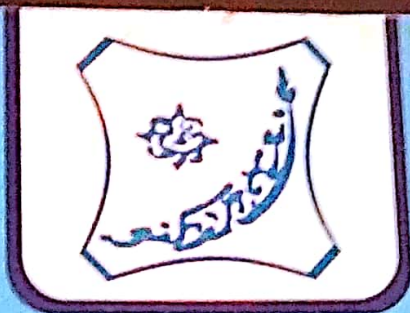




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Maqasid Al-Shari'ah as a Tool for Protecting Children's Right to Health

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Abstract

Children all over the world have legal backing for their protection including their protection under Shariah. The protection of children covers all aspects of children life such as education, freedom of movement including their right to health. Despite the existence of the provisions under the Shariah relating to the protection of children's health yet children are suffering from various diseases such as malaria, diarrhea and other communicable diseases. This is due to the nonchalant attitude of some parents or government towards the application of Shariah or their ignorance of the objectives of Shariah known as Maqasid-al-Shariah in relation to the health of children. Therefore, the purpose of this study is to examine the right of children to health under the Maqasid al-Shariah such as daruriyyat, hajiyyat and tahssiniyyat. Qualitative method will be adopted and in doing so, analysis of both primary and secondary materials will be used. The study concludes that full implementation of children's right to health under the Shariah will promote the health of children and assist them to develop mentally and physically.

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1. INTRODUCTION

Shari'ah regulates the affairs of all human beings, religiously, socially, politically and economically and thus leaves nothing untouched in all day to day activities including health related matters. *Shari'ah* considers children as part of the human being with legal entity and that their rights should be protected by ensuring that they properly enjoy adequate health care, health facilities, proper nutrition, and other health aids. Because of their immaturity and their vulnerability to some diseases, *Shari'ah* saddles both the government and the parents with the responsibility of giving the children adequate health care. The place of *maqasid al-shari'ah* in contemporary human rights discourse has been a cause of recent debates among both oriental and occidental scholars. Notwithstanding the importance of the concept of right of children under *shari'ah*. This paper, therefore, discusses the right of children to health by relating it to the *Maqasid al- Shariah* (objectives of *shari'ah*). The analysis on the right of children to health will be explained in line with each *Maqsid*(objective) such as *Daruriyyah*, *Hajiyyah* and *Tahsiniyyah* for the purpose of establishing how *Shari'ah* protects health of children. The paper also examines some of health related issues that fall under each *Maqsid*.

2. MAQASID AL-SHARI'AH: MEANING AND CLASSIFICATION

Maqasid al-Shari'ah has been defined as the purpose for which the law was established to fulfil for the benefit of humankind.² It can also be described as meanings and wise purposes derived by the creator in His injunctions in general and specifically aiming for public interest.³ From all these meanings it can be concluded that *Maqasid al-Shari'ah* is a divine wisdom of Allah derived behind most of His Laws which guide towards the end and goals of the *Shariah*, which can either be general or specific. Commonly, *Maqasid al- Shari'ah* is also described as the objectives of *Shari'ah*.⁴ The objective of *Shari'ah* is to protect the well- being of the people irrespective of gender and without any discrimination as

² Al- Raysuni, A. *Imam Al- Shatibi's Theory of the Higher Objectives and intents of Islamic Law* (Islamic Book Trust, 2006) 67

³ Al-Ayubi, M.S. *Maqasid al- Shariah al- Islamiyyah wa alaqatuha bil Adlah al- Shariyyah* (Dar Ibn al-Jawzi, 2008) 20.

⁴ NurudeenbnMukhtar, *Ilm-al- Maqasid al-Shariah* (Maktabatulaikani : 2001) 15

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to sex, colour, tribe and religion and it lies in the safeguarding of their faith (*deen*), life (*nafs*), intellect (*aql*), posterity (*nasl*) and their wealth (*mal*). The underlying theme is the realization of the benefit of the people (*Maslahah*) or public interest.⁵ Thus, where a *Shari'ah* rule does not have a direct legislation from the Quran and *Sunnah* of the Prophet Muhammad (S.A.W), the scholars could apply *ijtihad* to deduce the appropriate rulings by considering what would be the best interest of the Muslims and Islam within the prevailing global trend.⁶ Scholars have stated that the principles and rules of *Shari'ah* are basically underlined with the objective of compassion and must be applied in a manner that will reflect the compassion in the daily affairs of the citizens.⁷

This objective is deduced from the verse where the Qur'an describes itself as "a healing to the (spiritual) ailments of the hearts and a guidance and mercy for the believers and mankind".⁸ Similarly, Allah said of Prophet Muhammad (PBUH) that "We have not sent you but as a mercy to the worlds".⁹ This principle has been reinforced in the Islamic legal maxim (*qawa'idulfihiyyah*) that says "hardship must be eradicated" (*addararuyu'zal*).¹⁰ Thus, the primary objective of *Shari'ah* is to establish mercy and justice while eradicating prejudice, hardship, injustice and lack of freedom in the society.¹¹ This, therefore, justifies the need to protect the rights of the children, especially their right to healthy living and health facilities. This is because, while the adults, who are regarded as *mukallaf* (adults with full legal capacity and responsibility) can legally enforce their rights, the children cannot. Even though there may not be direct *Shari'ah* legislation on the protection of the right of children to health, the abysmal state of the health condition of children in Muslim societies has necessitated the invocation of the principle to protect the vulnerable children, which is also in line with several international treaties and commitments.

⁵ Ahmad al- Raisimi, 1992, *Nazariah al-maqasid 'nda al-imam al-satibi*, Riyadh: Darul-Alamiyah kitaul-islami, p41.

⁶ Buba, T. M. 2014, "Role of Maqasid al-Shari'ah as a Social Welfare Concept in the interpretation of the sources of Shari'ah" (2014) Vol. 2, No. 1 *Unilorin Shariah Journal*, Ilorin: Department of Islamic Law, 61-86.

⁷ Kamali, M. H. *Maqasid al-Shari'ah: The Objectives of Islamic Law* (n.pl: 1998) 200.

⁸ Al-Quran, Al-Yunus, 10:57.

⁹ Al-Quran, Al-Anbiyan, 21: 107.

¹⁰ Buba, T. M. 2014, "Role of Maqasid al-Shari'ah as a Social Welfare Concept in the interpretation of the sources of Shari'ah" (2014) Vol. 2, No. 1 *Unilorin Shariah Journal*, Ilorin: Department of Islamic Law, 61-86

¹¹ *Ibid*

The *Maqasid al-Shariah* have been classified into three namely *daruriyyat* (essential), *hajiyyah*, the (complementary) and *Tahsiniyyat* (embellishments).¹² The essential objectives however, are targeted at protecting five values of life, religion, intellect, lineage and property. The principles under the first classification are regarded as *Daruriyyah* or the essentials. These are the basic rights of a human being. The first is the protection of the right of people to practice their religion without any untoward harm to them. No one should fear to pray in a mosque due to prosecution. Freedom for man to practice his faith is the first objective because the practice of religion allows man to live within a code of law which guides him to behave as a human. Therefore, children should be encouraged to observe daily prayers as this is the purpose of being created.¹³

Meanwhile, to observe a valid *Salat*, a Muslim is required to perform ablution.¹⁴ The wisdom behind performing ablution is to teach Muslims the practice of constant cleanliness. Therefore, where the child is being instructed from a tender age to observe *Salat* and before doing so to perform ablution, he is technically being taught to observe cleanliness at all times and to avoid engaging in dirty activities that may lead to sickness.¹⁵ The second objective of the *Shariah* is to protect human life. Right to life is a basic fundamental right. Therefore, no one's life is less valuable than another's. Life is a precious gift that we must value and give respect to. No child should die of starvation and malnutrition because each child has a basic right to live.¹⁶

The third objective of the *Shariah* is to protect the intellect. Man uses his intellect to think and in the Holy Quran Allah constantly asks us to think and ponder about His creation.¹⁷ One of the reasons Islam prohibits intoxicants is because it impairs intellectual ability. The children are vulnerable in many respects including mental wise. As children, their mental faculties are not fully developed; hence, the parents are always advised medically to be careful with what their children eat. The children are expected to consume foods that are rich in nutrients like protein, calcium and vitamins.¹⁸ These help to develop their

¹² Mohamad Akram Laldin, *Islamic Law: An introduction*. (Research Centre IIUM : 2006) 17

¹³ See Al-Quran, al-Ankaboot, 29:45.

¹⁴ Ibrahim bn Aliyubn Yusuf, *AlMuadhab fi Fiqh al- Imam Safii*. (n.pl. : 1996) 93

¹⁵ Ibid. *AlMuadhab fi Fiqh al- Imam Safii*. (n.pl. : 1996) 93

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mental faculties.¹⁹ Similarly, countries, including Nigeria always mandate pharmaceutical companies to inscribe caution statements on their drug packaging advising parents to keep medical drugs away from the reach of their children.²⁰ Therefore, prohibiting of narcotic and psychotropic drugs by Act²¹ is in line with the principle of *Shari'ah* to protect the mental health of the children. The fourth objective of the *Shari'ah* is safe guarding posterity (*nasl*). This means safe guarding one's lineage from illegitimacy.²² One of the reasons that Islam recognises valid marriage is that it will enable to determine the illegitimate children from the other.²³ The inability of the people to appreciate and put this objective into practice has brought about many social ills like unwanted teenage pregnancies and baby dumping. Babies born under such circumstances already lack their basic rights in Islam which is proper lineage.²⁴ The sense of belonging and utmost pride towards ones lineage must be instilled within our children to encourage them to protect their lineage. The fifth objective is to protect wealth. Every human being has rights to own property regardless of gender. Their wealth must be protected and not be usurped. The wealth of the orphans must therefore be cared for by the guardian and returned to them when they are grown.²⁵

The above objectives have connection with the health of children. This is because discussion about children's right to health and right to life are seemingly intertwined and inseparable. Equally, religion enables us to understand the importance of health as it prescribes that Muslims including children, should consume healthy and *halal* foods. *Salat* also entails physical fitness for the children which is covered under health matters. The protection of lineage also protects children from hereditary diseases.

The second division under *Maqasid al- Shari'ah* is *al- Hajiyat* (the complimentary). It refers to those interests whose neglect leads to hardship of the

¹⁹ Hafiz Mohammed. 'Healthy Eating : An Islamic Perspective.' www.tsmv.org/articles/zahid-healthyeating.html. Accessed on 10th October 2015

²⁰ Habib, A.G. et. al. 2009. 'Transparency in Nigeria's Public Pharmaceutical Sectors : Perceptions from Policy Makers'. (n.d.) www.ne.ncbi.nlm.gov/pmc/articles/pmc2775729. Accessed 10th October 2015

²¹ Pharmacists Council of Nigeria Act CAP 17 LFN 2004

²² Shabina Arfat. 2013. "Islamic Perspective of the Children's Rights: An overview." Vol. 2 No

1 *Asian Journal of Social Sciences and Humanities*. 302

²³ Ibid

²⁴ IbnAshur, Muhammad al- Tahir, *Maqasid al- Shari'ah al- Islamiyyah* (International Institute of Islamic Thought & Maqasid Research centre : 2006) 116.

²⁵ See Al Quran. An Nisai 4 : 6

individual or community although it does not lead to disruption of normal life.²⁶ There are many examples of *hajiyyat* such as dispensation of excuses (*rukhsah*) that *Shariah* has granted in respect of *Ibadat* of travellers and sick. The travellers are allowed to shorten their prayers and break their fasting when they are on journey. The sick people are also allowed to pray on sitting and are exempted from fasting during Ramadan.²⁷ Although, prayer and fasting are not compulsory for the children but it can assist the children health wise if they engage in it. This will be done by asking them to shorten prayers while travelling and encourage them to fast from morning to *Zuhr* prayer as these will improve their health status.

The Third division under the *Maqasid al- Shari'ah* is embellishment (*al-Tashiniyyat*) and it refers to benefit that leads to the improvement and attainment of that which is desirable. Therefore, the observance of cleanliness in personal appearance and *Ibadah*, moral virtues, and avoiding extravagance fall under the category of *al-Tashiniyyat*. The disappearance of *Tahsiniyyat* may not interrupt the normal life, but it might lead to lack of comfort in life.²⁸ In this regard right of children to health can be discussed according to the objective of *Shariah* (*Maqasid al- Shariah*). The concept of *Maqasid al- Shari'ah* as briefly discussed has a lot of role to play in determination of children's right to health. It enables us to understand the intent of the *Shari'ah* on the protection of children.

3. CONCEPT OF HEALTH UNDER THE SHARI'AH

Islam considers health as a basic human right as mentioned in the hadith of Prophet Muhammad S.A.W .which says "Your body has a right over you".²⁹ Therefore, for a Muslim, health consciousness is akin to God consciousness.³⁰ Health can be described as " a state of complete physical, psychological, social and spiritual well-being. It also means state of "equilibrium".³⁰ Therefore, health is very important in life of any human being including children and must be protected. It is, then, like a balance which moves between two extreme limits.³¹ To maintain this health balance in the state of equilibrium, a human being must have a "health potential". This health potential usually takes the form of proper

²⁶ Mohamad Akram Ladin, *Islamic Law: An introduction*. (IIUM Press : 2006) 28

²⁷ Nurudeen Mukhtar al-Khadmyy, *IlmulMaqasid al Shari'yyat* (Maktabutlaikani : 2001) 89.

²⁸ Mohamad Akram Ladin, *Islamic Law: An Introduction* (IIUM Press, 2006) 28

²⁹ Shahid Athar.nd, 'Health and Islamic Philosophy' www.islam.usa.com/n.dex.php. Accessed on 5th March 2015.

³⁰ Muhammad Haytham Al-Khayat, *The Right Path to Health: Health Education through Religion* (World Health Organization, 1997) 12

³¹ Ibid. p.12.

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nutrition, good immunity, or physical fitness which enables a person to cope well with the stress which the body may face.³² Health is normally looked upon as a natural state of our lives, while illness or disease is a sort of unnatural condition that afflicts human body and can be combated and cured by the use of proper medication.³³ Therefore it becomes imperative to protect the health of children due to their vulnerability because health is believed to be one of the greatest blessings God bestowed on human beings and needs to be preserved and protected.³⁴ Health is something for which human beings will account for its usefulness on the Day of Judgment³⁵. It is therefore the duty of every Muslim to safeguard this blessing and not to allow any changes to overcome it through ill usage and any attempt to abuse this precious gift can lead to punishment for whoever mismanages it.³⁶

4. DARURIYAT AND THE RIGHT OF CHILDREN TO HEALTH

4.1 Protection of life.

Life is one of the fundamental objectives of *Shari'ah* that must be secured and protected.³⁷ Children are legal entity and their right to life is guaranteed under the *Shari'ah*. Protection of life is very important and that is the reason why it is placed at the second level of necessity (*Daruriyyah*)³⁸. The life of children is given adequate regard under the *Shari'ah*. The rationale behind this is that the children are considered as weak.³⁹ It is therefore considered a great sin and violation of *Shariah* objective to terminate the life of any child intentionally.⁴⁰ Right to life as the second objective of the *Maqasid al-Shari'ah* deals with protection of human life. Everyone including the child has the right to

³² IbnSina. Al-qanoon.1093. A.D.

³³ Abu FadlMohsinEbrahim, 1989. *Abortion, birth control & surrogate parenting: An Islamic perspective* (American Trust Publication, 1989) 4

³⁴ See Muhammad Haytham Al-Khayat, *The Right path to Health: Health Education through Religion* (World Health organization, 1997) 15

³⁵ Ibid.p.18

³⁶ See also Al-Quran. Baqarah 2 v.211.

³⁷ Muhammad al Tahir ibnAsuhur, *Treaties on Maqasid al Shariah* (The international Institute of Islamic thought, 2006) 107

³⁸ Mohammad Akram. 2012. 'The Shariah Objectives (Maqasid) in contemporary science'. *Islamic finance online*. <Nexux.www.amanie_iconnect.com.p.1>

³⁹ Ibid

⁴⁰ See also Al-Jabiri. 2009. 'The Rights of the Child in the Islamic Context: The Challenges

live in this world. No one's life is less valuable than that of another. Life is a precious gift that it must be valued and give respect to. No child should die for starvation and malnutrition because each child has a basic right to live.⁴¹ It is established that *Maqasid al-Shari'ah*'s attention to preserving the life and health of the child amounts to attending to the strength of the Muslims as a whole.⁴² Therefore, a healthy body is not only attributed to the soundness of one's thing but also makes it for individual to interact with life and fellow human being.⁴³

Similarly, it is asserted that the protection of child's right to health does not end in avoiding the physical act of attacking the child. It involves all the acts that could threaten the life of the child.⁴⁴ The provision of basic necessities of life such as food, shelter, clothing and medical care is essential for the survival of the child.⁴⁵ If parents or government fails to cater for these important necessities of life, the probable outcome is death of the child. The right to life cannot be completely assured unless the children are able to enjoy good health and live in a healthy environment. Both are integral parts of the right to life.⁴⁶ And it is the duty of parents and the authority in charge such as the government to protect the welfare of children.

Furthermore, right to life under *Shari'ah* also includes the right of foetus, providing to it an independent existence. Though still part of his mother, the foetus has an independent legal personality and rights. Therefore, under the *Shari'ah* if a pregnant woman commits homicide or any offence that requires the death sentence, the judgment is to be delayed till she delivers or after she finishes nursing the child.⁴⁷ The rationale behind it under the *Maqasid* to protect the foetus

⁴¹Ibid. 3.

⁴² Ibrahim Adebayo R. 'The Islamic theory and practice of peace and peaceful co-existence in a pluralistic society, Nigeria. (2013) Being a paper presented at the first National conference on Ilorin: History, culture and lesson of peaceful co-existence...3.

⁴³Ibid.

⁴⁴ Al Muhalli & Al Sayuti, *Tafseer Al Jalalayn*. (Dar al Ma'rifah, 1973) 182

⁴⁵ Bhuyan Mah. et. al. "Child Caring and Complementary feeding practices among selected households in Dhaka" Vol. 33. No 1 *The ORION Medical Journal*. 718

⁴⁶Ibid

⁴⁷ Abdulrahman al-Sabuni, *Nisam -l- Usratwahal Muskilatuha fi daoue-l Islam*. (Darul Fikr, 2001) 71. It is also reported by Al- Bukhari, Muslim, Al Trimidh, An Nisae and Ibn Majah on the authority of Abu Hurairah that two women from Hazil were fighting, one threw a stone at the other which killed her and foetus. People sought counsel from the Prophet S.A.W. who gave the verdict that for the killed foetus the killer should release a male or a female slave, as a ransom and that the blood money (Diyah) for the woman killed was to be paid by the guardian of the killer, her heirs and her offspring. Then the guardian (Al Nabigah Al- Hazly) said Oh Messenger of Allah, how could I be fined for that who did not drink, eat, speak or initiate a life? Such a case

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from being killed along with the mother because the foetus's right has to be protected. Prophet Muhammad (S.A.W.) said: "if a pregnant woman intentionally kills a soul, the death sentence on her should be delayed till she delivers..."⁴⁸ The foetus right to life is an absolute value, even if this foetus is illegitimate.⁴⁹ This principle of *Shari'ah* is encapsulated in the episode narrated by Buraida, Al Ghamadiyyah came to the Prophet Muhammad S.A.W saying, "Oh messenger of Allah, I have committed adultery, so purify me." The Prophet S.A.W. instructed her to go "until you give birth". When she gave birth, he said to her "go and feed him until he is weaned". We weaned him, she came to Prophet (S.A.W) with the boy holding a crumb of bread. The Prophet S.A.W. gave the boy to a man and commanded people to stone her to death. He then performed prayer on her and she was buried. It is clear from the hadith of Prophet Muhammad (S.A.W) that the foetus right to life should be protected.

4.2 Right of foetus to health

The protection and respect for the children's right to health commences even before their birth.⁵⁰ *Shariah* as a divine law has provisions for the protection of the foetus which include the condition of its health. The Foetus's right to health can be categorized under the *hajiyyat* that is complementary under the *Maqasid al-Shari'ah*. This is because health compliments the life and without sound health the life of children will not be adequately guaranteed. Some scholars have however argued that protection of health is a new value to be included under the *daruriyyah* necessities because without it other five objectives; life, intellect, property, religion, and lineage will be in vain.⁵¹ The health of children has to be considered paramount because it is the foundation of everything. If the children

be denied. The Prophet S.A.W. said "This man is a brother of the soothsayer, for the rhymes as they do."

⁴⁸ Hadith....?

⁴⁹ Ibrahim Abdul Hamid Al Sayyad, *Islamic Approach to Medicine* (n.d.) 33

⁵⁰ Arafat, S. "Islamic Perspective of Children's Right: An Overview" (2013) Vol.2 No 1. *Asian Law Journal of Social Sciences and Humanities*. 300

⁵¹ NurdengDeuraseh, "New essential Values of Daruriyyah (Necessities) of the Objectives of Islamic Law (Maqasid al- Shari'ah) " (2012) Vol.4. No 2. *Journal of Hadhri*. 107-116.

are not getting adequate health care it can lead to hardship and the foetus must be protected against harm such as malnutrition.⁵²

It is a principle of the *Shari'ah* that a person should refrain from any act that will injure him or any other human being which is in accordance with the saying of Prophet Muhammad (PBUH); "There should be neither harming nor reciprocating harm".⁵³ This *hadith* is supported by a *Shari'ah* legal maxim that states "Harm must be eliminated".⁵⁴ Thus, the need to protect the foetus's right to health and life has been identified to have necessitated why pregnant women are exempted from fasting during Ramadan. This is to give her better health and to protect the life and health of the child especially where it is confirmed by a qualified doctor that fasting will affect her or the pregnancy.⁵⁵

Furthermore, in order to properly give the foetus adequate health care, the pregnant woman must not expose herself to radiation or chemicals that may damage some of the cells or tissues of the foetus or that may lead to the occurrence of mutation or physical deformities.⁵⁶ She must not use any medications during pregnancy without expert medical guidance.⁵⁷ The use of medications, particularly in the early days of pregnancy, may increase the deformities in the foetus or cause malformation of the organs.⁵⁸ Similarly, to ensure adequate health of the foetus the pregnant woman should abstain from illicit sexual intercourse or having contact with someone suffering from contagious diseases such as measles, HIV, syphilis, hepatitis or any other transmitted diseases. She must avoid passive smoking because it has been proven to inflict harm upon her foetus.⁵⁹ It is an established fact that the health of the foetus is linked with that of its mother; therefore, it is the duty of the husband to provide adequate care for the mother and the child and to increase her share of food and drink so as to remain healthy.⁶⁰ It also incumbent upon the parents to

⁵²Children in Islam..p.11.

⁵³IbnMajah.Sunnanibnmajah. Kitab Al- Ahkam, "The Judgment regarding he would build for himself while hearing his neighbor.". Hadith 2340.Vol.2.p. 748.

⁵⁴Azman Ismail..p.171.

⁵⁵Al ArabyyitaullahiQuwaidiri, *Al tiflu fi taribawwy l islamyy*(Daruusamat : 2010) 23

⁵⁶ Robert Brent 'Pregnancy and Radiation Exposure'. <<https://hps.org/hps/publication/articles/pregnancy>>. Accessed on 8th September 2015.

⁵⁷ Ibid

⁵⁸Children in Islam..p.'22.

⁵⁹ShabinaArfat, "Islamic Perspective of the Children's Rights: An overview." (2013)Vol. 1 No.1 *Asian Journal of Social Sciences and Humanities*. 302

⁶⁰Sa'adat Hassan Liman. "Child upbringing the Frame work of Islamic Family ideals: Panacea for National Security." (2014) Vol.4 No 5 *Journal of Research on Humanities and Social Sciences*. 62

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avoid whatever may harm the mother's health such as early pregnancy below the age of 18 years or late pregnancy above the age of 35 years or pregnancies at short intervals apart.⁶¹

4.3 Protection of children's intellect against harm

Intellect 'Aql' is a human faculty that enables humans to interpret sensory information from the environment to gain new knowledge, to think and formulate ideas, to distinguish the right and moral from the wrong and evil and to control voluntary human behaviour.⁶² It distinguishes humans from animals.⁶³ Just like adults children also endowed with the intellectual faculty of reasoning. Therefore, their intellect should be protected and safe guarded in order to save them from injurious things that might harm the ability and function of the brain.⁶⁴ This includes consumption of liquor or drugs (hard drugs), Cocaine, Nicotine, Hallucinogenic drugs and other similar substances that will upset the function of the brain.⁶⁵

The principle of *Maqasid al- Shari'ah* under *darurriyah* can be applied to the prohibition of all intoxicants as it affects intellect and mind of those who consume it including children.⁶⁶ Preservation of intellect of children is currently evolving to include propagation of scientific thinking, travelling to seek knowledge and avoiding brain drain.⁶⁷ There is therefore need as a matter of necessity to prevent children from using the computer system for purposes of watching Pornographic and Violent films that can endanger their health.⁶⁸ The same effect comes from magazines and stories with similar content. When they reach the age of discretion, such scenes become imprinted in their memory, and settle in to their mind, so they try to imitate them.⁶⁹

⁶¹ Ibid.

⁶² Seyyed Hossein Nasr, "Intellect and Intuition: Their Relationship from Islamic Perspective." (1979) Vol.1 No1 &2. *Journal of Studies in Comparative Religion*. 98

⁶³ Omar Hassan Kasule, "Protection, Preservation and Promotion of the Intellect, Hifdh Al- Aql." (2007) *Islamic Education Resources*. 1

⁶⁴ Ibid

⁶⁵ Muhammad Akram Laldin, *Islamic Law: An Introduction* (Research Center IIUM, 2006) 25. See also Al- Quran. Al- Maidah.5: 90.

⁶⁶ Jasser Auda, *Maqasid al- Shariah: An Introductory Guide* (n.pl. 2008)20

⁶⁷ Auda n.d. *Fiqh al- Maqasid*. n.pl.p.20.

⁶⁸ Luqman Zakariyah. Lecturer. 25 January, 2015. International Islamic University Malaysia. Maqasid Shariah and right of children to health. (Personal interview).

⁶⁹ Abdullah Nasih Ulwan, *Child Education in Islam* (Dar Al-Salam, 2000)63

4.4 Protection of Religion and Children's health.

The purpose of expounding the concept of *maqasid al-Shari'ah* is to establish that every *Shari'ah* legislation either on ritual worship ('*ibadah*') or civil transactions (*mu'ammalaat*) has its underlying goal and benefit for mankind.⁷⁰ Whenever mankind is ordered to perform an act of *ibadah*, Allah always explicitly justifies the reason for ordering such act by stating the rationale behind prescribing it and the benefit derivable from its observance.⁷¹ For instance, while prescribing ablution before *Salat*, the Qur'an points out that "Allah does not wish to inflict hardship on you but to make you clean and to complete His favours upon you". This instruction was also buttressed by the Prophet's hadith that "cleanliness is part of faith". The purport of these sayings is to teach Muslims the act of cleanliness in order to encourage them to live a healthy life. Similarly, *Salat* is also established as one of the important practices to help the Muslim maintain both spiritual and physical health. Thus, one of the purposes of prescribing *Salat* is because "truly, *Salat* restrains promiscuity and evil".⁷² This verse further establishes *Salat* as a means of safeguarding the Muslims from sexually transmitted diseases, which has been medically established to be evil and dangerous to human health and lives.

Although prayer is not compulsory for the children but the Prophet Muhammad (S.A.W) encouraged parents to command their children to pray at the age of seven.⁷⁴ It has been found that *Salat* has health benefits for both adults and children. The health benefit of *Salat* starts from ablution because it purifies the body particularly the children who are always involved in dirty games. The washing of exposed areas of the body which come in contact with germs and dirt throughout the day including hands face, mouth and nostril five times a day is healthy and primitive medicine. If the children are able to keep their nostrils clean in a manner prescribed for the ablution they will breathe in cleaner air to their lungs.⁷⁵ Similarly, the act of washing the hands has been recognized by Islam since the pre modern era is now encouraged as medical precaution to prevent the spread of infections such as cholera, bird flu (Atienza), *ebola* etc.

⁷⁰ Ibid

⁷¹ Kamali, M. H. *Maqasid al-Shari'ah: The Objectives of Islamic Law* (npp, 1998) <www.islamicbookstore.com/b10159.html> Accessed on 19 September 2013.

⁷² Al-Quran. Al-Maaidah. 5:17.

⁷³ Al-Quran. Al-Ankabut. 29:45

⁷⁴ Al- Azdi As-Sjstijan, Sulaiman bin al-Ash'ab, *Aonu al-Mahbud Shariu Sunnan Abi Dawud* (Dars Fikri, 1995) 123. Kitabu As-Solat Babu Mata Yumar Al -Gulam bi Solat.

⁷⁵ Salem Muktar, *Prayer: A sport for the soul and body* (The Arab Modern Center, 1990) 52

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The health benefits of *Salat* has been identified by classical Islamic scholars who noted that prayers can preserve health, ward off harm, repel maladies, strengthen the heart, brighten the face, gladden the soul, remove laziness, refresh the organs, reinforce the faculties, expand the breast, nourish the spirit, illuminate the heart, preserve well-being, protect against suffering, attract blessing, keep Satan at bay and bring one closer to the Merciful.⁷⁶ Furthermore, *Salat* has been shown to cause recovery from the pain of the heart, stomach and intestines, it diverts the mind from pain and reduces its feelings, while strengthening the power to repel pain⁷⁷ and also exercises the body since, in prayers, different bodily movement occurs and in various postures such as standing upright, genuflection, prostration and relaxation.⁷⁸

Furthermore, giving out to the needy is an element for peace of mind for both the givers and the receivers. It will enable the poor parents of children who are suffering from diseases to recast benefit from the pool to treat their children. At the same time the Islamic government can draw from the *Baitul mal* to take care of the children who are facing the health challenges and their parents who are financially incapacitated.⁷⁹ Fasting is also not compulsory for the children but because of its health children should be encouraged to fast. It produces psychological change in the body, it gives rest to different organs and improves adaptability.⁸⁰ It lowers the cholesterol, blood pressure and sugar levels. It also produces peace and tranquillity in the mind.⁸¹

4.5 Protection of Progeny and Children's Health

Preservation of progeny is one of the interests to be preserved under the *Maqasid al-Shariah*. Procreation is one of the purposes of marriage in Islam.⁸² It is an avenue of producing a healthy progeny for one's own benefit and the benefit of the entire community. With valid marriage, children are able to live in a complete

⁷⁶ Ibn al-Qayyim.n.d. *al-Tibb al-Nabawi*. 322.

⁷⁶ Ibid

⁷⁷ Al- Dhalabi Shams al-Di Muhammad Ahmad ibnUthaman, *al- Tibb al- Nabawi* (HakikatKitabevi, 1990) 167-168

⁷⁸ Ibid

⁷⁹ AbdulraheemTaofeeqAbolaji. et. al. "Protecting the Children's Right to Basic Education and Health in Northern Nigeria : Exploring Institutionalization of Zakat and Waqf as a viable option." (2015) Vol.1 No 1. *Al-Ikmah Journal of Education*. 45

⁸⁰ Salma Naseer, 'Fasting and Health Benefit in Ramadan.' <www.khanapakana.com/article/> accessed on 10 Oct.2015

⁸¹ Ibid

⁸² See Al- Quran. Al- Baqarah 2: 224

environment for the betterment of the society.⁸³ The purpose is fulfilled by appropriate health care for children to grow in to healthy adults able to reproduce.⁸⁴ It is also fulfilled by appropriate care during pregnancy and delivery to ensure a health outcome.⁸⁵ To adequately protect and preserve the progeny there should be genetic testing and periodic counselling for the mother for safety delivery. Genetic testing during pregnancy or soon after delivery can detect diseases to enable instituting early treatment for a better outcome. The rationale behind the counselling before testing is to provide information about the genetic disorder and the risk of diseases to the individual and families so that they make informed decisions about child rearing.

5. HAJIYYAT AND RIGHT OF CHILDREN TO HEALTH

5.1 Nutrition and healthy eating

Nutrition and healthy food falls with the realm of *Maqasid al- Shari'ah* precisely under *hajiyyah* (complimentary interest).⁸⁶ If there is inadequate nutrition, the life of children will be in danger. Taking healthy nutrition means having a balanced diet in order to maintain the balance that Allah has established in all matters.⁸⁷ Allah has also ordained parents to maintain children properly to produce a sound and healthy generation. The roles of parents are paramount and germane in shaping and restructuring children's personalities as a universal fact.⁸⁸ Health nutrition means a diet balanced in quantity; eating too much is harmful, as it causes disorders to the digestive system. It may also be an indirect cause of diseases such as diabetes, hypertension and vascular diseases leading to angina

⁸³ n.a. 'Importance of Marriage in Islam.' (2014) <www.theislamiclightt.blogspot.my/2014/importance-of-marriage-in-islam> accessed on 15th October 2015

⁸⁴ Omar Hassan Kasule, "Preservation of Progeny: A medical Perspective (MaqasidhifizNasl: Al MandhuurTibbi) (2004) Paper presented at an Institute for Islamic Understanding (IKIM0 Kuala Lumpur. 27th -28 April 2004.p.1.

⁸⁵ Ibid.

⁸⁶ NurudeenMukhtar al-Khadimyy, *IlmulMaqasidShari'yah* (MaktabatulAikan,2001)50

⁸⁷ Allah enforced the balance. That you extend not the bounds But observe the balance strictly and fall not short thereof' Quran55:7-9.

⁸⁸ AzzizahMohd, *Protection of Abandoned Children in Malaysia: A comparative overview with Islamic Law*. (International Law Book Services, 2007) 56

and heart attack, as well as diseases of the brain arteries, causing stroke and paralysis.⁸⁹

More so, healthy nutrition also means a diet balanced in its contents. This means that it must have a mixture of the different types of food which Allah has graciously provided for His creation so that it satisfies all the body needs in terms of proteins, fat, carbohydrate, salts and vitamins. Most of these lawful foods are mentioned in the holy Quran which says: "He created cattle which give you warmth, benefits and Food to eat."⁹⁰ Food and drink have been included as part of obvious benefits of *Maqasid al-Shariah* for the children and it is considered as supplement to *daruriyah* that can sustain the children to live a healthy life.⁹¹ Therefore, health rules must be observed. One of the rules stresses the need to ensure the cleanliness of food and drink. For instance, Prophet Muhammad PBUH said: "Cover your food and drinks" Based on the foregoing hadith, the *Shari'ah* urges that food should be covered so that dirt do not fall into it. This is because it has made a preventive measure against contaminated food or drinks that can lead to sickness or illness. Therefore, it is encouraged to choose food that will enhance promotion of health for the children. The food choices one makes significantly influence one's health. Choosing a healthy diet helps to support maximum fitness and protect against diseases.⁹²

The general principle under *Shari'ah* is that all things which are pure themselves and good are lawful for diet as long as they are taken in reasonable and moderate quantities and all things which are not pure themselves are not suitable and not good and cannot be categorized as lawful diet because of their impurity and harmfulness to human health. There are therefore, certain foods and drinks which are forbidden for consumption under the *Shari'ah*. These include carcasses of animals and birds, pork, and anything slaughtered without invoking the name of Allah.⁹³ The rationale behind the prohibition of unlawful foods and drinks is that it serves as divine intervention in the best interest of man and for his own sake. This is because when the Qur'an describes the forbidden things as bad,

⁸⁹Wali Abu Hendi, 'Managing your Weight through Sunnah,' (n.d.) <www.everymuslim.net> accessed 2nd October 2015

⁹⁰ Al Quran. anNahl. 16 v5. See also Al Quran.an Nahl. 16 v 1011

⁹¹ Muhammad Al-Tahir IbnAshur, *IbnAshur Treatise on Maqasid al-Shariah*, (Islamic Book Trust, 2006) 205.

⁹²Ibid

⁹³HammudahAbdalati, *Islam in Focus* (Islamic Book Trust, 1998) 122

impure and harmful it has a nexus with human's health.⁹⁴ For instance blood consumption is forbidden under *Shari'ah*, because it is a medium through which microorganism flourish and multiply bacteria and other germs. If children or people eat it there is the tendency of transmitting microorganism to the body which has adverse effect and dangerous to the health. Children must therefore be discouraged from eating all these forbidden foods because of their negative impacts on the body.

5.2 Breastfeeding as an optimal Source of nutrition.

Under the *Maqasid al-Shariah*, breastfeeding is regarded and classified under *hajiyyah* (complimentary).⁹⁵ It is an unequalled way of providing ideal food for the healthy growth and development of infants and has a unique biological and emotional influence on the health of both the child and the mother.⁹⁶ It is the parent's responsibility to provide nourishing food that will enrich their children both physically and mentally.⁹⁷ The child therefore, has the right to be fed with breast milk (by the Mother or Foster Mother) for two full years until weaning (eating solid food). This is an unquestionable right of the child so much so that even if the mother is to be executed for a crime, the baby's right comes first.⁹⁸ Similarly, parents are urged not to feed their children with baby formula (powered milk and others) as substitution for breast milk unless all other available options are exhausted. For instance medical problems, death of the mother and unavailability of a wet nurse⁹⁹ in an effort to obtain breast milk. Breast feeding is the only optimal nutrition for the baby and makes him sound and healthy because it is natural food and legalized by Allah.¹⁰⁰

It is the duty of the mother of the child under the *Shari'ah* to breastfeed the child except in rare occasions where it can be scientifically proved that it will affect the mother adversely. Then a nursing mother can be employed. However there are instances where the mother will take the responsibility of breastfeeding

⁹⁴ See also Al- Quran. Al-Maidah 5:4

⁹⁵ NurudeenbnMukhtar al- hadamy. 2001. *Ilmul-maqasid al-shari'yat*. Riyadh .p.87

⁹⁶ Luthfor Ahmed, S.K. Nazrul Islam Khan & Syeda Nilufer Nahid, "Vitamine C Content in Human (Colostrum, Transitional and Mature) and Serum of a Sample of Bangladeshi Mother." (2004) Vol.10 (1) *Malaysian Journal of Nutrition*. 1-4.

⁹⁷ Bidmos, M.A.. 'Rights of Child in Islam in Women, Islam and current issues in development' Edited by Wole Abbas & Jade Mohammed. (Ile-Ife, Nigeria: Obafemi Awolowo University Press Limited, 2009) 107-109.

⁹⁸ See Al Muwattah 41. 5

⁹⁹ Mariahusain.wordpress.com/2009/01/28. Assessed 15/01/2014.

¹⁰⁰ See Al Quran. Al Baqarah.2:233. See also Al Quran. At-Talaq. 65 :6

her child or if the father is poor and cannot pay a wet nurse to give suck to the child. If the child refuses to take milk from the breast of another woman. In this case the child would be in great danger, and it would be incumbent on the mother to give him suck to protect him from perishing. However, some jurists see that this ruling it is restricted to a situation where the child cannot take another kind of nourishment that may replace mother's milk. If the child is in danger of death and no wet nurse is available, then the mother must feed him in order to save his life irrespective whether the father is financially capable or not.¹⁰¹

Similarly, the position and view of all the notable Imams are similar and the same to the effect that the mother is encouraged to breast feed her child. Imam Abu Hanifah held the view that the biological mother should be urged and compelled to breastfeed her biological baby if the baby refuses the milk of other foster mothers.¹⁰² Another view was expounded by Imam Malik that the biological mother must be under a religious and legal obligation to breast feed her baby as her duty and responsibility to her baby unless feeding is contrary to her custom and status as a high classed woman.¹⁰³ However, Imam Ahmad opined that it is obligatory for a biological mother to make provision for his biological child's breastfeeding.¹⁰⁴ It is the view of the *Zahiri* school of thought that the biological mother should be compelled to suckle her child unless she is already divorced or has insufficient milk to breastfeed her child.¹⁰⁵

5.2.1 Importance of breastfeeding to the promotion of children's health

Breast milk is the best form of nutrition for infants.¹⁰⁶ Even before the baby is born the mother's body is busy preparing the important, nutrient-rich precursor of breast milk, called colostrum, which is released from the breasts and which can sustain an infant until the mother begins producing adequate amounts of breast

¹⁰¹ Ala'Eddin Kharofa, *Islamic Family Law: A comparative Study with other Religion* (DarulEsan, 2009) 98

¹⁰² Shivram Balkrishan. 2013. "Exploring gender: Islamic perspective of breastfeeding." *International Research Journal of Social Sciences*. Vol.2 No 6.p32

¹⁰³ Anyesha Rafiq, "Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World (An Analysis)" (2014) Vol.4 No 5 *International Journal of Humanities and Social Sciences*. 267-277

¹⁰⁴ Muhammad Zaheer Abbas & Shamreeza Riaz, "Diversity of Interpretations Regarding Qawwam in Islamic Thought with special Reference to Surah An- Nisa." (2013) Vol.11 *Pakistan Journal of Islamic Research*. 1-20

¹⁰⁵ Jamal J.N. *The Islamic Law of personal Status* (Graham & Trotman Ltd, 1986) 98.

¹⁰⁶ Ibrahim B. Sayed, "Benefit of Breastfeeding." (2012) *Islamic Research Foundation*. <www.irfi.org/article> accessed on 8th August 2015

milk.¹⁰⁷ This colostrum has a high concentration of protein (especially antibodies for fighting infection) and milk sugar called 'lactose' which gives the baby much of its calories.¹⁰⁸ As the breast comes in two to four days after delivery, the colostrum is replaced with larger volumes of more mature milk.¹⁰⁹

Similarly, one of the benefits of breastfeeding is that it is the responsibility of a Muslim woman towards her children is to nourish their minds, bodies and soul with her milk for a period of two years.¹¹⁰ Her reward for this is so great that if she dies during this period she dies with the status of a martyr.¹¹¹ Every woman's milk is uniquely suited to meet the needs of her own baby. For example the milk will be richer in the event of premature birth, helping the baby to make up for his small size.¹¹² The composition of the milk also changes from feeding to feeding as the baby grows in order to meet the baby's nutritional needs at each stage of his development.¹¹³

Breast milk contains at least 100 ingredients that cannot be found in any formula and these are essential and germane in providing immunity to diseases, protection against allergies and prevention against infections, digestive disorders and other various ailments common among bottled-fed children.¹¹⁴ Cow milk, on the other hand contains of proteins and hormones which are necessary for baby cows to grow normally but which are rough for a human baby's delicate system.¹¹⁵ The protective effect of breast feeding against acute infection has been addressed. Human milk (colostrum, transitional and mature milk) can transfer

¹⁰⁷ Normadiah Daud et al. 'A Study of the Understanding amongst Academia towards the Islamic concept of breastfeeding.' (2014) Vol.10. No 19 *Asian Social Science*. 230-239

¹⁰⁸ Rahman, M.M. 'Breastfeeding Islamic Guidance and Scientific Evidence.' (2011) Vol.1. No 5 *International Journal of Humanities and Social Science*. 287-288

¹⁰⁹ Esther Yoder Strahan, *Parenting with reason*. Canada: (Routledge, 2010) 46

¹¹⁰ Lysa Story, "Breastfeeding Helps prevent Two Major Infant Illnesses." (2008) vol.6. No 3 *Journal of Allied Health Sciences and Practice*. 1-4

¹¹¹ n.a. 'Reward for women in Islam' (2010) <www.therevival.co.uk/blogs/zdc/rewards-for-women-in-islam> accessed on 5th May 2015

¹¹² Lysa Story, "Breastfeeding Helps prevent Two Major Infant Illnesses." (2008) vol.6. No 3 *Journal of Allied Health Sciences and Practice*. 1-4

¹¹³ Rahman, M.M. 'Breastfeeding Islamic Guidance and Scientific Evidence.' (2011) Vol.1. No 5 *International Journal of Humanities and Social Science*. 287-288

¹¹⁴ Heather Johson, 'Breast milk contains over 100 ingredients not possible in formula fomula.' (2012). <www.inquisitr.com/280112/breast-milk-contains-over-100-ingredients-not-possible-in-fomula> Accessed on 4th April 2015

¹¹⁵ Ibid

specific or non-specific immunities to the external mucosal surface of the intestine and possibly to the respiratory tract of the new born.¹¹⁶

Additionally, aside from the mentioned values of mother's milk, being a perfect and safe diet, its psychological effects are also far reaching. The child, who suckles within the mother's warm embrace does not only receive the best nourishment, it also feels secure and loved.¹¹⁷ Like colostrum, breast milk contains antimicrobial products such as anti-bodies and white blood cells to help the child to develop a mature immune system, so the antibodies supplied in breast milk provide important protections against infection during the most vulnerable period of infancy.¹¹⁸ To improve the success of breastfeeding, it is important to begin the process as soon after delivery as possible, preferably while still in the delivery room.¹¹⁹ Children who begin breastfeeding within thirty minutes of birth are more alert and have stronger suckling reflexes and are more likely to continue breastfeeding successfully beyond two to four months postpartum.¹²⁰ The early feeding ritual is an important part of the bonding process, and the children or infants are more likely to benefit by having higher core body temperatures and better temperature stability after delivery.¹²¹

5.3 Personal cleanliness and hygiene.

Personal hygiene and cleanliness for the children are part of principles of *Maqasid al-Shari'ah*. The preservation of health of children can only be achieved through taking good care of their health and taking every measure to maintain and enhance it. On the basis of this principle every parent should follow the doctor's instructions or what Doctors prescribe to be suitable for the preservation of good health for their children.¹²² *Shari'ah* as stipulated two broad methods for the preservation, protection and prevention of health in accordance with the Qur'an and *Sunnah*. This can be categorized into two: General purification or cleanliness and Special purification or cleanliness.

¹¹⁶ LuthforAhmed, S.K. Nazrul Islam Khan & Syeda Niluer Nahid., " Vitamin C Content in Human Milk (Colostrum, Transitional and Mature) and Serum of a Sample of Bangladeshi Mothers". (2004) Vol. 10 (1) *Malaysian Journal of Nutrition*. 1-4.

¹¹⁷ Ibid

¹¹⁸ Esther Yoder Strahan, *Parenting with reason* (Routledge, 2010) 46

¹¹⁹ Ibid

¹²⁰ Kimi Mamemoto MS, et.al. "Factors associated with exclusive breastfeeding in low birth weight infants at NICU discharge and the start of complementary feeding." (2013) Vol 22 no 2 *Asian Pac J Clin Nutr*. 270-275

¹²¹ Ibid

¹²² Esther Yoder Strahan, *Parenting with reason* (Routledge, 2010) 46

General purification or cleanliness includes ablution and *ghusl*, (bath). To ensure proper hygiene for the children and adult, *Shari'ah* has recommended ablution for all Muslims including children.¹²³ Ablution entails purifying oneself from filth and dirt. It is not just an act of cleaning oneself but if done regularly, earns the doer reward and if he remains in this state all daylong he can save himself from many sins. More so, *ghusl* is an act of purification and preservation of health when taking regularly as when due. This is compulsory when one is in the state of impurity¹²⁴. Bathing is also recommended in some occasions such as on every Friday and on the two recognized feasts in Islam that is *Eid-l fitr* and *Eid- al adha*. Taking a shower is also recommended for entering into the state of *Ihram* (consecration) whether for pilgrimage or Umra (lesser Hajj).¹²⁵

The second category is special purification or cleanliness. *Shariah* has laid down other methods of cleanliness or purification in order to safeguard, promote and preserve health which are in relation to the health of the child. The parents, government and the authority in charge need to put into consideration aspects of cleanliness such as washing hands before and after eating, washing hands and the usual part of the body when visiting the toilet and to wash the hand to ensure full sanitary benefits of the body, clipping the nails regularly especially for the children, proper cleaning of the mouth and cleaning one's eyes, ears, nose, hair and genital health. The Prophet (S.A.W) was reported to have encouraged frequent washing of the hands in the interest of health sustenance not only in every *Salat* but also before and after eating.¹²⁶ Prophet Muhammad (S.A.W) and his companions were accustomed to this whenever they proceeded to an act of significance, like *Salat* travelling and war.¹²⁷ Every Muslim is required to follow the hygiene principle of neatness and cleanliness as well. Hence such person should ensure that he or she washes his hands before eating and ensure that he or she is mentally satisfied and upright before eating the food.¹²⁸ Prophet

¹²³ See Al-Quran. Al-Maidah.5:6.

¹²⁴ The right path to health.

¹²⁵ See Al Quran 5:6

¹²⁶ Prophet Muhammad S.A.W." used to wash his hands before eating". Related bnMajah. See also Kareem S.Ghoneim.2003. "Body Cleanliness: General and Specific in Islam. 'Journal of Islamic Science. . India. DarulFikir.Vol 19 No. 1-2 Jan -Dec.p.56. Prophet Muhammad S.A.W. said "were it not that it might distress my people, I would order them to delay evening prayer and use the tooth stick before every prayer." See Al-Bukhar. Sahih al-Bukhari. Kitab al-Jumuah, Bab Siwak al-Ratibwa al-Yabis li al-saim

¹²⁷ KareemS.Ghoneim, "Body Cleanliness: General and Specific in Islam." (2003) Vol 19 No. 1-2 Journal of Islamic Science. 56.

¹²⁸ M. .Mukarram Ahmad, *Encyclopedia of Islam* (DarulEhsan, 2007) 250.

Muhammad (S.A.W) described the process of cleaning one's mouth as "purification of one's mouth" as an act that is pleasing to the Lord".¹²⁹ The washing of the mouth especially with *Siwak* has been said to have many benefits. It refreshes the mouth, strengthens the gums, stops phlegm, makes the sight clear, prevents cavities, purifies the voice, assists in the digestion of food, and facilitates the passage of speech and gives energy.¹³⁰

In addition, that Prophet Muhammad PBUH placed great importance on the body,¹³¹ clothing, house and the environment to be always clean and he stated that special attention or priority should be given to the cleanliness of the teeth, hands and hair. In addition to this requirement, there are some compulsory types of cleansing either of the entire body in the form of *gushl* (washing or bathing) of those part of the body which are exposed to dirt or in the form of ablution.¹³² Children physical cleanliness is encouraged by *Shariah*. Prophet Muhammad disapproved keeping the hair long or uncared for and he also advised shortening of moustaches. For the purpose of cleanliness and health care he encouraged those who grow beards to always comb, trim and fragrance them. On the other hand women are ordered to wash their hair to the roots after the end of the menstruation cycle. This is because it removes sweat and dirt. Rubbing the whole scalp with water daily, which strengthens the hair, and activate the blood circulation, is also advised according to the Islamic *Shariah*.¹³³ Therefore, children should be given proper cleanliness training as it is not only connected with their religion but also their health status as well.

6. TAHSINIYYAT AND THE RIGHT OF CHILDREN TO HEALTH

6.1 Cleanliness of the environment

The Environment where the children live and are brought up must be clean and free from pollution because children are very sensitive. Environmental crisis is one of the major problems of the contemporary world which without doubt affects

¹²⁹ See Hadith Narrated by Al- Nisai following ibnKhuzaima following Aisha

¹³⁰ IbnQayyim, *al-Tibb al-Nabawi* p.323.

¹³¹ "It is authentically reported that Prophet Muhammad S.A.W. wiped his ears from the inside using his forefingers and placed his thumbs on the outside, wiping both the inside and outside of his ears." Related by IbnMajah.

¹³² Yusuf al- Qaradawi, *The Lawful and Prohibited in Islam* (Islamic Publications, 2005) 89

¹³³ Kareem S. Ghoneim, "Body Cleanliness: General and Specific in Islam." (2003) Vol. 19 NO.1-2 *Journal of Islamic Science*. 136-137

the suitability of five necessities and health of children.¹³⁴ In reference to the environmental crisis, Muslim jurists are often criticized for having lost contact with the changing conditions of the contemporary life in that they have been unable to relate the resources of Islamic jurisprudence in general and *Maqasid al-Shari'ah* in particular with the environment (*Fiqh al-Bi'ah*) to modern situations especially in relation to protection and maintenance of healthy environment.¹³⁵

It is necessary to accept the protection of human health as a fundamental value in *Maqasid al-Shari'ah* because Islam cares for the environment and emphasizes the importance of maintaining all its elements.¹³⁶ The generality and infinity of this message are two qualities that are guaranteed in Islam.¹³⁷ Its comprehensiveness in all aspects of life both physical and moral leads to eternal happiness.¹³⁸ Safety issues of the environment has become interest of individuals, societies and countries. That is due to the persistence and aggression of humans towards the resources of the environment, the poor utilization of its resources, and destruction of massive areas forest wasting enormous of water and pollution of a high percentage the Air.¹³⁹

Islam is concerned with the environment because a clean and healthy environment ensures healthy citizens.¹⁴⁰ To provide better school with conducive environment for the children form part of *Tahsiniyyat* thereby the atmosphere of learning process will enhance better health condition. This because there are children who are suffering from different ailments and need clean and better environment to sustain their health. These children need to avoid dusty

¹³⁴NurdengDeuraseh, "New essential values of Daruriyah (Necessities) of the objectives of Islamic law." (2012) Vol. 4.No 2 *Journal of Hadhari*. 107-116.

¹³⁵Mumtaz Akhtar, "Islamic Educational Approach to Environment protection: A strategic Approach for secure peaceful world." (2010) Vol. 1 No 3 *International Journal of Business and Social Science*. 183- 191

¹³⁶ Muhammad Ramzan Akhtar, "Towards An Islamic Approach for Environmental balance."(1996) Vol. 3. No 2 *Islamic Economic studies*. 57-74

¹³⁷MohdYaseenGada, "Environmental Ethic in Islam: Principles and Perspective." (2014) Vol.4. No 4 *World Journal of Islamic History and Civilization*. 130- 138

¹³⁸AbdelhaqHamche, "Caring for the environment a religious duty." (2013)<www.thepeninsulaqatar.com/special-page/islam/228282/caring-for-the-environment-a-religious-duty> Assessed on 2nd Dec. 2014.

¹³⁹Rafiu Ibrahim Adebayo, "Abuse of religion and environmental pollution in Nigeria: An Islamic Perspective." (2013) Vol.21. No 1 *Intellectual Discourse*. 109-121

¹⁴⁰Muhammad Ridwan Gallant, "The Objective (Maqasid) of al -Shariah in the protection of the Environment." (2006) *International conference on Jurisprudence and the Challenges of the 21st Century*. International Islamic University Malaysia. 417-440.

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environment to avoid recurrent or persistent of the ailment.¹⁴¹ The right to healthy environment can be connected to the right to life and the environment in this regard must be devoid of dangerous pollution whether of water, air or Soil.¹⁴² In the same vein, if the school environment is far to their house it is *Tahsiniyyat* for the parents to ensure they are provided with cars if the school bus is not available in order to save them from stress or fatigue which may later transform to sickness if not adequately taken care of. This will make the children to be physically, intellectually and psychologically fit during the learning processes.¹⁴³ The environment in which the children live should be preserved and protected. This is to protect the children.¹⁴⁴ Therefore, the school authority and the parents are advised to provide a suitable and conducive apartment for the children who are living in the premises of the school and the parents have the same duty and avoid over crowded areas for the children just because of their health.¹⁴⁵

6.2 Medical treatment

Children should be given adequate medical treatment whenever they fall sick. This is because every Muslim is required and allowed to seek medical attention and treatment whenever they are sick or face with illness. The benefit of seeking medical treatment is hinted by the *Quranic* verse that describes honey produced by bees as having curative powers.¹⁴⁶ Seeking for medical treatment has been given priority by Prophet Muhammad S.A.W. This is because the Prophet demonstrated it and urged his companion to uphold the same. This can be inferred from an incident which was recorded in the Hadith; "The Bedouin Arabs came to Prophet Muhammad S.A.W and said Messenger of Allah should we treat ourselves? He replied, yes O servant of Allah you must treat (yourselves): for

¹⁴¹ Luqman Zakariyah. Lecturer. 25 January, 2015. International Islamic University Malaysia. Maqasid Shariah and right of children to health. (Personal interview).

¹⁴² Abdul Haseeb Ansari & Umar A. Oseni, "Human Rights: Genesis and Perspective. In *Human Rights Law, International, Malaysian and Islamic Law Perspectives*." (Thomason Reuters, 2012) 20.

¹⁴³ Ibid

¹⁴⁴ Luqman Zakariyah. Lecturer. 25 January, 2015. International Islamic University Malaysia. Maqasid Shariah and right of children to health. (Personal interview).

¹⁴⁵ Basil Mahmud al- Hafii, *Fiqh Tufulat Ahkam Nafs: Dirastun Muqaranat*. (Dar Namwad, .2008) 393.

¹⁴⁶ Abu Fadl Mohsin Ebrahim, *Abortion birth control & surrogate parenting: An Islamic perspective* (American Trust Publications, 2001) 4. See also Al -Quran. An Nahl: Q16v69

verily, Allah has not created a disease without providing a cure for it except for one. They asked him 'which one is that?' He replied old age."¹⁴⁷

Some jurists are of the opinion that medical treatment is allowed in line with the above quoted Hadith. The majority of scholars (Hanafi and Maliki) hold that medical treatment is *Mubaah* (permitted) while Shafii and Qaadii bn Aqeel and ibn Jawzi of the Hanbali Shool of law are of the opinion that medical treatment is regarded as *Mustahabb* (recommended). They rely on the above mentioned Hadith and that prophet used cupping and other kinds of treatment indicating that medical treatment is allowed.¹⁴⁸ Similarly, it is instructive to note that Islam has warned all Muslims not to ignore or abandon or refuse to provide their children with adequate medical treatment or with preventive measures against fatal diseases or other illnesses.¹⁴⁹ The rationale behind it is that Islam prefers a strong believer to a weak one this is in line with Prophet Muhammad (S,A,W) Hadith which says: "A strong believer is better and more beloved to Allah than a weak believer."¹⁵⁰

It is explained that the principles of medicine are three, namely, protection of health, getting rid of harmful things, and safeguarding against harm, and he asserts that the concession given to the sick are precisely for the sake of upholding the three mentioned principles.¹⁵¹ The Prophet Muhammad S.A.W. in his medical teaching emphasized the concept of preventive medicine especially the contagious diseases which are common among the children. The Prophet Muhammad said; "If you hear of an outbreak of a plague in land, do not enter it, but if the plague breaks out in a place while you are in it, do not leave that place."¹⁵²

7. CONCLUSION

In conclusion, children are national assets; it is given that a nation that does not take the protection of its future leaders seriously risks leaving a great percentage

¹⁴⁷ Abu Dawudsulaymanibn al Asab AL Sitisjani. Sunan Abu Dawud "Kitab al-Tibb". Berut: Dar ihya al sunnah al Nabbawiyah .n.d. 4:3.

¹⁴⁸ Sheik Muhammad Salih al Mujahid. islamqa.info/en/2 3.

¹⁴⁹ Children in Islam.p.31.

¹⁵⁰ Muslim. Sahih Muslim. Kitab Al- Qadar (Book of Destiny), chapter "The injunction to be strong, renounce weakness, seek help from Allah and leave destiny to Him.". 4/2052. Hadith 2164.

¹⁵¹ Abu Fadl Mohsin Ebrahim, *Abortion birth control & surrogate parenting: An Islamic perspective* (American Trust Publications, 2001) 4.

¹⁵² Imam Al- Bukhari, Muhammad. 1986. Sahih Bukhari. Hadith NO.624. Mustafafa al Bagha. Beirut: Dar Ibn Kathir.

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of its population a liability. Childhood is a special protection and attention but unfortunately, childhood is a period when human beings suffer great deprivation from that albeit are supposed to protect them. Right to recast health is the bedrock upon all other rights rest, the right to assembly, the right to expression and movement is useless where there is no good health. *Maqasid al-Shariah* has shown the application of health to children as they are vulnerable to diseases which can affect them to develop mentally, physically and otherwise. The principles of *Maqasid al-Shariah* play a vital role to show and analyse the right of children which is basically at the center of the parents' duties to uphold and implement. It stresses the need to give the children adequate health care even right from the womb of mother which the conventional Laws have no provision for. Islamic law advocated for adequate breast feeding for children and it is unchallenged right for them because it makes children to feel healthy. Eating nutrient foods also encouraged by *Shariah* especially for the children and it will make them to develop physically, mentally and morally and these foods must be the lawful one as contained in the Quran and Hadith of Prophet Muhammad that is *Halal* food.