

AN EXAMINATION OF ASH-SHAWKĀNĪ'S VIEWS ON MATRIMONIAL LIFE IN HIS *FATHUL-QADĪR*

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Abstract

This paper attempted to examine the exegetical comments on the family life of marriage in the Qur'ān relating to legality of the choice of institution of marriage, divorce and its process etc. This paper studied *Fathul-Qadir* which is an exegetical work authored by Muhammad All Ash-Shawkāni. The objective of the paper was identified the extent to which Shawkani's opinions on the family life in the Qur'ān are correct. The paper also verified some divergent views of scholars with their proofs as cited by Imam Ash-Shawkāni while interpreting the Quranic passages. It also evaluated Muslims practice of matrimonial life in the contemporary society. Methodology adopted for this work was exegetical method. Thus, it was discovered that ahadith and other statement of Salaf are used as proofs in the Ash-Shawkāni's exegetical comments on the family life. Hence, this paper identified the submission and suggestions of the researcher based on informed views of Imam Ash-Shawkāni and other scholars.

Introduction

The *Tafsir* of Imam Ash-Shawkāni is one of the outstanding classical works of Quranic exegesis written in Arabic language in five (5) volumes. The author's full name was Muhammad Ali Ash-Shawkāni. The basic objective of this *Tafsir* was to deduce juristic injunction and rulings from the Qur'ān. In addition, the work also provided the explanation of verses, research into difficult words, discussion of diacritical marks, elegance of style and composition as well as linguistic analysis.

The methodology adopted by the author in his commentary on the verses of the Qur'ān was *At-Tafsir bil-Ma 'thūr* i.e *Tafsir* based on copious reference to the Qur'ān itself, the Prophet (SAW), the companions and their successors respectively. This paper, therefore attempts to scrutinize his comments on legal verses regarding some issues in matrimonial life in Islām.

In this regards, this research work intends to show the extent to which Imam Ash-Shawkāni's comments on the issues concerning the matrimonial life are genuine. It also evaluates attitude in our communities towards the legal rulings deduced from legislative verses on the issue of legality of marriage in Islām.

Significance of the Study

- i. It gives the readers opportunity to have access and insight into verified proofs of Imam, Ash-Shawkāni on his exegetical comments regarding in the matrimonial issues.
- ii. It also shows the erudition exhibited by Imam Ash-Shawkāni in his Interpretation of juristic verses of the Glorious Quran.
- iii. It finally indentifies the condition of legality of the family life according to the teaching of the Qur'ān and Hadith.

Biographical Sketch of Imam Ash-Shawkāni.

The author of *Tafsir Fathul-Qadir* which is the focus of this paper was Muhammad bn Ali bn Muhammad bn Abdullah Ash-Shawkāni as- dan'ani. (p.24) He was called Ash-Shawkāni as a reference to his birth place called Shawkāni is a small town and of a distance of a day journey from Sanisani in Yemen. (p. 6)

Imam Ash-Shawkāni was born in 1760 C.E. in Saniani known today as Yemen. In his early years, he studied under his father CALi bn Muhammad Ash-Shawkāni (d. 1797) who was a judge in Sanisani. (P, 16) He was well read, educated in both sunni traditions and Quranic exegesis. (p.7)

Hence, Imam Ash-Shawkāni studied from the renowned scholars of his time where he acquired the knowledge of the Glorious Qur'an

Mastering the Arabic Grammar, Science of the Qur'ān, Islāmic law, a hadith of the prophet and the knowledge of abrogated verses in the Qur'an.(p.30) With his mastery of numerous science, Imam Ash-Shawkāni claimed that by the age of Thirty (30), he had dispensed with Taqlid and become a *Mujtahid Mutlaq* and dedicated his life to issuing Fatāwah (Islāmic legal verdicts). Imam Ash-Shawkāni was known for his modesty, humility and diligence. He was an author Imam, a Qādi and a teacher and started his teaching and writing careers at the age of twenty (20). It was

reported that the Imam used to stay indoor except for occasional and religious purposes. He wore simple cloth with turban slim in nature with beard as part of the Sunnah of the Prophet. (pp.8-9)

Furthermore, Ash-shawkäi was a renowned exegete, jurist and an adherent of Hambali School of thought. He wrote works on sciences of Hadith and tenets of faith. However, his greatest contribution to the field of knowledge is his voluminous book which he titled: *Fathul-Qadir al-jâmiu Baina fannir-Riwayyah Wad-Dirayyah min ilmit-Tafsir* Shawkâni was ascetic who divided his day between worship and writing.

Issues Related to the Matrimonial Life in *Fathul-Qadir*

The focus of this research study is on the following sub-headings related to the matrimonial life as deduced from interpretation of legal verses of the Qur'ân in *Tafsir Fathul-Qadir*

- i. Marriage institution
- ii. Divorce and its process
- iii. Family planning
- iv.

Legal Status of Institutions of Marriage in *Fathul-Qadir*

Marriage in Islâm is an institution that aims at the common good of the married couple. It is legislated to achieve the greatest possible good for all the concerned with love and harmony that prevail at home without any intrusion from law. (p.18)

Marriage is a civil contract made by mutual consent between man and woman to establish a family. It requires full agreement of both parties without compulsion being brought to bear on either person. A marriage which takes place forcibly is considered null and void. When an agreement is reached between the two, the man pays to the woman a bride money (dowry or Sadaq), which is a token of admiration, not a purchase price or a form of remuneration. This is in line with the following verse from the Qur'ân

Qur'an 30:21 which read thus:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً

And among his signs is this, that He created for You wives from among yourselves, that You may find repose In them, and He has put between You affection and Mercy. Verily, In that are indeed signs for a people who reflect.

The Prophet Muhammad Said:

Marry and generate, for I shall be proud of you among all the nations on the Day of Judgment. (p.84)

By these definitions, it is understood that marriage in Islām is a contract that is to be undertaken willingly and by mutual consent of the two parties. It is also clear from these definitions that a marriage contract continues to exist as long as there is peaceful co-existence inspired by mutual understanding and harmony between the couple; otherwise, the husband and wife would endanger their lives if they keep hatred and enmity between one and other. In this circumstance, the law allows the revocation of the contract. It is also understood from the Islāmic marriage laws that the validity of the marriage contract legalizes sexual intercourse and procreation between the couple. Thus, sexual intercourse outside the legal wedlock is a punishable crime under the provision of the Islāmic law.

p.45)

Islām exhorts those who are not able to marry to engage themselves in the deviational nearness to Allāh i.e. fasting. Such people can also resort to study practice sports or take part in religious or social activities.

Abdullah Ibn Masud reported the prophet his advice to the youth:

Young men, those of you who can support a wife should marry, for it keeps you from looking at strange women and preserves you from immorality. But those who cannot, should devote themselves to fasting, for it is a means of suppressing sexual desire"
Transmitted by Bukhari and Muslim. (p.673)

Conditions of Marriage according to Imam Ash-Shawkāni

Marriage, as pointed out, is a simple civil contract made by mutual agreement between man and women, in order to preserve the rights of both the husband and wife. The following conditions are required for the establishment of marriage.

- i) Mutual consent of the bride and bridegroom.
- ii) Marriage contract must be witnessed by two or more male witnesses.
- iii) The bride money (Sadaq or Dowry) is to be paid to the bride or her guardian with her knowledge and permission.
- iv) The contract must comprise the formula of marriage which is:
 "I marry you to myself" should say the bride
 "I accept your marriage to me" should say the bridegroom (p.87)

Legal status of marriage according to *Fathul-Qadir*. The institution of marriage in Islām is established on the basis of divine provisions as contained in Qur'ān 4:3.

فَاتَكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ

Marry women of your choice, two, three, or four as well as Q 24:32.

وَأَنْكِحُوا الْأَيَامَىٰ مِنْكُمْ وَالصَّالِحِينَ مِنْ عِبَادِكُمْ وَإِمَائِكُمْ إِنْ يَكُونُوا فُقَرَاءَ يُغْنِهِمُ اللَّهُ مِنْ فَضْلِهِ وَاللَّهُ وَاسِعٌ عَلِيمٌ

Marry those among you who are single or virtuous ones among your slaves, males, or female; if they are in poverty Allah will give them out of His Grace.

Imam Ash-Shawkāni quotes one of the traditions of the prophet which says:

The Prophet was reported to have said: I keep the fast and I break it, I pray in the night and I sleep and I marry women, so marriage is my Sunnah whoever abstains himself from it is not of me. (p.80)

He {PBUH} was also reported to have said according to Imam Ash- Shawkāni:

Oh! Assembly of young people, whoever of you has the means to support a wife he should get married for this is the best means of

keeping the looks cast down and guarding the chastity and he who has no means let him keep the fast for this will as castration. (p.83)

From these divine words and the prophetic traditions, it is clear that marriage, is a legal contract that is regulated by the Islāmic law. However, it is still implied in both the Qur'ānic verses as well as the hadith that the nature of legal status of marriage on individuals varies. On the basis of this variance, the Muslim scholars categorized the legal status of marriage into five (5) according to the condition of individual persons as follows:

- i) *Wajib* – Compulsory
 - ii) *Mandüb* - Recommended or Permitted
 - iii) *Mübah* – Supererogatory
 - iv) *Haram*- Forbidden or Prohibited
 - v) *Makrüh* - Detested
- i. Marriage is *Wajib* (Compulsory or Obligatory) for a man who has a strong sexual appetite. It is obvious that man cannot cheat the nature, but he has to respond to its call hence it is compulsory for him to get married. In addition, such a person must have got the means to support a wife, to pay her dower as well as maintain the children.
 - ii. Marriage is *Mandüb* (Recommended or Permitted) for a man whose sexual appetite cannot be satisfied by only one wife because avoid tenderness and feebleness, whereas man is stronger in nature. To avoid falling a prey to evil temptations of *Shaytan* it is recommended therefore that a man marries more than one wife. In addition there ought to be the availability of marriageable women. It is in this circumstance that the provision of Qur'ān 4:3 become applicable.
 - iii. *Mubäh* (Supererogatory) this is for a person who desire marital companionship but not necessarily sexual gratification nor procreation yet the man has the means to support the wife.
 - iv. Marriage becomes *Harám* (forbidden or prohibited) when a man exceeds the maximum limit of four (4) wives or take on a woman in the prohibitions degree.

Furthermore marriage becomes haram to a man who does not possess the means to pay for dowry or the means to maintain his wife and children.

- v. Marriage becomes *Makruh* (Detested) for a man whose means is insufficient to maintain only one wife talk less of any number beyond that. Therefore, for him to take on a second wife or more is objectionable. (p.67)

For the validity and establishment of marriage, it is most essential that the prospective husband be a Muslim, male, sane, mature, and capable of establishing a home. It is also essential for the prospective wife to be Muslim or one of the people of the scripture (Christians or Jews) and free from the conditions that make her marriage unlawful.

But it must be noted that, while comments on Q2:221, Ash Shawkāni made some remarks concerning the permission to marry a Christian or Jew lady. The verse read thus:

وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّىٰ يَأْمَنَ

On the above verse, he made the following remark:

وفي هذه الآية النهي عن نكاح المشركات, فقيل: المراد بالمشركات الوثنيات, وقيل
تعم الكتابيات لأن أهل الكتاب مشركون

(p.167)

In this verse is the prohibition against marrying polytheist women. According to some scholars, this prohibition only affects the idol worshippers. But others, submitted that it also affects the people of the Book because they are polytheists as well.

He quoted the following verse Q9:30 to support his submission.

وَقَالَتِ الْيَهُودُ عُرْيَرُ ابْنُ اللَّهِ وَقَالَتِ النَّصَارَى الْمَسِيحُ ابْنُ اللَّهِ ذَلِكَ قَوْلُهُمْ بِأَفْوَاهِهِمْ

Again, he commented on the above thus:

وقد اختلف أهل العلم في هذه الآية, فقالت طائفة: إن الله حرم نكاح المشركات فيها
والكتابيات من الجملة, ثم جاءت آية المائدة

(168)

Scholars have disregarded on the meaning of this verse. Some group said that Allah has prohibited marrying the polytheist and the people of the book generally. Thereafter, the verse in Maidah was revealed.

Consequently, any type of marriage in which one or more of the essential conditions are lacking is held to be unlawful. Hence Islām forbids the so called reciprocal marriage in which a man gives his daughter or sister in marriage on condition that the other gives his daughter or sister to him in marriage without any dowry being paid by either. (p.160) Islām also forbids temporary marriage in which it is stipulated that its duration will expire at a certain time. This types of marriage was legislated in the early days of Islām when people had to be away from their homes on account of the Religious wars. Later on, it was strictly prohibited. (p.162)

The Role of Guardian in Marriage according to *Fathul-Qadir*

Guardianship in marriage is what the scholars refer to as *Al-Waliyah fiz-Ziwaj*. Muhammad Higāb defines it as “The authority of a father or a nearest male relative over minors, insane or inexperienced person who needs protection and guardianship. (p.30). It is the woman who needs guardian because she is usually said to lack experience in practical affairs and hence may be intrigued into containments contrary to her interest.

There are divergent opinions among scholars on whether the guardian is an essential requirement for a Muslim marriage. But Ash- Shawkani asserted the necessity of guardianship by referring to Qurān 2:232 which read thus:

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَّغُنَّ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ

According to Ash-Shawkāni, the instruction contained in the above Qurānic passage is directed to the guardian of bride. This indicates the significance of obtaining the consent of the guardian prior to solemnization of the marriage. (p.35). This view of Imam Ash-Shawkāni is deduced from the cause of revelation of the Qur’ān 2:232, which is as follows:

وأخرج ابن جريروا بن المنذر عن ابن عباس قال: نزلت هذه الآية في جابر بن عبد الله الأنصاري, كانت له ابنة عم فطلقها زوجها تطليقة وانقضت عدتها, فأراد

مراجعتها فأبى جابر, فقال طلقت بنت عمنا ثم تريد ان تتكحها الثانية وكانت المرأة
تريد زوجها فأنزل الله: وإذا طلقتم النساء الخ

(p.34)

Ash-Shawkāni opines that:

Ibn Jarir and Ibn al-Mundhir related from Ibn Abbas that: this verse was revealed about Jabir Ibn ‘Abdullah al- Ansari. He had a niece and her husband divorced her once. After the expiration of her waiting period, her husband wanted her back. But Jabir refused saying: you divorced my niece and now you want to marry her again! Thus Allah revealed the verse.

وإذا ثبت هذا ففي الآية دليل على أنه لا يجوز النكاح بغير ولي لأن عم جابر كانت ثيبا
ولو كان الأمر إليها دون وليتها لزوجت نفسها ولم تحتج الى وليها معقل فالخطاب إذا
في قوله تعالى فلا تعضلوهن للأولياء وإن الأمر إليهم في التزويج مع رضاهن

When this narration is confirmed, there is an indication in the verse that marriage without the consent of guardian is not permitted. This is because Jabir’s sister was married woman (formally). Hence, if it is a right for her to get married without the permission of her guardian, she would have married herself (to the man), and she would not need, to obtain the consent of her guardian, Jabir. Therefore, the instruction contained in the world of Allah ‘Do not prevent them" is directed to the guardians. Also, the authority on the marriage is with the guardian in addition to the bride’s acceptance. (p.32)

It should be noted that the narration on which Shawkāni relies to deduce his views is authenticated by Ibn Abass, Ibn Jarir and Ibn Mundhir that this sound Hadith of Jābir verified by Bukhari is sufficient to get rid of all challenging questions connected with this Qur’ān 2:232.

وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ

Rather, it is a right of her guardian contrary to the right to have authority on their marriage of their words. (p.26)

Furthermore, Imam Ash-Shawkāni cites several proofs in his comment on Qurān 2:221.

وَلَا تَنْكِحُوا الْمُشْرِكَاتِ حَتَّى يَأْمَنَ

To indicate that guardianship is an essential requirement for the validity of marriage in Islām. Some of the proofs include:

1. Imam Ash-Shawkāni interpretation on the Qur'ān verse 2:221.

The verse reads thus:

"Do not marry (your) girl to unbelievers until they believe"

The instruction contained in this verse is directed to marriage guardians. This indicates the importance of marriage guardian as a requirement of the valid marriage.

2. A hadith of Prophet Muhammad (SAW) which says:

لَا نِكَاحَ إِلَّا بِوَالِي

Marriage is not valid except with the approval of the guardian'

3. Ash-Shawkāni's also quoted Qur'ān 4:25 which reads:

فَأَنْكِحُوهُنَّ بِإِذْنِ أَهْلِهِنَّ

Wed them with the consent of their family

He uses this verse to buttress his stand on importance of marriage guardian.

4. Another Hadith cited to this effect reads thus:

وروي الدارقطني عن أبي هريرة قال: قال رسول الله صلى الله عليه وسلم: لا تزوج المرأة المرأة ولا المرأة نفسها فإن الزانية هي التي تزج نفسها قال حديث صحيح (p.107)

It was narrated by Ad-Daraqatniy from Abi Hurayrah who said: The Prophet of Allah (S.A.W) said: Woman should not serve as a guardian to a woman, nor woman should get herself in marriage

(to a men), because it is female fornicator that weds herself to man (without guardian). Then, Ad-Dāriqutniy says; this Hadith is sound.

A number of scholars such as Imam Malik, Abi Thawar, At-Tabari, Saheed bn Musayyib, Hassan al-Basra, Sufyan at-Thawri among others uphold the proof which says: "لا نكاح إلا بولي" (there is no valid marriage) except with the approval of guardian. (p.108) However, Imam Shawkāni also cited a contrary opinion held by Abū Hamfah Az-Zuhri to this effect that:

إذا زوجت المرأة نفسها كفوا بشاهدين فذلك نكاح جائز

If a woman married herself to a man who is sufficient enough to marry her with two witnesses, the marriage is lawful (without guardian).

The Qur'anic passage cited to this effect includes Qur'an 2:232 which says:

فلا تعضلوهن أن ينكحن أزواجهن

Do not prevent them from marrying their husband

and the Qur'an 2:234 which reads:

فلا جناح عليكم فيما فعلن في أنفسهن بالمعروف

There is no blame on you if they dispose of themselves in a just and reasonable manner.

In his reaction to the above opinion, Imam Shawkāni asserted that the Qur'an 2:234 implies that widow should not be prevented from choosing new husband and wearing decoration, when they have completed their waiting period. But the authority of the solemnization of marriage still remains with their guardians. (p.60)

It should be noted from the foregoing discussion that Ash-Shawkāni justifies his stand with the use of authentic Hadith and relevant quotations from the Qur'an. It is therefore, pertinent to submit that the position of Imam Ash-Shawkāni is in line with the view of majority of Qur'anic exegetes and Islāmic jurists in Islām. (p.302)

Muhammad Bakr noted that, marrying a woman without the consent of her guardian is a denial of the right of guardian, who is after her well-being (p.139) To this effect, Abdal-"Ati asserts that marriage guardian is a synthesis of both right and duty of the guardian. (p.303) He noted

that guardian's duty is to exercise his right to give consent to his ward's wish or object to his ward's unwise choice of spouse. (p.140) However, the guardian is enjoined in the Sunnah to take his ward's wish into consideration in order to obtain her consent.

Engagement of Marriage in Islām

Islām permits the man who has intended to get married to look at the woman whom he has chosen to be his bride. Islām does not recommend a man or woman to get married blindly, otherwise, he or she may encounter a spouse he or she does not like in their various matrimonial home.

Abū Hurairah reported this tradition:

I was with the prophet when a man came and told him that he intended to get married. The prophet asked him: "Did you look at her? The man said "No The Prophet said: "Go and have a look at her before you get married (p.302)

It is against Islām to attempt the engagement of the woman who has been already engaged, or the woman who is a divorcee or a widow who is still observing her *iddah* (legal period of retirement that usually follows divorce or the husband's death). It should be clearly understood that there is a difference between marriage and engagement. As Islāmic law considers the period of engagement as an opportunity for the two parties to study each other from aloof, it forbids the couple to go further than that as long as marriage, has not taken place yet. As we have already discussed, according to the Maliki School of law, a maiden cannot contract herself in marriage without the consent of guardian. (p.141) Islām, then calls upon the guardian to work for the best interest of the women he represents. Whether the guardian is the woman's father or otherwise, he is asked to respect her wish and opinion as long as she is neither wrong nor misled.

Imam Ash-Shawkāwi opines that Islām by gives the woman's guardian the authority to consent to the marriage contract or to refuse it. It forbids the guardian at the same time to misuse his rights. He is neither allows to force the woman he represents to marry a person she does not like, nor to refuse the suitable one whom she likes. Also, dowry is exclusively the bird's right. Neither the guardian nor the husband nor anyone else is entitled by Islām to use it in any way

without her consent. Therefore, no one is allowed to give his daughter in marriage without her consent or without the required dowry. (p.7)

Categories of Women Prohibited to Marry in Islām

Islām has forbidden the Muslim to take in marriage any woman that is related to him through consanguinity (blood relationship) affinity (matrimonial relationship) and fosterness, and within those not related to him. Islām has also forbidden the Muslim certain women temporarily till the causes of prohibition have passed away. Marriage to any of those prohibited women is rendered not valid, We classify them as follows:

1. Blood Relations
 - a. Mothers and grandmothers
 - b. Daughters and their branches
 - c. Sisters, whether full, paternal or maternal
 - d. Nieces, either daughters of brothers or sisters.
 - e. Paternal or maternal aunts
2. Matrimonial Relations
 - a. Step mothers, either present or previous
 - b. Mothers -in-law
 - c. Step daughter, unless the marriage between their mother and step father has not been consummated.
 - d. Daughter -in-law
 - e. Sisters-in-law, as long as their sister is still his wife.
3. Foster-Relations

It is forbidden for the Muslim to take in marriage his foster mothers, daughters, sisters, aunts, nieces etc.

4. Non-Relations: Till the causes of prohibitions have passed away:
 - a. The woman who is still married

- b. The woman who is observing her *Iddah* (legal period retirement) that usually follows divorce or her husband's death.
- c. Difference of religions it is forbidden for a Muslim to marry the woman who is neither a Muslim nor one of the people of the scripture. (p.36)

The prohibited marriage relations are stated in the Quran as follows: Qur'ān 4:22 23.

وَلَا تَنْكِحُوا مَا نَكَحَ آبَاؤُكُمْ مِنَ النِّسَاءِ إِلَّا مَا قَدْ سَلَفَ إِنَّهُ كَانَ فَاحِشَةً وَمَقْتًا وَسَاءَ سَبِيلًا

حرمت عليكم أمهاتكم وبناتكم وأخواتكم وعماتكم وخالاتكم وبنات الأخ وبنات الأخت
وأمهاتكم اللاتي أرضعنكم وأخواتكم من الرضاعة وأمهات نسانكم وربائبكم اللاتي في
حجوركم من نسانكم اللاتي دخلتم بهن

Dissolution of the Family

Marriage in Islām, as mentioned earlier, is expected to be lifelong contract for only when the bond is a source of peace, tranquility and even happiness between the parties concerned, and for as long as it keeps the unity of the family. However, where reverse is the case, the marriage contract is bound to be terminated after all efforts to mend the defects might have proved abortive. This implies that there are certain guidelines regarding divorce prescribed by the Shariah." This is contained in Qur'an 4:35

فَاتَّكُوهن بِأذن أهلهن

Causes of Divorce

1. Impotence: This is when the man is sexually inactive.
2. Maltreatment or injustice.
3. Judicial decree: it can be pronounced sequel to marriage irregularities or a forceful marriage that is being protested.
4. Insufficient dower
5. Apostasy: Denouncement of Islām by the husband.
6. Mutual imprecation
7. Desertion of the wife (keeping away sexually from the wife for an indefinable time). (p.133)

Conditions of Divorce

Islāmic law protects the woman's right intending to prevent permanent in order to save marriage life from destruction and children from vagary. As such it has laid down certain conditions as regards the exercise of the power of divorce.

1. The husband, being Muslim, mature and in full possession of his faculty, should pronounce, when divorce is resorted to, one repudiation only. Although most of the Muslim Schools of law consider the repudiation of the wife three times at one instance as one repudiation only, it is absolutely prohibited for the husband to do so. Imam Ash-Shakāni asserted on the issue

"Rukana Ibn Abu-Yazid said he divorced his wife Suhaima three repudiations at one instance and when the Prophet was informed of that, the man said: "I swear by Allah that I meant it to be only a single utterance of divorce". Allah's Messenger asked him if it was so, and when he assured him that it was, he restored her to him. Then, the man divorced her in the time of Umar and the third time in the time of Uthman'. Transmitted by Tirmidh and others. (Pp.7-8)

The object of this limitation is to give the couple the opportunity to come to their sense within the wife's waiting period and revoke the repudiation. Perhaps the husband has pronounced it in a moment of excitement or strain. No doubt, this corresponds with this text of the Qur'an. (p.133)

2. The second condition is that the repudiation must be pronounced when the wife is in the state of purity in which she had not been approached sexually.
3. The husband must abstain from having sexual intercourse with his divorcee as soon as the repudiation is pronounced.

"Abdullah Ibn Umar divorced his wife when she was menstruating. When Umar mentioned the matter to the Prophet he became angry and said: Let him take her back and retain her till she be pure and again have courses and again gets pure. Then if he thinks it prudent let him divorce her, but he should do when she is clean and has not been approached: and this is

the period of retirement 'iddah' which Allah has ordered for divorce.
(p.230)

The purpose of this condition, according to some commentators, is to avoid a rash and a hasty procedure on the part of the husband through aversion arising from the wife's impurity and by fixing a long period of abstinence to give him opportunities to reconsider his decision about the divorce. So that perchance he may repent and exercise the right of return before the expiry of the term.

4. The formula of divorce such as "you are divorced", is either stated by word of mouth or through any action which amounts to the same thing like writing (p.232)

Family Planning and its stand in Islām

One of the most controversial issues in Islām in this contemporary society is the concept of family planning. Some Muslims have gone so deep in their hatred for this concept that they do not like it to be discussed at all. Their perception on the one hand is that, it is an Euro-American concept of reducing the Muslim population. But on the other hand, other Muslims view family planning as an inevitable topic of discussion because large family or over population is part of the contemporary practical problems of the black Africans in particular and the world in general. Considering the assertion that Islām is a religion that can withstand and meet the challenges of all generation, it is thus necessary to examine what family planning is all about, its concept in Islām and the views of Islām Exegetes on its practices.

Historical Background of Family Planning in Islām

It has rightly been pointed out that the practice of family planning was initially attacked in Europe and America. (Pp.27-32) Muslims in various countries also received the concept of family planning with similar reaction. The Muslims' prejudice arose even from the Arabic terminology used for its expression. According to Balogun, the term in Arabic is *Tahdidun - Nasli* meaning "limitation of off spring really strived the emotion of a section of Islāmic scholars against the practice. (p.82) It sounds irrational for a Muslim to reject the favour of Allah by limiting the number of his children on account of the fear of poverty when Allah saying Qur'ān 17:31 which read thus:

ولا تقتلوا أولادكم خشية إملاق نحن نرزقكم وإياهم

And kill not Your Children for fear of poverty. We provide for them and for you.
Surely, the killing of them is a great sin.

قال إمام الشوكاني في آية "لا تقتلوا أولادكم الخ نهاهم الله سبحانه أن لا يقتلوا
أولادهم خشية الفقر, وقد كانوا يفعلون ذلك, ثم بين لهم أن خوفهم من الفقر حتى
يبلغوا بسبب ذلك إلى قتل الأولاد لاوجه له. فإن الله هو الرزاق لعباده, يرزق الأبناء
كما يرزق الأباء, فقال "نحن نرزقهم وإياكم

Imam Ash-shawkani says on the respondent on the verse 'Do not kill your child'
He said: Allah (SWT) prohibit for there, for killing their child for fearing of poverty,
and indeed, explained to them (Arabs) on their fear of poverty until they reached
certain stage on the circumstances leading to family planning there is no way for
it. Verily Allah He is the provider for His servant, He gives the child as also gives
the father, and Allah said we are the provider.

Considering the fact that the expression did not allow the Muslims to even see the rationale
behind this concept, it was then changed to the present expression as "*Tanzi-mul-Usrat* (تنظيم
الأسرة) meaning "Family Planning" The family planning, spacing and control started in Europe in
18th century due to domestic and personal objective as follow:

- i. Due to a situation that woman reproduction outstrip food production because of an industrial revelation that made rural of populace or rural bevellers to leave for urban areas under factices and companies.
- ii. The take away home or the salary could not take a worker anywhere with the large family such they inclined to programme of family planning looking for job

- iii. For the family support the husband in Europe proposed re-involvement of their women folk in public services under factory and government organization so that they assist in maintenance of a family. On this ground the idea of birth control, spacing and the planning for the interest of a woman was initiated. So that she could freely and physically dry attend to office.
- iv. With the women working class, they resorted to maintain their badly shape by dryness from giving any birth such a technique and sharp making is known as coca-cola bottle shape in other words they called it physically beauty. (p.83)

Islām and Family Planning

In the early day of Islām, Muslims particularly the companions some adopted family planning due to economic reasons and social objectives.

Economically, they inclined to plan their families, because of the hardship and poverty, to maintain their children, while on the other hand they inclined to plan for fear of getting themselves into a shortage of income to maintain a family. (p.36) But socially some inclined to the planning to avoid giving birth to a female child who according to them she might bring a bad name to the family due to an evil acts of fornication and other sexual abuses. (p.211)

However, the means and method adopted by the early Muslims to control a birth was a withdrawal method which is an act of sexual contact but without an ejaculation of semen within the private of a woman's in response, the Prophet (SAW) remain silent and he not forbid any one from such practices, except one day, he made a remark by saying:

لو أراد الله أن يخلقه ما فعله

(p.233)

If God decreed to create, you cannot succeed in withdrawal

In support to this assertion, Imam Ash-Shawkāni reported this Hadith on a man who went to the Prophet said:

I have get a girl who is our slave, and I am having intercourse with her while I dislike that she should conceive. The Prophet said do *azl* (withdrawal method) with her if you like. (p.212)

From the foregoing Hadith one clearly deduces on indisputable fact that the aim or intention of those companions for *AzI* (i.e. withdrawal method) was the same as that of the supporters of family planning today in the control of child birth. The intention was clearly expressed in the later Hadith that the man did not go his slave or wife to conceive and the Prophet was the one who recommended withdrawal to him. Hence, for the claim that those who practice family planning do not have confidence and trust in Allah conflicts with the practices of the *Sahabah* in this regard. Based on their argument Allah says in the Qur'an 24:58 which read thus:

يَا أَيُّهَا الَّذِينَ آمَنُوا لِيَسْتَأْذِنُكُمُ الَّذِينَ مَلَكَتْ أَيْمَانُكُمْ وَالَّذِينَ لَمْ يَبْلُغُوا الْحُلُمَ مِنْكُمْ ثَلَاثَ مَرَّاتٍ مِنْ قَبْلِ صَلَاةِ الْفَجْرِ وَحِينَ تَضَعُونَ ثِيَابَكُمْ مِنَ الظَّهْرِ وَمِنْ بَعْدِ صَلَاةِ الْعِشَاءِ ثَلَاثُ عَوْرَاتٍ لَكُمْ لَيْسَ عَلَيْكُمْ وَلَا عَلَيْهِمْ جُنَاحٌ بَعْدَئِذٍ طَوَّافُونَ عَلَيْكُمْ بَعْضُكُمْ عَلَى بَعْضٍ

O You who believe! Let Your legal slaves and slave-girls, and those among You who have not come to the age of puberty ask Your permission (before they come to Your presence) on three occasions; before Fajr (morning) prayer, and while You put off Your clothes for the noonday (rest), and after the 'Isha (late-night) prayer. (These) three times are of privacy for you, other than these times there is no sin on You or on them to move about, attending (helping) You each other. Thus Allah makes clear the *Ayat* (the Verses of This Qur'an, showing proofs for the legal aspects of permission for visits, etc.) to you, and Allah is All-Knowing, All-Wise.

The Position of Islām Towards Family Planning

- a. In support: Islām accept family planning programme on two (2) conditions only.
 - i. For the rescue of health of a woman.
 - ii. For the rescue of life of a pregnant woman. (p.213)
- b. Against the family planning programme: Islām condemn and prohibited family planning. On the following conditions.

- i. On an economic reason due to poverty, Islām does not allowed any act of family planning because of the fact, Allah is the sustainer of every living object.
 - ii. For sexual reason, in other word for dryness and shape making by a woman, it is not allowed by Islām.
 - iii. Due to the side effect of all the artificial contraceptives, it is not allowed by Islām.
- (p.186)

Conclusion

From the researcher's discussion so far, Imam Ash-Shawkāni comments on some legal verses have been examined particularly with regard to marital issue raised by him from such legal verses. Therefore, the study identifies Imam Ash-Shawkāni's positions on the three issues selected by the researcher as raised in *Tafsir, Fathul-Qadir al-Jāmiu'u Bainan Fannir-Riwayyah wad-Dirayyah min ilmit-Tafsir*, Thus, it is discovered that Ash-Shawkāni cites divergent views of jurist and exegetes while giving the injunctions on the issues raised by him from his interpretation of the legal passages. In addition, the stand of Shawkāni on the scholars' opinions as cited in *Fathul-Qadir* is appraised in this paper.

However, it is noted that at times Imam Shawkāni did not indicate his rejection or acceptance of divergent views of scholars cited by him in his *Tafsir*. It should be noted that this is due to the fact the Quranic passages in contention carry different connotations. Perhaps, it is for this reason that Shawkāni deliberately left the readers of his *Tafsir* to decide which view is appropriate and genuine regarding the intended meaning of some legal verses.

Furthermore, it is noted that most of the views on which Imam Ash-Shawkāni indicated his position contain relevant Qur'ānic proofs and sound traditions of the Prophet. Besides, Shawkani used to consider the causes of revelation as well as sound opinion of early scholars. However, it is noted that a very few Hadith to which Shawkāni referred are considered by some scholars of Hadith as weak. Obviously, Imam Shawkani's erudition is evident in his abilities to raise copious topical issues related to matrimonial life, divorce, family planning etc. Such issues as wife's right to claim back the dowry waved by her, and the prohibition of marriage on account

of fornication with a daughter or mother of a prospective wife, are discussed by this present exegetes of the Qur'āan.

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