard to make an honest living for

their sake, and raising one's children" (al-Ghazālī 1302 A.H.: Vol. 2: 27-40 as cited in Attia 2007: 226-227).

According to Attia, " *Usūl* scholars who succeeded [al-Ghazālī], considered procreation to be the primary intent of marriage, and all other resultant benefits as secondary" (Ghazālī 1302 A.H.: Vol. 2: 27-40 as cited in Attia 2007: 227). In this context the economic realm plays an important role in warding off difficulties in a multitude family with regards to those who use family planning to curb it against financial difficulty.

According to Īsā, family planning is far from population control either on a general or individual basis. He refers to the foremost objective is to produce offspring who would worship Allāh, and who would populate the earth. His view is in line with Attia's view in populating the earth. According to Īsā, Islām looks for high quality offspring, not hopeless masses that are weak despite their multitude (Īsā 1987 as cited in Omrān 1992: 236). The question remains, what happens if such legislation is not upheld and mass population leads to the deprivation of society where quantity is of no value? The answer to this will be alluded to when analysing the stance of Ebrāhīm and Omrān.

4.5 Chapter Summary

For Attia the five *Maqāsid* proliferate through the entire system of *Sharī'ah* through the function of humanity, community, family and the individual, and are not confined to strictly legal categories or the five universals. Applied to the category of progeny, Attia's analytic approach has wide potential. Attia sees populating and developing the earth as the intent that grows out of the *Maqāsid al-Sharī'ah* for all of humanity, and therefore he encourages marriage and promotes procreation. He also allows *al- 'azl* with the wife's consent.

Chapter 5

Abul Faḍl Moḥsin Ebrāhīm on progeny and family planning

5.1 Introduction

In this chapter I will discuss a brief background of Abul Faḍl Moḥsin Ebrāhīm. Thereafter I will discuss his views on family planning and progeny related to *Maqāsid al-Sharī'ah* as well as an assessment of his views.

Abul Faḍl Moḥsin Ebrāhīm “is Professor of Islamic Studies in the School of Religion and Theology at the University of KwaZulu-Natal, Durban, South Africa”. He analyses “a number of controversial topics such as contraception, assisted reproduction, termination of pregnancy, blood transfusion, tissue and organ transplantation, euthanasia and HIV/AIDS. In each instance he describes the secular legal position in South Africa– sometimes with references to other jurisdictions, especially the United Kingdom and the United States–before explaining the Islamic approach to the topic concerned (Ebrāhīm 2008: back cover).

According to Ebrāhīm, “[a]ll religions encourage their followers to marry and their matrimonial union legitimizes the sexual act, which facilitates the sperm to fertilize the egg and in this way accomplish procreation of the human race”. He alludes to the fact that “infertility is viewed as a ‘disease’ and ought to be cured”, and that “the infertile couple who resort to artificial reproductive technologies (ART) is not guilty of failing to place their trust in Allāh, but their resolve to overcome infertility would in effect enable them to fulfil the religious imperative to populate the world” (Ebrāhīm 2008: 100).

Ebrāhīm also points out that contraception involves using certain aids or techniques to prevent pregnancy (Ebrāhīm 2008: 100). He also claims that abortion is “a deliberate intervention to terminate

pregnancy” as he describes it “in a most inhumane manner” which he regards as a “direct violation of one of the purposes of the *Sharī’ah*, namely, preservation of life (*ḥifṭh al-nafs*)” (Ebrāhīm 2008: 129). He also points “out that it would be permissible to terminate pregnancy only in the event that the pregnancy poses a threat to the health or life of the mother”. According to him, this would be in conformity with one of the purposes of the *Sharī’ah*, namely, preservation of life (*ḥifṭh al-nafs*) of the mother” (Ebrāhīm 2008: 129).

5.2 Ebrāhīm’s views on progeny

The Muslim married couple’s right to procreate

According to Ebrāhīm, “[p]rocreation of [humankind] is part of the divine plan and this is brought out clearly in the Qur’anic verse: ‘*O humankind! Reverence your Guardian-Lord, who created you from a single person, created of like nature, his mate, and from them twain scattered (like seeds) countless men and women*’. (Qur’ān: 4: 1)

According to Ebrāhīm, “Muslims generally look forward to have children and they are well aware of the *Ḥadīth* of *Sayyidunā Muḥammad* (SAW) in this regard: ‘*Marry women who will love you and give birth to many children for I shall take pride in the great number of my Ummah (nation)*’. (al-Nasā’ī 1959/1378 A.H.: *Kitāb al-Nikāḥ*. Part 6, p. 66 as cited in Ebrāhīm 2008: 59). He points out “the fact that there was no Qur’anic revelation censuring *al-‘azl*” therefore “the schools of Islamic Jurisprudence concur that both spouses share mutual right to procreation, necessitating the wife’s consent if the husband chooses to practice *al-‘azl*. He added that “this equally implies that the wife may not practice contraception without her husband’s knowledge” (Ebrāhīm 2008: 59).

After examining the views of the five major schools of jurisprudence on the issue of *al-‘azl*, Ebrāhīm came to the

conclusion “that the husband ought to seek the wife’s permission to practice ‘*azl*’ due to two reasons: “Firstly, her husband resorting to *al-a’zl* would deny her right to procreate; and secondly, it would compromise her sexual fulfilment” (Ebrāhīm 2008:59).

5.3 Family planning

Ebrāhīm’s views will be discussed under the following:

- “Acceptable reasons for Muslims to resort to contraception
- Reversible contraceptive methods that could be used by Muslims
- Irreversible contraception in light of Islamic medical jurisprudence
- Assisted reproductive technologies (ART) in light of Islamic medical jurisprudence” (Ebrāhīm 2008:60–75).

5.3.1 Acceptable reasons for Muslims to resort to contraception

According to Ebrāhīm, “(a)mong the traditional scholars, the one who has dealt with the question of the acceptable reasons for one to practice contraception is the illustrious scholar, Imām al-Ghazālī (d. 1111 C.E.)”. Ebrāhīm lists “some of the acceptable reasons advanced” [by al-Ghazālī as follows]:

- “To preserve the woman’s beauty and health for her husband’s continued enjoyment.
- To protect the wife’s health and life from the risk associated with child-birth.
- To avoid excessive hardship (*kathrat al-ḥaraj*) because of an excess of children.
- To avoid genuine financial difficulty” (al-Ghazālī 1302 A.H.: Vol. 2, p. 52 as cited in Ebrahīm 2008: 60).

Ebrāhīm substantiates his stance on contraception for genuine reasons by mentioning “modern scholars who have laid down genuine reasons for contraception” such as “Shaykh Dr. Aḥmad al-Sharabāṣṣī of Al-Azhar University, Cairo, Egypt”. According to Ebrāhīm, al-Sharabāṣṣī states that contraception is valid in the following circumstances:

- “To give a woman a chance to rest between pregnancies.
- If either or both partners have a disease which can be transmitted.
- To safeguard the woman’s health. For instance, if a woman is already sucking an infant, it would be harmful both for herself and her child if she became pregnant.
- If the husband’s finances are insufficient to support more children” (al-Sharabāṣṣī 1965: 110–111 as cited in Ebrāhīm 2008: 60).

5.3.2 Reversible contraceptive methods that could be used by Muslims

According to Ebrāhīm “[t]he principle involved in *al-‘azl* is to prevent the sperm from reaching the uterus and thus frustrating the possibility of the fertilization of the ovum. All reversible contraceptive methods, both hormonal and non-hormonal, have the same aim and thus by analogy there would be no problem for Muslims to opt for anyone of them on the grounds that all the Schools of Islamic Jurisprudence do not hold *al-‘azl* to be *ḥarām* (forbidden)”. He points out an interesting point stating that “there may be a problem if a Muslim woman were to resort to Copper T IUCD in view of the fact that the South African Medical Adviser points out the following:

‘Pregnancy can occasionally occur even with the device in place, and if it does, there is a greater risk of abortion between the forth and the sixth month, and an increased

chance of the pregnancy being ectopic (at a site outside the womb)” (South African Family Medical Adviser. 1983. Cape Town. The Reader’s Digest Association South Africa (Pty) Ltd., 254 as cited in Ebrāhīm 2008: 61–62).

5.3.3 Irreversible contraception in light of Islamic medical jurisprudence

According to Ebrāhīm, “irreversible contraceptive methods are the ones that are of a permanent nature”.

Ebrāhīm lists “the following methods (that) fall under this category: (a) Vasectomy (b) Tubal ligation, (c) Hysterectomy and Essure Permanent Birth Control System”.

According to Ebrāhīm, “(v)asectomy, tubal ligation and hysterectomy are methods which produce sterility and involve surgical intervention. If the wife chooses tubal ligation or hysterectomy as a method of contraception and the husband opts for vasectomy, then both the husband and wife would be rendered incapable of biological reproduction permanently”. Ebrāhīm further points “out that total hysterectomy, i.e., the removal of the entire uterus, is not opted for by most women as a means of permanent contraception in view of the fact that such a measure involves major surgical procedure and is a risky affair” (Munson 1983: 44 as cited in Ebrāhīm 2008: 63). According to Ebrāhīm’s view, irreversible contraception is impermissible using the analogy that castration was forbidden by the Prophet (SAW) as reported by ‘Abdullah Ibn Mas’ūd (R.A), **“We were on an expedition with the Prophet (SAW) and we had no women with us. We said, ‘Should we not have ourselves castrated?’ He (the Prophet) forbade us to do so.”** Authenticated by Muslim (Muslim 1385: Vol. 3, pp. 553–554 as cited in Ebrāhīm 2008: 65)

5.3.4 Assisted reproductive technologies (ART) in light of Islamic medical jurisprudence

The desire to have one's own offspring is a very strong human instinct and ART techniques have helped thousands of infertile couples achieve their dream of conceiving a child. ART includes all fertility treatments in which both eggs and sperms are handled involving surgically removing eggs from a woman's ovaries, combining them with sperm in the laboratory, and returning them to the woman's body or donating them to another woman. Some of the techniques are; Artificial insemination, In vitro fertilization, Surrogacy/Gestation Carrier, Human Cloning. (Centers for Disease Control and Prevention. 2007. *Assisted Reproductive Technology*, <http://www.cdc.gov/ART/index.htm> date accessed 22 July 2007 as cited in Ebrāhīm 2008: 73)

Ebrāhīm emphatically makes it clear that “[i]n the West today, where secularism prevails, there is no limit to the extent that one may go in trying to rectify one's infertility problem. Ebrāhīm arguebaly points that, “[p]erhaps the only concern in that part of the world may relate to whether such assisted reproductive manipulations, which does not involve sexual intimacy between the spouses, could affect the family and children. On the other hand, since Muslims are bound by the dictates of the *Sharī'ah* (Divine Law), the dilemma for infertile Muslims is whether it would be permissible for them to resort to assisted reproduction in order to become parents?” (Ebrāhīm 2008: 88)

Ebrāhīm affirms that “Muslims firmly believe that procreation of the [humankind] is part of the Divine plan as is evident from the following verse of the *Qur'ān*: ‘O humankind! Reverence your Guardian-Lord, who created you from a single person, created of a like nature, his mate, and from them twain scattered (like seeds) countless men and women’. (Qur'ān: 4: 1 as cited in Ebrāhīm 2008: 88–89)

In addition to that, Ebrāhīm mentions, that Muslims “firmly believe that nothing happens except as willed by Allāh and their conviction in this regard is based upon the following Qur’anic citation: *‘To Allāh belongs the dominion of the heavens and the earth. He creates what He wills (and plans). Or He bestows both males and females, and He leaves barren whom He wills: for He is full of Knowledge and power’*. (Qur’ān: 42: 49: 50 cited in Ebrāhīm 2008: 89). For this reason, Ebrāhīm views the need to procreation and sees the inability to procreate as a sickness that can be cured, except in circumstances beyond control (Ebrāhīm 89, 90).

5.4 Assessment of Ebrāhīm’s views

Of the acceptable reasons put forth by Imām al-Ghazālī and al-Sharabāṣṣī as genuine reasons for contraception relates to the consideration of the life and health of the wife. In this regard, the juridical rule of necessity would make the use of contraceptive devices an obligation for it would fulfil one of the purposes of the *Sharī’ah*, namely preservation of life (*ḥifẓ al-nafs*). Al-Sharabāṣṣī relates to resorting to contraception to prevent birth of children with genetic diseases. Ebrāhīm substantiates its validity on the ground of preservation of progeny (*ḥifẓ al-nasl*). In other words, if through genetic screening it is established that one or both of the prospective parents are found to be carriers of certain genetic diseases and there exist a strong probability of their begetting a deformed new-born, then their resorting to contraception to prevent such birth can in no way be comparable to the actual killing of defective fetuses through the act of abortion after fertilization has taken place. Ebrāhīm is of the opinion that “the view of Imām al-Ghazālī and al-Sharabāṣṣī on the permissibility for Muslims to resort to contraception on the basis of genuine financial consideration is not generally accepted by Muslim jurists to be tenable and valid” (Qāsmī n.d.: 73-286 as cited in Ebrāhīm 2008: 61).

Ebrāhīm also holds “the view that it would be in order for Muslims to space the birth of their children as a result of genuine financial difficulty”. He added that “this would in no way imply that they have lost faith or trust in Allāh as the Provider of their needs, but rather as parents, they have the equal responsibility to plan for the future of their family needs. What needs to be noted is that it would not be *ḥarām* (prohibited) for them to resort to reversible contraception on the basis of financial difficulty, but it would most certainly be *ḥarām* (prohibited) for them to resort to resort to sterilization for the same [reason]” (Ebrāhīm 2008: 61). Ebrāhīm is of the view that, “if the wife were to fall pregnant while practicing contraception, it would be *ḥarām* (prohibited) for her to opt for abortion on the basis that the pregnancy was unplanned” (Ebrāhīm 2008: 61).

After an in depth analysis of Ebrāhīm’s views, I discovered that Ebrāhīm cautions against some reversible contraceptive methods which may pose a problem as he points out that there is the possibility that with the Copper T IUCD in place, the woman may abort the foetus if she does fall pregnant, making its use questionable. According to Ebrāhīm, Muslim women should rather make use of the Progestasert IUD or Mirena IUS since they are hormone based and prevent the sperm from reaching the egg. He also mentions that Muslim women should also take note of the fact that some of the contraceptive methods, like, for example, the post coital pill, is also questionable since it does not prevent fertilization, but in effect impedes implantation. In the view of Imām al-Ghazālī fertilization is the essential factor and disturbing it would be a crime (al-Ghazālī 1302: Vol. 2, p. 51 as cited in Ebrāhīm 2008: 62).

Ebrāhīm ascertains that “as far as all the other contraceptive methods, for example, natural family planning (ovulation,

symptothermal and withdrawal methods), non hormonal contraception (male and female condoms, the diaphragm and the cap, sponge and spermicides), and hormonal contraception (the pill, progesterone-only pill, injections, implants) are concerned, Muslims may make use of them since these methods of contraception, like *al-‘azl* prevent the sperm fertilizing the ovum” (Ebrāhīm 2008: 62).

Ebrāhīm alludes to the fact that the contraceptive patch, Muslim women ought not to make use of it since it is not regarded as a medical necessity and there are other alternative acceptable contraceptive methods as its use would render the compulsory *ghusl* (ceremonial bath) null and void since it would impede water flowing over the part of the skin where the patch had been placed. According to Ebrāhīm, “it would be advisable for Muslims to consult their respective Muslim physicians when determining which of the types of contraception they should make use of so that they would be in a position to avoid using the ones that could jeopardize their health and well-being, as well as the ones which are not acceptable within the Islamic contexts” (Ebrāhīm 2008: 62-63).

According to Ebrāhīm, “[i]t is argued that tubal ligation is not a permanent measure and if a woman so desires later on to bear children, the fallopian tubes could be ‘untied’ or ‘joined’ again”. The “chances for successfully rejoining the severed segments of each tube (tubal reanastomosis) depends on the technique used to do the sterilization” (Glass 1982: 81 as cited in Ebrāhīm 2008: 63). Ebrāhīm cites “the insight of Clive Wood on the possibility of reversing vasectomy” as he quotes him saying:

Many experts believe that vasectomy should be regarded as an irreversible procedure. There are some doctors who have specialized in rejoining the cut ends of the vas, in response to

requests from patients who have decided they would like to have their fertility restored and some of these doctors have reported considerable success – the restoration from the sperm to the semen in 50% of the cases or more. However, the return of fertility cannot be guaranteed. And since this is so, patients who are likely to change their mind afterwards are not generally regarded as good candidates for the operation (Wood 1975: 45 as cited in Ebrāhīm: 2008: 63–64).

I haven't come across any medical critique that opposes this view. It can be said that it is medically agreed upon that vasectomy is an irreversible procedure in most cases as indicated by Wood. With reference to irreversible contraceptive methods, al-Būṭī (1976: 33 as cited in Ebrāhīm: 2008: 64) states that the *‘Ulamā* concur that it is not permissible to make use of any device which might permanently incapacitate a person to procreate regardless of whether such a person is a man or woman or whether such use followed the consent of one or both spouses.

5.5 Chapter Summary

Ebrāhīm views barrenness in both male and female as a sickness that can be overcome through artificial reproductive technology (ART). He sees procreation of the human species as part of the divine plan of Allāh. Ebrāhīm endorses valid reasons to use reversible contraceptive methods which are: to give a woman a chance to rest between pregnancies, if either or both partners have a disease which can be transmitted [that is to be regarded as the juridical rule of necessity which would make the use of contraceptive devices an obligation for it would fulfil one of the purposes of the *Shari'ah*, namely preservation of life (*ḥifẓ al-nafs*), to safeguard the woman's health and if the husband's finances are insufficient to support more children. He is of the opinion that the contraceptive patch poses a dilemma as it prevents the water from

reaching the skin in a ceremonial bath. Ebrāhīm also sees vasectomy as an irreversible contraceptive method. Ebrāhīm is of the view that if the wife were to fall pregnant while practicing contraception, it would be *ḥarām* (prohibited) for her to opt for abortion on the basis that the pregnancy was unplanned.



Chapter 6

‘Abdel Raḥīm Omrān on progeny and family planning

6.1 Introduction

In this chapter I will discuss a brief background of ‘Abdel Raḥīm Omrān and then discuss his views on family planning and progeny related to *Maqāsid al-Sharī’ah* as well as an assessment of his views

“Professor ‘Abdel Raḥīm Omrān is a world authority on population, health, Islamic culture and demography. He is the chief Population Adviser to Al-Azhar (Islamic) University, Cairo”. He is the author of, *Family Planning in the Legacy of Islām*, in which he gathers “fourteen centuries of views on family formation and planning from leading Islamic theologians and jurists”. He looks at family planning as a solution to the twentieth century challenges of “increased pressure on population control, health care and rapid urbanization”. His “aim is to provide the first comprehensive and objective analysis of Islamic jurisprudence relating to family planning and to dispel any misconceptions” (Omrān 1992: back cover). His works have been discussed and shaped by a committee of Islamic experts, representing the majority of Muslim countries. Omrān emphasizes that Islām is a religion which aims to organize the life of its people therefore it must foster planning as emphasized by the *Qur’ān* that ‘everything in the universe has been created according to a plan or law’ (Omrān 1992: 62).

6.2 Omrān’s views on progeny

According to Omrān “children are considered a joy, an adornment as well as a way to continue one’s descent. Islām enjoins (Muslims) to have children, but it insists at the same time that they should be good and righteous which requires an intensive effort to

raise them correctly. The ability to raise children correctly is an inherent requirement of marriage in Islām”(Omrān 1992: 30).

6.2.1 The value of children in Muslim societies

As stated by Omrān, “[c]hildren are highly valued in many societies,” [particularly among Muslims]. He states that the reason for this is because of “religious, economic, socio-psychological and child survival related rationales for this phenomenon” (Omrān 1992: 30).

6.2.2 The religious rationale or value

According to Omrān, “Muslims believe that children are gifts from Allāh. The *Qur’ān* says: ***‘And Allāh has made for you mates from yourselves and made for you, out of them, children and grandchildren’***. (Qur’ān 16: 72 as cited in Omrān 1992: 31)

He states that, “[m]any Muslims believe that it is their religious duty to multiply and populate the earth. They refer to the Prophet’s (SAW) saying: ***‘Marry and multiply for I will make a display of you on the Day of Judgement’***. Authenticated by Abū Dāwūd (al-Sijistānī 1985: 295 as cited in Omrān 1992: 31)

6.2.3 The economic rationale or value

“Children are economic assets to parents particularly in traditional societies where the cost of raising children is very modest. Children in these societies may also work at an early age and add to the family’s income. The picture is changing now with university education and vocational training for technical jobs. Children constitute an in-built social security system for parents in old age, in crippling sickness and in the case of unemployment” (Omrān 1992: 31).

6.2.4 Socio-psychological rationale or value

According to Omrān the socio-psychological value of family planning includes the following:

- “Having children is a joy for parents, satisfying the instincts for motherhood and fatherhood.
- Pride in having a large family is a feature of traditional societies where numbers are equated with power. This stems from tribal beliefs that having many children, particularly sons, was a prerequisite for protecting family wealth, property, honour and social functions.
- Children are proof of a wife’s fertility and a husband’s virility” (Omrān 1992: 31).

6.2.5 Child survival related rationale

“Until the mid-twentieth century, Muslim societies experience high infant and child loss. It was logical to expect, therefore, that women would bear upwards of eight children in the hope that a few might survive. Referred to the ‘child survival hypothesis’ in demography, the motivation for high pregnancy rates” as Omrān relates to it, as listed below:

- “Compensation for actual loss of children in the family (the compensation motivation).
- Fear of child loss even though there is no child death in the family. Pregnancy in this case is to ensure enough children (insurance motivation).
- Adopting the common pattern in society at large where child loss rates are high (societal motivation).
- Child loss by lactating mother’s stops breast-feeding which in turn shortens the post-partum infertility period; thus the woman becomes more susceptible to falling pregnant sooner when an infant die than when the child survives (*biological*

motivation)” (Omrān 1971: 115–132 as cited in Omrān: 1992: 32).

Omrān emphasises that, “child survival has progressively improved in recent years in Muslim societies with no corresponding change in the procreation pattern”. He adds that, “women are still caught psychologically in the traditional trap of ‘high child loss–high fertility’. And he concludes by saying that, “[i]t will take time to change this pattern (Omrān 1992:32). Omrān mentions if both the mother and foetus life is at risk during pregnancy, then the mother’s life takes precedence over that of the foetus because she is the origin. Omrān refers to, “[t]he underlying rule in this case that a greater risk is warded off by a lesser risk” (Omrān 1992: 191).

6.3 Omrān’s views on family planning

“Several general precepts of Islām provide a convenient context for the proper formation of the Muslim family in a changing society and lend support to the principle of family planning whenever justified”. Omrān states further that, “this is, of course, an endorsement of the specific provisions on family planning in Islamic jurisprudence”(Omrān 1992: 59).

“The following accounts [briefly deal] with some basic precepts or characteristics of Islām that are particularly relevant to [family planning]” as set out by Omrān (1992: 59):

6.3.1 A religion of *yusr* (ease) and not *‘usr* (hardship)

Islām, in all its institutions and regulations, addresses itself to reason and keeps in harmony with [mankind’s] natural character (*fitrah*). It never fails to demonstrate its great compassion for its people, nor does it ever seek to impose undue burdens and intolerable restrictions upon them. The *Qur’ān* states this principle

very succinctly: *‘Allāh desires for you yusr (ease); He desires not ‘usr (hardship) for you’* (Qur’ān: 2: 185 as cited in Omrān 1992: 60).

And the *Qur’ān* states: *“And has not laid upon you in religion any hardship”* (Qur’ān: 22: 78 as cited in Omrān 1992: 60).

And it also states: *“Allāh desires to lighten your burden, for man was created weak”* (Qur’ān: 4: 28 as cited in Omrān 1992: 60).

Omrān ascertains that, “Islām would be sympathetic to family planning if spacing pregnancies and adjusting their numbers will make the mother physically fit and the father more financially at ease, since it is not antagonistic to any *nuss* (text) of prohibition in the *Qur’ān* or the Prophet’s [(SAW)] tradition (*Sunnah*) and points to the fact that there is a basic ruling in [*Sharī’ah*] (Islāmic jurisprudence) that states: *‘Harm may neither be inflicted nor reciprocated in Islām.’* (Mālik, et al. 1985: 212–213 as cited in Omrān 1992: 60)

“Thus if excessive fertility leads to proven health risks to mothers and children and/or it leads to economic hardship or embarrassment to the father, or if it results in the inability of parents to raise their children religiously, educationally and socially, then Muslims would be allowed to regulate their fertility in such a way that these hardships are warded off or reduced”. According Omrān, this was “the basis for the *fatwā* (legal verdict) by Sheikh Maḥmūd Shaltūt, the former Grand *Muftī* of Al–Azhar University” (Shaltūt 1959 as cited in Omrān 1992: 60, 226).

6.3.2 A religion of moderation

According to Omrān, the *fatwā* (legal verdict) of Shaltūt is in line with Islām being a religion of moderation. Pushing Muslims to continue their unregulated fertility in face of hardships is rather harsh, for Islām encourages moderation and discourages excesses, extremism, and undue restrictions. The *Qur’ān* says: *“Allāh tasks*

not a soul beyond its capacity (or limits).” (Qur’ān: 2: 286 as cited in Omrān 1992: 61)

6.3.3 A religion for quality

“Islām, [like all other religions,] encourage[s] its people to increase and populate the earth, but with the proviso [sic] that their quality should not be compromised. If [it is that the] question of quantity or quality arises, Islām would certainly go for quality. The preference of quality over quantity is evident in Sheikh Shaltūt’s *fatwa* and in the options of many other theologians, for example most of those who attended the Rabat Conference of Islām and Family Planning in 1971” (Rabat Proceedings: 1974: Vol. 2, pp. 117-144 as cited in Omrān 1992: 62).

According to Omrān, “it is observed that some other theologians are pushing for an indiscriminate high rate of growth among Muslims even if it is far in excess of their means. They use the argument of ‘becoming plenty’ as an implicit or explicit discouragement of family planning” (Abū Zahra 1976: 102-104 as cited in Omrān 1992: 62).

6.3.4 A religion for planning

Omrān mentions that, “[Islām as a religion], aims to organize the life of its people” therefore “must foster planning”. He explains that “the *Qur’ān* has always emphasized that everything in this universe has been created according to plan or law: **‘We have created everything according to a LAW’**. (Qur’ān: 54: 49 as cited in Omrān 1992: 62)

Omrān ascertains that, “Muslims are repeatedly urged to consider and reflect on the divine plan in the universe around them and in the miracle of their creation”. He refers to a verse that [describes believers as those who] **‘reflect on the creation of the heavens and the earth’**. (Qur’ān: 3: 191 as cited in Omrān 1992: 63)

He also mentions that, “Muslims are reminded of the orderliness in everything” as referred to in the *Qur’ān*: *‘It is not for the sun to overtake the moon, nor does the sun outstrip the day. They all float along, each in its own orbit [according to law]’*. (Qur’ān: 36: 40 as cited in Omrān 1992: 63)

He added that, “an orderly universe, from a religious viewpoint, is one of the signs of the existence of Allāh” and refer to the verse: *‘Blessed be He whose hand is in the kingdom, and over everything is He potent, who has created death and life that He may try you, which of you is best in deed, and He is the Exalted and Forgiving. Who has created seven heavens in harmony, one above the other, no defect can you see in Allāh’s creation’*. (Qur’ān: 67: 1–3 as cited in Omrān 1992: 63)

Another demonstration of planning as defined by Omrān, “is the *orderliness, even in the main acts of worship*. Prayers five times a day are a constant reminder of planning and orderliness in everyday life. Fasting is required at a fixed time every year as is pilgrimage with specified orderly rituals. Giving alms (*zakāh*) follows certain quantitative rulings with specified target recipients etc”. (Omrān 1992: 63)

“With reference to the story of Prophet Yusuf (Joseph PBUH) in the *Qur’ān* (Qur’ān: 12: 43–49) to which Omrān substantiate, with regards to planning following the interpretation of the king’s dream, when he saw seven fat cows being eaten by seven lean cows, and seven green ears of corn with another seven dry. After the king inquired who would interpret the dream, someone referred the king’s dream be interpreted by Joseph. Joseph said that they will sow seven years as usual, but that which they reap, to leave it in the ears and save much, and eat a little thereof. Then after that there will come seven hard years which will devour all that they prepared for them except a little of what they have stored. Then after that will come a year when the people will have

plenty crops and when they shall press juice and oil. “The implication of this Qur’ānic account is pervasive. It denotes without doubt the legality of planning for the future and taking steps to ward off potential future hardships” (Omrān 1992: 65).

It is also reported by Imām Zabīdī that the Prophet Muhammad (SAW) stored one year’s supply of the dates of Khaibar for future use (Zabīdī n.d.: 382 as cited in Omrān 1992: 65).

Omrān concludes by emphasizing that, “family formation is no exception. It requires preparation, co-ordination and planning, from the choice of a marital partner, to the timing and spacing of pregnancies, to plans of how to bring up children as good, healthy and useful Muslims, as well as to care for the aged and disabled family members. Some families may desire and are prepared to raise many children, other families may restrict the number of their physical, cultural and socio-economic abilities. Thus family planning is within the general concept of family formation in Islām” (Omrān 1992: 65).

6.3.5 A religion for all times

“Islām is the last of the revealed religions and Muḥammad (SAW) is the seal of the Prophets (SAW). Thus Islām is meant for all [humankind] and was not restricted to a special population in a specified area or to a circumscribed period in history. This means that this religion should cater not only for the time of the Prophet (SAW) and the Arabs of the seventh century [(CE)], but should satisfy the requirements of future generations and different population groups until the end of time” (Omrān 1992: 65).

Omrān alludes to the fact that, “Islām is not merely a religion. It is also a social system, a culture and a civilization. As such, it has values, ideals and goals which it regards as the culmination of human perfection in all aspects of life.

Islamic legislation is most comprehensive. It does not deal exclusively with questions of faith and worship. It also regulates moral behaviour, social interaction, and business dealings as well as systems of legislation, taxation, family formation, community development, societal structure and international relations” (Omrān 1992: 59).

6.4 Infertility as an illness which can be treated

Omrān also approves treatment for infertility and describe it as the compliment of family planning (Omrān 1992:184).

6.5 The legality of infertility control methods

According to Omrān, “treatment of infertility is not only allowed but is recommended. There is no problem with chemical or surgical therapy as long as it is performed by honest, experienced specialists. He however points out that, “[t]he problem lies with some methods of artificial insemination and genetic engineering”. He refers to a question posted “to Sheikh [Jād al-Ḥaq] in 1980, when he was Muftī of Egypt, by a specialist physician. His remarks were:

- “Treatment of ills with legal procedures is mandatory in Islām; infertility in one or the other of the married couple is no exception.
- Insemination of a wife (in vivo) with semen taken from her husband (provided that it has not been mixed with other semen) is allowed.
- Insemination of the wife with semen taken from a donor who is not her husband is forbidden.
- Artificial insemination in vitro (test-tube babies) using the husband’s semen only is allowed.

- Artificial insemination in vitro (test-tube) using sperms of donors or mixed sperms (of husband and donors) is forbidden, since it destroys the lineage in the family.
- Mixing the woman's ovum with semen from a man who is not her husband, then transferring the fertilized ovum to the uterus of the man's wife is forbidden.
- Sperm banks are against the purpose of lawful family formation and are forbidden.
- Mixing the wife's ovum with her husband's sperm, and transferring the fertilized ovum to the uterus of an animal (for whatever reason) for a period, then returning it to the wife's uterus is forbidden.
- The physician is the technical expert in insemination procedures, in its different forms. If he assists in performing illegal procedures as mentioned above, he violates the Sharī'ah Law.
- A child resulting from illegal procedures of insemination is illegitimate and cannot claim the husband's name. it should carry the wife's name instead, as does any other product of fornication" (Jād al-Ḥaq: 1980: Fatwā on family planning in *al-Fatāwā al-Islāmiyyah*, Vol. 29, pp. 3110-3113 as cited in Omrān 1992: 186).

According to Omrān surrogate motherhood was not mentioned in the *fatwa*, although "it is understood from other evidence that it is forbidden" (Omrān 1992: 186).

6.6 Risk factors that may result from modern medicine:

- "Increase maternal mortality.

- Poor obstetric performance that is difficult labour, requiring operative intervention such as Cæsarian section and/or blood transfusion.
- Increased gynaecological problems such as uterine prolapse and cancer of the cervix.
- Increased diabetes and rheumatism” (Omrān 1992: 178).

6.7 These factors may result in risk to the progeny:

Omrān mentions the following risk factors associated with modern medicine:

- “Increased foetal loss and still-birth.
- Increased congenital anomalies and low birth weight or prematurity.
- Increased neonatal and infant mortality.
- Poor development and higher susceptibility to infection and malnutrition” (Omrān 1992: 178).

6.8 The Question of sterilization

According to Omrān, “[s]terilization is a procedure that results in the permanent or temporary loss of the ability of a man to impregnate a woman or the ability of a woman to conceive.

Sterilization in men is performed through dividing or tying the vas (seminal canal) and is called vasectomy. It is different from castration (removal of the testes) since it does not impair hormonal function or the ability of men to have complete and normal sex. In woman sterilization can be performed by tying the fallopian tubes which are connected to the uterus and which normally pick up the ovum from the ovary and allow the process of fertilization to take place within its cavity. The operation is called tubal ligation. The tubes may also be cut (tubectomy) and then the

ends ligated, or the tubes may be blocked with chemicals. These are methods to prevent the ovum from being exposed to the sperm from man's semen and thus pregnancy is avoided. Like sterilisation of men, the methods used for female sterilization do not impair a woman's hormonal functions and have no effect on her sexual performance" (Omrān 1992: 187).

Omrān indicates that, "it should be emphasized that sterilization operations are performed everyday in the Muslim world for medical indications, in which case theologians have no objection because the operations are methods of treatment, and treatment is legal in Islām" (Omrān 1992: 187).

Omrān emphatically points out that "the question becomes more problematic when permanent sterilization is performed for contraceptive purposes. It happens, for example that a Muslim couple may find that they have enough children and they would prefer for one of them to undergo a sterilization operation than to use contraceptive methods for the rest of the wife's reproductive span. If she is in her thirties, this means 10-15 years of using contraceptive pills, intrauterine devices (IUD) or barrier methods. They have the option of using contraceptives (which are costly, worrisome and may fail) or they may have a one-time operation that would achieve the same purpose. Some Muslim countries do provide sterilization services to their people" (Omrān 1992: 187).

Omrān also points out that, "[t]he methods of sterilisation used today were not known to the early theologians or physicians. There is some vague reference, however, to something taken (apparently by mouth) that stops procreation altogether. This was mentioned by al-Bijurmi (D.1806 C.E.) (Ibn Qudāmah n.d.: Vol. 8, p. 133) and Shubramallissi (D.1087 A.H.) (al-Ghazālī 1302 AH: Vol. 2, pp. 53), both of whom prohibited the practice. Ironically al-Shawkānī (d.1839 C.E.) (al-'Asqalānī 1988: Vol. 9, p. 247) are

listed among the permissible practices, *coitus interruptus* ‘to avoid to many children, and also to avoid children, and also to avoid too many children altogether’, i.e. permanent contraception” (Omrān 1992: 187).

6.9 Assessment of Omrān’s views

In early times, life was simpler and family life was less of a burden than it is today. Religious education was the norm through which the community augmented the efforts of parents whose child-rearing responsibilities was also shared by other members of the extended family. Under the current status of Muslim communities, it is not easy for parents to fulfil their obligations towards large families and their increasing demands of growing children.

According to my understanding, the views of Omrān can be assessed in five basic capabilities of the nuclear family in trying to determine the number of children as follows:

- “Physical (health) capability of the parents especially the mother.
- Economic capability to support the family and safeguard the future of the children, and provide independent sleeping arrangements for them.
- Cultural capability to give the child proper education, religious training as well as training in self-defence and sport.
- Time availability for child care and companionship including verbal investment to stimulate their intellectual development.
- Community support in the area of schooling, health care, day care, housing, etc.” Omrān 1992: 39).

6.10 Chapter Summary

Omrān views barrenness in both male and female as a sickness that can be overcome through artificial reproductive technology (ART). He has a broader outlook on family planning as a solution to increase pressure on population control, health care and rapid urbanization. He cautions the risk factors that may result from modern medicine which may have a negative impact and cause risk to the progeny” (1992: 178-187).



Chapter 7

Comparison of the three scholars

7.1 Introduction

In this chapter I will do a comparison of the three selected scholars in which I will assess their views in relation to each other.

7.2 Similarities and differences between Omrān, Attia and Ebrāhīm

Omrān considers family planning as a solution to the twentieth century challenges of increase pressure on population control, health care and rapid urbanization. Attia in contrast promotes procreation and further argues that the goal of existence on earth in particular, have been subjected to human beings and placed at their service in order for them to fulfil their roles as Allāh's trustees and to complete the process of populating and developing the earth. Ebrāhīm (2008: 66) considers certain conditions on family planning. He substantiates his stance on contraception for genuine reasons by mentioning circumstances that may arise whereby the wife's health or life could be threatened if she were to fall pregnant, example having delivered three children through caesarean section or having undergone multiple previous abdominal surgeries. He adds that due to the nature of her medical condition, her doctor may sterilize her and that would be justified on the basis of the Islamic Juridical principle of the rule of necessity for the sake of safeguarding her life. Ebrāhīm also allows "Muslims to space the birth of their children as a result of genuine financial difficulty" and that by "no way [would] imply that they have lost faith or trust in Allāh as the Provider of their needs, but rather as parents, they have the equal responsibility to plan for the future of their family needs" (Ebrāhīm 2008:61).

According to Attia, preservation of lineage is distinct from preservation of progeny and that the relevant objective here (on children) is not only lineage or geneology but more broadly, the value of family itself. Attia's analytic move is unique in that he shifts from the 'five universals' into what he call the "four realms" structured around a telescopic view of the individual that zooms in from the broader perspective on humanity into the Muslim community or *Ummah*, a third level namely the family, until it arrives at the specificity of the individual. In this formation Attia moves from 5 to 24, a rearrangement that broadens and renders the *Maqāsid* more comprehensive than previous approaches. Attia views preservation of the progeny as amongst the essentials which is needed for fostering a society. According to Attia, (2007: 125-131) ordering the relations between the sexes, preservation of the progeny, achieving harmony and affection, the preservation of family lineage, preservation of personal piety within the family, ordering the institutional aspects of the family and ordering the financial aspect of the family should be classed among the essentials which is needed rather than the exigencies. He uses the verses of the *Qurān*, '*Allāh causes to be barren whomever He wills...*' (Qur'ān: 42: 50) and gives an alternative option by stating that for those who find this to be a source of hardship, Islamic law provides the option of divorce and remarriage or polygamy in order to meet this need. In contrast to Attia, Omrān states his conditions on progeny in that he insists at the same time that children should be good and righteous which requires an intensive effort to raise them correctly, because the ability to raise children correctly is an inherent requirement of marriage in Islām. Ebrāhīm speaks of progeny as a divine injunction using the Quranic Verse.... "*Who created you from a single person, created of like nature, his mate, and from them twain scattered (like seeds) countless men and women*" (Qur'ān: 4: 1) as well as the Prophet's (SAW) saying: "*Marry women who will love you and give birth to many children for I*

shall take pride in the great number of my Ummah.” (Al-Nasā’ī 1959/1378 A.H.: Kitāb al-Nikāḥ. Part 6, p. 66).

Ebrāhīm (2008: 59), Omrān (1992: 142) and Attia (2007: 126) all agree that there must be a joint agreement between husband and wife on progeny in terms of *al-‘azl* and contraception.

Omrān ascertains that family planning is not a contradiction to the call for *kathrah* (multitude) nor does it contradict predestination or reliance on Allāh. Ebrāhīm argues that it would be in order for Muslims to space the birth of their children as a result of genuine financial difficulty. This would in no way imply that they have lost faith or reliance in Allāh as the Provider of their needs, but rather as parents, they have the equal responsibility to plan for the future of their family needs.

According to Ebrāhīm (2008: 66) and Omrān (1992: 188) both castration and irreversible contraceptive methods are tantamount to changing the very nature or order of things as created by Allāh.

Both Attia and Ebrāhīm agree that abortion is prohibited with the latter describing abortion as a deliberate intervention to terminate pregnancy in a most inhumane manner.

Ebrāhīm (2008: 61) and Omrān (1992: 192) agree that if the wife were to fall pregnant while practicing contraception, it would be *ḥarām* (forbidden) for her to opt for abortion on the basis that the pregnancy was unplanned.

The three scholars approve *al-‘azl* with the wife’s consent but disagree how it can be substituted within modern contraceptive methods. The question remains, did the Prophet (SAW) endorse *al-‘azl* as a family planning method or not? If we study the *aḥādīth* (traditions) we find that the Prophet (SAW) ascertained that Allāh has preordained if there will be creation or not. Attia (2007: 126)

ascertains that Islamic law seeks to encourage marriage, prohibits the burying alive of female infants and abortion, and treats procreation as one of the requirements of the marriage contract, therefore it is not permissible for the man to engage in coitus interruptus without the wife's consent. According to Omrān (1992: 142) the majority ruling given by jurists, is permissibility of *al-'azl* (withdrawal) with *karāha tanzīhiyyah* (being less than impeccable). This does require a wife's permission. He ascertains that justification for avoiding pregnancy for health reasons, economic reasons or in enemy territory the ruling is that *al-'azl* becomes not only permissible but recommended. Omrān's research on *al-'azl* indicates that the legal schools formulated detailed positions on *al-'azl* and by analogy on the permissibility of other forms of contraception. Ebrāhīm points out that there was no Qur'anic revelation censuring *al-'azl*. The schools of Islamic Jurisprudence concur that both spouses share mutual right to procreation necessitating the wife's consent if the husband chooses to practice *al-'azl*. This equally implies that the wife may not practice contraception without her husband's knowledge (Ebrāhīm 2008: 59).

Ebrāhīm (2008: 90) and Omrān (1992: 186-187) sees barrenness in both male and female as a sickness that can be overcome through artificial reproductive technology (ART).

Ebrāhīm and Omrān agree that reversible contraceptive methods, both hormonal and non-hormonal, have the same aim and thus by analogy there would be no problem for Muslims to opt for any one of them on the grounds that all the schools of Islamic Jurisprudence do not hold *al-'azl* to be *ḥarām* (forbidden).

7.3 How do the three scholars relate to the *Maqāsid al-Sharī'ah*?

We live in a time where nations do not boast of their numbers or the size of their territory but of technical ability, invention and scientific achievements in such a way that other nations will be dependent on them. According to Omrān (1992: 257–258), one of the characteristics of Islamic Jurisprudence is that a decisive text is given for things that do not change. But in cases where the welfare of the people changes over time, leeway is given for the knowledgeable thinkers of the people to adjust rules to their welfare within the general principle and the *Maqāsid al-Sharī'ah*. He alludes to the fact that family planning varies, some nations need it more than others, while some may wish to increase their population growth. He also ascertains that children are the apple of our eyes but they are the responsibility of their parents who should provide them with adequate care physically, educationally, culturally and economically.

Ebrāhīm (2008: 60) and Omrān (1992: 169, 172) agree that family planning can be practiced due to inability to sustain a big family which would be seen as one of the principles of the *Maqāsid al-Sharī'ah*, namely *ḥifẓ al-māl* (preservation of wealth).

Ebrāhīm (2008: 129) and Omrān (1992: 190–193) both allude to the principle of the *Maqāsid al-Sharī'ah*, namely *ḥifẓ al-nafs* (preservation of life) to terminate pregnancy only in the event that the pregnancy poses a threat to the health or life of the mother. Omrān (1992: 59–65) emphasises that Islām is a religion based on *yusr* (ease) and not *'usr* (hardship) and does not seek to impose undue burdens and intolerable restrictions upon Muslims.

Attia proposed an alternative by conceiving the *Maqāsid al-Sharī'ah* in terms of the preservation of progeny by dividing it in four areas: the individual, the family, the greater Muslim community, and humankind as a whole. He considers applying *Maqāsid al-Sharī'ah* in a more practical way (Attia 2007: 126).

7.4 Internal consistency of the three selected scholars

Many of the *aḥādīth* (traditions) of the Prophet (SAW) concerning *al-‘azl* emphasized predestination, i.e. if Allāh wills to create a soul, it would be created, with or without contraception, although the three scholars agree that *al-‘azl* or any contraceptive method could fail.

According to all three scholars, Islām approves of all methods of contraception provided they are safe, legal and approved by Muslim physicians. *Al-‘azl* was the method available in the early period of Islām. Now we have the pill, the loop, the injectable contraceptives and other methods discovered by modern medicine.

Referring to the question of the legality of permanent sterilisation, Omrān (1992: 187–188) refers to the views of some contemporary scholars with different opinions on the issue of permanent sterilisation without stating his own view on the matter. As for irreversible contraception, Omrān and Ebrāhīm (2008: 61–62) agree on the permissibility for it must be for genuine reasons. It is worth mentioning here that Omrān cites the view of Jād al-Ḥaq who states that if we were to examine the *Qur’ān* and *Sunnah* we find *no text* prohibiting sterilisation, that is rendering a man or a woman unable to procreate totally and permanently by surgery or chemical or other means (Jād al-Ḥaq 1980 as cited in Omrān 1992: 188).

Omrān further alludes to the fact that Jād al-Ḥaq's view together with other scholars are opposed to permanent sterilisation based on the general goals of the *Shar'iah* which specifies five areas for preservation. These are the preservation of life, religion, intellect, progeny and wealth. This can be attributed to how family planning relates to *Maqāsid al-Sharī'ah*.

Omrān (1992: 188–190) does not mention directly his personal view on permanent irreversible sterilization, though he refers to the majority of the scholars who prohibit it. Ebrāhīm (2008: 61–66), on the other hand, is opposed to permanent sterilization but permits reversible contraceptive methods that could be used by Muslims for health reasons or if the life of the spouse is threatened as a result of child birth. Ebrāhīm (2008: 59) states that the purpose of marriage is procreation. Omrān shares the same views, except that the latter leaves it up to the husband and wife to decide on their progeny as he mentions, “[t]hus family planning is within the general concept of family formation in Islam” (Omrān 1992). Ebrāhīm (2008: 62) would prefer any reversible option but cautioned the use of the patch as it would prevent water from reaching the skin in the ceremonial bath and advised Muslims to consult their respective Muslim physicians in this regard.

7.5 Can the three selected scholars help to resolve the problem?

The core principles of the *Maqāsid al-Sharī'ah*, namely preservation of life, the preservation of the religion, the preservation of the intellect, the preservation of progeny and the preservation of wealth, pertaining to the issue of family planning can be resolved within a *maqāsidic* framework. This will draw the scholars to a more unanimous agreement on the issue of family planning.

7.6 Development of ideas of the three selected scholars

The three selected scholars developed the traditional thinking of progeny and family planning into the modern era taking into account the recent medical advancement.

In view of the fact that there was no Qur'anic revelation censuring *al- 'azl*, the schools of Islamic jurisprudence concur that both spouses share mutual right to procreation, necessitating the wife's consent if the husband chooses to practice *al- 'azl*. This equally implies that the wife may not practice contraception without her husband's knowledge.

It is logically understood from the views of Ebrāhīm (2008: 73–74) and Omrān (1992: 186) that ART (Artificial reproductive technologies) and modern medication can be a cure to impotency in males and females with insemination of a wife (in vivo) with semen taken from her husband (provided it has not been mixed with other semen) which renders it permissible. What is important here is that the *Qur'ān* (chapter 19: 2 and chapter 11: 72) make reference to the barrenness of the wives of at least two Prophets, namely, Prophet Zakariyyah (PBUH) and Prophet Ebrāhīm (PBUH), but they implored Allāh to bestow them with offspring and He fulfilled their prayers. Even the prophets had a primal desire to have their progeny and lineage continued and this reinforces the fact that parental instinct is innate in all human beings.

Ebrāhīm alludes to the fact that abortion is unlike contraception. He states that contraception involves using aids or techniques to prevent pregnancy, whereas abortion is in effect a deliberate intervention to terminate pregnancy. In other words, abortion is the premature destruction of potential or actual human life in a most inhumane manner. This would be in direct violation of one of the *Maqāsid al-Sharī'ah*, namely, *ḥifẓ al-nafs* (preservation of life).

He further states that it is therefore plausible to conclude that the unborn has the right to life, to be born and live as long as Allāh permits. Permanent sterilisation is opposed to the *maqāsidic* principle of *ḥifẓ al-nasl* (preservation of progeny).

According to Ebrāhīm (2008: 62), the contraceptive patch poses a problem pertaining to the compulsory *ghusl* (ceremonial bath) which Muslims have to undertake after having engaged in marital relations or when Muslim women have completed their menstrual cycle or stopped bleeding after having given birth. Logically speaking the contraceptive patch would render the *ghusl* null and void since it would impede water flowing over that part of the skin where the patch has been placed. This view was not mentioned by the other two scholars neither by any other scholar. It would be advisable for Muslims to consult their respective Muslim physicians when determining which of the types of contraception they should make use of so that they would be in a position to avoid using the ones that could jeopardize their health and well-being, as well as the ones which are not acceptable within the Islamic context.

Logically it can be understood from Omrān's views that *tawakkul* (reliance on Allāh) and Allāh's ability to provide *rizq* and reliance on Allāh are simply abiding by the rule that *al-akhdh bil-asbāb* (to have recourse to expedients) is no negation of reliance on Allāh.

It can also be logically understood that to resort to contraception to prevent the birth of children with genetic diseases falls in the juridical rule of necessity as an obligation and would fulfil one of the purposes of the Shari'ah, namely, *ḥifẓ al-nafs* (preservation of life).

Ebrāhīm and Omrān unanimously agree that family planning is not killing or *wa'd* (infanticide), it does not contradict predestination or

tawakkul (reliance on Allāh) or ability of Allāh to provide for His people (*rizq*). Neither is family planning a contradiction to the call for (*kathrah*) multitude. It is quality not quantity that makes the Prophet (PBUH) proud of us.

Attia (2007: 126) does not mention family planning in his works but refers to using *al-‘azl* with the wife’s consent. According to my analysis of his views in relation to the *Maqāsid al-Sharī’ah*, many of the views he holds on the *Maqāsid al-Sharī’ah* is interrelated to the permissibility of family planning.

Attia (2007: 126) classes the preservation of the progeny as among the essentials. He views impotency as natural and gives an alternative option by stating that for those who find this to be a source of hardship, Islamic law provides the option of divorce and remarriage or polygamy in order to meet this need. He however does not mention resorting to artificial reproductive technologies (ART). According to his understanding, barrenness can be overcome by divorce and remarriage or polygamy in order to meet this need. It would be seen as illogical option to some to use these reproductive technologies to overcome barrenness and does not take into account the personal and emotional problems it causes within marital relationships.. Today through modern medical advancement (ART) artificial reproductive technologies can overcome the problem of barrenness and impotency.

7.7 Chapter Summary

Ebrāhīm, Omrān and Attia all agree that there must be a joint agreement between husband and wife on progeny in terms of *al-‘azl* and contraception. Attia views preservation of the progeny as amongst the essentials which is needed for fostering a society. The development of ideas of the three selected scholars can be seen as a breakthrough in the permissibility of family planning in

the field of (ART) to overcome infertility. Today through modern medical advancement (ART) artificial reproductive technologies can overcome the problem of barrenness and impotency.



Chapter 8

Conclusion & Recommendation

8.1 Introduction

In this chapter I will attempt to answer a few questions on how we can take forward the Islamic debate on family planning and *Nasab* (progeny) as one of the basic principles of *Maqāsid al-Sharī'ah*.

8.2 Can the problem be solved by increase in progeny?

According to Attia (2007:125–130) *Maqāsid al-Sharī'ah* prescribes to us the expansion of progeny which will result in a greater community. He also argues that producing progeny brings about love and compassion between the husband and wife. According to my understanding this argument concurs with the great exegesis of Ibn Kathīr when he analyse the verse:” ... *And among his signs is this, that He created for you wives from among yourselves, that you find repose in them, and he has put between your affection and mercy.*” (Qur’ān: 30: 21 and Ibn Katheer 1992: 163). Ebrāhīm argues that procreation is part of the divine plan and uses the following evidence from the Quran and ḥadīth. **“O humankind! Reverence your Guardian-Lord, who created you from a single person, created of like nature, his mate, and from them twain scattered (like seeds) countless men and women.”** (Qur’ān 4:1)

And the ḥadīth,

“Marry women who will love you and give birth to many children for I shall take pride in the great number of my Ummah (nation)”. (al-Nasā’ī 1959/1378 A.H.)

In my understanding both Attia (2007:125–130) and Ebrāhīm (2008: 62) favours procreation and both of them use sacred texts to substantiate their arguments. They see procreation as a blessing.

8.3 Do the different view of the three selected scholars resolve the issues around progeny?

All three selected scholars are in favour of progeny but they differ on how to implement it. Ebrāhīm argues that procreation must be encouraged no matter what the conditions are and that ART should be used so that the population can increase. Omrān argues that procreation must be encouraged but he insists that children must be raised in an environment of good quality. Attia says that creation must continue because humankind must fulfil its duty as vicegerent of Allāh on earth, because Allāh has made the earth subservient to humankind.

8.4 Does this study help to take the debate forward on progeny?

On the one hand this study can help to protect progeny in the realm of protecting against social harms in a way that will create a sustainable living environment where no poverty, crime and human degradation will exist. The *Maqāsid al-Sharī'ah* can play a decisive role in getting all the scholars to come to a common agreement and solve differences on the topic of progeny and family planning.

8.5 Does this study help to take the debate forward on family planning?

Taking into consideration the views of both the proponents and opponents of family planning, we have to understand the impact of family planning in the present and future with regards to the challenges Muslims face worldwide. For this reason, we have to look at sustainable development and strategically tackle this issue in the twenty first century as modern medical sciences are rapidly developing. Therefore, after an in depth research of the study of family planning in an Islamic context, I emphatically support the promotion of family planning. Looking at the social, economic, financial and educational aspect of the Muslim world today, we

seriously have to take a look at family planning. The religion of Islām is in favour of multitude that would be equally of a qualitative nature rather than a multitude of quantity but lacking all forms of progressiveness.

The majority of scholars throughout the world and in past generations agree that family planning can be practiced. Today we are more in need of practicing family planning than ever before as the moral degeneration of our societies are deteriorating, coupled with high child mortality rate. The Prophet (SAW) said: ***“Nations are about [in the future] to gather to fall upon you as people would fall upon a trencher to eat.”*** The Companions asked if that would be because of their small numbers at the time and the Prophet (SAW) replied: ***“No! You will be of great multitude, but you will be scum like that is carried down by a torrent. And Allāh will take the fear for you from the breasts of your enemy and cast enervation (*wahan*) into your hearts.”*** (Authenticated by Abū Dāwūd as cited in Omrān 1992: 104)

I agree with Omrān’s (1992: 104) statement that Muslim demographers, physicians, social scientists and development specialists warn that rapid population growth in many Muslim countries is an obstacle to spiritual, social, economic and technological development and that these facts explain the Prophet’s prediction.

Bibliography of Arabic works

Abonnour, M. Al-Aḥmadī. (1976). *Thamarāt al-Zawāj in Manhaj al-Sunnah Fil Zawāj*. A dissertation on ḥadīth under Sheikh M. Abū Zahra, unpublished, College of *Usūl al-Dīn*, al-Azhar, Egypt.

Abū Yahya, Muhammad Hassan. (1985). *Ahdāf al-Tashri al-Islāmī*. Published by *Dār al-Furqān*, Jordan.

Abū Zahra, Muhammad. (1962). 'Tanẓīm al-Nasl' *Liwā' al-Islām* magazine, Vol. 16 no. 11

Abū Zahra, Muhammad. (1976). *Tanẓīm al-Ushrah Wa Tanẓīm al-Nasl*. Published by *Dār al-Fikr al-Arabī*. Egypt.

Afar, Muhammad 'Abd al Mun'im. (1992). *Al-Tanmiyyah wa al-takhtīt wa taqwīm al-mashrū-āt fī al-tiṣād al-Islāmī*. Dar al-Wafā, Beirut.

Aḥmed, Wajīhuddīn. (1974). 'Al-Mujtama' Wattanmiyyah al-Ijtimā'iyyah' in Rabat Proceedings Vol. 1, IPPF, pp.328-341.

al-Āmidī, Sayf al-Dīn. (1914). *Al-Iḥkām Fī Usūl al-Aḥkām*. Published by *Maṭba'ah al-Ma'ārif*, Cairo.

al-Āmirī, Abū al-Ḥasan al-Faylasūf. (1967). *Al-I'lām bi-Manāqib al-Islām*. Published by *Dār al-Kitāb al-'Arabī*, Cairo.

al-'Asqalānī, Ibn Ḥajar. (1988). *Fath al-Bārī Sharḥ al-Bukhārī*. Maṭba'at al-Bahiyat al-Misriyyah, Beirut Aḥmad.

Atay, Ḥusain. (1974). 'Takhtīt al-Ushrah kamā warada fil Qur'ān wal-Sunnah' in Rabat Proceedings, IPPF, Vol. 2, pp. 160-189.

al-Aynī, Badr al-Dīn Maḥmūd ibn Aḥmad. (1348). *Umdatul-Qārī Sharḥ Sahīḥ al-Bukhārī*, Cairo.

al-Baihaqī, Abū Bakr Aḥmad Ibn al-Ḥasan Ibn 'Alī. (1353). *Al-Sunan al-Kubrā*, Dā'irah al-Ma'ārif al-Islāmiyyah, Ḥaidar Abād.

al-Bājī, al-Qādī ‘Abdul Walīd Sulaimān Ibn Sa’d al-Bājī al-Andalusī. (no date). *Al-Muntaqā Sharḥ Muwatta’ Imām Dārīl Hijrah Sayyidinā Mālik*. Maṭba’at al-Sa’ādah, Cairo.

al-Bukhārī, Muḥammad Ibn Ismaīl. (1983). *Saḥīḥ al-Bukhārī*. Mukhtar and Co, Deoband, India.

al-Būtī, Muhammad Sa’id Ramadān. (1976). *Mas’alah Taḥdīd al-Nasl*. Published by *Maktabah al-Farābī*, Damascus.

al-Dardīr, Aḥmad Ibn Muḥammad Abul Barakāt. (1355 A.H.). *al-Sharḥ al-Kabīr*. Al-Maṭba’ah al-Bahiyyah, Cairo.

Ebrāhīm, Aḥmad. (1936). Introduction to dissertation, *Kalimah Fī Taqlīl al-Nasl’ aw Man’ih Wa Ta’qīm*. The dissertation, *Fī Madā Isti’māl Ḥuqūq al-Zawjiyyah*, by al-Sa’id M. al-Sa’id, University, Cairo.

Fasi, A. (1993). *Maqāsid al-Sharī’ah al-Islāmiyyah Wa Makārimuha*. Dār al-Gharb al-Islāmī. Al-Najāh, Casablanca.

al-Ghazālī, Abū Ḥāmid. (1302 A.H.). *Iḥyā Ulūm al-Dīn (Revival of Religious Sciences)*. Al-Maṭba’ah al-Azhariyyah al-Misriyyah, Cairo.

al-Ghazālī, Abū Ḥāmid. (1400 A.H.). *Al-Mankhūl fī Ta’līqāt al-‘Usūl*. Dār al-Kutub al-‘Ilmiyyah, Beirut.

al-Ghazālī, Abū Ḥāmid. (1970). *Al-Mustaṣfā min Ilm al-‘Uṣūl*. Maṭba’at al-Muthannah, Baghdad.

al-Ghazālī, Muhammad. (1985). *Jawāhir al-Qurān*. Dar Iḥyā al-Ulūm, Beirut.

Ḥassan, Ḥusayn. (1993). *Fiqh al-Maṣlaḥah wa taḥbīqātuhu al-Muāṣirah* (1st ed.). Al-Bank al-Islāmī Li al-Tanmiyyah, Jeddah.

- Ibn Abdin, M. Amīn Ibn ‘Umar (D.1836) *Minḥāt al-Khāliq*. On margin of *al-Baḥr al-Rā’iq* by Ibn Nujaim.
- Ibn Abdin, M. Amīn Ibn ‘Umar (1870) *Radd al-Muhtār Aladdur al-Mukhrār Fi Sharḥ Tanwīr al-Abṣār*. Bulāq, Cairo.
- Ibn ‘Ābidīn, Muḥammad Amīn Ibn ‘Umar. (1404 A.H.). *Rad al-Muhtār ‘Alā Dur al-Mukhtār*. Al-Maktabat al-Rashīdiyyah, Pakistan.
- Ibn ‘Āshūr, M.T. (1999). *Maqāsiq al-Sharī’ah al-Islāmiyyah*. Al-Sharikah al-Tūnisiyyah, Tunisia.
- Ibn ‘Āshūr, M.T. (2001). *‘Usūl al-Niẓām al-Ijtimā’ī Fī al-Islām*. Dār al-Nafā’is, Amman.
- Ibn Ḥanbal, Aḥmad. (n.d). *Musnad al-Imām Ibn Ḥanbal*. Al-Maktab al-Islāmī, Beirut.
- Ibn Ḥazm, Alī Ibn Aḥmad. (1352 A.H.). *Al-Muḥallā* (authenticated by M. Munīr al-Dimishqī). al-Tibā’ah al-Muniriyyah, Cairo.
- Ibn al-Humām, Kamāluddīn M. (1315 A.H.). *Sharḥ Faḥ al-Qadīr*. Bulāq, Cairo.
- Ibn Kathīr, Abul Fidā’ Ismā’il Ibn Kathīr al-Qurashī al-Dimashqī. (1992). *Tafsīr al-Qur’ān al-‘Aẓīm*. Dār al-Ḥadīth, Cairo.
- Ibn Mājah, Abū ‘Abdullah Ibn Yazīd. (n.d.). *Sunan Ibn Mājah*. Dār Iḥyā al-Kutub al-‘Arabiyyah, Cairo.
- Ibn Nujaim. (1980). *Al-Ashbāh Wa al-Nazā’ir*. (Beirut)
- Ibn Nujaim, Zain al-‘Ābidīn Ibn Ibrāhīm. (1562). *al-Baḥr al-Rā’iq Sharḥ Kanz al-Daqā’iq*. al-Maṭba’ah al-‘Ilmiyyah, Cairo.
- Ibn Qudāmah, Abū ‘Abdullah Ibn Aḥmad. (no date). *Al-Mughnī ‘Alā Sharḥ Mukhtaṣar al-Khirāqī*. al-Maṭba’at al-Salafiyyah, Cairo.

Ibn Qudāmah, al-Maqdisī, Shamsuddīn Abul-Faraj ‘Abdurrahmān (D. 682 A.H.). (no date). *Al-Sharḥ al-Kabīr*, a commentary on Ibn Qudāmah’s *Al-Muqni’*, printed with *Al-Mughnī* as above.

Ibn al-Qayyim, M. Ibn Abī Bakr. (1950). *Zād al-Ma’ād Fī Hadī Khayr al-Ībād*, Maṭba’at al-Ḥalabī, Egypt.

Ibn al-Qayyim, M. Ibn Abī Bakr. (n.d.). *Tuḥfat al-Maudūd fī Aḥkām al-Maulūd*. Al-Maktabah al-Qayyim, Cairo.

Ibn Taymiyyah, Aḥmad. (1961-1966). *Majmū’ al-Fatāwā Ibn Taymiyyah*. Saudi Arabia.

al-‘Irāqī (the father), ‘Abdurrahmān Ibn al-‘Irāqī. (n.d.). *Ṭarḥ al-Tathrīb Fī Sharḥ al-Taqrīb*, a commentary on *Taqrīb al-Asānīd Wa Tartīb al-Masānīd*, completed by the son (see below).

al- ‘Irāqī (the son) Waliyyuddīn Abū Zar’ah known as al-Ḥāfiẓ al-‘Irāqī. (n.d.). *Ṭarḥ al-Tathrīb* (with his father).

Īsā, ‘Abdul ‘Azīz. (1987). *Tanzīm al-Ushrah Fil Fiqh al-Islāmī*. Translated and printed as Family Planning in Jurisprudence. Maṭba’ah al-Ahrām, Cairo.

Jād al-Ḥaq. (1980). ‘*Ra’y al-Dīn Fī Tanzīm al-Ushrah*’ in *Al-Tasawwuf al-Islām* magazine, no. 21, Cairo.

Jaṣṣāṣ, Abū Bakr Aḥmad Ibn ‘Alī. (1335A.H.). *Aḥkām al-Qur’ān*. Dār al-Kutub al-‘Arabī, Beirut.

al-Juwaynī, ‘Abdul-Malik Imām Al-Ḥaramayn. (1418 A.H./1998 CE). *Al-Burhān Fī Usūl Al-Fiqh*, al-Wafā’, Manṣūrah. Fasi, A. (1993).

al-Khadimi, Nur al-Din Ibn Mukhtar. (2001). *Ilm al-Maqāsīd al-Sharī’ah*. Maktabah al-Abikan, Riyadh.

al-Khamlīshī, *Aḥmad*. (1998). *Wujhah Naẓar*. Dār Nashr al-Ma'rifah, Rabat.

al-Khawārizmī, Muḥammad Ibn Maḥmūd. (1322 A.H.). *Jām'ī Masānīd al-Imām al-'Aẓam Abī Ḥanīfah*. Dā'irat al-Ma'arif al-Islāmiyyah, Hyderabad.

Mālik, Imām Mālik Ibn Anas al-Aṣḥabī al-Madanī. (1336A.H.). Ibn Mājah. (n.d.). *Al-Muwatta' al-Imām Mālik*. Dār Iḥyā al-Kutub al-'Arabiyyah, Cairo.

al-Masri, Rafiq Yunus. (1999). Ḥassan, Ḥusayn. (1993). *'Usūl al-Iqtiṣād al-Islāmī*. Dār al-Shāmiyyah, Beirut.

Muslim Ibn al-Ḥajjāj al-Nisābūrī. (1385A.H.). Ibn Mājah. (n.d.). Ibn Ḥanbal. (n.d.). *Ṣaḥīḥ Muslim*. Kutub Khana Raḥīmiyyah, Deoband, India.

Muslim Ibn al-Ḥajjāj al-Nisābūrī. (1385A.H.). Ibn Ḥanbal. (n.d.). Abū Dāwūd. (1985). Mālik. (1336 A.H.). Ibn Ḥanbal. (n.d.). *Ṣaḥīḥ Muslim*. Kutub Khana Raḥīmiyyah, Deoband, India.

al-Najjār, 'Abdul Raḥmān. (1986). *Ru'yah Maudū'iyyah Fī al-Da'wah Ilā Tanẓīm al-Urah*. al-Hay'ah al-Āmmah Lil-Isti'lāmāt, Cairo.

al-Nasā'ī, Abū 'Abd al-Raḥmān Ibn Alī. (1959/1378A.H.). *Sunan al-Nasā'ī*. Kutub Khana Raḥīmiyyah, Deoband, India.

al-Nawawī, Abū Zakariyyah Yaḥyā ibn Sharaf. (n.d.). *Al-Majmū' Sharḥ al-Muhadhab*. Maṭba'ah al-Āṣimah, Cairo.

al-Nawawī, Abū Zakariyyah Yaḥyā Ibn Sharaf. (n. d.). *Sharḥ Ṣaḥīḥ Muslim*. Dār Iḥyā al-Turāth al-Arabī, al-Maṭba'ah al-Miṣriyyah al-Azhariyyah. Cairo.

al-Qaradāwī, Yusuf. (1997). *Kayfa Nata'āmalu ma'a al-Qur'ān al-Aẓīm*. Qatar University, Doha.

Al-Qaradāwī, Yusuf. (1998). Kamali, M.H. (1999). Nyazee, I.A.K. (2000). Hallaq, W.B. (2004). *The Role of Values and Morals in Islamic Economics*. ABIM, Kuala Lumpur.

al-Qaradāwī, Yusuf. (1990). *Mudkhal li Dirāsah al-Sharī'ah*. Maktabah Wahbah, Cairo.

al-Qastallānī Aḥmad. (1305A.H.). *Irshād al-Sārī Li Sharḥ al-Bukhārī*, Cairo.

al-Qurṭubī, Abū 'Abdullāh. (1967). *al-Jāmi' li Aḥkām al-Qur'ān*. Dār al-Ma'ārif, Cairo.

Rabat Proceedings. (1974). 'Al-Islām Wa Tanẓīm al-Ussrah' (editors: I Naser; M.Y. Zayid; Y.J. al-Najjār) 2 Vol, IPPF. (The Conference took place in 1971.)

Shaltūt, Maḥmūd. The former Imām of Al-Azhar University. (1959). *Fatwā* (Legal verdict) issued from Al-Azhar press, Cairo.

al-Sharabāṣṣī, Sheikh (Dr) Aḥmad. (1965). *Al-Dīn Wa Tanẓīm al-Ussrah*. Dār Matābi' al-Sha'b, Cairo.

al-Shātibī, Abū Ishāq, Ebrāhīm Ibn Mūsā al-Lakhmī al-Ghranāṭī al-Mālikī. (1975). Ibn 'Āshūr. (1999). *Al-Muwāfaqāt fī Usūl al-Sharī'ah*. Published by Dār al-Ma'rifah, Beirut.

al-Shawkānī, M. Ibn 'Ali ibn M. (1357A.H). *Nayl al-Awtār Sharḥ Muntaqā al-Akḥbār Min Ahādīth Sayyid al-Akhyār*. Al-Maṭba'ah al-'Uthmāniyyah.

Shibir, Muḥammad 'Uthmān. (2000). *Al-Qawā'id al-Kulliyyah wa al-Dawābit al-Fiqhiyyah fi al-Sharī'ah al-Islāmiyyah*. Dār al-Furqān, Amman.

al-Shīrāzī, Abū Ishāq Ibrāhīm Ibn 'Ālī al-Fairūzabādī. (n.d.). *al-Muhadhab fī Fiqh al-Imām al-Shāfi'i*. Maṭba'ah al-Ḥalabī, Cairo.

al-Sijistānī, Abū Dāwūd Sulaimān Ibn al-Ash'ath. (1985). *Sunan Abī Dāwūd*. Mukhtār and Co., Deoband, India.

al-Taḥāwī, Abū Ja'far Aḥmad Ibn Maḥmūd al-Misrī al-Azdī. (1333 A.H.). *Mushkil al-Āthār*. Majlis Dā'irah al-Ma'ārif al-Nizāmiyyah, India.

al-Taḥāwī, Abū Ja'far Aḥmad Ibn Maḥmūd al-Misrī al-Azdī. (n.d.). *Sharḥ Ma'ānī al-Āthār*. Dārul Kutub al-'Arabī, Cairo.

al-Tirmidhī, Abū Īsā, Muḥammad Ibn Īsā. (n.d.). *Sunan al-Tirmidhī*. Kutub Khana Rashīdiyyah, Delhi, India.

al-Zabīdī, M. Ibn M. al-Murtaḍā. (n.d.). *Ithāf al-Sādah al-Muttaqīn Fī Sharḥ Ih'yā' 'Ulūm al-Dīn*. Dār Ih'yā' al-Turāth al-'Arabia, Beirut.

Zarqā, Aḥmad Muṣṭafā. (1963). *Al-Fiqh al-Islāmī Fī Thawbihī al-Jadīd*. Maṭba'ah Jāmi'ah, Damascus.

Zarqā, Muḥammad Anas. (1982). *Al-Qiyām wa al-Ma-āyir al-Islāmiyyah Fī Taqwīm al-Mashrū-āt*. In Dr Gemal Eldīn Attia (ed.), *Majallah al-Muslim al-Mu-āṣir* (p. 85-105). Mu-assasah al-Muslim al-Mu-āṣir, Beirut.

al-Zuḥayli, Wahbah. (1998). *'Uṣūl al-Fiqh al-Islāmī* (2nd ed.). Dār al-Fikr, Damascus.

Bibliography of English works

‘Abdel Kader, D. (2003). *Modernity, the Principles of Public Welfare (Maṣlahah) and the End Goals of Sharī’ah (Maqāsid) in Muslim legal thought. Islām and Christian-Muslim Relations.*

al-Alim, Yusuf Hāmid. (1991). *Al-Maqāsid al-Āmmah li al-Sharī’ah al-Isāmiyyah.* Published by the International Institute of Islāmic Thought, London.

American Academy of Family Physicians. (2000). *Natural Family Planning. What is natural family planning?* [Online]. Available: <http://familydoctor.org/online/famdocen/home/women/contraceptive/126.html>.

Anwārul-Haq. (1976). *Family Planning in the light of Islām.* Darsi Printing Press, Gujrat.

Attia, Gamal Eldin Attia. (2007). *Towards Realization of the Higher Intents of the Islāmic law Maqāsid al-Sharī’ah: A Functional Approach.* The Institute of Islāmic Thought, London.

Auda, Jasser. (2008). *Maqāsid al-Sharī’ah as Philosophy of Islāmic Law, A Systems Approach.* The International Institute of Islāmic Thought, London.

Balogun, K.A. (2007). *Islamic viewpoint on family planning.* Ben Olucashman, Nigeria.

Berghout, ‘Abdul’aziz. (2005). ‘Islāmic Law and Public Interests’, *Sharī’ah Law Report, Malayan Law Journal*, Kuala Lumpur, Malaysia.

Buckley, S. (2001). *Islamic Parenting.* Baker Book House Company. U.S.A.

Centers for Disease Control and Prevention. 2007. *Assisted Reproductive Technology: Home*.

<http://www.cdc.gov/ART/index.htm> date accessed 24 March 2018

Chapra, M.U. (2000). *The Future of Economics: An Islāmic Perspective*. Islāmic Foundation, Leicester.

Denis J. Wiechman, Jerry D. Kendall, and Mohammad K. Azarian, *Islāmic law: Myths and Realities*, Quoted at Website address: <Http://www.Muslim-Canada.Org/Islām> Myth. Date accessed 16/07/2016

Donohue, J.J. and Esposito, J.L. (1982). *Islām in Transition: Muslim Perspective*. Published by Oxford University Press, New York.

Ebrāhīm, Abul Faḍl Moḥsin. (1988). *Biomedical Issues-Islāmic Perspective*. The Islāmic Medical Association of South Africa, South Africa.

Ebrāhīm, Abul Faḍl Moḥsin. (2008). *An Introduction to Islāmic Medical Jurisprudence*. The Islāmic Medical Association of South Africa, Durban.

Ejibi, M.A. (2006). *Women's Rights and Responsibilities in Islāmic System*. The Ministry of Culture and Islāmic organization Publishers, U.S.A.

Fletcher, Joseph. (1954). *Morals and Medicine*. Boston Press, Boston.

Glass, Robert H. 1982. *Getting pregnant in the 1980's*. University of California, Berkeley.

Griffiths, P. & Stephensen, R. (2001). 'Understanding Users' Perspectives of Barriers to Maternal Health Care Use in Maharashtra, India'. *Journal of Biosocial Science*, Vol. 33, pp. 339-359.

- Ḥakīm, K. A. (1959). *Islām and Birth Control*. Lahore, Pakistan.
- Hallaq, W.B. (2001). *Authority, Continuity, and Change in Islāmic Law*. Cambridge University Press, Cambridge.
- Hallaq, W.B. (2004). *A History of Islamic Legal Theories: An Introduction to Sunni Usul-al-Fiqh*. Cambridge University Press, Cambridge.
- Ḥaneef, Sayed Sikandar Shah. (2000). *Homicide in Islām*. Noordeen Publications. Kuala Lumpur.
- al-Ḥasanī, Isma'īl. (1995). *Naẓariyyah al-Maqāsid 'Ind al-Imām Muḥammad al-Ṭāhir Ibn 'Āshūr*. The International Institute of Islāmic Thought, London.
- Kamālī, M.H. (1993). 'Fundamental Rights of the Individual: An Analysis of Haqq (Right) in Islāmic Law.' *The Journal of Social Sciences*. 10(3), pp340-366
- Kamālī, M.H. (1989). *Principles of Islāmic Juresprudence*. Pelanduk Publications, Selangor.
- Kamālī, M.H. (1999). *Maqāsid al-Sharī'ah: The Objectives of Islāmic Law*. Published by *Islāmic* Research Institute, International Islāmic University of Islamabad, Islamabad.
- Khalīfah 'Abdul-Ḥakīm. (1959). *Islām and Birth Control*. Lahore, Pakistan.
- Khan, M.A. (1997). The role of the government in the economy. *The American Journal of Islamic Social Sciences*.
- Khan, M.F. and Ghifārī, N.M. (1992). *Shātībī's objectives of Sharī'ah and some implications for customer theory*. Readings in Islāmic Economic Thought. p176-202, Selangor Longman, Malaysia.

Landis, Paul. (1959). *Social Problems*. Chicago Press, Chicago.

Maharishi, M. (2004). *Woman*. Nāṣiriyyah publication, Iran.

Maḥmūd, Ṭāhir. (1977). *Family Planning: The Muslim Viewpoint*. Viking Publishing House, New Delhi.

Maudūdī, Maulānā Abū al-Alā. (1987). *Birth Control*. Markaz Maktabah Islāmīyyah

Mazharul Islām, M., & Saidul Ḥasan, A.H.M. (2000). 'Mass media exposure and its impact on family planning in Bangladesh.' *Journal of biosocial science*, 32(04), 513-526.

Meera, A.K.M. (ND). Adjusting the hurdle rate to account for uncertainty-induced bias and social importance of the projects. Unpublished article.

Mistry, M. (1999). 'Role of religion in fertility and family planning among Muslims in India.' *Indian Journal of Secularism*.

MOHFW (Ministry of Health and Family Welfare). 2001. Annual Report 2000-01. Government of India, India.

Mosha, I. (2013). 'Family planning decisions, perceptions and gender dynamics among couples in Mwanza, Tanzania: a qualitative study'. *BMC Public Health*.

<https://bmcpublikealth.biomedcentral.com/articles/10.1186/1471-2458-13-523> date accessed 20/02/2018

Muftī, H. S. (2005). *Islamic principles on Family Planning*. Adam Publishers, India.

Mumisa, M. (2002). *Islamic Law: Theory and Interpretation*. Amāna Publications. Maryland.

Munson, Ronald. 1983. *Intervention and Reflection*. Wadsworth Publishing Co. California.

- Musallam, B.F. (1986). *Sex and Society in Islām*. Cambridge University Press, Cambridge.
- Nyazee, I.A.K. (2000). *Islāmic Jurisprudence (Usūl al-Fiqh)*. Islāmic Research Institute Press, Islamabad.
- Omrān, ‘Abdel Raḥīm. (1992). *Family Planning in the legacy of Islām*. Routledge, London.
- Omrān, ‘Abdel Raḥīm. (1971). ‘The Epidemiologic Transition: a Theory of the Epidemiology of Population Change’, *Milbank Memorial Fund Quarterly*, Vol. 49, pp.509–538
- ORG (Operation Research Group). (2010). *Family Planning Practices in India: Third All India survey*. Baroda: Operations Research Group.
- Orgocka, A. (2004). *Perceptions of communication and education about sexuality among Muslim immigrant girls in the US*. *Sex Education*.
<http://www.tandfonline.com/doi/abs/1080/1468181042000243349>
 date accessed 20/02/2018
- Place, Francis. (1930). *Illustration and Proofs of the Principle of Population, Including an Examination of the Proposed Remedies of Malthus*. Houghton Mifflin Co., Boston.
- Prata, Ndola. (2007). *Population and Enviroment*. ‘The Need for Family Planning’. pp. 212–222
<http://www.jstor.org/stable/27503993> date accessed 21/02/2018
- Qāsmī, Qāḍī Mujāhidul Islām. (n.d.) *Contemporary Medical Issues in Jurisprudence*. Trans. By A.R. Agwan. Islamic *Fiqh* Academy. New Delhi.
- Rai, B. (2008). *Demographic Aggression against India: Muslim Avalanche from Bangladesh, India*.

Ramadān, Tāriq. (1999). *To be a European Muslim*. Islamic Foundation. Leicester.

Ramadān, Tāriq. (2005). 'Stop in the Name of Humanity'. Globe and Mail, London.

al-Raysūnī, Aḥmad. (1992). *Naẓariyyah al-Maqāsid 'Inda al-Imām al-Shāṭibī*. The International Institute of Islāmic Thought, Al-Mu'assasah Al-Jāmi'iyyah, London.

Religions-Islam: Contraception-BBC

<https://www.bbc.co.uk/religion/religions/islam/islamethics/contraception.shtml> Date Accessed 23/10/2016

Sahidullah, M. (1962). 'Family Planning in Islām': First Indian Conference, *International Planned Parenthood Federation*. Dacca, East Pakistan.

Sahnūn, Sheikh Aḥmad. (1974). 'Nazarāt al-Islām Ilā al-Ijhād wa al-Ta'qīm' in Rabat Proceedings, Vol. 2, IPPF pp. 402-417

South African Family Medical Adviser. 1983. 'The Reader's Digest Association South Africa' (Pty) Ltd., Cape Town.

Tahi, M. (1977). *Family Planning; The Muslim View point*. Vikas publishing house, New Delhi.

'Uthmān, T. (2009). *Fatwā on Reproductive Health and Family Planning*. Jean Justimbaste, Cotabato City.

[Wood, Clive. \(1975\). Contraception Explained. World Health Organization, Geneva.](#)

World Medical Association. (2017). 207th WMA Council session, Chicago, United States. <http://www.wma.net/policies-post/wma-statement-on-family-planning-and-the-right-of-a-c13> date accessed 21/02/2018

Zarqā, Muhammad Anas. (1984). Islamic economics: An approach to human welfare. *International Conference on Islamic Economics (Selected Papers)*. Delhi: Amar Prakashan.

