

Maqasid Al-Shari'ah: A Pathway for Protecting Children's Right to Health

(*Maqasid Al-Shariah: Menjamin Hak Kesihatan Kanak-kanak*)

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ABSTRACT

Children all over the world have legal instruments for their protection. These rights are also accorded them under the Shari'ah. The protection of children covers all aspects of children's life such as education, freedom of movement and right to health. Despite the existence of provisions under Shari'ah relating to the protection of children's health, yet children are suffering from various diseases such as malaria, diarrhea and other communicable diseases. It has been proven that over 800,000 children have been suffering for health problem as a result of inadequate health facilities or medical expert as well as malnutrition. This suffering is due to the nonchalant attitude of some parents or government towards the application of Shari'ah on one hand, and ignorance of the objectives of Shari'ah known as Maqasid-al Shari'ah in relation to health of children on the other hand. Therefore, the purpose of this study is to examine the right of children to health under Maqasid al-Shari'ah such as darurriyat, hajiyyat and tahsiniyyat. Qualitative method is adopted and in doing so, analysis of both primary and secondary materials is be used. The primary data sources include the Quran and Hadith. The secondary sources include journals, judicial authorities, unpublished dissertations/theses, articles from newspapers and magazines while data will also be obtained through online data bases. Some of the instruments used include tools from other disciplines as well. The study concludes that full implementation of children's right to health under Shari'ah will promote the health of children and assist them to develop mentally and physically.

Keywords: right; children; health; maqasid al-Shari'ah

ABSTRAK

Kanak-kanak mempunyai pelbagai hak yang perlu dilindungi. Syariah mengiktiraf hak-hak ini, termasuklah hak untuk pendidikan, kebebasan bergerak, kesihatan dan lain-lain. Namun, walaupun terdapat peruntukan dalam Syariah yang menjamin hak kesihatan bagi kanak-kanak, mereka masih terdedah kepada penyakit seperti malaria, cirit-birit dan pelbagai penyakit berjangkit yang lain. Kini, lebih dari 800,000 kanak-kanak mengalami masalah kesihatan yang berpunca daripada kekurangan kemudahan kesihatan dan nutrisi. Masalah ini dikaitkan juga dengan sikap ibu bapa atau kerajaan yang tidak mengambil berat tentang objektif Syariah. Kajian ini meneliti hak kanak-kanak terhadap kesihatan seperti mana yang dianjurkan di bawah maqasid al-shariah yang meliputi darurriyat, hajiyyat dan tahsiniyat. Kajian ini menggunakan kaedah kualitatif dalam menganalisis sumber utama iaitu Al-Quran dan Al-Sunnah dan pelbagai sumber tambahan. Kajian ini mendapati Syariah melindungi hak kanak-kanak terhadap kesihatan dalam menjamin perkembangan mental dan fizikal mereka.

Kata kunci: hak; kanak-kanak; kesihatan; maqasaid al-Shariah

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 there are only few literatures that relate the concept of right of children to the maqasid al-shari'ah. The gap has led to either lack of protection of the rights of the children even in Muslim societies or inadequacy of the protection. This article, therefore, discusses the right of children to health by relating it to the maqasid al-shari'ah (objectives of Shari'ah). The analysis on the right of children to health will be explained in line with each maqsad (objective) such as daruriyyah,

hajiyah and *tahsiniyyah* for the purpose of establishing protection of children's health under the *shari'ah*. This article also examines some of health related issues that fall under each *maqasid*.

CONCEPTUAL SCRUTINY OF *MAQASID AL-SHARI'AH*

The word *maqasid* is an Arabic word which literally means purposes, objectives, principles, intents, goals and ends. Technically it has been defined as the purpose for which the law is established to fulfil for the benefit of humankind.¹ 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. 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 *shari'ah*, which can either be general or specific.² Commonly, *maqasid al-shari'ah* is also described as the objectives of *shari'ah*. The objective of *shari'ah* is to protect the well-being of the people irrespective of gender and without any discrimination as 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*).³ The underlying theme is the realization of the benefit of the people (*maslahah*) or public interest. Thus, where a *shari'ah* rule does not have a direct legislation from the Quran and *Sunnah* of the Prophet Muhammad, 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. 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.⁴

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."⁵ Similarly, Allah said of Prophet Muhammad that "We have not sent you but as a mercy to the worlds."⁶ This principle has been reinforced in the Islamic legal maxim (*qawa'idul fiqihiyah*) that says 'hardship must be eradicated' (*addararu yu'zal*). 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. 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.

The *maqasid al-shari'ah* have been classified into three namely: *daruriyyat* (essential), *hajiyah* (complementary) and *tahsiniyyat* (embellishments).⁷ 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.

POSITION OF THE *SHARI'AH* ON CHILDREN'S HEALTH

Islam considers health as a basic human right as mentioned in the hadith of Prophet Muhammad which says "Your body has a right over you."⁸ Therefore, for a Muslim, health consciousness is next to God consciousness. Health can be described as 'a state of complete physical, psychological, social and spiritual well-being.'⁹ It is the condition of person's body or mind and it is considered as one of realities of life human being that dominates his activities. 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. To maintain this health balance in the state of equilibrium, a human being must have a 'health potential.'⁷ This health potential usually takes the form of proper nutrition, good immunity, or physical fitness which enables a person to cope well with the stress which the body may face.¹⁰ 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. 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.¹¹ This is in line with the hadith of Prophet Muhammad which says "There are two of Allah's favours of which many people do not make advantage: health and free-time" (narrated by Bukhari, Tirmidhi and others). It is clear from the aforementioned hadith of prophet that health is a blessing of Allah. Health is something for which human beings will account for its usefulness on the day of judgment. 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. This position is supported by the hadith of prophet Muhammad "Indeed, the first of Allah's favour that a person will be questioned about on judgement day is, "Did we not make your body healthy and give you cool water to drink" (narrated by Tirmidhi, Ibn Hibban and others).

It is important to state that *shari'ah* attaches importance to the well-being including the children. In Quran 2:185, Allah categorically stated that "God intends for you comfort; He does not want for you hardship." He did not stop at that level of concern but also provided means for good health and cure for the ailment. To further enhance the health quality of creatures including the children Allah also indicated by way of prohibition some aspects of what is consumable that are not in the best interest of the health of children such as alcohol, pork, dead animal, blood, smoking etc, which science has proved to be harmful for the consumption.

DARURIYYAT AND THE RIGHT OF CHILDREN TO HEALTH

Darruriyah, *hajjiyat* and *tashsiniyat* are products of maqasid *shari'ah*, which is generally a product of *maslahah al-mursalah* of the Maliki *madhhab*.¹² This is because *maslahah* has to do with both public and private interest which includes the health of human being and includes children's health. Public interest consists of what is beneficial and useful for the whole or most of the community, and does not concern individuals only in so far they are members of the whole. Private interest consists of anything that benefits the individuals. It is concerned with the righteousness and well-being of the whole society.¹³ *Daruriyyat* are regarded as the essential interests to normal order in society as well as to the survival and spiritual well-being of individual, so much so that their destruction and collapse will precipitate chaos and collapse of normal society.¹⁴

PROTECTION OF LIFE

Life is one of the fundamental objectives of *shari'ah* that must be secured and protected. 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*). The life of children is given adequate regard under the *shari'ah*. The rationale behind this is that the children are considered as weak. It is therefore considered a great sin and violation of *shari'ah* objective to terminate the life of any child intentionally. *Maqasid al-shari'ah* deals with protection of human life. Everyone including the child has the right to 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. To ensure meaningful life for the child there must a sound health. This because under the *shari'ah* human being will result to approach anything that can save his life such as health and it is a necessity as in the case of child and it is not allowed to ignore this necessity that may lead to death except in some.¹⁵

No child should die for starvation and malnutrition because each child has a basic right to live. 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. 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.

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. The provision of basic necessities of life such as food, shelter, clothing and medical care is essential for the survival of the child. 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. 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. Although 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. The rationale behind it under the *maqasid* to protect the foetus from being killed along with the mother because the foetus's right has to be protected. Prophet Muhammad said: "if a pregnant woman intentionally kills a soul, the death sentence on her should be delayed till she delivers..."¹⁶ The foetus right to life is an absolute value, even if this foetus is illegitimate. This principle of *shari'ah* is encapsulated in the episode narrated by Buraida, Al Ghamadiyyah came to the Prophet Muhammad saying, "Oh messenger of Allah, I have committed adultery, so purify me." The Prophet instructed her to go "until you give birth." When she gave birth, he said to her "go and feed him until he is weaned." When weaned him, she came to Prophet with the boy holding a crumb of bread. The Prophet 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 that the foetus right to life should be protected.¹⁷

RIGHT OF FOETUS TO HEALTH

The protection and respect for the children's right to health commences even before their birth. *Shari'ah* 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 *hajjiyat* 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.¹⁸ 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.¹⁹ The health of children has to be considered paramount because it is the foundation of everything. If the children are not getting adequate health care it can lead to hardship and the foetus must be protected against harm such as malnutrition.²⁰

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.²¹ She must not use any medications during pregnancy without expert medical guidance.²² The use of medications, particularly in the early days of pregnancy, may increase the deformities in the foetus or cause malformation of the organs.²³ 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.²⁴ She must avoid passive smoking because it has been proven to inflict harm upon her foetus. 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.²⁵ It also incumbent upon the parents to 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.²⁶

PERSONAL CLEANLINESS AND HYGIENE

Personal hygiene and cleanliness for the children are part of principles of *maqasid al-shari'ah*.²⁷ 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.²⁸ 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. It is important to mention that *shari'ah* has stipulated two broad methods for the preservation, protection and prevention of health in accordance with the Qur'an and *Sunnah*. These methods for the preservation, protection and prevention of health are as follows.

GENERAL PURIFICATION OR CLEANLINESS

General purification or cleanliness includes ablution and *ghusl* (washing or bathing). To ensure proper hygiene for the children and adult, *shari'ah* has recommended

ablution for all Muslims including children. 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 day long 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.²⁹ This is compulsory when one is in the state of impurity. 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).

SPECIAL PURIFICATION OR CLEANLINESS

The second category is special purification or cleanliness. *Shari'ah* 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 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.³⁰ Prophet Muhammad and his companions were accustomed to this whenever they proceeded to an act of significance, like *salat* travelling and war.³¹ 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.³² Prophet Muhammad described the process of cleaning one's mouth as 'purification of one's mouth as an act that is pleasing to the Lord.' The washing of the mouth especially with *siwak* (chewing stick) 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.

In addition, that Prophet Muhammad placed great importance on the body,³³ 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 *ghusl* of those part of the body which are exposed to dirt or in the form of ablution. Children physical cleanliness is encouraged by *shari'ah*. 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 *shari'ah*.³⁴ Therefore, children should be given proper cleanliness training as it is not only connected with their religion but also their health status as well.

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.³⁵ It distinguishes humans from animals. 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. 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.

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. Preservation of intellect of children is currently evolving to include propagation of scientific thinking, travelling to seek knowledge and avoiding brain drain. 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. 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.³⁶

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. 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. 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."³⁷ This instruction was

also buttressed by the Prophet's hadith that "cleanliness is part of faith." The essence of these sayings is to teach Muslims the act of cleanliness in order to encourage them to live a healthy life.

Although prayer is not compulsory for the children but the Prophet Muhammad (encouraged parents to command their children to pray at the age of seven. It has been found that *salat* has health benefits for both adults and children.³⁸ The health benefit of *salat* starts from ablution because it purifies the body particularly the children who are always involved in dirty games.³⁹ 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.⁴⁰ 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.⁴¹ 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 (avianza), ebola etc.⁴²

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.⁴³ Furthermore, it 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 pain and also exercises the body since, in prayers, different bodily movement occurs and in various postures such as standing upright, genuflection, prostration and relaxation.⁴⁴

PROTECTION OF PROGENY AND CHILDREN'S HEALTH

Preservation of progeny is one of the interests to be preserved under the *maqasid al-shari'ah*. Procreation is one of the purposes of marriage in Islam.⁴⁵ 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 environment for the betterment of the society.⁴⁶ The purpose is fulfilled by appropriate health care for children to grow in to healthy adults able to reproduce.⁴⁷ It is also fulfilled by appropriate care during pregnancy and delivery to ensure a health outcome. 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.⁴⁸ 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.

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 *Quran* verse that describes honey produced by bees as having curative powers. Seeking for medical treatment has been given priority by Prophet Muhammad. 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 and said Messenger of Allah should we treat ourselves? He replied, yes O servant Allah you must treat (yourselves): for 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.”

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) held that medical treatment is *mubaah* (permitted) while Shafii and Qaadi ibn Aqeel and ibn Jawzi of the Hanbali School 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. 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. The rationale behind it is that Islam prefers a strong believer to a weak one this is in line with Prophet Muhammad’s hadith which says: “A strong believer is better and more beloved to Allah than a weak believer.”⁴⁹

HAJIYYAT AND RIGHT OF CHILDREN TO HEALTH

Hajiyyat the complimentary benefits are described as benefits which seek to remove severity and hardship that do not pose a threat to very survival of normal order.⁵⁰ This is one of the objective of *shari’ah* that will enable to protect the interest of the child in the area of health particularly to remove the hardship the manner that child will not suffer or be freed from a threat of any sickness. This can be viewed in term of adequate nutrition and health eating.

NUTRITION AND HEALTHY EATING

Nutrition and healthy food falls with the realm of *maqasid al-shari’ah* precisely under *hajiyyah* (complimentary interest). If there is inadequate nutrition, the life of children will be in danger.⁵¹ Taking healthy nutrition means having a balanced diet in order to maintain the balance that Allah has established in all matters.⁵² 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. 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 and heart attack, as well as diseases of the brain arteries, causing stroke and paralysis.⁵³

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.”⁵⁴ Food and drink have been included as part of obvious benefits of *maqasid al-shari’ah* for the children and it is considered as supplement to *daruriyah* that can sustain the children to live a healthy life. 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 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.⁵⁵

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. 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.⁵⁶ This is because when the Qur’an describes the forbidden things as bad, impure and harmful it has a nexus with human’s health. 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.

TAHSINIYYAT AND THE RIGHT OF CHILDREN TO HEALTH

CLEANLINESS OF THE ENVIRONMENT

Tahsiniyyat are regarded as benefits in nature of desirability as thing to attain refinement and perfection in the customs and conduct of people at all levels of achievement.⁵⁷ Therefore, 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 the suitability of five necessities and health of children.⁵⁸ 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.

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 emphasises the importance of maintaining all its elements.⁵⁹ The generality and infinity of this message are two qualities that are guaranteed in Islam. Its comprehensiveness in all aspects of life both physical and moral leads to eternal happiness. Safety issues of the environment have 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.

Islam is concerned with the environment because a clean and healthy environment ensures healthy citizens. 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 is 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 environment to avoid recurrent or persistent of the ailment. 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. 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. The environment in which the children live should be preserved and protected. This is to protect the children. 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.

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 of its population a liability. Childhood is a special protection and attention but unfortunately, childhood is the period when human beings suffer great deprivation from that albeit are supposed to protect them. Right to recast health is the bedrock upon which all other rights rest, the right to assembly, the right to expression and movement is useless where there is no good health. *Maqasid al-shari'ah* 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-shari'ah* play a vital role to show and analyse the right of children which is basically at the centre 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 *shari'ah* 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.

NOTES

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