

## **An Analysis of the Issue of Human Reproductive Cloning in the light of *Maqāsid al-Sharī‘ah***

Dr. Shazia Kiyani<sup>1</sup>  
Yasir Munir<sup>2</sup>

### **Abstract**

Being a flexible and moderate religion Islam provides guidelines for the followers in every walk of life. Muslim jurists have been working hard to formulate the principles of Islamic jurisprudence for derivation of *Sharī‘ah*. The theory of the objectives of Islamic law or “*Maqāsid al-Sharī‘ah*” holds a significant position in Islamic jurisprudence and gives remarkable principles and rulings when applied for the solution of the issues in life of the followers in economic, social, personal, bioethical or any other area. This research paper intends to discuss the issue of human cloning in the context of *Maqāsid al-Sharī‘ah*. The Descriptive and analytical research methodologies have been applied for this purpose. The five basic essentials from the classical model of this theory have been illustrated first, then human cloning has been analyzed in their light. For this purpose the two main types of human cloning; Reproductive and Therapeutic have been analyzed considering their distinctive nature and characteristics. In the end reasons have been indicated which prohibit the reproductive type of cloning and suggestions have been forwarded regarding how therapeutic cloning can be treated differently. *Maqāsid al-Sharī‘ah* reject every biotechnological technique which goes against the basic objectives of Islamic law; protection and preservation of Religion, Life, Progeny, Intellect or property. This reason turns human reproductive cloning prohibited according to the *Maqāsid al-Sharī‘ah* theory.

**Key Words:** Human Cloning, *Maqāsid al-Sharī‘ah*, Masālih, Ḍarūrīyyāt, Hifz Al-Dīn, Hifz al-Nafs, Hifz al-Nāsl, Hifz al-Aql, Hifz al-Māl

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<sup>1</sup> Lecturer in Law, School of Law, University of Gujrat Pakista: shazia.kiyani@uog.edu.pk

<sup>2</sup> LLM Research Scholar, School of Law, University of Gujrat Pakistan:  
[leghariyasir84@gmail.com](mailto:leghariyasir84@gmail.com)

### **Introduction**

*Maqāsid al-Sharī‘ah* has been passing through many phases of evolution and progress till the time this theory is perceived in its final shape. Modern Muslim jurists acknowledge the place and importance of this theory and consider it a marvelous criterion to explore the solution of the issues faced by the followers in the age of scientific and technological development. By tracing its historical evolution it becomes clear that many Muslim jurists have contributed to this concept. Imam al-Ghazali contributed in it by setting the “Order of Necessities” in the form of five fundamentals. Al-Tufi attributed it to “attracting utility”(Jadhb al-Naf) and “repelling harm”(Raf’ al-Darar). Imam al-Juwaini related it with the “Public Needs.” Imam Al-Shatibi urged that these Maqāsid must be taken as “Fundamentals” which can never be subject to any compromise. Ibn al-Qayyim associated it with “What *Sharī‘ah* is all About” i-e it includes every aspect of righteousness, justice, integrity and honesty. This research is aimed to comprehend, evaluate and analyze human cloning after application of the Essentials (Darūrīyyāt) as elaborated by the classical Maqāsid al-Sharī‘h Model. Human cloning is an asexual reproduction of human beings where natural mode of cell division is not adopted and copy of a cell is made without following the natural method of cell development and reproduction. This technique can be broadly divided into two major types: Reproductive and Therapeutic.

### ***Maqāsid al-Sharī‘ah: Meaning, Application and Scope***

The Arabic term “Maqsid” (plural: Maqāsid) denotes an objective, goal, principle, purpose, an aim or the ultimate target or end of anything. While considering these meanings Maqāsid can be defined as: “The purposes, objectives, intents/ends or the principles enforced by the Islamic Law in order to secure the rights of Muslims individually and collectively.”<sup>3</sup>

Numerous Muslim jurists have established a similarity between “people’s interests” or “Masālīh” and Maqāsid hence equating the term with the welfare and well-being of the people. Abū Malik al-Juwayni a renowned jurist is considered to be one of the pioneers for the contribution to al-Maqāsid theory. He perceived al-Maqāsid and the public interests “Masālīh ‘Āamāh” interchangeably and it is imperative to mention that al-Juwayni is one of the pioneers to develop the theory of al-Maqāsid in the shape we have today.<sup>4</sup>

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<sup>3</sup> Muḥammad al-Tahir Ibn Ashur, *Ibn Ashur Treatise on Maqāsid Al-Sharī‘ah*, trans. Mohamed El- Tahir El-Mesawi, vol. 1st (London-Washington: International Institute of Islamic Thought (IIIT),2006), 02.

<sup>4</sup> Abdul-Malik al-Juwaini, *Ghiath Al-Umam Fi Iltiyath Al-Zulam*, ed. Abdul-Azim al-Deeb (Qatar:Wazarat al-Shuun al-Dīniyah, 1400 H), 253.

Maqāsid were denoted as “unrestricted interests” or “al-Maṣaliḥ al-Mūrsalāh” by Abu Hamid Al-Ghazali.<sup>5</sup> Najmuḍḍin Al-Tufi explained *maslahāh* as, “what fulfils the purpose of the Legislator.”<sup>7</sup> Al-Qarafi established a link between *maslahāh* and Maqāsid by a “fundamental rule” which states that:

“A purpose (Maqāsid) is not valid unless it leads to the fulfillment of some good (*maslahāh*) or the avoidance of some mischief (*mafsadah*).”<sup>8</sup>

hence, it can be inferred that the terms al-Maqāsid can also be defined as “interest of humanity” or “Masālīḥ ‘Āamāh” “unrestricted interests”, “people’s interests” and “everything intended by the legislator for the interest of public.”

**The Classical Maqāsid Model: The Circle of the Essentials (Ḍarūrīyyāt):**

The *Sharī'ah* derives five fundamental and basic necessities surrounding every human being, these are crucial for human existence too. It is obligatory that these five necessities are protected and preserved because failure to this would result in low quality of human life or no life at all. It may result in offering a miserable, poor, brutal and harsh life in both worlds i-e here as well as in the life hereafter. These essentials set a pattern encompassing all important parts and segments of life divided into different circles. They cover everything starting from the birth of a follower to his living in a society with his family and business life as well by following his religious traits.

**i) Hifz Al-Dīn (Protection of Religion)**

The foremost attribute to be secured and preserved by the Muslims is “Al-Dīn,” it can also be designated as the most important value to be secured and preserved. Thus it can rightly be said that it is an obligation for every Muslim to protect his Dīn at every point and stage of life. The observance and practice of obligatory *Ibadah*, including the five prayers of the day, fasting in Ramadan, paying of Zakah and Hajj pilgrimage are the examples of protecting al-Dīn at the individual level. Performance of all of these rituals is taken as a shield to protect the followers from commission of forbidden acts/sins fearing to make them apostates and primarily these actions are accelerators to increase the Iman of the followers. From the countless examples of such an acts following example from the *Qur'ān* points out one of the wisdoms behind performing prayers i-e it saves a man from every transgression and evil:

<sup>5</sup> Abu Hamid Muḥammad ibn Muḥammad al-Ghazali, *Al-Mustasfa min ilm al-usul* (Beirut: Dar-Ul-Fiker), 37.

<sup>6</sup> Abu Bakr al-Maliki ibn al-Arabi, *Al-Mahsoul Fi Usul Al-Fiqh*, ed. Hussain Ali Alyadri and Saeed Foda, 1 ed (Amman: Dār al-Bayariq, 1999), 222.

<sup>7</sup> Najmuḍḍin Al-Tufi, *al-Tayinfi Syarhal-Arbain (al-Tayinin Explaining al-Nawawis forty Ḥadīths* (Beirut: Muassasah-Risalah, 1989), 239.

<sup>8</sup> Shihabuddin Al-Qarafi, *Al-Dhakheerah* (Beirut: Dār al-Arab, 1994) vol. 5, 478.

“Recite what is sent of the Book by inspiration to thee, and establish regular Prayer: for Prayer restrains from shameful and unjust deeds; and remembrance of Allāh is the greatest (thing in life) without doubt. And Allāh knows the (deeds) that ye do.”<sup>9</sup>

While broadening the extent and scope of the protection of al-Dīn many other practices of Muslims; such as defending the Islamic faith at the time of test and need against the enemies of Islam, or to initiate or wage a war by verbal or peaceful methods such as speeches and writings etc or the coercive methods according to the demand of the situation can be counted. Protection of al-Dīn is not only an individual responsibility but a collective one too. This important responsibility can be categorized under the sphere of “Prevention of evil or harm” as it has been mentioned in a Ḥadīth of the Prophet Muhammad P.B.U.H:

“Whoever witnesses any evil (munkar), he has to change it by his hand (using of force), if he is unable (has no power) to do so, then he has to change (the evil) by his tongue (speaking), if he is unable to do so, then he has to hate the evil in his heart and that is the lesser degree of faith.”<sup>10</sup>

Elimination and abolition of evil has been set as a primary responsibility considering its importance and nature because if the Din of an individual is not protected, he will be more prone to the inducements and ways to the evil thus prevention of it is definitely required and obligatory in this situation. Every obnoxious act or deed which can be a source of evil would be considered prohibited under this Maqsid of Islamic law. This is one of the reasons that the law of Jihad has been ordained by Allāh S.W.T. so Muslims can defend and preserve their faith. The *Qur’ān* quotes:

“Fight in the cause of Allāh those who fight you, but do not transgress limits; for Allāh loveth not transgressors.”<sup>11</sup>

At another place, the eradication of evil with the help of fight has been recommended by stating that:

“And fight the Pagans all together as they fight you all together. But know that Allāh is with those who restrain themselves.”<sup>12</sup>

## **ii. Hifz al-Nafs (Protection of Life)**

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<sup>9</sup> Al-Qur’ān 29:45.

<sup>10</sup> Muslim, *Sahih Al-Muslim*, vol 01, Ḥadīth No. 34.

<sup>11</sup> Al-Qur’ān 02:190.

<sup>12</sup> Al-Qur’ān 09:36.

Islam regards life of every human being sacred and valuable. While giving life an important status no distinction has been made between the powerful or poor, Muslim or the non-Muslim, privileged or the subordinates. All and sundry have equal sanctity and respect when it comes to their life, as it is equally important. The society as well as every individual owe the duty to protect and safeguard the life of every member without any discrimination. The *Qur'ān* mentions this duty quite a several times and puts a great emphasis on it, for instance:

“Nor take life which Allāh has made sacred except for just cause. And if anyone is slain wrongfully, we have given his heir authority (to demand qisas or to forgive): but let him nor exceed bounds in the matter of taking life; for he is helped (by the Law).”<sup>13</sup>

Prescribing rigorous punishments and penalties for the ones killing others without a justification indicates the importance and dignity of human life under the *Sharī'ah*. Any act amounting to the killing of human beings can never be justified under this Maqsid of Islamic law. The *Qur'ān* sets forth the death penalty for everyone who takes life of another innocent human being:

“O ye who believe! the law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty.”<sup>14</sup>

While a murderer is entitled of a severe punishment and he is supposed to be deprived of his life and liberty it saves the humanity in a way that it deters to repeat such a crime and discourages others to commit it. This notion has been signified and highlighted in the *Qur'ān* in the glorious words like:

“In the Law of Equality there is (saving of) Life to you, o ye men of understanding; that ye may restrain yourselves.”<sup>15</sup>

### **iii. Hifz al-Nāsl (Protection of Progeny or Lineage)**

A man's dignity is one of the vital fundamentals in his social and personal life. Islam shows an incredible and serious concern about the dignity of a person and spares no room to emphasize its importance by giving it a full protection and due respect. Protection of dignity includes everything which comes under the domain of self-esteem, decorum and pride including; the

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<sup>13</sup> Al-Qur'ān 17:33.

<sup>14</sup> Al-Qur'ān 02:178.

<sup>15</sup> Al-Qur'ān 02:179.

respect and honor enjoyed by an individual in a society, the right of privacy and respectful responses and behaviors from other members of the society, the right of having good fame and repute and protection from every accusation and unjustifiable revelation of one's private life which may harm his dignity in the society.<sup>16</sup>

*Sharī'ah* has offered many guiding principles for the preservation and protection of the dignity of a man. It leaves no room to let anyone interfere in the peaceful life of anyone by infringing his dignity. This is the reason that Islam forbids its followers from causing any kind of mischief or obnoxious act such as adultery or any other immoral act or attributing any such act falsely to anyone.<sup>17</sup>

*Sharī'ah* presents a general principle applicable to every act involving an accusation of any crime for which a certain punishment lies if proven i-e:

“Evidence is for the person who claims (accuse) the oath for the person who denies (the accusation).”<sup>18</sup>

This maxim provides the standard criterion to be applied for the analysis of the accusation and actual commission of the unlawful act before making adjudication. This principle sets forth the imposition of a punishment for the false accusation if allegation has not been proved with the help of evidences. When any such accusation is related to the unlawful sexual act, but later the accuser is unable to prove it, such an act is termed as “al-Qazf” as inferred by the verse of the *Qur'ān*. It is an act which is highly reprehensible and the *Qur'ān* prescribes a punishment of 80 lashes for the ones who accuse falsely the innocent man or woman of the unlawful sexual acts, the *Qur'ān* states:

“And those who launch a charge against chaste women, and produce not four witnesses (to support their allegations),- flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors.”<sup>19</sup>

The accusers have been cursed at another place again, in the *Qur'ān* in the words:

“Those who slander chaste women, indiscreet but believing, are cursed in this life and in the Hereafter: for them is a grievous Penalty.”<sup>20</sup>

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<sup>16</sup> Hajiya Bilkisu Yusuf, “Sexuality and the marriage institution in Islam: An appraisal.” *Afr. Regional Sexuality Res. Center* (2005): 15.

<sup>17</sup> Siti Nurani Mohamed Nor, “Human genetic technologies and Islamic bioethics.” In *Gen Ethics and religion*, Karger Publishers (2010): 132.

<sup>18</sup> *Ibid.*

<sup>19</sup> Al-Qur'ān 24:04.

<sup>20</sup> Al-Qur'ān 24:23.

Being a complete code of life *Sharī‘ah* also observes the conduct of the followers (both men and women) and regulates their relationships in order to protect their dignity. Certain rules have been recommended to regulate the relationship between the men and women which prohibit free mixing of the two sexes. Evasion from unnecessary interaction between the men and women and escaping from a meeting with an unfamiliar and stranger person (non-mahram) are few instances of the code of conduct for the Muslim men and women while living in a society. It is not that Islam has forbidden every interaction between these two genders but it has regulated their relationship in a skillful manner by promoting and endorsing the institution of marriage. A Ḥadīth of the Prophet Muhammad P.B.U.H gives an inference to the significance of the marital tie in the words:

“O Youth! Those of you who have the means to get married shall do it, as it is better to protect your eyes and your desire, as for those who are unable to do so, he shall fast as it is a protection for you.”<sup>21</sup>

Indeed the institution of marriage does not provide the basic unit in a society only but it also secures the rights of Muslim women. Islam condemns every act giving rise to the maltreatment and exploitation of women. The prohibition of adultery is one of the most important demonstrations of the protection of dignity. Adultery is not an immoral act only but it may give birth to different evils in the society surrounding the social, moral and ethical and religious corners.<sup>22</sup>

The following verse of the *Qur‘ān* ordains the punishment for the adulterers:

“The woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allāh, if ye believe in Allāh and the Last Day: and let a party of the Believers witness their punishment.”<sup>23</sup>

The punishment provided under the above mentioned verse addresses the unmarried person committing Zina but for the already married person while committing the same crime the punishment is stoning to death. A Ḥadīth reported by Abdūllāh Ibn Masud mentions this punishment:

“It is not permissible to take the life of a Muslim who bears testimony (to the fact that there is no god but Allāh, and I am the Messenger of Allāh, but in one of the three cases: the

<sup>21</sup> Al-Bukhari, *Sahih Al-Bukhari*, vol 6, Ḥadīth No. 4778.

<sup>22</sup> Fatima Mernissi, *Women and Islam: An historical and theological inquiry* (Columbia: South Asia Books, 1991), 12.

<sup>23</sup> Al-Qur‘ān 24:02.

married adulterer, a life for life and the deserter of his Din (Islam), abandoning the community.”<sup>24</sup>

The sanctity of a clear and unambiguous lineage is ranked high under the injunctions of *Sharī‘ah*. Islam offers an easy, simple, clear and comprehensible model in the form of Nikah or marriage which is meant to safeguard the progeny. Any Mixing or doubt in the lineage is clearly rejected under the *Sharī‘ah*.

**iv. Hifz al-Aql (Protection of the Intellect or Mind)**

One of the greatest gifts bestowed by Allāh S.W.T. to the human beings is Al-Aql or the intellect. This attribute makes a distinction between human beings and animals thus designating man the status of vicegerency of Allāh S.W.T. on earth. This precious endowment must be preserved and taken care of by every believer as a sign of gratefulness and gratitude. Man must stay vigilant and conscious to utilize his mental capabilities to the fullest in order to be befitted from such a marvelous blessing himself as well as offer the tremendous benefits of it to all humanity or public at large. The intellect is the human attribute having a great potential and can be inclined towards both positive and negative usage. *Sharī‘ah* forbids every destructive and evil use of intellect or any such act promoting evil or destruction in the society or life of the individuals. *Sharī‘ah* prescribes some other rights for the preservation and development of intellect including the freedom of expression and thought and giving respect to the rival opinions. Staying patient, gentle and humble at the time of disagreement and discontent is also required by the followers. The code of conduct regarding the interaction and social relations must contain preclusion from degrading others, using abusive language and being prejudice to anyone unjustifiably. Likewise, *Sharī‘ah* forbids imposition of our own patterns of thought on others and encourages to opt for the best view point in the interest of the public at large. Personal views must not be imposed upon others sub-setting their individuality and freedom of intellect and thought.<sup>25</sup>

Our Prophet Muhammad P.B.U.H always accepted the best view while giving the opportunity to his companions to express their opinions. An example can be quoted from the battle of Badr, when the Prophet Muhammad P.B.U.H had made a suggestion regarding camping at a particular place for the Muslim army men.<sup>26</sup>

In such a situation Khabbab bin Al-Mundhir inquired: “O Prophet of Allāh (P.B.U.H), is this place which Allāh has ordered you to occupy so that we cannot leave the place, or is it a matter of opinion and military tactics?” “No,” replied the

<sup>24</sup> Al-Bukhari, *Sahih Al-Bukhari*, vol 08, Ḥadīth No. 6378.

<sup>25</sup> Ibn Kathir, *Qasasul Anbiya (Beirut: Dar Al Kotob Al Ilmiyah 2013)*, 402.

<sup>26</sup> Ibid.



Prophet P.B.U.H “it is only a matter of opinion and military tactics.” Khabbab then said, “O Prophet of Allāh, it is not the place we should occupy.” He suggested another place nearer to the water (wells of Badr), which was more suitable for engaging the enemy. The Prophet P.B.U.H agreed and ordered his men to move there immediately.<sup>27</sup>

The above mentioned incident is truly a demonstration of freedom of expression presented by the Prophet Muhammad P.B.U.H, it is undoubtedly an example to be followed and practiced by the world leaders particularly the Muslim leaders. It is not only that he taught the importance of choosing the best opinion but he urged and motivated the Muslims to practice Ijtihad (independent reasoning) when they face any issue or problem to be resolved. The Prophet Muhammad P.B.U.H signifies this urge in the following Ḥadīth:

“If a ruler makes an Ijtihad and he is precise in it, he will be rewarded with two rewards, if, however, he makes a mistake, he will be rewarded with one reward.”<sup>28</sup>

Pondering and striving for the truth and righteous opinions and views is always encouraged by Islam whenever the followers have got any matter under consideration, their effort to invoke and find out the truth entitles them for reward even when they fail to come up with right ruling of *Sharī'ah* on the issue concerned. This reward encourages the followers to strive hard and their best to the finest ruling by consulting all accessible evidences of Islamic law including the *Qur'ān* and Sunnah. Safeguarding the mind against anything that can affect the proper functioning of the brain is also included under the umbrella of protection of Al-Aqal, like prohibition of the liquor or anything that causes intoxication. The *Qur'ān* forbids use of liquor as the man becomes incapable of performing his religious and worldly duties by its use, resulting in his inability to safeguard his dignity and respect during the time he is unconscious. The *Qur'ān* has forbidden its use at a number of times, one of the verses depict it in the words:

“O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination, of Satan's handwork: eschew such (abomination), that ye may prosper.”<sup>29</sup>

**v. Hifz al-Māl (Protection of Property)**

One of the basic human instincts is sense of acquisition and attainment. Everyone has a right to acquire his/her own property as a basic human right or

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<sup>27</sup> Ibid.

<sup>28</sup> Al-Bukhari, *Sahih Al-Bukhari*, vol 09, Ḥadīth No. 6919

<sup>29</sup> Al-Qur'ān 05:90.

need. This right must be exercised by the individuals without any hindrance as it is an absolute right conferring ownership and possession. This right includes not only acquisition of property but also its protection and security is recommended and secured under the Islamic law. Islam rejects and discourages any form of transgression for the purpose of illegal acquisition of the property of others unless a lawful reason or proper agreement lies between the parties. The *Qur'ān* signifies the importance of sanctity of others' property in the words:

“And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property.”<sup>30</sup>

According to the *Qur'ān*, on the Day of Judgment, severe punishment will be given to those who get hold of the properties and belongings of others dishonestly and unlawfully. The following two verses for instance indicate such an admonition in the words:

“Those who unjustly eat up the property of orphans, eat up a Fire into their own bodies: They will soon be enduring a Blazing Fire!”<sup>31</sup>

And:

“That they took usury, though they were forbidden; and that they devoured men's substance wrongfully, we have prepared for those among them who reject faith a grievous punishment.”<sup>32</sup>

Every mischievous act involving taking of interest (Riba), cheating and deception in transactions, breach of trust in the matters related to the property, its misappropriation, theft, robbery and damaging the property of others, illegal possession or containment of the property is forbidden according to the teachings of *Sharī'ah*. The *Sharī'ah* sets forth severe and rigorous punishments for the culprits which may extend to chopping off the hand of a thief.<sup>33</sup>

The *Qur'ān* mentions this punishment in the words:

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<sup>30</sup> Al-Qur'ān 02:188.

<sup>31</sup> Al-Qur'ān 04:10.

<sup>32</sup> Al-Qur'ān 04:161.

<sup>33</sup> Muḥammad Adil Khan Afridi, “Maqāsid al-Sharī'ah and preservation of basic rights: under the theme: Islam and its perspectives on global & local contemporary challenges.” *Journal of education and social sciences*, vol. 4, June (2016): 280.

“As to the thief, Male or female, cut off his or her hands: a punishment by way of example, from Allāh, for their crime: and Allāh is exalted in power.”<sup>34</sup>

**Evaluating Human Cloning in the Light of *Maqāsid al-Sharī‘ah***

The evolution of al-Maqāsid theory shows that how the “preservation of progeny” evolved into “care for the family” and enlargement of a civil “Islamic social system”, how the “preservation of intellect” changed into “propagation of scientific thinking”, “travelling for the pursuit of knowledge”, “suppressing the herd mentality”, and even “avoiding brain drain”, and how the “preservation of honor” evolved into “preservation of human dignity” and “protection of human rights”. Maqāsid-based approaches can be useful and constructive to support the Universal Islamic Declaration of Human Rights on every emerging issue concerning the human rights by proving the view that Islam could add “new positive dimensions to human rights” as it is said to be a progressive religion. Likewise, the “preservation of religion” took an evolution for the “freedom of belief” in the expressions of modern day and the “preservation of wealth” tends to evolve to “economic development” and “diminishing the difference between economic levels.”<sup>35</sup>

The Muslim jurists agree unanimously on the fact that the *Maqāsid al-Sharī‘ah* methodology can really be used as a practical, useful and functional tool while resolving bioethical issues in order to adjudicate upon the problems and issues faced by the human beings, where issue of human cloning is undoubtedly an important topic in the bioethics. In order to achieve this aim five fundamental points of *Maqāsid al-Sharī‘ah* (i.e. faith, life, intellect, progeny and property) need to be used as central point of power and decision making. Infact these five objectives are the base line, foundation or the foremost principles for weighing up bioethical issues. The mechanism presented by the Maqāsid is value-based which is certainly helpful and productive when resolution of the conflicting interests is required. It is not only the issue of human cloning but every biotechnological application when causing a risk to any one of the five objectives of *Maqāsid al-Sharī‘ah* it would be considered unethical, hence rejected at the time of conflict. *Maqāsid al-Sharī‘ah* can complement and replace the four famous conventional bioethical principles; Autonomy, beneficence, non-maleficence and justice, in the field and discipline of bioethics for the Muslims.<sup>36</sup>

<sup>34</sup> Al-Qur’ān 05:38.

<sup>35</sup> Jasser Auda, *Maqāsid Al-Sharī‘ah As Philosophy Of Islamic Law: A Systems Approach* (London: The international institute of Islamic thought, 2008), 100.

<sup>36</sup> Musa Mohd Nordin, “Human genetic and reproductive technologies: an international medico-legal-religious impasse.” *Bangladesh Journal of Medical Science* Vol.10 No.1 (2011): 01-10.

The biotechnological techniques and all such research products and their applications must be compatible with the teachings of *Sharī‘ah*. They must not be contrary to the essence of any ruling based upon the primary sources of *Sharī‘ah*. Marriage between a man and a woman is a valid social right with moral and religious recognition. The act of reproduction is further assigned to this institution. Considering the sanctity of this institution, any technology like of human reproductive cloning, where the involvement and contribution of both spouses in the act of reproduction is missing, would be considered to be against the *Fitrāh* set by Allāh S.W.T hence forbidden.<sup>37</sup>

Muslims cannot approve of human reproductive cloning owing to its detrimental and disadvantageous impact to the religion. Such a technique is also damaging to the society as it lowers the value and sanctity of the marital tie between the male and female genders as it gives encouragement and rise to the unnatural unions as of LGBTs. *Sharī‘ah* prohibits same sex marriages just as it forbids every illicit act in the marital relationship like extra marital relations etc. The commands and teachings of *Qur‘ān* must be followed by the believers in order to show their gratitude towards Allāh S.W.T who is the sole creator of every human soul and the universe. Allāh S.W.T has bestowed every human being with life and has full authority over his lineage and progeny.<sup>38</sup>

The second objective of the *Maqāsid al-Sharī‘ah* is the protection of life. All advancements and progress in the biotechnology must be beneficial for the human beings if they want to pass the test for their acceptance. It is mandatory that such techniques must not supposed to be of any harm or risk to the human life. These innovations and developments in biotechnology must be capable of enhancing the quality of human life. Every application of biotechnology causing demolition to human life will be considered forbidden while applying the theory of *Maqāsid al-Sharī‘ah*. *Sharī‘ah* also prohibits the elimination of the chromosomes during the procedure of cloning.<sup>39</sup>

The third objective of the *Maqāsid al-Sharī‘ah* is the protection of the intellect. It is imperative to signify that if application of any biotechnological technique tends to bring any form of risk or harm to the human intellect it will be considered prohibited or forbidden under the teachings of Islamic law. These applications will be permitted and allowed if only they can bring progressive benefits and utility to the intellect. Similarly, the *Maqāsid al-Sharī‘ah* framework would reject every biotechnological application which causes a threat to the sanctity of the intellect and it will be considered

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<sup>37</sup> Nordin, “Human genetic and reproductive technologies”, 02.

<sup>38</sup> Ibid, 03.

<sup>39</sup> Auda, *Maqāsid Al-Sharī‘ah As Philosophy Of Islamic Law*, 100

unethical hence prohibited and unapproved under *Sharī‘ah*. In the case of reproductive cloning there is a fear that the weak minds would be inclined towards the science more rather than Allāh S.W.T. firming their belief that science can bring them any good by creating it for them. Believers are encouraged to put their trust in Allāh S.W.T.’s will.<sup>40</sup>

It is only Allāh S.W.T.’s will which bestows people with their progeny in the form of sons or daughters or this “will” may be inclined to keep them barren. The *Qur’ān* mentions the following verse to signify this view:

“Or He bestows both males and females, and He leaves barren whom He will: for He is full of Knowledge and Power.”<sup>41</sup>

The fourth objective under the *Maqāsid al-Sharī‘ah* framework is the protection of the progeny. The biotechnological applications must establish the confirmation that the human progeny is not at any risk. Only those applications of biotechnology will be considered allowed and permissible which do not jeopardize the progeny. The *Maqāsid al-Sharī‘ah* framework rejects every application in biotechnological sector which may endanger the birth, reproduction or progeny of human beings. Human reproductive cloning can rightly be said to be against the Fītrāh set by Allāh S.W.T. as it lacks the involvement of the fertilization of the ovum by a sperm. This technique would be considered unacceptable for the Muslims from ethical perspective too as it involves deviation from set religious, social and moral parameters, thus bringing a continuous harm to the religion.<sup>42</sup>

Family is the fundamental and the smallest component in any society. The parents and children perform some duties for each other and make a strong bond between themselves and retain it by giving and taking love, care and respect to each other. Their rights and duties exist side by side. For example, even an unborn child has the right of lineage from his father in a Muslim family. Likewise the parents of that child are under an obligation to raise and look after him till he is grown up, eventually this duty to take care shifts and that grown up child is held responsible to take care of his parents as they raised him since his birth. The following verses of the *Qur’ān* illustrate this fact in the words:

1. “Serve Allāh S.W.T, and join not any partners with Him; and do good- to parents.”<sup>43</sup>

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<sup>40</sup> Muḥammad Hashim Kamali, “Actualisation (Tafil) of the Higher Purposes (Maqāsid) of Sharī‘ah.” *Islam and Civilisational Renewal (ICR)* 8, no. 3 (2017): 300.

<sup>41</sup> Al-Qur’ān 42:50.

<sup>42</sup> Al-Aqeel, "Human cloning, stem cell research: An Islamic perspective", 1510.

<sup>43</sup> Al-Qur’ān 04:36.

2. “We have enjoined on man kindness to his parents: In pain did his mother bear him, and in pain did she give him birth.”<sup>44</sup>

Human reproductive cloning creates another problem that it causes doubts regarding the position and status of the mother of the clone and even her identity. The title “Mother” is attributed to the woman who gives birth to a child and then brings him up. But in the case of reproductive cloning to whom this title would belong? The family structure in any society would definitely be disturbed and hampered by it.<sup>45</sup>

On the other hand, if a single/unmarried or lesbian woman wants to clone her offspring alone who would be the father of that child then? From where the father of the child will be gotten? Such a situation too would be a greater disturbance in the family life.<sup>46</sup>

Another problem has been discussed by the Muslim jurists addressing the situation when a male wants to have his clone and a cell has been taken from him. In such a case determination of the real relationship between the donor and the clone is a matter of great concern for the Muslim jurists. It is difficult to establish if they will be father and son to each other or they would be brothers? Such a perplexity is detrimental to the spirit of family life and creates doubts with respect to the rights and responsibilities of the members, this characteristic turns human reproductive cloning divergent to the purposes of *Sharī‘ah*. Even at this modern era man and woman intend to get married in order to have their own offspring. But in the case human reproductive cloning is made permissible, there will be an encouragement for the LGBTs and same sex marriages would surely accelerate in society. Such a practices are totally against the spirit and purpose of the “objectives of *Sharī‘ah*.”<sup>47</sup>

It is not the matter of parents’ responsibilities only but Islam adds more respect and value to the status of the parents by giving them a right to have their share in the property of their children. Such a right has been mentioned in the following verse of the *Qur’ān*:

“For parents, a sixth share of the inheritance to each, if the deceased left children.”<sup>48</sup>

The reproductive cloning is totally opposing to the fourth objective of *Sharī‘ah* as it offers the complete violation of the basic idea of progeny and reproduction

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<sup>44</sup> Al-Qur’ān 46:15.

<sup>45</sup> Dr. Alkhadmi, *Al-Istinsākh’ fi du al-Asuk wa al- Qawā‘id wa al-Maqāsid al-Sharī‘ah*, 100.

<sup>46</sup> Ibid.

<sup>47</sup> Dr. Alkhadmi, *Al-Istinsākh’ fi du al-Asuk wa al- Qawā‘id wa al-Maqāsid al-Sharī‘ah*, 108.

<sup>48</sup> Al-Qur’ān 04:11.

under family system. The *Sharī‘ah* has ordained the institution of marriage due to its strong believing in clear lineage. Marriage is such an institution for the continuation of the reproductive cycle which is legally, morally as well as socially acceptable. Human reproductive cloning offers the gays and lesbians to have their own offspring without giving adherence to formal marriage system of a male and female.<sup>49</sup>

The final objective under the framework of the *Maqāsid al-Sharī‘ah* is the protection of property. All biotechnological processes, applications, techniques and products involving wastage of money are prohibited. At any point of time in future, if ever, human reproductive cloning is practicable, a huge sum of money will be required to have a clone, where wastage of a big amount of money calls for prohibition under the objectives of *Sharī‘ah*. Such a huge sum could have been used for more positive and constructive uses and objectives instead. This process also involves buying and selling of the eggs or embryos, which may be used for illegal or prohibited usage and researches, which makes cloning again contrary to this objective of *Sharī‘ah*.<sup>50</sup>

The preservation of the eggs or embryos by freezing or any other method, for the purpose of trade by the individuals, companies, healthcare institutions researchers or the hospitals must be strongly discouraged. Only strict sanctions and penalties can make such a prohibition effective and fruitful.<sup>51</sup>

While analyzing all of the five objectives under the *Maqāsid al-Sharī‘ah* framework on bioethical issue of human reproductive cloning it becomes clear that it is not endorsed by the *Maqāsid al-Sharī‘ah*. But the issue of therapeutic cloning needs to be evaluated in the light of Fiqh bioethical and biotechnological principles thoroughly to reach at a consensus. So far the eminent Muslim jurists consider it good enough to be acceptable owing to its practicability and consequential benefits. Muslims need to conduct more discussions and researches before formulation and announcement of any ruling on cloning after evaluation of all types of it from Fiqhi as well as scientific points of view so that their decision/ruling can be in accordance with the *Sharī‘ah* injunctions.

Therapeutic cloning seems to have more potential on the research and clinical sides when it offers organ reproduction and transplantation and diagnosis and cure of the fatal diseases like cancer. But there is need to formulate and devise

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<sup>49</sup> Ibid.

<sup>50</sup> Dr. Muḥammad Wasil, “Al-Istinsākh’ albashri fi Sharī‘ah wa Qanoon.” Majjalāh Jamia Damishq, almajaled alsamin ashri (2002) Jamia Damishq: 43.

<sup>51</sup> Nooraslinda Abdul Aris, Rafidah Mohd Azli and Rohana Othman, “Maqāsid Shari‘ah in Islamic finance: assessment on ideologies of Muslim philosophers and economists.” In *Proceeding of the Islamic Economics System Conference*, vol. 5, (2013): 427.

the mechanism to regulate this type of cloning. Most of the Muslim jurists do not prohibit this type of cloning but they recommend a deep scientific as well as jurisprudential study of it from every perspective.