

The Role of the *Shari'ah* in Contemporary Moral and Social Development

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Abstract: The modern world has increasingly witnessed paucity of people with impeccable moral standards. All forms of moral bankruptcy are being witnessed across nations of the world. Muslim nations are also not excluded from this. This ranges from homosexuality, same sex marriage, abortion, suicide, euthanasia, and corruption to mention but a few. This ultimately calls to question the impact, which the law has in the moral and social development of nations. The problem seems to be aggravated as a result of the gap and disconnection between law and morality. The tremendous impact of this on moral and social development of the society is better imagined than real. Based on this premise, the paper analyses the role of the *Shari'ah* in contemporary moral and social development. In doing this, it analyses how the *Shari'ah* puts in place mechanisms to ensure moral and social developments in the society. It further discusses the perspectives of the *Shari'ah* to the contemporary moral issues. For this purpose, the verses of the Qur'an, *Sunnah* of the Prophet (s.a.w.) and opinions of learned Muslim scholars are used.

Key words:

INTRODUCTION

The purposes of law are to promote the general wellbeing of the society such as security of lives and properties, good health, safety, moral, justices and fundamental rights of its people (George, 2008). Despite this, there are so many moral issues today being products of modernity or civilization. Also, some rights against all forms of discriminations are guaranteed by some international human rights instruments (Articles 11 and 15 of the Convention on the Elimination of all forms of Discrimination against Women and Article 3 Universal Islamic Declaration of Human Rights). Similarly, constitutions of many nations (section 17(3) (a) of the Constitution of the Federal Republic of Nigeria, 1999 as altered; Article 8(2) of Malaysian Federal Constitution) also guarantee the rights against discrimination. These guaranteed rights, lofty as it appears, have some negative implications on the moral and social development of the society. For instance, the effect of this is that illegitimate child who in those days did not have rights now claim the right against discrimination on the ground of the circumstances of his birth. In fact, some constitutions still makes express provisions that nobody shall be subjected to discrimination as a result of the circumstances leading to his/her birth (See section 42 of the Nigerian 1999 Constitution). It therefore means that an illegitimate child is entitled to what a freeborn is also entitled. In fact, in *Nwariaku* and ors (1997) 5 NWLR (Pt. 505) 442 affirmed by the Supreme Court in *Dr Salubi v Mrs. Nwariaku* (2003) 2 S.C.N.J. 47, the Supreme Court of Nigeria held that children born outside the wedlock cannot be discriminated against because it would violate section 42 of the Nigerian Constitution which prohibits discrimination on the grounds of the circumstances of his birth. The result today is that illegitimate children are now being included at the helm of affairs thereby further destroying the moral values of the society. This is not to say that discrimination should be allowed. However, there should be limitations against some freedoms some times to promote the moral values of the society.

Again, there are other moral issues of today. One moral issue today is the recent report of the Amnesty international objecting to treating homosexuality and transsexuality as crime in 70 countries around the world. It called for detribalising these on the ground of freedom of sex. One is surprised that some Muslim countries have been used as fertile land for passing of some of these principles (e.g. the Yorgy Akata principles passed in Indonesia). The issue of euthanasia is another moral issue. In fact, in relation to this, Archbishop of Canterbury, leader of the world's 70 million Anglicans, said on 20th January 2005 that the Church would not change its position on euthanasia. Since euthanasia involved other people, it was suggested any recognition of a legal right to assisted dying could entail responsibility on others to kill. He further said, "What any one's life means is not exclusively his own affair.

He lives in relation to others and to a society." Similarly, there is the recent practice of female foeticide i.e. parents knowing the sex of the foetus through ultrasonography and if they discover its female, they will abort it. This was the olden days practice of ignorance now becoming in vogue today. In spite of the fact that to know the sex of the child in the womb in India and China is illegal, this is largely practiced and female foetuses are

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being aborted enormously. In the same vein, Muslim youths in many parts of the world are now being found in disco or amusement centers, some practicing prostitutions, which contradicts Islamic morality. Although those who practice these acts are now being arrested in many countries including Malaysia but human right organisations are questioning these acts of arrests and trial on various grounds. The issue of same-sex marriage, group marriage in the United States and some of the western countries and *de facto* marriages in Australia are also issues of morals around the world as they are means of destroying the moral values of the society today.

Against the above backdrop, the paper analyses the role of the *Shari'ah* in contemporary moral and social development. In doing this, it analyses how the *Shari'ah* puts in place mechanisms to ensure moral and social developments in the society. It further discusses the perspectives of the *Shari'ah* to the contemporary moral issues. This is motivated by the facts that that moral is indeed a foundation to the religion of Islam. The word Islam itself, which means 'peace' is a message to reflects the commitment of Islam in offering and achieving one of the most important moral values that is tranquillity. In fact, the Holy Prophet (s.a.w.) was reported to have said that the very purpose of his prophecy is to perfect the moral values of mankind (Sahih al-Bukhari). Therefore, all laws especially the rules of '*Amaliyyah* and *Akhlakiyyah*, are founded based on the best moral in which men should behave in the eye of their Creator. The *Shari'ah* has therefore put in place the legal mechanism to imbibe and protect morals in the society thereby leading to sustainable moral and social development.

Nature of law and Morality:

Morality can be seen as social rules and norms which are based on divine wisdom that tries to promote fair, just and good human relations and human behaviours in every sphere of human life, violation of which is considered as socially deviant behaviors or violation of divine commands and might be subjected to social sanctions or religious sanctions. It is also as a set of values common to societies, which are normative, specifying the correct course of action in a situation, and the limits of what society considers acceptable. Law can be seen as the state echoing, and seeking to uphold, these values. Law is a set of rules that govern the patterns of behaviour of society (Yakin, 1996). It could be a manifestation of social needs and interests. It exists as soon as the society starts to have certain needs and interests and develops naturally with the society. It can be said that the complexity of law and morality perhaps accounts for the reason why many works on this area tend to describe morality rather than proposing definitions to end all definitions (Sulentic, 2003; Kramer, 2004; Elovetz; Walzer, 2006; Wambu, 2011; Green, 2003; Rothkamm, 2008).

A number of academic works seem to discuss the ostensibly unending question of the relationship of law and morality and the function of both in human society (Fuller, 1969; Hart, 1961; Hart, 1957-58; Raz, 1988; Finnis, 1988). The problem goes back to the days of Greeks and many other philosophers that followed who vainly tried to establish or distinguish the relationship between law and morality. Many questions have been asked and continued to be asked about the nature of law and that of morality and whether moral norms are separate from legal norms? Can legal norms exist in any given society without assistance of moral norms? To what extent can a society survive or depend solely on law without reference to moral or ethical precept? The huge literature on the subject tells us that there is no, until now, a one single convincing answer to the problem posed by these questions. Let us agree that man-made law is made to operate within a given society. It is a manifestation of societal needs whether that is political, economic or otherwise. Likewise, it is claimed that moral or ethical principles are founded to fulfill societal needs whether that be in regulating physical behavior of individuals or that of the whole community. The question still is whether the foundations and the objectives of law and morality are one and the same.

Law and morality is inseparable. There are sometimes links between the two (Brudney, 1993). Some people, at some time, may regard things as matters of moral right or wrong, which at another time or in another place are thought to be matters of taste, or indeed to be matters of no importance at all. Moral attitudes tend to change over time, for instance cohabitation, homosexuality and women's liberation. In a modern, developed society it is difficult to pinpoint a set of moral values shared by all. Small tribal groups are likely to share a moral code, but a society such as our own, where individuals differ widely in social status, income, occupation, ethnic background and so on, its members are unlikely to share identical moral values, even if they largely agree on some basic points. Some areas of law have moral implications. For example tort law, especially negligence, is built around the principle that those who harm others should compensate for the damage done; that as Lord Atkin noted in *Donoghue v Stevenson* (1932) the biblical principle of 'love thy neighbour' must include 'do not harm your neighbour.' Contract law, is also centered around the principle that promises should be kept.

Although many have argued that law and morality are different, it is undeniable that morality is an essential and integral part of law and cannot be to some extent separated from it (Lloyd, et.al, 1985). In fact, majority of laws are the result of codification and enforcement of the prevailing social norms with sanctions. This, although is admitted, is not a justification to deny the legality or enforceability of a law on the general ground of them being morally neutral or immoral (ibid). For instance, prohibition of murder, causing bodily hurt, theft, robbery and treason are obvious examples in which immoral acts are codified into law. However, there are some acts

that may be immoral for some societies and may not be immoral for others; euthanasia and necessity killing for instance. This notwithstanding, there is the minimum irreducible standards of human behaviours in every society. Both morality and law seek to impose certain fundamental standards of conduct to ensure the survival of human society. In majority of these fundamental standards, law and morality reinforce one another. This is because law and morality are closely connected especially in the sense that law is based on the moral concept of right or wrong. Moreover, both aim at regulating social conduct and preserve order in the terms of duties and obligations. Thus, how the *Shari'ah* plays its roles in the contemporary moral and social development becomes apt in the study of this nature.

The Shari'ah on the Protection of Morality in the Society:

The *Shari'ah* has designed a number of ways to ensure adequate protection of morals in order to promote and sustain moral and social development of nations. Some of the ways are examined.

Construction of Barriers Against Immorality:

One of the major causes of moral decadence in the society today is centered on man's visual faculty. This has been made worsened as a result of technological advancement. Technology has indeed exposed even a closed society to moral decadence as a result of social networks such as face book, twitter, you tube, etc leading to a high number of unpleasant pictures being posted on the internet for visual consumption. Islamic law, having realized the moral decadence of the society for a very long period of time has provided ways to curb the moral decadence as a result of visual faculty. Allah (s.w.t.) in this regard says: "Say to the believing men that they *lower their gaze* and *guard their modesty*; that is purer for them. Surely God is aware of what they do. And say to the believing women that they *lower their gaze* and *guard their modesty*, and do not flaunt their adornment except what is apparent thereof" (Qur'an, 24: *ayah* 30-31).

The above verse shows basically that:

- 1). Believers should lower their gaze i.e. they should not look at anything that would stir up unacceptable lust in their own hearts;
- 2). Believers should ensure modesty, i.e. they should not do anything that could stir up unacceptable lust hearts in the hearts of others. Either of these is enough to prevent or cure moral decadence in the society. However, the two are actually needed to promote decency and prevent societal vices such as corruption at all levels, misappropriation. In this regard, the Prophet (s.a.w.) was reported to have said: "A portion of fornication has been pre-inscribed for all human beings and inevitably overtakes them (The fornication of the eyes is looking [at a forbidden woman or man]; the fornication of the ears is listening [to her/him]; the fornication of the tongue is speaking [to her/him]; the fornication of the hand is touching [her/him]; the fornication of the feet is taking steps [toward a rendezvous with her/him]; the heart harbors passionate desire and the soul yearns (i.e. the soul's fornication is yearning); but it is the genitalia that confirm or belie [all of the above, i.e. by either going through with or refraining from the illicit act of intercourse]" (Abu Hurayra).

The *Shari'ah* does not stop at ordering people to lower their gaze. It also tells us how the gaze is to be lowered for instance, the Prophet (s.a.w.), in order to encourage people on how to lower one's gaze advised thus: O young men! Those of you who have reached puberty (or: are capable of having intercourse —marry! This will facilitate the lowering of your eyes, and it will be better for your genitals. Again, still on the issue of visual faculty by lowering one's gaze, the Prophet (s.a.w.) was also reported to have said that: A group of us assembled at the Prophet's house, and we said to him: "O Messenger of God! We are a people of the valleys and the hills and we like to spend our time in such gatherings; what do you instruct us in this regard?" He responded, "Give such meetings their due". We asked, "And what is their due?" He answered, "Lower your gaze return salutations, guide the blind, show the way, help those foundering under their burdens, enjoin the good and forbid the evil (reported by Malik b. al-Tihan).

However, one look may not be a sin. Thus, this happened to the Prophet David (who inadvertently set eyes upon the bathing Bathsheba (al-Shawksni, 1964). It also happened to the Prophet (s.a.w.) when he inadvertently set eyes upon the less-than-fully-dressed Zaynab (al- abari, 1988). The Prophet (s.a.w.) suggested that men who encounter a similar situation should go home to his own wife and have intercourse with her; this will alleviate that which is in your soul (ibid). According to Jabir b. 'Abd Allah: "I asked the Messenger of God about accidental glances. He commanded me to avert my eyes. The Messenger of God said (to Ali): "Do not follow one look with another look for the first one is for you but the second is against you." Also, the prophet was also reported to be furious at a man who peeped at him curiously. It was reported by Sahl b. Sa'd that: "A man looked into the Prophet's chamber, while the Prophet (s.a.w.) was scratching his head with an implement (*mudri*). The Prophet (s.a.w.) came out and scolded the man: "Had I known you were looking, I would have stabbed you in the eyes with this (implement); for [the requirement to request] permission [before entering an abode] was established [first and foremost to regulate] looking."

Thus, one important way Islam has promoted morality is the building of strong men and the building of strong wall. The first is usually done through education i.e. reaching out to the people's mind and heart so as to

improve them in character. The second curtails opportunity to transgress. This is done by building a barrier that would minimise exposure and impede access (Maghen, 2007).

Furthermore, the issue of morality was aptly captured when Lukman told his son as stated in the Qur'an that: "And (mention, oh Muhammed), when Lukman said to his son why he was instructing him "oh my son, do not associate (anything) with Allah. Indeed, Association (with Him) is great injustice" (Qur'an, 31: *ayah* 13). (And Lukman said), " O my son, indeed if its (i.e. a wrong) should be the weight of a Mustad seed and should be within a rock or (anywhere) in the heavens or in the earths, Allah will bring it forth. Indeed, Allah is Subtle and Acquainted"(Qur'an, 31: *ayah* 16). "Oh my son, establish prayer, enjoin what is right, forbid what is wrong, and be patient over what befalls you. Indeed, [all] that is of the matters [requiring] determination"(Qur'an, 31: *ayah* 17). "All do not turn your cheek [in contempt] toward people and do not walk through the earth exultantly. Indeed, Allah does not like everyone self-deluded and boastful" (Qur'an, 31: *ayah* 18). "And be moderate in your pace and lower your voice, indeed, the most disagreeable of sounds is the voice of donkeys" (Qur'an, 31: *ayah* 19).

Also, many verses of the Qur'an preach morals by stating that: "O you who have believed, do not raise your voices above the voice of the Prophet or be loud to him in speech like the loudness of some of you to others, lest your deeds become worthless while you perceive not" (Qur'an, 49: *ayah* 2.). In the subsequent *ayah*, Allah (s.w.t.) says: Indeed, those who lower their voices before the messenger of Allah- they are the ones whose acts Allah Has tested for righteousness. For them is forgiveness and great reward" (Qur'an, 49: *ayah* 3). He (s.w.t.) also says: "Indeed, those who call you, (O Muhammed), from behind the chambers-most of them do not use reason" (Qur'an, 49: *ayah* 4). Again, the Qur'an says that: "And if they had been patient until you (could) come out to them, it would have better for them. But Allah is forgiven and merciful" (Qur'an, 49: *ayah* 5).

Prescription of Ways of Life to Better the Society:

Islam has provided for certain ways of life for the Muslim leaders and followers in order to lead to sustained peace and development of the society. Some of the examples include: O you who have believed, if there comes to you a disobedient one with information, investigate, lest you harm a people out of ignorance and become over what you have done, regretful (Qur'an, 49: *ayah* 6). And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until he returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly (Qur'an, 49: *ayah* 9). "The believer is but brothers, so make settlement between your brothers and fear Allah that you may receive blessing"(Qur'an, 49: *ayah* 10). "O you who have believed, lest not a people ridicule (another) people, perhaps they may be better than them, nor let women ridicule other women, perhaps they may be better than them. And do not insult one another and do not call either each other by (offensive) nicknames. Wretched is the name (i.e. mention) of disobedience after (one's) faith. And whoever does not repent, then it is those who are the wrong doers" (Qur'an, 49: *ayah* 11). O you who have believed, avoid much (negative) assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of another when dead? You would detest it. And fear Allah, indeed, Allah is accepting of repentance and merciful" (Qur'an, 49: *ayah* 12). "...Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is knowing and acquainted" (Qur'an, 49: *ayah* 13).

Defining the Scope of Moral Laws:

Islam emphasises that human mind is indefinite instrument in determining moral laws. Therefore, as part of His mercy, Allah (s.w.t) revealed his concept of morality rather than leaving man groping in darkness and lost in speculation while contemplating the moral laws. This divine concept of morality is revealed in the Quran and the traditions of the Prophet (s.a.w.). These are sufficient as guidance for mankind. Being a comprehensive code of conduct and an inclusive legal system, the *Shari'ah* is not only concerned with worldly matter. The enforcement of moral rules is not only based on the threat of worldly punishment. It is also based on the prescription of divine reward as well as the threat of divine punishment in the hereafter. In the *Shari'ah*, human actions are divided into two: the good deeds and the bad deeds). The *Shari'ah* emphasises the promotion of good deeds and abolition of bad deeds. In this regard, Allah (s.w.t.) says in Qur'an, 3: *ayah* 110: "Ye are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing in Allah. If only the People of the Book had faith, it were best for them: among them are some who have faith, but most of them are perverted transgressors." Thus, every good deed will be divinely rewarded while the evil deed will be punished in one of two ways: 1) evil deed which is condemned by divine legislature attached with worldly punishment in the form of corporal punishment such as for the crime of stealing and adultery; and 2) evil deeds that are condemned by the *Shari'ah* without prescribing worldly punishment but promised with a warning of a punishment in the hereafter for example, telling lie and hasad (envy). So, the determination to upheld moral code is encouraged by the promise of divinely reward while the consciousness to refrain from evil deed is

encouraged by the threat of worldly and divine punishment. This advocates Muslim to adhere the moral code with or without the presence of enforcement authority.

There are numerous injunctions in the Holy Qur'an and *Sunnah* of the Prophet (s.a.w.), which demands Muslim to observe their morality. With respect to justice, Allah (s.w.t.) says: "Allah commands justice, the doing of good, and Liberality kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He you, that ye may receive admonition" Qur'an, 16: *ayah* 90). He (s.w.t.) also encourages unity by stating that: "And hold fast, all together, by the rope which Allah (stretches out for you), and be not divided among yourselves" (Qur'an, 3: *ayah* 103). We are also encouraged to fulfil obligations: "O ye who believe! Fulfill (all) obligations" (Qur'an, 5: *ayah* 1). In fact, the *Shari'ah* declares that the superiority of a person is based only on morality. Allah says: "Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you" (Qur'an, 49: *ayah* 13). The Prophet (s.a.w.) was also reported to have said: "Say the truth even if it may be bitter"(Ahmad).

Recognition of Participation of Men in Law-Making Process Where Divine Law is Silent:

The *Shari'ah* on morality, as earlier stated, has been divinely determined and revealed in the form of Holy Scriptures. This does not mean that human being has no say whatsoever in the making of law. The *Shari'ah* allows men to participate in law making process. This is especially where the Qur'an and *Sunnah* are silent on it. Thus, the application of *ijtihad* (personal reasoning), *istihsan* (juristic preference), *masolihul mursalah* (public interest), and *'urf* (custom) (Kamali, 1998) are allowed. This is however based on the facts that application of these mechanisms is guided by the fundamental principles stated in the revelation.

Thus, social morality in conformity with Islamic values may be enforced to supplement the existing revealed morality. This ultimately aims at complimenting and suiting it to local circumstances. For example, under the Islamic criminal law, some offences are categorised as falling under the offences of *ta'zir*. In these offences, the authority may enforce social morality in conformity with Islamic values against any person in breach.

The Shari'ah and Contemporary Moral Issues:

The Shari'ah and Euthanasia:

The *Shari'ah* regards the life of human being as a gift from Allah to his servant. Life is neither subjected to ownership nor is it a property of human being, which they can deal with as they wish but rather it is an *amanah* (trust) from Allah to mankind. Therefore, He is the sole and absolute authority that has the right to give and take life as He wishes. Allah says in His Holy Book: Say: "It is Allah who gives you life, then gives you death; then He will gather you together for the Day of Judgment about which there is no doubt": but Most men do not understand (Qur'an, 45: *ayah* 26).

The *Shari'ah* prohibits the act of taking one's life without valid reason as prescribed by *Shari'ah*. The life of human being is *ma'sum* (protected) by the *Shari'ah* itself and any act, which in violation of this protection is seriously condemned and coupled with severe punishments. Allah (s.w.t.) says: "On that account: we ordained for the Children of Israel that if any one slew a person – unless it be for murder or for spreading mischief In the land – it would be As if He slew the whole people: and if any one saved a life, it would be As if He saved the life of the whole people. Then although there came to them Our apostles with Clear Signs, yet, Even after that, many of them continued to Commit excesses In the land" (Qur'an, 5: *ayah* 32). Not only the act of killing another soul is strictly prohibited, Islam also prohibits the act of suicide. This is based on the very fundamental concept of sanctity of human life and that since life comes from God, only He may take it away (Brockopp, 2003). Allah (s.w.t.) says: O ye who believe! ... do not kill (or destroy) yourselves: for Verily Allah hath been to you Most Merciful! (Qur'an, 4: *ayah* 29).

Therefore, the act of taking one's life either personally done or by another person, with or without that person's consent is strictly prohibited in Islam (Ansari, et.al, 2012). This prohibition includes the act of active euthanasia. There was an event during the period of the Prophet where two of his companions were badly injured. Since they could not bear the suffering, they consequently killed themselves. The Prophet while receiving the news uttered two Hadith for those two deceased: My servant hastened himself to me and so I made paradise unlawful for him (Al-Tirmidhi). Despite the great feat displayed by this person, that single act by him wiped away all his services in the cause of Allah and doomed him to hell (Al-Bukhari). With respect to active euthanasia, Tantawi (2000) noted dismissed "everything that would result in mercy killing, conforming that killing the patient who has no hope [of recovery] is not allowable decision according to Islamic law: not for the sake of doctor, nor for the ease of the patient, nor for the patient themselves."

Furthermore, the element of mercy or compassion in euthanasia is neither a valid justification nor an acceptable defence to escape criminal liability in the *Shari'ah*. Similar to the Civil Criminal Law, the Islamic Criminal Law does not bother with the motive of the accused person at the time he committed the offence. Regardless whether the motive is good or bad, a crime is considered as complete when both the elements of the prohibited act and the bad intention exist. Since we are talking on the act of killing, the bad intention here means

that the accused intended to cause the death of his victim. Audah observed that: “the *Shari'ah* from the outset has drawn a clear distinction between intending to commit a wrong and the motive which impels the criminal to do such wrong. Thus it does not attach any significance to motive in determining the guilt of the accused or its ensuing penalty. It is immaterial whether a killing is committed by a noble motive such as for vengeance and protection of one's dignity or it is committed with a base motive of killing for the sake of stealing (Shah, 1996; Abdul Latif, 1999).

Also, the consent of the victim to die is also not a valid defence and it cannot be equated with the principle of pardon under the *Shari'ah*. The right to pardon is the right of the deceased heir and not the right of the deceased himself. Such right exist immediately after the death of the victim. Thus, consent to die either from the victim himself or from his heir is not a valid defence for active euthanasia. Al-Dasuqi, a scholar from Maliki school stated that if a person before infliction of a deadly blow, says to another that he forgives him from the liability of killing him, the forgiveness is void because the victim has exempted the accused before such right was due to him (ibid). Nevertheless, some scholars like Sheikh Tantawi himself has adopted a lenient view as regard to passive euthanasia, which according to him, may be permissible in the event of the patient suffered from brain dead. He was reported to say: Death is the separation from life and those who can judge a separation from life are the physician, not the religious scholars, so if the doctor believes that the patient, whose heart is beating although his brain has died, is dead, this is a matter of the physician[’s professional expertise]. [If] the heart of a patient continues to beat because he is hooked up to a machine, and his brain is dead, there is no fault in the family requesting the removal of the machine...they are accepting God's decree (Brockopp, 2003).

The Shari'ah and Necessity Killing:

As earlier noted, the *Shari'ah* places an extraordinary value on human life. This accounts for the reason why protection of human life is considered as number one of the five main objectives of the *Sahri'ah* (*Maqasid al-Shari'ah*). Also, the principle of *dharurah* (dire necessity) in Islam provides for the permissibility of certain prohibited things in the event where it is indispensable for saving human life. *Dharurah* or necessity according to Zuhaily (1982) is: “a difficult or dangerous situation faced by a person which he believed might result in some harm to himself or his limb, reputation, mind and property or whatsoever alike. And a person who is placed in such circumstances is allowed to do the prohibited acts or leave the obligatory acts in order to dispose of the hardship.

The issue here is whether the *Shari'ah* principle of *dharurah* can be extended to the killing of one human being in order to save another human being. It should be noted that necessity is different from self defence because in self defence, the protection of life is from direct threat of another person while in necessity there is no threat whatsoever from the other person but the circumstances itself that put the life of the person at stake. As earlier noted, motive is immaterial in the conviction of the crime of murder in Islam. What matters is the intention of the murderer to cause the death of his victim. Therefore, the issue to be answered would be whether the principle of *dharurah* can be a valid defence to escape criminal liability. Allah (s.w.t.) in this regard says: Nor take life – which Allah has made sacred – except for just cause (Qur'an, 17: *ayah* 33).

The above Quranic verse obviously mentions the prohibition of the act of killing except in circumstances which is allowed in Islam. The example of those circumstances is when the non-Muslims attack a Muslim state or when a person committed an offence, which is punishable with death punishment such as murder, apostasy, treason and adultery. The act of killing without any excuse allowed by Islam will amount to murder, which is subject to death penalty. Audah (1999) noted that there are 4 conditions which need to be fulfilled before the defence of necessity can be applied: 1) The necessity is so dire that the person senses a threat to his life, limb or some other person; 2) the necessity is actually present and not merely expectation; 3) there in no way to encounter the situation except by committing prohibited act; 4) the forbidden act should only be committed in proportion to the necessity.

In the same vein, the *Shari'ah* recognises necessity as a defence. It nevertheless does not apply in all offences. There are offences in which necessity will be acceptable especially when the offence related to the relation between man and his Creator. For instance, the offence of eating prohibited food and drinking prohibited drinks in order to protect life in the event where there is no *halal* (permissible) food available to be consumed. However, there are also offences in which the defence of necessity is not applicable especially related to the relation between fellow human beings for example the offence of murder, infliction of injury and amputation of limbs of another person. Thus, a person under necessity is forbidden to kill or injure another person in order to save himself (ibid). Therefore, if two persons are starving to death, he is not allowed by *Shari'ah* to kill his fellow friend and eat his flesh in order to survive and they have to resort to other measure to save their live. Imam Malik and majority of Hanafi's scholars are of the view that eating human flesh is unlawful in the state of necessity even if the person whose flesh is eaten is a person whose life is not protected under the *Shari'ah* (ibid).

The Shari'ah, Same Sex Marriage and Transsexual Operation:

Human beings are created in pairs. This is supported by many verses of the Qur'an. Allah (s.w.t.) says: And (have We not) created you in pairs (Qur'an, 78: *ayah* 8). In another *Surah*, He (s.w.t.) says: "That He did create in pairs - male and female (Qur'an, 53: *ayah* 45). Qur'an also says: "Glory to Allah, Who created in pairs all things that the earth produces, as well as their own (human) kind and (other) things of which they have no knowledge" (Qur'an, 36 *ayah* 36) These authorities show that Allah (s.w.t.) proscribes same sex marriage. Also, the Prophet (s.a.w.) was reported to have said that transgender is not part of his *Ummah*. Besides, it is evident from the story of Prophet Luth (a.s.) where Allah (s.w.t.) prohibits and curses such act and his people were punished by Allah (s.w.t.). He says: "For ye practise your lusts on men in preference to women: ye are indeed a people transgressing beyond bounds" (Qur'an, 7: *ayah* 81).

From this verse, it's clear that Islamic law rejects same sex marriage as well as transgender. However, Islam allows sex operation in case of hermaphrodite. In Malaysia, the Conference of Rulers decided that 'sex change operation' is prohibited in 1983 except in the case of hermaphrodite. Even the al-Azhar scholar allows sex operation in the same case. Therefore, it can be said that same sex marriage is prohibited by the *Shari'ah* not only on the ground of morality, but it is also prohibited by Allah (s.w.t.).

The Shari'ah and Abortion:

As a general rule, abortion is prohibited in the *Shari'ah*. It is generally tantamount to murder. Ibn Taymiya while answering a question by a man who tried to induce his slave girl to abort the pregnancy stated that: Praise be to God! Causing the abortion of a fetus (*isqat al-haml*) is forbidden (*Haram*) by the consensus of the Muslims. It is a category of wa'd, about which the God said "When the buried child will be asked / For what crime she was killed", he [also] said: "Do not kill your children for fear of want."

During the period of the Prophet Muhammad (s.a.w.), it would appear that there was no any case of intentional abortion reported. However, there is a case where a woman strikes her pregnant co-wife with a tent pole and killing the woman. The Prophet (s.a.w.) required blood money for the life of the woman and a payment known as *ghurra*. The value of this *ghurra* is set at one twentieth of the full blood money (al-fiqhiya, 1987). However, the *Shari'ah* has different approach in dealing with fetus and they divide them into two categories, which are the one that have legal rights and responsibility such as right to inherit and not a complete fetus. There are discussions among Muslim jurist as where the fetus got its soul, according to Ibn Hazm, a fetus received it soul 120 days after conception and after that the fetus will be a complete fetus. Such will only be prohibited if it is done after 120 days after conception. Also, killing a baby can be said to be an act of the *Jahiliyyah* and is prohibited under the *Shari'ah*. However, the *Shari'ah* does not categorically prohibit abortion but it is allowed in certain exceptional cases. This may include, for instance, to save the mother's life or to prevent any harm to the mother.

Conclusion:

From the foregoing discussion, the *Shari'ah* has offered solutions to the problem of immorality in order to improve and sustain moral and social development of the society. A 'developed nation' cannot be truly seen to be developed if the large members of the nation are morally bankrupt. Development should include moral and social development. Since the major cause of moral decadence has always been the visual faculty, Islam has recommended that Muslims should lower their gaze. It also recommends that Muslims should be modest so that they would not put unacceptable lust in the heart of others. Apart from this, the Prophet (s.a.w.) also serves as models to everybody because he has been described as a sublime of morals. A number of verses in the Qur'an also promote morality. It is submitted that there is the need to integrate morality and law together with the religious laws in order to solve the problem of decadence in the society today and lead to sustainable development of the society. Also, the law makers especially in the western world should always reintegrate morality in their legislative processes and legislations. This will go a very long way in helping the society for the better.

Again, the uniqueness of the role of the *Shari'ah* in moral and social development seems to be evident by divine definition of what amounts to morality. The *Shari'ah*, being a complete way of life, has not left its adherents to be wallowing for what amounts to morality. It is clearly stated by the divine revelation and practised by the Prophet (s.a.w.). Also, man-made laws are also allowed to enforce morality where the revelation is silent so long as it does not contradict the spirit, letter, intent and objectives of Qur'an and *Sunnah*. As a result, contemporary moral issues are adequately taken care of by the *Shari'ah*. Thus, homosexuality or same-sex marriage is strictly prohibited by the *Shari'ah*. Also, the act of taking one's life either personally done or by another person, with or without that person's consent under the guise of euthanasia is strictly prohibited by the *Shari'ah*. Similarly, necessity killing is not allowed by the *Shari'ah*. A person under necessity is forbidden to kill or injure another person in order to save himself. However, transsexual operation is allowed under a very strict condition; i.e. in the case of hermaphrodite. Abortion is also strictly prohibited but allowed under very

strict conditions. Thus, if these *Shari'ah* rules are complied with strictly, it will reduce the present modern moral bankruptcy. This will go a long way in ensuring moral and social development of today's modern world.

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