

MAQASID AL-SHARI'AH AND PRESERVATION OF BASIC RIGHTS

UNDER THE THEME "ISLAM AND ITS PERSPECTIVES ON GLOBAL & LOCAL CONTEMPORARY CHALLENGES"

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ABSTRACT

Now more than ever, there is a necessity to clarify the Shari'ah of Islam. Daily, the media, government institutions, and lobbying groups depict Islam as a religion bent on domination with the goal of enforcing the Shari'ah on Muslims and non-Muslims alike. Unfortunately, a small minority of Muslims promoting a deviant, archaic legal system far removed from the principles and purposes (Maqasid) of the spirit of Islam are complicit in perpetuating this biased narrative. We are living in a time when the religion of Islam is being maligned by outside and inside forces. The Shari'ah of today needs to be clarified as a continuation of Shari'ah. The methodology of Maqasid al-Shari'ah needs to be articulated and promoted to the Muslim and the non-Muslim alike. When the Shari'ah of Islam can be realised and clarified through universal principles and purposes (Maqasid), the Muslim community (Ummah) can rectify Islam from those who have corrupted the tradition from within. The Ummah of the Prophet (p.b.u.h) needs to be awakened from its slumber and turn to the higher Fiqh (Maqasid al-Shari'ah) to renew (Tajdid) and infuse the spirit of Islam into the hearts and minds of the believers. This study discusses the Maqasid al-Shari'ah, its history and background, the famous three categories of Maqasid al-Shari'ah and its preservation of five basic rights. Today the world wants to know the relationship between the human rights and Shari'ah. This paper is a step in that direction based on a framework of analyses that exemplifies the spirit of Islamic law in its treatment and guidance of mankind.

Keywords: Maqasid, Shari'ah, Basic Rights, Life, wealth, Property, Qur'an, Sunnah, Fiqh, History.

Introduction

Definition Of Maqasid Al- Shari'ah

The term 'Maqasid' (plural: of *Maqsad*) refers to a purpose, objective, principle, intent, goal, end,¹ *telos* (Greek), *finalite* (French), or *Zweck* (German).² *Maqasid* of the Islamic law are the objectives/purposes/intents/ends/principles behind the Islamic rulings.³ For a number of Islamic legal theorists, it is an alternative expression to people's 'interests' (*Masalih*). For example, Abdul-Malik al-Juwaini (d.478 AH/ 1185 CE), one of the earliest contributors to *al-Maqasid* theory as we know it today (as will be explained shortly) used *al-Maqasid* and public interests (*al-Masalih al-'ammah*) interchangeably.⁴ Abu Hamid al-Ghazali (d.505 AH/1111 CE) elaborated on a classification of *Maqasid*, which he placed entirely under what he called 'unrestricted interests' (*al-Masalih al-mursalah*).⁵ Fakhruddin al-Razi (d.606 AH/1209 CE) and al-Amidi (d.631 AH/1234 CE) followed al-Ghazali in his terminology.⁶ Najmuddin al-Tufi (d.716 AH/1316 CE), defined *maslahah* as, 'what fulfils the purpose of the Legislator.'⁷ Al-Qarafi (d.1285 AH/1868 CE) linked *maslahah* and *Maqasid* via a 'fundamental rule' that: 'A purpose (*Maqasid*) is not valid

¹ Mohammad al-Tahir Ibn Ashur, *Ibn Ashur-Treatise on Maqasid Al-Shariah*, trans. Mohamed El- Tahir El-Mesawi, vol. 1st (London-Washington: International Institute of Islamic Thought (HIT), 2006), p. ii. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

² Rudolf von Jhering, *Law as a Means to an End (Der Zweck im Recht)* trans. Isaac Husik, 2nd reprint ed. (New Jersey: The Lawbook Exchange (Originally published 1913 by Boston Book Co.), 2001) p.xxxv. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

³ Ibn Ashur, *Maqasid Al-Shari'ah Al-Islamiyah* p 183. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

⁴ Abdul-Malik al-Juwaini, *Ghiath Al-Umam Fi Iltiyath Al-Zulam*, ed. Abdul-Azim al-Deeb (Qatar: Wazarat al-Shu'un al-Diniyah, 1400 H) p. 253. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

⁵ al-Ghazali, *Al-Mustasfa* vol. 1, p. 172. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

⁶ Abu Bakr al-Maliki Ibn al-Arabi, *Al-Mahsul Fi Usul Al-Fiqh*, ed. Hussain Ali Alyadri and Saeed Foda, 1 ed. (Amman: Dar al-Bayariq, 1999) vol. 5, p. 222. al-Amidi, *Al-Ihkam* vol. 4, p. 286. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

⁷ Najmuddin al-Tufi, *Al-Ta'ifin Fi Sharh Al-Arba'in* (Beirut: al-Rayyan, 1419 H) p. 239. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

unless it leads to the fulfilment of some good (*maslahah*) or the avoidance of some mischief (*Mafsadah*).⁸ Therefore, a *Maqasid*, purpose, objective, principle, intent, goal, end, or principle in the Islamic law is there for the 'interest of humanity.' This is the rational basis, if you wish, for the *Maqasid* theory.

Many scholars attempted to explain the aims and objectives of *Shari'ah*. Among those outstanding scholars are Maliki Abu Ishaq Al-Shatibi, Shafie al- Izz Ibn Abd Al Salam and Hambali Ibn Qayyim Al-Jawzi. The most well-known is the great Muslim scholar Sheikh Muhammad Al-Tahir Ibn Ashur. The translation of his book on *Maqasid Al-Shari'ah* led to a breakthrough in studies of Islamic law in English literature.⁹

***Maqasid Al-Shari'ah* As Rooted In The Qur'an And Sunnah**

The primary objective of the *Shari'ah* is the realisation of benefit to the people, concerning their affairs both in this world and the hereafter. It is generally held that the *Shari'ah* in all its parts aims at securing benefits for the people or protecting them against corruption and evil. The Qur'an explained the main objectives of *Shari'ah* when it declares:

And We have sent you (O Muhammad SAW) not but as a mercy for the '*Alamin* (mankind, jinns and all that exists) (al-Anbiya': 107).

The message in this verse transcends all barriers that divide humanity; none must stand in the way of the mercy and beneficence that Allah has intended for all human beings. The word "*Rahmatan*" in this verse includes compassion, kindness, goodwill, and beneficence. In explaining the above verse, Ibn Qayyim al-Jawzi explains that the *Shari'ah* aims at safeguarding the people's interests and preventing them from harm in this world and the next. He further explains that if the injunctions of Qur'an are not aimed at benefitting mankind, then there would be little value to the Qur'an as a revelation and guide.²² The general explanation of the word '*Rahmatan*' in the above verse includes that which benefits mankind and prevents harm and is harmonious with human needs. In addition, the different systems enacted in Islam including the injunctions related to '*Ibadah*, *Mu'amalah*, *Jinayah* and others were revealed to benefit human beings and prevent them from harm, and as such are part of Allah's mercy of to mankind.¹⁰

In another verse, the Qur'an describes the *Shari'ah* as a healing guide and mercy for mankind:

O mankind! There has come to you a good advice from your Lord (i.e. the Qur'an, ordering all that is good and forbidding all that is evil), and a healing for that (disease of ignorance, doubt, hypocrisy and differences, etc.) in your hearts, - guidance and a mercy (explaining lawful and unlawful things, etc.) for the believers (Yunus: 57).

Al-Shatibi in his famous book *Al-Muwafaqat fi Usul al-Shari'ah*, characterised *maslahah* as being the only principal objective of the *Shari'ah* which is broad enough to comprise all measures that are beneficial to the people. He placed a great emphasis on the objectives of the *Shari'ah* (*Maqasid al-Shari'ah*), so much so that his unique contribution to the understanding of the objectives and philosophy of the *Shari'ah* is widely acknowledged. Al-Shatibi pointed out that Allah revealed the *Shari'ah* for the benefit of mankind both in this world and the next. This is the primary objective of the Lawgiver and a unifying factor which can be seen in all of the detailed rulings of the *Shari'ah*.

The majority of Muslim scholars agree that most of the injunctions of the *Shari'ah* were revealed with certain objectives and reasons. These objectives are rational and are easy to identify except in certain injunctions related to rituals (*Ibadah*) which are sometimes only known to the Creator and there is no need for human beings to know them.¹¹

A further examination of the verses Qur'an and *Sunnah* will prove the above claim that the *Shari'ah* was revealed with the main objective of providing benefits for mankind and preventing them from harm (*jalb al-masalih wa dar' al-mafasid*). All the benefits are for mankind and Allah will not gain and does not need to gain anything from these injunctions. It is in its entirety for the benefit of mankind, Allah says:

And whoever is grateful, truly, his gratitude is for (the good of) his own self, and whoever is ungrateful, (he is ungrateful only for the loss of his own self). Certainly! My Lord is Rich (Free of all wants), Bountiful (*al-Naml*: 40).

The Qur'an also explains the different objectives of its injunction in several verses when it says:

...and perform *al-Salah* (*Iqamat al-Salah*). Verily, *al-Salah* (the prayer) prevents from *al-fahsha* (i.e. great

⁸ Shihabuddin al-Qarafi, *Al-Dhakheerah* (Beirut: Dar al-Arab, 1994) vol. 5, p. 478. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

⁹ See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008), p. 6.

¹⁰ Mohamad Akram Laldin. *Islamic law: an introduction / Mohamad Akram Laldin* International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 14.

¹¹ Al-Qardawl, Yusuf, *Madkhal li Dirasah al-Shari'ah al-Islamiyyah*, p. 57. Ibn Qayyim al-Jawziyyah also held the same view that the injunctions of *Shariah* were revealed to fulfill certain objectives. See, Ibn Qayyim, al- Jawziyyah, *Flam al-Muwaqqi'in*, vol. 3, p. 317. Also see: Mohamad Akram Laldin. *Islamic law : an introduction / Mohamad Akram Laldin* International Islamic University Malaysia Kuala Lumpur, Malaysia 2006.

sins of every kind, unlawful sexual intercourse, etc.) and *al-munkar* (i.e. disbelief, polytheism, and every kind of evil wicked deed, etc.) (al-'Ankabut: 45).

This verse explains that the main objective of prayers is to act as a shield for those who perform it. If prayers are performed according to its strict requirements by fulfilling all the conditions and stipulations, it will be a protection for the believers from committing all kinds of evil.¹² In another verse, the Qur'an elaborates the objective of punishment for a murderer:

O you who believe! *Al-qisas* (the Law of Equality in punishment) is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or the relatives, etc.) of the killed against blood money, then the heir should be made in fairness. This is alleviation and a mercy from your Lord. So after this whoever transgresses the limits (i.e. kills the killer after taking the blood money), he shall have a painful torment. And there is (a saving of) life for you in *al-qisas* (the Law of Equality in punishment), O men of understanding, that you may become *al-Muttaqun* (the pious). (al-Baqarah: 178-9).

The above verse clearly mentioned the main objective of *al-qisas* (the Law of Equality in punishment), which is to save lives. This objective can be achieved when the culprit is punished and his punishment is witnessed by the public, which in turn will prevent them from committing such a crime in view of the severity of the punishment. Even though one life is taken because the person has killed others, this will save the lives of others.¹³ There are many other verses of Qur'an underlying the objectives of the injunctions revealed by Allah.¹⁴

The Qur'an also explains that Allah did not intend to burden mankind through the different injunctions revealed to them: "He has not laid upon you in religion any hardship" (al-Haj: 78).

"Allah intends for you ease, and He does not want to make things difficult for you" (al-Baqarah: 185).

Mohammad Hashim Kamali explains that while the *Maqasid* are "rooted in the textual injunctions of the Quran and the Sunnah", their focus is "the general philosophy and objectives of these injunctions often beyond the particularities of the text".¹⁵ The focus is on the goals and purpose of the text rather than the specific words and verses. He contends that the *Maqasid* make the *Shari'ah* more accessible by avoiding the literalism, atomism, conditions, and requirements associated with the *usul* methodology.¹⁶

Historical background of Maqasid

i) Early Theories of Maqasid

In the early centuries between al-Ghazali and al-Shatibi, the influence of al-Ghazali can clearly be seen in terms of the direction in which the theory of *Maqasid* developed. As Ahmad Raysuni documents, the contributions of the scholars during this period served to elaborate the model developed by al-Ghazali.

Al-Shatibi's theory of *Maqasid* is founded on, and originates in, the Maliki School, which possesses an inherent concern for the objectives of Islamic law. Raysuni refers to the Maliki School as "the school of human interest and *Istislah*"¹⁷; the school most concerned about warding off potential evil and harm. He provides extensive documentation of the development of the Maliki School and explains that its knowledge and methods originate with the second Caliph, Umar bin al-Khattab, RA (d. 644).

By contrast, the 14th century was a period of relative peace and political stability that allowed intellectual activity to resume. Much of this work sought to re-evaluate tradition in light of the social, political, financial, commercial, and religious changes that had occurred.¹⁸ Similarly, social, political, and economic change formed the catalyst for a renewed focus on the *Maqasid* today.

After the companions' era, the theory and classifications of *Maqasid* started to evolve. However, *Maqasid* as we know them today were not clearly developed until the time of the later *usulis* of the fifth to eighth Islamic century, as I will elaborate in the next subsection. During the first three centuries, however, the idea of purposes/causes (Arabic: *hikam*, *'ilal*, *munasabat*, or *ma'ani*) appeared in a number of reasoning methods utilised by the Imams of the classic schools of Islamic law, such as reasoning by analogy (*qiyas*), juridical preference (*istihsah*), and interest (*maslahah*). Purposes themselves, however, were not subjects of separate monographs or special attention until the end of the third Islamic century. Then, the development of the

¹² Mohamad Akram Laldin. *Islamic law: an introduction / Mohamad Akram Laldin* International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 16.

¹³ Ibid.

¹⁴ See Al-Qur'an: Al-Tawbah: 103, Al-Hajj: 28,

¹⁵ M.H Kamali, *An Introduction to Shariah*, Ilmiah Publishers, Kuala Lumpur, 2006, p. 130-131. See also: Mohamad Akram Laldin. *Islamic law: an introduction*, International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 16.

¹⁶ Ibid.

¹⁷ M.K Masud, *Shatibi's Philosophy of Islamic Law*, Islamic Book Trust, Kuala Lumpur, 1995, p. 26-60.

¹⁸ Ibid., p. 26-60.

theory of 'levels of necessity' by Imam al-Juwaini (d.478 AH/ 1085 CE) took place much later in the fifth Islamic century. The following is an attempt to trace early conceptions of *al-Maqasid* between the third and fifth Islamic centuries.¹⁹

1. Al-Tirmidhi al-Hakeem (d. 296 AH/908 CE)

The first known volume dedicated to the topic of *Maqasid*, in which the term '*Maqasid*' was used in the book's title, is *al-Salah wa Maqasiduha* (Prayers and their Purposes), written by al-Tirmidhi al-Hakeem.²⁰ The book is a survey of the wisdoms and spiritual 'secrets' behind each of the prayer acts, with an obvious Sufi inclination. Examples are 'confirming humbleness' as the *Maqasid* behind glorifying God with every move during prayers, 'achieving consciousness' as the *Maqasid* behind praising God, 'focusing on one's prayer' as the *Maqasid* behind facing the direction of the Kabah, and so on. Al-Tirmidhi al-Hakeem also wrote a similar book on pilgrimage, which he entitled, *al-Hajj wa Asraruhu* (Pilgrimage and its Secrets).²¹

2. Abu Zaid al-Balkhi (d.322 AH/933 CE). The first known book on the *Maqasid* of dealings (*Mu'malat*) is Abu Zaid al-Balkhi's *al-Ibanah 'an 'ilal al-Diyanah* (Revealing Purposes in Religious Practices), in which he surveys purposes behind Islamic juridical rulings. Al-Balkhi also wrote a book dedicated to *maslahah*, which he entitled, *Masalih al-Abdan wal-Anfus* (Benefits for Bodies and Souls), in which he explained how Islamic practices and rulings contribute to health, physically and mentally.²²

3. Al-Qaffal al-Shashi al-Kabeer (d. 365 AH/975 CE). The oldest manuscript that found in the Egyptian *Dar al-Kutub* on the topic of *al-Maqasid* is al-Qaffal's *Mahasin-us-Shari'ah* (The Beauties of the Laws). After a 20-page introduction, al-Qaffal proceeds to divide the book into the familiar chapters of traditional books of *Fiqh* (i.e., starting with purification and then ablution and prayers, etc.). He mentions each ruling briefly and elaborates on the purposes and wisdoms behind it. The manuscript is fairly clear and contains around 400 pages. The last page mentions the date of the book's completion, which is the 11th of Rabiul- Awwal 358 H (7th of February, 969 CE). The coverage of the rulings of *Fiqh* is extensive, albeit strictly addressing individual rulings without introducing any general theory for the purposes. Nevertheless, the book is an important step in the development of *al-Maqasid* theory.

One part of a different manuscript of al-Qaffal's '*Mahasin al-Shari'ah*' was edited and analysed by Abd al-Nasir al-Lughani in his Ph.D. thesis that he wrote in the University of Wales, Lampeter, 2004.²³ Mawil Izzi Dien, who supervised the above-mentioned thesis, addressed the significance of the manuscript and al-Shashi's contribution to the theory of Islamic law. He writes:

According to Shashi, the importance of other injunctions is based on their meanings, which are often highlighted by the legislator. The prohibition of alcohol is an example of this, whereby drink is perceived as a tool with which the devil may create animosity between people, thus preventing them from remembrance of God and prayer ... Shashi's discussions leaves little doubt that he was providing a further step to his Shafi'i school by establishing a plethora of abstract legal theories to set up reasons for the legal injunctions.²⁴

Thus, these 'meanings' and 'reasons,' on which al-Qaffal al-Shashi is basing the legal rulings, represent an early conception of *al-Maqasid* theory, which was a development in the Shafie school. I would add that al-Shashi's developments of the concepts of necessities (*darurat*), polity (*siyasah*), or moral actions (*al-makrumat*) set up the stage for al-Juwaini's and al-Ghazali's contribution to both the Shafie theory and *al-Maqasid* theory, via further developments of these terms, as explained shortly.

4. Ibn Babaweah al-Qummi (d. 381 AH/991 CE). Some researchers claim that research on *Maqasid* was restricted to the Sunni schools of law until the twentieth century.²⁵ However, the first known monograph dedicated to *Maqasid* was, in fact, written by Ibn Babaweah al-Sadouk al-Qummi, one of the main Shia jurists of the fourth Islamic century, who wrote a book of 335 chapters on

¹⁹ Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008), p. 17.

²⁰ According to: Ahmad El-Raisouni, *Nazariyat Al-Maqasid Fndal-Imam al-Shatibi*, 1st ed. (Herndon, VA: IIIT, 1992).

²¹ Also according to Ahmad el-Raisouni, in: Mohamed Saleem El-Awa, ed, *Maqasid Al-Shariah Al- Islamiya: Dirasat Fi Qadaya Al-Manhaj Wa Qadaya Al-Tatbeeq* (Cairo: al-Furqan Islamic Heritage Foundation, al-Maqasid Research Centre, 2006) p.181. see also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

²² Mohammad Kamal Imam, *Al-Daleel Al-Irshadilla Maqasid al-Shari'ah al-Islamiyyah* (London: al- Maqasid Research Centre, 2007), Introduction, p.iii.

²³ Al-Lughani, Abd al-Nasir, 'A Critical Study and Edition of the First Part of Kitab Mahasin al- Shari'ah by al-Qaffal al-Shashi.' Ph.D. diss., University of Manchester, 2004. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

²⁴ Izzi Dien, *Islamic Law*, p. 106. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

²⁵ Hassan Jaber, *Al-Maqasid Fi Al-Madrasah Al-Shi'yyah*, In: El-Awa, Mohamed Saleem, ed. *Maqasid Al-Shariah Al-Islamiya: Dirasat Fi Qadaya Al-Manhaj Wa Qadaya Al- Tatbeeq (Studies in the Philosophy of Islamic Law: Theory and Applications)*. 1st ed. Cairo: al-Furqan Islamic Heritage Foundation, al-Maqasid Research Centre, 2006, p.325. Also: Oral Discussion over the issue in Alexandria, Egypt, August, 2006. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

the subject.²⁶ The book, which was entitled *‘ilal al-Shari‘ah* (The Reasons behind the Rulings), ‘rationalises’ believing in God, prophets, heaven, and other beliefs. It also gives moral rationales for prayers, fasting, pilgrimage, charity, caring for parents, and other moral obligations.²⁷

5. Al-Amiri al-Failasuf (d. 381 AH/991 CE). The earliest known direct theoretical classification of purposes was introduced by al-Amiri al-Failasuf. Al-Amiri’s classification, however, was solely based on ‘criminal punishments’ in the Islamic law (*hudud*). Classifications of *Maqasid* according to ‘levels of necessity’ were not developed until the fifth Islamic century. The theory reached its most mature stage (before the twentieth century CE) in the eighth Islamic century.

Maqasid In The Contemporary Era

In the modern era, the most significant contribution to the *Maqasid* was made by Ibn Ashur. First published in 1946 in Tunis, Ibn Ashur’s *Maqasid al-Shari‘ah al-Islamiyyah* is arguably the most important attempt of the 20th century to further develop the theory of *Maqasid*. Expressing the need for an objective based approach to Islamic law in light of modern realities, he introduces to the theory of *Maqasid* the preservation of the family system, freedom of belief, orderliness, natural disposition, civility, human rights, freedom, and equality as objectives of Islamic law.

In contemporary times, Yusuf Qaradawi has further extended the *Maqasid* list to include social welfare support, freedom, human dignity, and human fraternity, while Kamali has added to this list the protection of fundamental rights and liberties, economic development, along with research and development in science and technology.²⁸ Like their predecessors, both scholars based their additions on relevant supporting texts of the Quran and Prophetic Traditions. Kamali contends that the *Maqasid* remains dynamic and open to expansion according to the priorities of every age.²⁹

Contemporary scholarship has introduced new universal *Maqasid* that were directly induced from the scriptures, rather than from the body of *Fiqh* literature in the schools of Islamic law. This approach allowed *Maqasid* to overcome the historicity of *Fiqh* edicts and represent the scriptures’ higher values and principles. Detailed rulings would, then, stem from these universal principles. The following are examples of these new universal *Maqasid*.

1. Rashid Rida (d.1354AH/1935 CE) surveyed the Quran to identify its *Maqasid*, which included, “reform of the pillars of faith, and spreading awareness that Islam is the religion of pure natural disposition, reason, knowledge, wisdom, proof, freedom, independence, social, political, and economic reform, and women rights.”³⁰

2. Al-Tahir Ibn Ashur (d.1325 AH/ 1907 CE) proposed that the universal *Maqasid* of the Islamic law is to maintain “orderliness, equality, freedom, facilitation, and the preservation of pure natural disposition (*fitrah*).”³¹ It is to be noted that the purpose of ‘freedom’ (*hurriyah*), proposed by Ibn Ashur and several other contemporary scholars, is different from the purpose of ‘freedom’ (*Itq*) mentioned by jurists.³² *Al-Itq* is freedom from slavery, not ‘freedom’ in the contemporary sense. ‘Will’ however, is a well-known Islamic term that bears a number of similarities with current conceptions of ‘freedom’ and ‘free will.’ For example, ‘freedom of belief’ is expressed in the Quran as the ‘will to believe or disbelieve.’³³ In terms of terminology, ‘freedom’ (*al-hurriyah*) is a ‘newly-coined’ purpose in the literature of Islamic law. Ibn Ashur, interestingly, accredited his usage of the term *hurriyah* to “literature of the French revolution, which were translated from French to Arabic in the nineteenth century CE,”³⁴ even though he elaborated on an Islamic perspective on freedom of thought, belief, expression, and action in the sense.³⁵

3. Mohammad al-Ghazali (d.1416 AH/ 1996 CE) called for learning lessons from the previous 14 centuries of Islamic history, and therefore, included justice and freedom in *Maqasid* at the necessities level.³⁶ Al- Ghazali’s prime contribution to the

²⁶ According to Prof. Mohammad Kamal Imam of Alexandria University's Faculty of Law (Oral Discussion, Cairo, Egypt, August, 2006). See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

²⁷ Ibn Babaweah al-Sadouk al-Qummi, *Hal Al-SharaP*, ed. Mohammad Sadik Bahrul-Ulum (Najaf: Dar al-Balaghah, 1966). See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

²⁸ Kamali, *op. cit.*, p.118-119. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

²⁹ Ibid.

³⁰ Mohammad Rasheed Rida, *Al-Wahi Al-Mohammadi: Thubut Al-Nubuwwah Bil-Qur'an* (Cairo: Mu'asat Izziddin, without date) p.100. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

³¹ Ibn Ashur, *Maqasid Al-Shari‘ah Al-Islamiyyah* p183. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

³² As in, for example, Kamaluddin al-Siwasi, *Sharh Fath Al-Qadir*, 2nd ed. (Beirut: Dar al-Fikr, without date) vol.4, p.513. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

³³ For example, Surat al-Kahf, 18:29.

³⁴ Mohammad al-Tahir Ibn Ashur, *Usul Al-Nizam Al-IjtimaP Fil Islam*, ed. Mohamed El-Tahir Mesawi (Amman: Dar al-Nafais, 2001) p.256, 268. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

³⁵ Ibid, p.270-281.

³⁶ Jamal Atiyah, *Nahwa TafilMaqasidAl-Shari‘ah*, p. 49. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

knowledge of *Maqasid* was his critique on the literalist tendencies that many of today's scholars have.³⁷ A careful look at the contributions of Mohammad al-Ghazali shows that there were underlying *Maqasid* upon which he based his opinions, such as equality and justice, upon which he had based all his famous new opinions in the area of women under the Islamic law and other areas.

4. Yusuf al-Qaradawi (1345 AH/ 1926 CE -) also surveyed the Quran and concluded the following universal *Maqasid*: "Preserving true faith, maintaining human dignity and rights, calling people to worship God, purifying the soul, restoring moral values, building good families, treating women fairly, building a strong Islamic nation, and calling for a cooperative world."³⁸ However, al-Qaradawi explains that proposing a theory in universal *Maqasid* should only happen after developing a level of experience with detailed scripts.

5. Taha al-Alwani (1354 AH/ 1935 CE) also surveyed the Quran to identify its supreme and prevailing *Maqasid*, which are, according to him, is the oneness of God (*tawhld*), purification of the soul (*tazkTah*), and developing civilisation on earth (*'imran*). He is currently writing a separate monograph to elaborate on each of these three *Maqasid*.³⁹

All of the above *Maqasid* were presented as they appeared in the minds and perceptions of the above jurists. None of the above classic or contemporary classifications and structures could claim to be 'according to the original divine will.' If we refer to nature that God created, we will never find natural structures that could be represented in terms of circles, pyramids, or boxes, as the mention statement shows. All such structures in science and humanities and the categories they include, are human-made for the sake of illustration for themselves and other humans.

The *Maqasid* structure is best described as a 'multi-dimensional' structure, in which levels of necessity, scope of rulings, scope of people, and levels of universality are all valid dimensions that represent valid viewpoints and classifications.

The above twentieth century views also show that *Maqasid al-Shari'ah* are, actually, representations of each scholar's own viewpoint for reform and development of the Islamic law, despite the fact that all these *Maqasid* were introduced from the scriptures. This fusion of the scriptures and contemporary needs for reform gives the *Maqasid* special significance.

The Objectives Of Maqasid Al-Shari'ah

The objectives of the *Shari'ah* can be divided into three, namely 1, the essentials or necessities (*daruriyyat*), 2, the needs (*hajiyyat*) and 3, the complementary (*tahsiniyyat*).⁴⁰ All the different injunctions of the *Shari'ah* aim at the realisation of one of the above objectives. *Maqasid Al-Shari'ah* is an important part of Islam as it teaches us what is good and what is bad, to do good and to prevent bad deeds, and to reason everything we do in our daily lives. Such an approach is the basis of the theory of *Maqasid*. The word '*Maqasid*' is the plural of '*Maqsad*' meaning purpose or objective. The scholars of Islamic law have defined the term in reference to the purpose and objectives of the law and its sources, specifically the Quran and the Prophetic Traditions. The theory of *Maqasid* holds that human interest or benefit and the objectives of the law are interlinked and that, "any independent interpretation of the principles of jurisprudence must be based on what is termed *Istislah* [interest-based reasoning], and that one's understanding of the relevant texts and the conclusions one draws from them must be based on the principle that the objectives of such texts are to achieve benefit and prevent harm".⁴¹

In regard to their importance, priority, benefits, and interests were divided by Muslim scholars into three kinds: The essentials (*Daruriyyat*), The needs (*Hajiyyat*), The complementary (*Tahsiniyyat*).

Categories of Maqasid Al-Shari'ah

1-The Essentials or Necessities (*al-Daruriyyat*)

The essentials are matters on which the religion and worldly affairs of the people depend upon; their neglect will lead to total disruption and disorder and could lead to an undesirable end. These must be protected and all measures that aim at safeguarding them must be taken, whether by the individual or by government authorities. The essentials (*daruriyyat*) can be further divided

³⁷ Mawil Izzī Dien, *Islamic Law: From Historical Foundations to Contemporary Practice* (Edinburgh: Edinburgh University Press Ltd, 2004) p.131-132. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

³⁸ Yusuf al-Qaradawi, *Kayf Nata'amal Ma'a Al-Quran Al-'Azeem?* 1st ed. (Cairo: Dar al-Shorouk, 1999). See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

³⁹ Taha Jabir al-Alwani, *Maqasid Al-Shari'ah*, 1 ed. (Beirut: IIIT and Dar al-Hadi, 2001), p.25. See also: Jasser Auda, *Maqasid Al-Shariah An Introductory Guide*, (Herndon, VA: IIIT, 2008).

⁴⁰ Al-ShatibT, *Al-Muwafaqat*, vol. 2, p. 8.

⁴¹ *A Raysuni*, Imam al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law, *Islamic Book Trust, Kuala Lumpur, 2006*, p.46. See also: Mohamad Akram Laldin. *Islamic Law: An Introduction* International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 17.

into the protection of the five fundamental values (*al-daruriyyat al-khams*), which are necessary for human life.⁴² These five values are:

1. Protection of *al-din*
2. Protection of life (*al-nafs*)
3. Protection of dignity or lineage (*al-'ird*)
4. Protection of intellect (*al-'aql*)
5. Protection of property (*al-mal*)

The protection of these values include executing all the necessary measures in order to ensure their realisation while at the same time ensuring that all possible obstacles to their implementation are removed. The *Shari'ah* has enacted the guiding principles to ensure the above values are protected. The guiding principles for each of the values are as follows:

Five Basic Rights as Prescribed by *Maqasid al-Shari'ah*:

1. Protection of *Al-Din*:

Al-Din is the most important value that must be protected by Muslims. It is obligatory upon each Muslim to protect his *al-din* all times. The protection of *al-din* at the individual level is achieved through the observance of the different kinds of *'Ibadah*, such as performing the five prayers, fasting, paying of *Zakah* and performing the *Hajj*. Executing all these rituals will increase the *Iman* of a person and will therefore be a shield that protects the person from committing sins or becoming an apostate and indulging in actions that will obliterate his *din*.⁴³ As an example, the Qur'an has pointed out that performing prayers will save a person from evil:

...and perform *al-salah* (*lqamat al-salah*). Verily, *al-salah* (the prayer) prevents from *al-fahsha'* (i.e., great sins of every kind, unlawful sexual intercourse, etc.) and *al-munkar* (i.e. disbelief, polytheism, and every kind of evil wicked deed, etc.) (al-'Ankabut: 45).

The protection of *al-din* from a wider scope involves defending the Islamic faith particularly if it is attacked by the enemies of Islam. This can be done through various means such as in writings, speeches, and other practical means. If the situation demands waging a war with the enemies of Islam, then it should be done for the sake of protecting Islam from being destroyed by others.⁴⁴ The responsibility to protect *al-din* falls under the category of preventing evil as mentioned by the Prophet (p.b.u.h) in a *hadith*:

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

This is because if the *din* is not protected, it will definitely lead to evil and preventing it is required in this situation. Accordingly, Allah s.w.t. has enacted the law of *jihad* and commanded Muslims to defend their faith:

And fight in the Way of *Allah* those who fight you, but transgress not the limits. Truly, *Allah* likes not the transgressors (al-Baqarah: 190).

...and fight against the *Mushrikun* (polytheists, pagans, idolaters, disbelievers in the Oneness of *Allah*) collectively, as they fight against you collectively. But know that *Allah* is with those who are *Al-Muttaqin* (the pious) (al-Taubah: 36).

2. Protection of Life (*al-Nafs*)

Life is essential and valuable to everyone. It must be protected under all circumstances and in this respect, there is no difference between the life of the rich and poor, between the leader and the subordinates, Muslims and non-Muslims; protecting everyone's life is equally important and obligatory to each and every individual and society.⁴⁵ The Qur'an emphasises this point when it says:

And do not kill anyone who *Allah* has forbidden, except for a just cause. And whoever is killed (intentionally with hostility and oppression and not by mistake), We have given his heir the authority [(to demand *Qisas*, Law of Equality in punishment or to forgive, or to take *diyyah* (blood money)]. But let him not exceed the limits in the matter of taking life (i.e. he should not kill anyone except the killer only). Verily, he is helped (by the Islamic law) (al-Isra33).

The Prophet (p.b.u.h) reminded us of the stern punishment for those who commit this crime when he said:

When two Muslim's meet with their sword (in fight with each other), both of them will be in the fires of hell, (the companion asked him), this (punishment should be) for the one who tries to kill his challenger, what

⁴² Mohamad Akram Laldin. *Islamic Law: An Introduction*, International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 18.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid. p. 20

about the one who tries to defend himself? The Prophet replied, "He was also trying to kill his opponent."

To protect life, the *Shari'ah* has enacted a severe punishment for those who murder others. The punishment for those who kill innocent human beings is the death penalty in Islam:

O you who believe! *Al-Qisas* (the Law of Equality in punishment) is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother (or the relatives, etc.) of the killed against blood money, then adhering to it with fairness and payment of the blood money, to the heir should be made in fairness. This is alleviation and a mercy from your Lord. So after this whoever transgresses the limits (i.e. kills the killer after taking the blood money), he shall have a painful torment (al-Baqarah: 178).

In the punishment of the murderer, even though one life is killed because of the crime, this will lead to saving many more lives as the punishment will deter others from committing such a crime.⁴⁶ The Qur'an emphasises this point when it says:

And there is (a saving of) life for you in *al-Qisas* (the Law of Equality in punishment), O men of understanding, that you may become *al-Muttaqun* (the pious) (al-Baqarah: 179).

It is important to note that generally, saving of one's life is required. However, it should not be done at the expense of the lives of others.

3. Protection of Dignity or Lineage (*al 'Ird*)

One of the essential elements in the life of a person is his or her dignity. Islam is very concerned about the dignity of a person and emphasises the importance of protecting dignity. Protection of dignity include protecting individual rights to privacy and not exposing or accusing others of misbehaviour. It also means ensuring that relationships between men and women are respectful and responsible. Islam has enacted a number of guidelines to protect the dignity of mankind. It prohibits its followers from accusing others of mischief such as committing adultery or other immoral behaviours. The general principle that applies to any accusation toward another person is the maxim that says:

Evidence is for the person who claims (accuse) the oath for the person who denies (the accusation).

Based on this principle, each allegation must be substantiated by proofs; otherwise, a punishment will be imposed for the false accusation. The punishment for such behaviour which is termed as *al-qazf* in Islamic law is 80 lashes based on the following verse:

And those who accuse chaste women, and produce not four witnesses, flog them with 80 stripes, and reject their testimony forever, they indeed are the *Fasiqun* (liars, rebellious, disobedient to Allah (al-Nur: 4).

In addition to the lashes, Allah's curse is upon those who commit such crimes.

Verily, those who accuse chaste women, who never even think of anything touching their chastity and are good believers, are cursed in this life and in the Hereafter, and for them will be a great torment (al-Nur: 23).

Islam also regulated the relationships between men and women to protect their dignity. Free mixing between the two sexes is disallowed and there are several principles that regulate this matter. Among others, an unmarried man and woman shall not be with an unfamiliar person (*non-mahram*), and there should not be unnecessary contact between the two sexes. Islam regulated the relationship by encouraging its followers to enter into marriage to protect themselves from evil deeds and to protect their dignity.⁴⁷ The Prophet (p.b.u.h) is reported to have said in a Hadith:

O Youth! Those of you who have the means to get married shall do it, as it is better to protect your eyes and your desire, as for those who are unable to do so, he shall fast as it is a protection for you.⁴⁸

Islam disallows the manipulation of women or making women as sexual and commercial objects by portraying them as an attraction for selling commercial products. When Islam tells its followers to cover their *'awrah* it is seeking to protect their dignity. Doubtless women who cover their *'awrah* are respected and safer compared to those who display parts of their body meant to be concealed from public gaze.⁴⁹

The prohibition of adultery in Islam is another manifestation of the protection of dignity. The immoral practice of adultery will lead to the spread of different evils and problems in the society. It also leads to the increase of social problems such as the birth of illegitimate children, irresponsible parents and others. To prevent such problems, Islam has imposed severe punishments for

⁴⁶ Ibid. p. 20

⁴⁷ Ibid. p.23

⁴⁸ Narrated by Bukhari and Muslim.

⁴⁹ Mohamad Akram Laldin. *Islamic Law: An Introduction*, International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 23.

those who commit adultery.⁵⁰ The following verse of Qur'an describe the punishment for adulterers:

The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes. Let not pity withhold you in their case, in a punishment prescribed by Allah, if you believe in Allah and the Last Day. And let a party of the believers witness their punishment (al-Nur: 2)

The above punishment is for an unmarried person who commits adultery, as for the married person the punishment is stoning to death as mentioned by a Hadith:

Abdullah b. Mas'ud reported Allah's Messenger (may peace be upon him) as saying: It is not permissible to take the life of a Muslim who bears testimony (to the fact that there is no god but Allah, and I am the Messenger of Allah, but in one of the three cases: the married adulterer, a life for life, and the deserter of his *Din* (Islam), abandoning the community.⁵¹

4. Protection of the Intellect or Mind (*al-'Aql*)

Al-'Aql or the intellect is a great gift from Allah s.w.t. to mankind. This is one of the human capacities that differentiate man from animals. Allah s.w.t. has ordered that everyone should protect this precious gift by utilising the mental for the benefit of all and not for any kind of evil or anything that might lead to destruction. To achieve this goal, Islam has given the freedom to its followers to express their views and tolerated the differences in views and opinions. However, the expression of views and differences of opinion must conform to the moral and ethical values provided by Qur'an and Sunnah. As an example, one shall not degrade or use abusive words towards others in disagreement. In addition, everyone should respect and be able to accept the differences of others without being prejudice.⁵²

One shall provide sound evidence and proofs to defend his ideas and everyone should try to agree on the best view point and opinion that serves the interest of Islam and Muslims. The Prophet (p.b.u.h) is the best example in allowing his companions to express their views and would always accept the best view. In one instance, during the battle of Badr, the Prophet (p.b.u.h) suggested that the Muslim army camp at a particular place. Khabbab bin Al-Mundhir, called upon the Prophet (p.b.u.h) to inquire: "O Prophet of Allah (p.b.u.h), is this place which Allah has ordered you to occupy, so that we cannot leave the place, or is it a matter of opinion and military tactics?" "No," replied the Prophet (p.b.u.h), "it is only a matter of opinion and military tactics." Khabbab then said, "O Prophet of Allah, it is not the place we should occupy." He suggested another place nearer to the water (wells of Badr), which was more suitable for engaging the enemy. The Prophet (p.b.u.h) agreed and ordered his men to move there immediately.⁵³

This is the ultimate manifestation of freedom of expression that was practiced by the Prophet (p.b.u.h) which should be taken and practiced by current Muslim leaders all over the world. The Prophet also encouraged Muslims to practice *Ijtihad* (independent reasoning) in resolving various issues that arose in the Muslim Ummah.⁵⁴ The Prophet (p.b.u.h) is reported to have said in a Hadith narrated by 'A'amer bin al-'A'as:

If a ruler makes an *Ijtihad* and he is precise in it, he will be rewarded with two rewards, if, however, he makes a mistake, he will be rewarded with one reward.⁵⁵

The fact that the Prophet (p.b.u.h) promised rewards even for those who made mistakes unintentionally indicates that Islam encourages its followers to strive in giving their views and opinions. The fact is that a person must always strive to reach the best opinion by referring to all available sources including the Qur'an and Sunnah. Protection of the mind requires safeguarding it from anything that might harm the ability and functions of the brain. This includes the consumption of liquor or similar substances that will upset the functions of the brain.⁵⁶ The Qur'an forbids liquor when it says:

O you who believe! Intoxicants (in all forms), gambling, *al-Ansab*, and *al-Azlam* (arrows for seeking luck or decision) are an abomination of *Shay tan's* (Satan) handiwork. So avoid (strictly all) that (abomination) in order that you may be successful (al-Ma'idah: 90).

Even though the Qur'an specifies the consumption of liquor in this verse, the ruling on the consumption of similar substance can be extended by virtue of the principle of *qiyas* (analogical deduction). Islam has also imposed a punishment on those who consume liquor in order to prevent the spread of this habit.⁵⁷ The punishment that was agreed by the majority of scholars is 80

⁵⁰ Ibid.

⁵¹ Ibn Hisham, *Sirah*, vol. 1, p. 620.

⁵² Mohamad Akram Laldin. *Islamic Law: An Introduction*, International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 25.

⁵³ Narrated by Bukhari and Muslim.

⁵⁴ Mohamad Akram Laldin. *Islamic Law: An Introduction*, International Islamic University Malaysia Kuala Lumpur, Malaysia, 2006, p. 25.

⁵⁵ Narrated by Muslim.

⁵⁶ Mohamad Akram Laldin. *Islamic law : an introduction*, International Islamic University Malaysia Kuala Lumpur, Malaysia, 2006, p. 25.

⁵⁷ Ibid. p.26

lashes as mentioned in the following Hadith:

Anas b. Malik reported that Allah's, Apostle (may peace be upon him) gave a beating with palm branches and shoes, and that Abu Bakr gave 40 lashes. When 'Umar (became the Commander of the Faithful) and the people went near to pastures and towns, he said (to the Companions of the Holy Prophet). What is your opinion about lashing for drinking? Thereupon, 'Abd al-Rahman b. 'Awf said: My opinion is that you fix it as the mildest punishment. Then 'Umar inflicted 80 stripes.⁵⁸

5. Protection of Property (*al-Mal*)

Acquiring property is a basic human need. Everyone has his/her own property and would like to have all the necessary protection and security for his/her property. Islam has ordered that no one should transgress and acquire the property of others without legitimate reasons and without proper contract. The Qur'an emphasises this point when it says:

And eat up not one another's property unjustly (in any illegal way e.g. stealing, robbing, deceiving, etc.), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully (al-Baqarah: 188).

The Qur'an has also warned of severe punishment in the Day of Judgment against those who acquire the properties of others unlawfully.

Verily, those who unjustly eat up the property of orphans, they eat up only a fire into their bellies, and they will be burnt in the blazing Fire! (al-Nisa': 10).

And their taking of *Riba* (usury) though they were forbidden from taking it and their devouring of men's substance wrongfully (bribery, etc.). And We have prepared for the disbelievers among them a painful torment (al-Nisa': 161).

There are several ways of acquiring the property of others illegitimately. Among these are taking usury (*Riba*), cheating in transactions, breaking the trust in matters related to property, stealing the property of others and other similar means. The *Shari'ah* prohibits all these means. Islam has also imposed severe punishments for those who steal the properties of others. Chopping off the hand of a thief is the punishment for those convicted for stealing.⁵⁹ The Holy Qur'an has mentioned the punishment when it says:

Cut off (from the wrist joint) the (right) hand of the thief, male or female, as a recompense for that which they committed, a punishment by way of example from Allah. And Allah is All Powerful, All Wise (al-Ma'idah: 38).

2- The needs (*al-Hajiyat*)

Those interests which are needed or *al-hajiyat* supplement the five essential interests and refers to those interests the neglect of which leads to hardship of the individual or community although it does not lead to the total disruption of normal life. There are many examples of *al-hajiyat* such as the dispensations or legal excuses (*Rukhsah*) that the *Shari'ah* has granted in regards to '*Ibadah* for the travellers and the sick. Travellers are allowed to combine and shorten their five obligatory prayers (*al-jam' wa al-Qasr*) and break their fast in *Ramadan*. A sick person is allowed to pray in the sitting or sleeping position and break his fast in *Ramadan*. In the area of *Mu'amalah*, the ban of profiteering (*Ihtikar*), for example, or the sale of alcohol so as to prevent its consumption, and concessions, all fall under the category of *hajiyat*. The basic permissibility (*ibahah*) regarding the enjoyment of victuals and hunting also falls under this category.⁶⁰

3-The Complementary Interests (*al-Tahsiniyyat*)

The complementary interests or *al-tahsiniyyat* refer to interests whose realisation leads to the improvement and attainment of that which is desirable. Therefore, the observance of cleanliness in personal appearance and in '*ibadah*, moral virtues, avoiding extravagances and measures that are designed to prevent proliferation of false claims in the courts, etc., fall under the category of *al-tahsiniyyat*. The disappearance of *tahsiniyyat* may not interrupt the normal life, but it might lead to the lack of comfort in life.⁶¹

The Rules of Conflict and Priority:

⁵⁸ Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence*, p.344. See also: Mohamad Akram Laldin. *Islamic Law: An Introduction*, International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 26.

⁵⁹ Mohamad Akram Laldin. *Islamic Law: An Introduction*, International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 27.

⁶⁰ See Muhammad Hashim Kamali, *Source, Nature and Objectives of Shariah*, Islamic Quarterly (London), vol. 33 (1989), pp. 215-233. Mohamad Akram Laldin. *Islamic Law: An Introduction*, International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 16.

⁶¹ Mohamad Akram Laldin. *Islamic Law: An Introduction*, International Islamic University Malaysia Kuala Lumpur, Malaysia 2006, p. 28.

In the event of a conflict arising between the various classes of interest, the lesser of these may be sacrificed in order to protect a higher interest. When there is a plurality of conflicting interests and none appears to be clearly preferable, then prevention of evil takes priority over the realisation of benefit. This is because the Shari'ah is more emphatic on the prevention of evil, as can be seen in the hadith where the Prophet (p.b.u.h) has reportedly said: "When I order you to do something, do it to the extent of your ability, but when I forbid you from something, then avoid it" (Narrated by Al-Bukhari Wa Muslim)

It will also be noted that on occasions *Mujtahid* and judges have issued decisions in disputed matters, which were found upon further scrutiny to be in disharmony with the goals and objectives of the *Shari'ah*. Instances of this nature are also encountered with reference to contracts since a contract may duly have been signed and made binding on the parties and only then it was found to be unfair to one of the parties due to some unexpected change of circumstance. In such an eventuality, the judge and *Mujtahid* can hardly ignore the subsequent changes and insist on the obligatoriness of the said contract on purely formal grounds. For a contract is no longer the governing law of contracting parties (*shari'at al-'aqidayn*) if it proves to be an instrument of injustice. Such a contract must be set aside and justice, which is the goal and *maqsūd* of the Lawgiver, must be given priority over considerations of conformity to an untenable contract.

Without going into details, instances of conflict between the overriding objectives of the *Shari'ah* and a particular ruling thereof can also arise with reference to the rulings of analogy (*qiyas*). A rigid adherence to *qiyas* in certain cases may lead to unsatisfactory results; hence recourse may be had to *Istihsan* to obtain an alternative ruling that is in harmony with the objectives of the *Shari'ah*.

Conclusion

We have limited the discussion of *Maqasid* in this study to its theoretical aspects, although it is a topic related with the many other issues. Under this research we showed its relevance to our contemporary time. Even though *Maqasid* has been discussed theoretically by many contemporary scholars, we present some of the key concepts in a new way. However, there is still a need to take the *Maqasid* dimensions to the new era where we can consider it as an Islamic philosophy of law.

More concerned with the philosophy and purpose of the law, *Maqasid* has historically received insufficient attention from Muslim jurists who were preoccupied with the letter of the law and formulation of the text. Such has been the general neglect of *Maqasid* that it does not even feature in many of the reputable textbooks of Islamic jurisprudence, nor even as part of the theory of *Ijtihad*.⁶² Indeed, the term '*Maqasid*' was not used in the writings of jurists until 300 years after the death of the Prophet Muhammad, when Abu Abd Allah al-Tirmidhi al-Hakim (d.932) became the first scholar to use the term *Maqasid* and to write specifically on the topic.⁶³

The *Maqasid* vision, which looks at the purposes or the principles behind the prohibition, will result in a multitude of variations. Knowing the principles and the maxims, the *faqih* will extrapolate through reasoning and analogy that anything that harms the intellect will fall within this category. Immediately any drug or intoxicant that will harm the intellect is considered to have the same ruling as wine, for example, cocaine harms the intellect, so cocaine is prohibited. Furthermore, the comprehension of the *Maqasid* behind this one example of drinking alcohol acts as a guiding maxim (*Qawa'id*) and confirms the essential role of *Maqasid* for protecting and preserving faith, life, wealth, intellect, progeny and honour.

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⁶² Kamali, *op. cit.*, p.116-117.

⁶³ Raysuni, *op. cit.*, p.5.

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11 Qur'an 2:143.

15 Ibid.

39 This term Qur'an and Sunnah are often interchanged with Qur'an and Hadith or simply the latter. This is problematic since Sunnah and hadith are not necessarily one and the same.