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A Jurisprudential and Ethical Analysis of Spouses' Right to Procreation and Population Growth

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ABSTRACT

Procreation occupies a central yet contested position in Islamic family law, situated between moral aspiration, legal structure, and personal autonomy. Contemporary demographic concerns and expanding reproductive technologies have intensified longstanding questions about whether procreation within marriage constitutes an enforceable obligation, a discretionary choice, or a legally protected right. This article offers an integrated jurisprudential and ethical analysis of spouses' right to procreation (*istilād*) within Imāmī Islamic jurisprudence. It first clarifies the conceptual distinction between *haqq* (right) and *ḥukm* (rule), demonstrating that not every normative directive in Islamic law amounts to a personal entitlement. Building on this framework, the study examines classical and contemporary juristic positions on the attribution of reproductive rights to the husband or the wife, critically assessing arguments based on guardianship, bodily sovereignty, and analogies drawn from sexual permissibility. The analysis shows that unilateral models of reproductive authority are doctrinally weak and ethically problematic. The article then advances a relational understanding of procreation as a non-financial, personal, and reciprocal right embedded within the cooperative structure of marriage. Such a right is waivable under certain conditions, non-transferable, and resistant to coercive enforcement, yet ethically guided by considerations of responsibility, dignity, and mutual consent. The study further argues that procreation is not an essential element of marriage but a default implication that may be shaped by the spouses' circumstances and agreements, with important distinctions between permanent and temporary marriage. By integrating fiqhī analysis with ethical reasoning, the article provides a coherent framework for addressing contemporary reproductive disputes in family law and bioethics while preserving the moral significance of childbearing and the dignity of spouses.

Keywords: Procreation; *Istilād*; Islamic Jurisprudence; Marital Rights; Reproductive Ethics; Family Law

Introduction

Procreation has long been regarded as one of the most fundamental human capacities, situated at the intersection of biology, law, morality, and theology. At its most basic level, the ability to bring forth offspring is a natural potential embedded within human existence, yet this potential has never been understood as merely biological. Across religious traditions and legal systems, procreation has been interpreted as a meaningful act with normative significance, shaping family structures, social continuity, and moral responsibility. In Islamic thought, reproduction is not treated as a morally neutral event but as an act embedded within a divinely oriented vision of human life, where lineage, responsibility, and ethical intention play decisive roles (1). Jurisprudential discussions



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within Imāmī fiqh have historically addressed procreation under concepts such as marriage, lineage, and sexual relations, reflecting the view that reproductive capacity carries both legal consequences and moral weight (2). At the same time, modern legal discourse increasingly frames procreation through the language of individual rights, autonomy, and personal choice, particularly in relation to bodily integrity and privacy (3). This dual positioning of procreation as both a moral good and a personal entitlement has generated a complex normative landscape that demands careful analysis.

In contemporary societies, the issue of procreation has acquired renewed urgency due to sustained declines in fertility rates and growing demographic concerns. Many states now confront aging populations, shrinking labor forces, and long-term challenges to social welfare systems, prompting heightened policy attention to population growth and family formation (4). These demographic anxieties have led governments to encourage childbirth through financial incentives, legal reforms, and public discourse that emphasizes the social value of reproduction. In societies influenced by religious norms, such policy debates are often accompanied by ethical appeals rooted in the preservation of family and lineage, concepts deeply embedded in Islamic jurisprudence (5). However, this renewed emphasis on population growth also intensifies tensions between collective interests and individual reproductive autonomy. While demographic policies may seek to promote higher fertility, individuals and couples increasingly assert control over reproductive decisions, informed by economic constraints, health considerations, and personal life plans (6). The result is a normative friction between state-oriented demographic objectives, religious expectations regarding procreation, and contemporary conceptions of personal freedom.

This tension becomes particularly visible within marriage, where procreation has traditionally been viewed as one of the central purposes of the marital bond. Classical Imāmī jurists frequently described marriage as the legitimate framework for sexual relations and lineage formation, thereby linking marital intimacy with the potential for offspring (7). At the same time, juristic discussions also recognized practices such as coitus interruptus ('azl), suggesting that procreation was not always treated as an absolute or compulsory outcome of marriage (8). Modern ethical discourse further complicates this picture by emphasizing reproductive choice and mutual consent between spouses, particularly in light of medical advances that allow for both the facilitation and prevention of conception (9). These developments raise fundamental questions about whether procreation within marriage should be understood as a shared moral aspiration, an enforceable legal right, or a discretionary choice subject to individual preference.

Against this background, the legal–fiqhī nature of procreation remains deeply ambiguous. One of the central unresolved issues is whether procreation constitutes a right (ḥaqq) belonging to one or both spouses, or whether it is better characterized as a normative rule (ḥukm) tied to the institution of marriage itself. Classical juristic literature often employs the language of rights and obligations in relation to marital relations, yet it does not always clearly distinguish between entitlements that may be waived and normative directives that remain binding regardless of individual consent (10). This ambiguity has practical consequences. If procreation is conceived as a right, questions immediately arise concerning its holder: does the right belong to the husband, the wife, or both jointly? If it is a right, can it be waived, restricted, or transferred through agreement? Conversely, if procreation is treated as a rule inherent to marriage, the scope for individual discretion becomes significantly narrower, and refusal to procreate may be framed as a violation of marital norms (11).

Closely related to this conceptual uncertainty is the question of enforceability. If spouses possess a right to procreate, can one spouse legally compel the other to pursue conception? Classical fiqh discussions concerning

sexual availability, obedience, and marital duties have sometimes been invoked to support asymmetric claims of reproductive authority (12). Yet contemporary ethical reasoning challenges such unilateral control, emphasizing bodily autonomy and mutual consent as foundational principles of marital justice (6). On the other hand, if one spouse seeks to prevent procreation, whether through contraception or other means, does this constitute an infringement of the other spouse's rights? Juristic debates surrounding 'azl illustrate the complexity of this issue, as they reflect both permissive and restrictive attitudes toward intentional prevention of conception (13). These debates underscore the absence of a unified framework capable of reconciling classical jurisprudence with contemporary ethical expectations.

Another critical area of uncertainty concerns the validity of agreements related to procreation. Modern marital practice increasingly includes explicit or implicit understandings about whether spouses intend to have children, how many, and under what conditions. From a legal perspective, the enforceability of such agreements depends on whether they are compatible with the essential nature of marriage (14). Some jurists have argued that conditions negating procreation undermine the objectives of marriage and are therefore invalid, while others have adopted a more flexible approach that prioritizes contractual freedom (15). Ethical analysis further complicates this issue by questioning whether it is morally legitimate to bind oneself or another to irreversible reproductive decisions, particularly in light of changing circumstances over the course of a marriage (16). The lack of clarity surrounding these agreements creates significant challenges for courts, counselors, and policymakers.

The practical implications of these unresolved questions are far-reaching. In family law adjudication, judges are increasingly confronted with disputes in which one spouse alleges harm arising from the refusal to procreate or the unilateral prevention of conception. Without a coherent doctrinal framework, judicial responses risk inconsistency and normative incoherence (17). In the domain of medical law, reproductive technologies such as assisted reproduction, fertility preservation, and long-term contraception raise additional questions about consent, responsibility, and the limits of spousal authority (18). Ethical governance of fertility decisions must also grapple with broader societal concerns, including demographic sustainability and intergenerational justice, while avoiding coercive or paternalistic interventions (4). These challenges underscore the urgent need for a systematic analysis of procreation that integrates jurisprudential precision with ethical sensitivity.

Despite the richness of existing scholarship, the literature on procreation remains fragmented. Legal studies often focus on statutory rules and judicial practice without engaging deeply with the underlying fiqhī concepts that continue to shape normative expectations in Islamic societies (19). Jurisprudential works, for their part, frequently analyze procreation within narrow doctrinal debates, such as the permissibility of 'azl, without situating these discussions within a broader ethical framework (20). Ethical analyses, meanwhile, tend to address reproductive issues in isolation from the concrete legal structures governing marriage and family life (9). As a result, there is a noticeable absence of integrated studies that examine procreation simultaneously as a legal entitlement, a moral responsibility, and a social institution.

The present study seeks to address this gap by offering an integrated jurisprudential–ethical analysis of spouses' right to procreation. Its original contribution lies in systematically differentiating between *haqq* (right) and *hukm* (rule) as analytical categories and applying this distinction to the concept of *istilād*. By reassessing classical fiqh sources in light of contemporary ethical reasoning, the study aims to clarify whether procreation should be understood as a waivable entitlement, a shared moral expectation, or a normative directive inherent to marriage (21). This approach allows for a more nuanced understanding of spouses' reciprocal entitlements and the legitimate limits of

reproductive decision-making. Rather than framing procreation as either purely individual or wholly collective, the study explores the possibility of conceptualizing it as a relational right grounded in mutual responsibility and ethical deliberation.

Methodologically, the study adopts a doctrinal-analytical approach grounded in classical and contemporary Imāmī fiqh. Foundational juristic texts are examined to reconstruct the underlying principles governing marriage, sexual relations, and lineage, with particular attention to how rights and obligations are articulated (7). These sources are then analyzed in dialogue with modern legal scholarship on family law and personal status, allowing for a contextualized understanding of how fiqhī concepts operate within contemporary legal systems (14). Ethical reasoning is drawn from Islamic moral philosophy and contemporary bioethical discourse, emphasizing values such as human dignity, mutual consent, and responsibility (1). While the study remains primarily focused on Imāmī jurisprudence, it maintains limited comparative sensitivity by engaging selectively with international ethical discussions on reproductive rights, without embarking on a full comparative law analysis (22). Through this integrated framework, the study aims to provide a coherent and practically relevant account of procreation that speaks to jurists, legal practitioners, and ethicists alike.

Conceptual and Normative Foundations: Right, Rule, and Procreation

The concept of “right” (ḥaqq) occupies a central position in Islamic jurisprudence and functions as one of the primary analytical tools for regulating social relations, legal entitlements, and moral claims. Linguistically, ḥaqq conveys meanings such as truth, firmness, and entitlement, and it is often contrasted with falsehood or arbitrariness. In juristic usage, however, the term acquires a more technical sense, referring to a legally recognized authority or claim that is attributed to a specific subject and protected by the normative order of the Sharī‘ah (19). Classical Imāmī jurists frequently employed the concept of ḥaqq to describe powers or interests that the law acknowledges for individuals in relation to others, to property, or to particular acts, thereby distinguishing such claims from purely moral exhortations or divine commands (2). This technical usage underscores that a right is not merely an abstract moral ideal but a structured legal relationship that entails recognition, protection, and, in many cases, enforceability.

Within Islamic jurisprudence, a right is generally understood as a legally protected entitlement that enables its holder to exercise control, demand performance, or prevent interference within a defined scope. Jurists have emphasized that the defining feature of a right is its attribution to a determinate subject, such that it can be meaningfully claimed, exercised, or relinquished by that subject (10). This attribution distinguishes rights from general norms that apply uniformly without conferring individualized claims. In this sense, a right establishes a relational structure between the right-holder and others, often generating correlative duties. For example, the right of ownership entails corresponding obligations on others to refrain from interference, while the right arising from a contract generates duties of performance on the contracting parties (5). The legal character of ḥaqq thus lies in its capacity to structure expectations and responsibilities in a manner that is intelligible within adjudicative and normative frameworks.

Islamic jurisprudence further refines the concept of right through various classifications that illuminate its scope and function. One of the most significant distinctions is that between general (‘āmm) and specific (khāss) rights. General rights refer to entitlements that are broadly attributed to categories of persons or to the public at large, such as the right to security or basic human dignity, which are grounded in overarching principles of justice and welfare (1). Specific rights, by contrast, are individualized claims that arise from particular legal relationships, such as

marriage, contract, or kinship, and are enforceable against specific persons (11). This distinction is crucial for analyzing procreation, as it raises the question of whether reproductive claims should be understood as general human entitlements or as specific rights emerging from the marital bond.

Another foundational distinction within the theory of rights concerns the differentiation between financial and non-financial rights. Financial rights are those that have direct economic value and are typically transferable, inheritable, and subject to compensation, such as ownership or debt claims (17). Non-financial rights, on the other hand, pertain to personal status, bodily integrity, and relational interests that do not lend themselves to monetary valuation, including rights related to marriage, parenthood, and personal dignity (15). Procreation, insofar as it relates to bodily capacity, lineage, and family formation, clearly falls within the domain of non-financial rights. This classification has significant implications, as non-financial rights are often treated with greater sensitivity and are subject to stricter limitations on transfer and commodification (3).

Classical jurists have also identified several characteristics that distinguish rights from other normative constructs. One of the most important of these is waivability (*isqāt*), meaning that the holder of a right may, under certain conditions, relinquish or forgo it. The possibility of waiver reflects the personal nature of rights and their grounding in individual interest or authority (13). Jurists have consistently emphasized that a right that cannot, in principle, be waived by its holder is more properly classified as a divine rule rather than a personal entitlement (21). This criterion plays a decisive role in debates about reproductive matters, particularly when assessing whether a spouse may voluntarily renounce claims related to procreation.

Transferability constitutes another defining feature of many rights, though its applicability varies depending on the type of right in question. Financial rights are generally transferable through sale, gift, or inheritance, whereas non-financial rights are often considered inherently personal and thus non-transferable (19). Islamic jurists have been cautious in allowing the transfer of rights that implicate personal status or bodily integrity, as such transfers risk undermining human dignity and moral agency (1). This limitation is particularly relevant to reproductive rights, which cannot plausibly be alienated or assigned to third parties without violating core ethical principles.

A further characteristic of rights is their capacity to generate obligations against others. A right, by its very nature, implies the existence of a corresponding duty, whether it be a duty of performance, forbearance, or respect. Jurists have underscored that without such correlative obligations, the concept of a right would lose its normative significance (10). In the context of marriage, rights related to companionship, maintenance, and sexual relations are understood to entail reciprocal duties between spouses, creating a network of mutual expectations (14). Whether procreation can similarly generate enforceable obligations remains a central question that hinges on its proper classification as a right or otherwise.

In contrast to the concept of right, the notion of “rule” (*ḥukm*) occupies a distinct place in Islamic legal theory. A *ḥukm* represents a normative determination issued by the Lawgiver, prescribing or proscribing certain actions regardless of individual preference. Jurists traditionally divide rules into *ḥukm taklīfī*, which concerns obligations, prohibitions, recommendations, and permissions, and *ḥukm waḍī*, which establishes legal statuses, conditions, or effects, such as validity, nullity, or causation (7). Unlike rights, rules are not attributed to individual subjects as personal entitlements but apply universally or conditionally based on the criteria set by the law.

The distinction between *ḥukm taklīfī* and *ḥukm waḍī* is particularly important for understanding the normative structure of Islamic law. *Taklīfī* rules address moral responsibility and divine accountability, focusing on what individuals ought to do or avoid in light of religious obligations (20). *Waḍī* rules, by contrast, define the legal

consequences of actions, such as whether a contract is valid or whether a marital bond has been established (12). Neither category, however, necessarily creates a personal entitlement that may be claimed or waived by an individual. This explains why not every normative directive qualifies as a right, even if it concerns matters of profound personal significance.

A key difference between divine rules and personal rights lies in their source and function. Rules derive their authority directly from divine legislation and are binding irrespective of individual consent, whereas rights are structured around human interests and agency, allowing for discretion and choice within legally defined limits (11). For example, the obligation to perform daily prayers is a divine rule that cannot be waived or transferred, while the right to receive maintenance within marriage may be waived or modified by agreement under certain conditions (15). Confusing these two categories risks attributing enforceability to norms that were never intended to operate as personal claims, or conversely, denying agency where the law recognizes personal discretion.

The ethical dimensions of rights in Islamic thought further illuminate this distinction. Rights are not conceived merely as instruments of individual power but as morally justified claims rooted in broader values such as justice, welfare, and human dignity. Ethical justification plays a central role in determining which interests merit legal recognition as rights and how such rights should be exercised (9). Islamic moral philosophy emphasizes that the legitimacy of a right depends not only on its legal form but also on its alignment with ethical virtues, including responsibility, moderation, and consideration for others.

The relationship between ethical duty and legal entitlement is particularly salient in this regard. While legal rights empower individuals to pursue their interests, ethical duties remind them of the moral limits of such pursuit. Islamic ethics consistently cautions against the absolutization of rights in a manner that disregards communal welfare or relational obligations (16). This balanced approach suggests that the exercise of rights, including those related to reproduction, must be informed by ethical deliberation rather than treated as an unchecked assertion of autonomy.

Human dignity (*karāmah*) occupies a foundational place in Islamic ethical and legal thought and provides a critical lens for evaluating reproductive capacity. The Qur'ānic affirmation of human dignity has been interpreted by Muslim scholars as grounding a range of rights and responsibilities associated with bodily integrity, moral agency, and family life (1). Reproductive capacity, as an aspect of human embodiment, is therefore not merely a biological function but a dimension of dignified human existence that demands respect and ethical consideration (6). This perspective resists both the instrumentalization of reproduction for purely demographic ends and its reduction to an isolated personal preference detached from moral context.

Against this conceptual backdrop, the classification of procreation (*istīlād*) as either a right or a rule requires careful analysis. One of the primary criteria for such classification is enforceability. If procreation were a rule inherent to marriage, it would imply that spouses are under a binding obligation to pursue reproduction, potentially allowing coercive enforcement (8). However, the absence of clear juristic mechanisms for compelling procreation, combined with the permissibility of practices that prevent conception, suggests that procreation does not function as a categorical rule in this sense (13). This observation points toward understanding procreation as a domain of discretion rather than compulsion.

Waivability constitutes a second criterion. The fact that classical jurists recognized circumstances in which spouses might agree to limit or avoid procreation indicates that reproductive claims are, at least to some extent, subject to waiver (23). Such waivability is difficult to reconcile with the notion of procreation as a non-negotiable

rule, as rules by definition do not admit voluntary suspension by their subjects. This further supports the classification of procreation as a right rather than a rule.

Reciprocity provides a third criterion for evaluation. Rights within marriage are typically reciprocal, reflecting the relational nature of the marital bond. If procreation is understood as a right, it cannot plausibly belong exclusively to one spouse without undermining the ethical principle of mutuality that underlies Islamic conceptions of marriage (14). Ethical analyses of reproductive decision-making emphasize shared deliberation and consent as essential components of marital justice (6). This reciprocity aligns with the understanding of procreation as a joint, non-financial personal right grounded in ethical responsibility rather than unilateral authority.

Taken together, these criteria support a preliminary positioning of procreation as a non-financial, personal right with strong ethical grounding. Such a right is neither absolute nor purely discretionary; it is shaped by moral considerations, relational obligations, and the overarching value of human dignity. This conceptualization allows for recognition of spouses' interests in reproduction while resisting coercive interpretations that conflict with both juristic principles and ethical reasoning (22). By situating procreation within the framework of rights rather than rules, it becomes possible to articulate a nuanced account that accommodates personal agency, mutual consent, and ethical responsibility within the marital relationship.

Jurisprudential Analysis of Spouses' Right to Procreation

The concept of *istīlād* occupies a distinct position within Islamic jurisprudence, reflecting a careful differentiation between the biological capacity to reproduce and the legal recognition of reproductive claims within marriage. Linguistically, *istīlād* derives from the root *w-l-d*, which denotes birth, generation, and offspring, and in its verbal form signifies the act of seeking or producing a child. In juristic discourse, however, *istīlād* does not merely describe a natural process but functions as a normative concept associated with lawful sexual relations, lineage formation, and the legal consequences that follow from procreation (2). Classical jurists employed the term primarily in discussions related to marriage, concubinage, and the attribution of lineage, indicating that reproduction becomes legally meaningful only when it occurs within a recognized juridical framework (5). This usage demonstrates that *istīlād* is not treated as an automatic extension of biological fertility but as a legally mediated phenomenon.

This distinction between biological capacity and legal entitlement is central to understanding the jurisprudential treatment of procreation. While every human being may possess the physical ability to reproduce, Islamic law does not confer legal significance upon reproduction in the absence of a valid marital or quasi-marital relationship. Jurists consistently emphasized that lineage (*nasab*) and its attendant rights and obligations arise only through legally sanctioned relationships, underscoring the idea that reproduction becomes a matter of law and ethics only when embedded within normative structures (7). Consequently, the capacity to bear children does not in itself generate a legal right to demand or compel procreation. Rather, any claim related to *istīlād* must be grounded in the legal institution of marriage and interpreted through the principles governing marital relations.

The question of whether the right to procreation is attributed primarily to the husband has been a recurring theme in classical jurisprudence. One of the most frequently cited arguments in this regard is rooted in the concept of *qiwāmah*, often translated as male guardianship or responsibility within the family. Jurists drawing on this concept have argued that because the husband bears primary responsibility for financial maintenance and overall family management, he consequently enjoys a broader scope of authority within marital life (11). From this perspective,

procreation is sometimes framed as falling under the husband's prerogatives, particularly insofar as it relates to decisions about family size and continuation of lineage.

Another classical argument supporting the attribution of reproductive rights to the husband relies on the permissibility of 'azl, or coitus interruptus. Many jurists held that the husband may lawfully withdraw prior to ejaculation under certain conditions, a position that has been interpreted as evidence of male control over the reproductive outcome of sexual relations (8). On this basis, some scholars reasoned that if the husband possesses the right to prevent conception through 'azl, he must also possess the primary right to initiate or demand procreation. This line of reasoning treats control over ejaculation as tantamount to control over reproduction, thereby situating the right to *istīlād* within the husband's domain.

However, a critical assessment of these arguments reveals significant limitations. With respect to *qiwāmah*, contemporary juristic and legal analyses emphasize that guardianship in Islamic law is functional rather than absolute. *Qiwāmah* is linked to responsibility and obligation, particularly financial maintenance, rather than unrestricted authority over the bodily or reproductive autonomy of the wife (14). Extending *qiwāmah* to justify unilateral reproductive control risks conflating managerial responsibility with personal entitlement, a move that lacks clear textual or doctrinal support. Moreover, guardianship does not negate the wife's status as a morally and legally responsible agent, a principle repeatedly affirmed in Islamic jurisprudence (1).

The analogy between the permissibility of 'azl and the attribution of reproductive rights to the husband is likewise problematic. Jurists who permitted 'azl often did so on the basis of specific evidentiary considerations and contextual factors, rather than as a blanket endorsement of male reproductive dominance (13). Importantly, permissibility does not equate to exclusive entitlement. The fact that a particular act is allowed under certain conditions or circumstances does not automatically generate a corresponding right to compel its opposite. Moreover, many jurists conditioned the permissibility of 'azl on the consent of the wife, thereby undermining the claim that reproductive decision-making lies solely with the husband (23). Treating sexual access as synonymous with reproductive control thus represents a misuse of analogy that overlooks the distinct normative dimensions of intimacy and procreation.

In contrast to male-centered approaches, some jurists and contemporary scholars have argued that the right to procreation should be attributed to the wife, drawing primarily on principles of bodily sovereignty (*saltanah 'alā al-nafs*) and the moral significance of motherhood. The principle of bodily sovereignty holds that every individual possesses authority over their own body, subject only to legitimate legal and moral constraints (19). From this perspective, the wife's capacity to conceive and bear children is intimately tied to her bodily integrity, health, and lived experience, suggesting that reproductive decisions cannot be made without her consent.

Advocates of this view further emphasize the ethical and emotional dimensions of motherhood. Bearing and raising children involves profound physical, psychological, and social commitments that fall disproportionately upon women. Recognizing a wife's right to motherhood thus reflects an appreciation of these realities and aligns with broader Islamic ethical commitments to justice and compassion (1). Some contemporary legal analyses frame reproductive choice as an extension of personal status rights, arguing that just as a woman cannot be compelled into marriage, she cannot be compelled into motherhood (15).

Despite the intuitive appeal of these arguments, their evidentiary strength within classical jurisprudence remains contested. While the principle of bodily sovereignty is widely acknowledged, jurists have traditionally balanced it against other considerations, including marital obligations and communal interests (10). Moreover, classical sources

rarely articulate a distinct, unilateral right to motherhood that would override the reciprocal nature of marital relations. The absence of explicit textual evidence attributing exclusive reproductive rights to the wife has led many jurists to approach such claims with caution, emphasizing instead the need for mutual accommodation within marriage (12).

These limitations point toward a more compelling alternative: understanding procreation as a joint or reciprocal right of the spouses. Marriage in Islamic jurisprudence is not conceived as a hierarchical relationship of domination but as a cooperative institution grounded in mutual rights and responsibilities. Jurists consistently described marriage as a contract that establishes reciprocal entitlements, including companionship, intimacy, and mutual support (2). Viewing procreation through this relational lens aligns with the broader structure of marital rights, which are rarely unilateral and typically require cooperation and consent.

Conceptualizing procreation as a shared relational right avoids the pitfalls of attributing reproductive authority exclusively to one spouse. It recognizes that both husband and wife have legitimate interests in reproduction while acknowledging that these interests must be harmonized through mutual deliberation. Ethical analyses of reproductive decision-making underscore the importance of shared responsibility and dialogue, particularly given the long-term consequences of childbearing for both spouses and for the family as a whole (6). This reciprocal model also resonates with contemporary legal approaches that emphasize partnership and equality within marriage (17).

The legal consequences of recognizing procreation as a reciprocal right are significant. First, it precludes unilateral compulsion, whether by the husband or the wife, thereby safeguarding bodily autonomy and personal dignity. Second, it frames disagreements over reproduction as matters requiring negotiation rather than coercion, encouraging ethical resolution rather than legal enforcement. Courts operating within such a framework would be less likely to impose rigid outcomes and more inclined to consider contextual factors, such as health, economic capacity, and marital harmony (14). Finally, a reciprocal understanding of procreation provides a coherent basis for evaluating agreements between spouses, allowing for flexibility while preserving the ethical core of marriage.

The relationship between procreation and the essence or implication of marriage further clarifies this analysis. A longstanding juristic debate concerns whether procreation constitutes an essential element of marriage or merely a default implication (*muqtadā al-itlāq*). If procreation were essential, a marriage devoid of reproductive intent would be conceptually defective. However, classical jurisprudence does not support this conclusion. Jurists recognized the validity of marriages in which procreation was unlikely or impossible, such as marriages involving infertility or advanced age, indicating that reproduction is not a constitutive element of the marital contract (5).

Instead, many jurists treated procreation as a default implication of marriage, meaning that it is ordinarily expected but not strictly required unless explicitly stipulated. This approach allows for the presumption that marriage naturally opens the possibility of childbearing while preserving the parties' ability to modify this implication through agreement (8). The concept of *muqtadā al-itlāq* thus provides a flexible framework that accommodates both the normative value of procreation and the reality of diverse marital circumstances.

The distinction between permanent and temporary marriage further illustrates this flexibility. In permanent marriage, procreation is commonly regarded as a significant objective, and social and ethical expectations surrounding childbearing are correspondingly strong (24). In temporary marriage, by contrast, jurists have often assumed the absence of reproductive intent, treating such unions as oriented primarily toward companionship or lawful intimacy rather than family formation (21). This differentiation demonstrates that Islamic jurisprudence does

not impose a uniform reproductive mandate across all forms of marriage, reinforcing the view that procreation functions as a contextual and relational right rather than an absolute rule.

Taken together, these jurisprudential analyses support a nuanced understanding of spouses' right to procreation. *Istilād* emerges not as a unilateral entitlement vested exclusively in the husband or the wife, nor as an immutable rule imposed by the Lawgiver, but as a shared, non-financial right embedded within the cooperative structure of marriage. This right is shaped by ethical considerations, reciprocal responsibilities, and the broader objectives of family life. Such an understanding preserves the moral significance of procreation while respecting personal dignity and relational justice, offering a coherent framework for addressing contemporary reproductive dilemmas within Islamic law and ethics (22).

Conclusion

The analysis undertaken in this study demonstrates that the question of procreation within marriage cannot be reduced to a simple dichotomy between individual choice and legal obligation. Rather, it emerges as a complex normative issue situated at the intersection of jurisprudence, ethics, and the lived realities of marital life. By examining the conceptual foundations of rights and rules in Islamic jurisprudence and applying them to the notion of *istilād*, the study has shown that procreation occupies a distinctive position that resists classification as either a purely discretionary personal preference or a binding legal mandate imposed upon spouses.

One of the central conclusions of this study is that procreation does not constitute an essential element of marriage in the strict legal sense. Islamic jurisprudence recognizes the validity of marriage even in the absence of reproductive capacity or intent, indicating that the marital bond is not contingent upon the production of offspring. At the same time, procreation remains a deeply significant objective and a default implication of marriage, reflecting its moral, social, and relational importance. This dual status allows Islamic law to affirm the value of childbearing without transforming it into a coercive requirement that overrides personal circumstances and ethical considerations.

The study further concludes that attributing the right to procreation exclusively to one spouse is neither doctrinally sound nor ethically defensible. Classical arguments that seek to vest reproductive authority solely in the husband, whether through appeals to guardianship or analogies drawn from permissibility of certain sexual practices, fail to account for the limited and functional nature of marital authority. Similarly, attempts to ground exclusive reproductive rights in the wife, based solely on bodily sovereignty or moral claims to motherhood, do not fully align with the reciprocal structure of marital rights in Islamic law. Marriage is fundamentally a cooperative institution, and reproductive decision-making must be understood within this relational framework.

Recognizing procreation as a shared and reciprocal right of the spouses offers a more coherent and balanced approach. Such a conception respects the legitimate interests of both husband and wife while acknowledging that neither party may unilaterally impose reproductive decisions upon the other. This reciprocal model affirms that procreation involves shared responsibility, mutual consent, and ethical deliberation. It also reflects the broader ethos of marital justice, which emphasizes harmony, compassion, and cooperation rather than domination or unilateral control.

Another important conclusion concerns the legal characteristics of the right to procreation. As a non-financial and deeply personal right, procreation does not lend itself to transfer, commodification, or external enforcement. Its waivability under certain conditions underscores its character as a personal entitlement rather than a divine

command. At the same time, this waivability is not absolute; it is constrained by ethical considerations, relational duties, and the broader purposes of family life. The right to procreation thus exists within a moral framework that guides its exercise without negating individual agency.

From a legal perspective, this understanding has significant implications for family law adjudication. Courts and legal authorities should refrain from treating reproductive disputes as matters suitable for coercive resolution. Instead, such disputes should be approached as ethical and relational challenges that require sensitivity to context, health, economic capacity, and the overall stability of the marital relationship. Recognizing the reciprocal nature of reproductive rights can help prevent the instrumentalization of law in ways that undermine personal dignity and marital harmony.

The ethical dimension of the analysis further highlights the importance of human dignity in reproductive matters. Reproductive capacity is an aspect of embodied human existence that carries profound moral significance. Treating procreation merely as a tool for achieving demographic goals or as an arena for asserting unilateral power risks eroding the dignity of the individuals involved. An ethically grounded approach affirms that decisions about childbearing must be guided by responsibility, compassion, and respect for the lived experiences of both spouses.

This study also underscores the adaptability of Islamic jurisprudence in addressing contemporary reproductive challenges. By carefully distinguishing between rights and rules and by grounding legal analysis in ethical reasoning, Islamic law demonstrates a capacity to engage with modern concerns such as reproductive technologies, changing family structures, and evolving conceptions of autonomy. This adaptability does not require abandoning tradition but rather reinterpreting it in light of its own normative principles.

In conclusion, procreation within marriage should be understood as a non-financial, personal, and reciprocal right with strong ethical grounding. It is neither an enforceable obligation nor a purely individual preference detached from moral responsibility. Such a conceptualization preserves the moral value of childbearing, safeguards personal dignity, and promotes marital justice. By situating reproductive rights within a relational and ethical framework, Islamic jurisprudence can offer a nuanced and humane approach to one of the most intimate and consequential aspects of human life.

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Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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