AL-MAQASID AL-SHARI'AH
THE OBJECTIVES OF ISLAMIC LAW

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INTRODUCTION

This essay is presented in five sections. It begins with a general characterisation of *Al-Maqasid Al-Shari'ah* and a brief examination of its origins in the *Qur'an.* The essay then proceeds to address the classification of the *maqasid* and a certain order of priority that is integrated into the structure of this classification. The third section is devoted to the historical development of the theory and science of *Al-Maqasid,* where the contributions to this branch of the *Shari'ah* of some of the leading *ulema* (scholars) are highlighted. The next section looks into the differential approaches the *ulema* have taken toward the identification of the *maqasid.* The final section highlights the relevance of *Al-Maqasid* to *Ijtihad* and the ways in which the former can enhance the scope and calibre of the latter.

CHARACTERISATION AND TEXTUAL ORIGINS

Al-Maqasid al-Shari'ah, or the Objectives of Islamic Law, is an important and yet somewhat neglected science of the *Shari'ah.* The *Shari'ah* generally is predicated on benefits to the individual and the community, and its laws are designed so as to protect these benefits and to facilitate the improvement and perfection of the conditions of human life on earth. The *Qur'an* is expressive of this when it singles out the most important purpose of the Prophethood of Muhammad (saw): *"We have not sent you but as a Mercy to the worlds"* (21:107). This can also be seen in the *Qur'an*'s characterisation of itself as *"a healing to the (spiritual) ailments of the hearts"* and *"a Guidance and Mercy"* for the believers and mankind (10:57). This very important objective of *Rahmah* (Mercy or Compassion), mentioned in these two verses, is further substantiated by other provisions in the *Qur'an* and *Sunnah* (the Traditions of the Prophet) that seek to eliminate prejudice, alleviate hardship and establish justice. The laws of the *Qur'an* and *Sunnah* also seek to promote co-operation and support within the family and the society at large. The objective of *Rahmah,* therefore, is most clearly manifested in the realisation of *Maslahah* (Benefit) in everyday communal life. The *ulema* have, thus, generally considered *Rahmah* to be the all-pervasive objective of the *Shari'ah,* and have, to all intents and purposes, used it synonymously with *Maslahah.*

'Adl or *Qist* (Justice), is indeed a manifestation of God's Mercy, but may also be seen as a principal objective of the *Shari'ah* in its own right. Certainly, the *Qur'an* sees it as such when it states: *"We sent Our Messengers and revealed through them the Book and the Balance so that Justice may be established amongst mankind"* (57:25). Justice as a value or primary objective of the *Shari'ah* is mentioned in the *Qur'an* fifty-three times in all. *'Adl* — literally meaning to place things in their right and proper place — as a fundamental objective of the *Shari'ah,* is to seek to establish an equilibrium between rights and obligations, so as to eliminate all excesses and disparities, in all spheres of life.

Tahdhib al-Fard (Educating the Individual) is also a very important objective of the *Shari'ah.* It fact, in order of priority, it may even ought to be placed before *Maslahah* and *'Adl.* For the latter are both, essentially, community-oriented values that acquire much of their meaning in the context of social relations, whereas the former seeks to make each individual a trustworthy agent just so as to strive to realise these values which benefit himself and the community. Indeed, the overall purpose of a great number of the stipulations of the *Shari'ah,* especially in the spheres of *'Ibadah* (ritual worship) and *Akhlaq* (moral teachings), is to train the individual to acquire the virtues of *Taqwa* (God-consciousness), and thus, to aid the fulfilment of this objective.[1]

The *Qur'an* is expressive, in numerous places and in a variety of contexts, of the purpose, rationale and benefit of its laws, to the extent that the texts stipulating these laws are characteristically goal-oriented. This feature of the Qur'an is common to its laws relating to both *'ibadah* (ritual worship) and *mu'amalah* (civil transactions). Thus, when the text expounds on the ritual of *wudu',* or ablution for prayer, it adds: *"God does not wish to inflict hardship on you but to make you clean and to complete His favour to you"* (5:7). With regard to the prayer itself, it declares: *"Truly, Salah restrains promiscuity and evil"* (29:45). With reference to *Jihad* the *Qur'an* similarly proclaims its rationale: *"Permission is granted to those who fight because they have been wronged"* (22:39). The purpose, in other words, of legalising *Jihad* is to fight *zulm* (injustice), and of *Salah,* to attain spiritual purity and excellence,

which is accomplished together with physical cleanliness through ablution before the prayer. With reference to the law of *Qisas* (Just Retaliation), the text similarly adds: *"And in the Law of Qisas there is life for you, O people of understanding"* (2:179). And finally, with regard to *Zakah* (Wealth Tax), the rationale is also given: *"In order that wealth may not circulate only amongst the rich"* (59:7).

One can add many more examples to demonstrate how the *Qur'an* and *Sunnah* are expressive of the goal, justification and benefit of their *ahkam* (laws). In addition to the above, which require or sanction the undertaking of some positive action, one may also refer to the *ahkam* of the *Shari'ah* which prohibit or discourage certain actions that are or may be harmful and that may result in prejudice, corruption and injustice. In all cases, whatever the aim or justification of the individual *ahkam*, however, it is to be noted that the underlying objective is the realisation of some *maslahah* (benefit). It is for this reason that the objective of *Maslahah* has generally been regarded as the summa of *Al-Maqasid*. For, in the final analysis, *'Adl* and *Tahdhib al-Fard* may also be seen as manifestations of *Maslahah*. The *Masalih* (pl. of *Maslahah*) is thus another name for the *Maqasid*, and the *ulema* have used these two terms almost interchangeably.

CLASSIFICATION OF BENEFITS

The *ulema* have classified the entire range of *maqasid*-cum- *masalih* into three descending categories of importance: the *daruriyyah* (the essential), the *hajiyyah* (the complementary) and the *tahsiniyyah* (the desirable or the embellishments). The essential *masalih* are enumerated as five, namely life, intellect, faith, lineage and property. These are seen as absolute requirements to the survival and spiritual well-being of individuals, to the extent that their destruction or collapse would precipitate chaos and the demise of normal order in society. The *Shari'ah*, on the whole, seeks, primarily, to protect and promote these essential values, and validates all measures necessary for their preservation and advancement. *Jihad* has thus been validated in order to protect religion, and *Qisas*, to protect life. Indeed, the *Shari'ah* takes affirmative and even punitive measures to protect and promote these values. Theft, adultery and the drinking of alcohol are punishable offences as they pose a threat to the immunity of private property, the well-being of the family and the integrity of the human intellect, respectively. In an affirmative sense again, but at a different level, the *Shari'ah* encourages work and trading activities in order to enable the individual to earn a living, and it prescribes elaborate measures to ensure the smooth flow of commercial transactions in the market-place. The family and personal laws of the *Shari'ah* are likewise an embodiment largely of guidelines and measures that seek to protect and strengthen the family unit and to make it a safe refuge for all its members. The *Shari'ah* also commands education and the pursuit of knowledge so as to ensure intellectual well-being and the advancement of the arts, sciences and civilisation. The essential *masalih* in other words, constitute the all-pervasive central theme of the *Shari'ah*, and all its laws are in one way or another related to the protection of these benefits.

The second category of benefits, known as the *hajiyyah* or the complimentary benefits, are not in themselves a completely independent category. They seek to protect and promote the essential *masalih*, albeit in a secondary capacity. The *hajiyyah* are defined as benefits that seek to remove severity and hardship in cases where such severity and hardship do not pose a threat to the very survival of normal order. A great number of the *rukhas* (concessions), such as the shortening of the *Salah* and the forgoing of the fast by the sick and the traveller, may be classified as *hajiyyah*. In almost all areas of obligatory *'ibadah* the *Shari'ah* has granted such concessions. These concessions are aimed at preventing hardship, but they are not essential: people could, indeed, live without them if they were obliged to. In the area of criminal law, the *Hadith* which proclaims that "prescribed penalties are to be suspended in all cases of doubt", may also be seen as providing a complementary benefit. Although, not absolutely essential, as the burden of proof for crimes of prescribed penalties is extremely stringent, it nevertheless, allows a potentially innocent defendant to be relieved of difficulties at a much earlier stage. The provision affects the criminal law process — a process designed to protect the essential *masalih*. In the sphere of *mu'amalah*, the *Shari'ah* validates certain contracts, such as the sale of *salam* and the *ijarah*, (lease and hire). Again, the benefits attained from such contracts may be classified as *hajiyyah*. The contracts are not absolutely essential to maintain normal order, and in fact, there is a certain anomaly that is attendant in both, but they are permitted so as to avoid hardship.

A complimentary *maslahah* is elevated to the rank of the essential *masalih* where it concerns the public at large. Certain concessions that are granted in the sphere of *'ibadah*, for instance, may be secondary to the survival of an individual, but may become of primary interest for the community as a whole — for example, the shortening of *Salah* on the battlefield. In the event of a conflict between two or more *masalih*, the accepted norm is to sacrifice the lesser benefit or benefits for the higher benefit. However, when there is a plurality of conflicting masalih and none appears to be clearly preferable, then the prevention of evil takes priority over the realisation of benefit.[2] This is because the Shari'ah is more emphatic about the prevention of evil then the realisation of good, as can be seen from the Hadith where the Prophet is reported to have 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 altogether".

The third category of *masalih*, known as the *tahsiniyyah*, are in the nature of desirabilities. They seek to attain refinement and perfection in the customs and conduct of the people, at all levels. The *Shari'ah* thus encourages cleanliness of the body and attire for the purposes of *'ibadah*, and recommends, for example, the wearing of perfume when attending the Friday congregational prayer. The *Shari'ah* also encourages the giving of charity to those in need, over and above the obligatory *Zakat*. Again in the area of *'ibadah*, it recommends supererogatory prayers and voluntary fasting. In customary matters and interpersonal relations, the *Shari'ah* encourages *al-rifq* (gentleness), *husn al-khulq* (pleasant speech and conduct) and *ihsan* (fair

dealing). The judge and the head of state are similarly advised not to be too eager in the enforcement of penalties, as this is considered to be undesirable. The purpose of all this is the attainment of refinement and excellence in all areas of human conduct.

The *tahsiniyyah* are a very important category, as they are all-pervasive and relate to all the other *masalih*. One can perform the obligatory *Salah*, for example, in different ways. It may vary from performing it with full and proper concentration, giving each of its parts their due attention, to performing it with haste and thoughtlessness. The difference between the two ends of the spectrum is that at one end the *Salah* is espoused with the attainment of both the essential and the desirable, and at the other end, it can at best be seen as discharging a duty. One can extend this analysis to the implementation of almost all the *ahkam* of the *Shari'ah*, and indeed, to almost every area of human conduct.

HISTORY IN BRIEF

As a science of the *Shari'ah* in its own right, *Al-Maqasid* did not receive much attention in the early stages of the development of Islamic legal thought, and as such, represents rather a latent addition to the juristic legacy of the *Madhahib* (Schools of Islamic Law). Even to this day many reputable textbooks on *Usul al-Fiqh* (Methodology in Islamic Jurisprudence) do not include *Al-Maqasid Al-Shari'ah* in their usual coverage of familiar topics. Perhaps, this is partly due to the nature of the subject. It is largely concerned with the philosophy of the law, its outlook and objectives, rather than the formulation of its specific text. Although *Al-Maqasid*, as a distinct science of the *Shari'ah*, is of obvious relevance to *Ijtihad*, again, it has not been treated as such in the conventional expositions of the theory of *Ijtihad*.

Broadly speaking, Islamic legal thought has, on the whole, preoccupied itself with concerns over conformity to the letter of the Divine Text, and the legal science of *Usul al-Fiqh* has played a crucial role in the advancement of this cause. This literalist orientation of the juristic thought was generally more pronounced on the part of the Ahl al-Hadith (The Traditionalists) than of the Ahl al-Ra'y (The Rationalists). The Traditionalists thus tended to view the *Shari'ah* as a set of rules, commands and prohibitions, that were addressed to the competent *mukallaf* (individual), where all that the latter was expected to do was to conform. The precedents of the leading *Sahabih* (Companions of the Prophet) indicate, on the other hand, that they saw the *Shari'ah* not only as a set of rules but also as a system of values, where the specific rules were the tangible manifestations of those overriding values. The textualist tradition of the early three centuries, however, did not take much interest in this deeper observation and it was not until the time of al-Ghazzali (d. 505H), and then al-Shatibi (d. 790H), that significant developments were made in the formulation of the theory of *Al-Maqasid*.

The basic outlook on the Shari'ah advocated by the theory of *Al-Maqasid* was, however, never completely denied by any of the leading *Madhahib*. Some were more open to the theory and science of *Al-Maqasid* than others. Indeed, except for the Zahiris, who maintained that the *maqasid* can only be known when they are identified by clear text, the majority of the *ulema* did not even confine *Al-Maqasid* to the clear text alone. They perceived and understood the *Shari'ah* to be rational, goal orientated and its rules generally founded in identifiable causes. A mere conformity to rules that went against the purpose and vision of the *Shari'ah* was therefore generally unacceptable. And yet, detailed elaboration on the aims and objectives of the *Shari'ah* was generally not encouraged. This rather unspoken attitude contrasted with the fact that the *Qur'an* itself conveyed considerable awareness of the purposes and objectives of its laws and often expounded the causes and rationale on which they were founded. The general reticence of the *ulema* in respect of the identification of the *maqasid* might have been partly due to the elements of projection and prognostication that such an exercise was likely to involve. Who could tell for sure, that this or that is the purpose and overriding objective intended by the Lawgiver, without engaging in a degree of speculation, unless, of course, the text declared it so. But to confine the scope of *Al-Maqasid* to clear textual declarations alone was also not enough, as we shall see below. And thus, *Al-Maqasid*, as a science, remained on the fringes of the mainstream juristic thought that was manifested in the various theories and doctrines of *Usul al-Fiqh*.

It was not until the early 4th Century of the Hijrah (the Islamic calendar) that the term '*maqasid*' was used in the juristic writings of Abu 'Abd-Allah al-Tirmidhi al-Hakim. Recurring references to this then appeared in the works of Imam al-Haramayn al-Juwayni (d. 478H), who was probably the first to classify the *maqasid* of the *Shari'ah* into the three main categories of the *daruriyyah*, the *hajiyyah* and the *tahsiniyyah*, which has ever since been generally accepted. Al-Juwayni's ideas were then further developed by his pupil, Abu Hamid al-Ghazzali (d. 505H), who wrote at length on the doctrines of *Maslahah* (Public Interest) and *Ta'lil* (Ratiocination) in his works *Al-Shifa' Al-Ghalil* and *Al-Mustasfa min 'Ilm Al-Usul*. Al-Ghazzali was generally critical of the doctrine of Public Interest as a source of proof, but validated it where it promoted the *maqasid* of the *Shari'ah*. As for the *maqasid* themselves, al-Ghazzali wrote categorically that the *Shari'ah* pursued five basic objectives — life, intellect, faith, lineage and property, and that these were to be protected as absolute priorities.

A number of prominent scholars have thereafter contributed to the development of the theory and science of *Al-Maqasid Al-Shariah*. Not all of them consistently perhaps, but each of their contribution has been invaluable. Sayf al-Din al-Amidi (d. 631H) identified the science as *al-tarjih*, a studied grid or criteria to ascertain preference amongst conflicting interests. He elaborated on a structure of internal orders of priorities, within and across the different categories of the *maqasid*. However, Al-Amidi also confined the essential *maqasid* to only five. The Maliki jurist Shihab al-Din al-Qarafi (d. 684H) was the first to add a sixth to the existing list of the five essential *maqasid*, namely, the protection of *al-'ird* (honour). This was later endorsed by Taj al-Din 'Abd al-Wahab ibn al-Subki (d. 771H) and Muhammad ibn Ali al-Shawkani (d. 1255H). The list of the five

essential values was evidently based on a reading of the relevant parts of the *Qur'an* and *Sunnah* on the *Hudud* (the prescribed penalties). The value that each of these penalties sought to vindicate and defend was consequently identified as an essential *maqasid*. The latest addition, *al-'ird*, was initially thought to have been covered under *al-nasl* (lineage), but the proponents of this addition argued that the *Shari'ah* had enacted a separate *hadd* (punishment) for *al-qadhf* (slanderous accusation), and hence, that the new addition be seen as an essential *maqsud* (objective) in its own right.[5] Izz al-Din Abd al-Salam al-Sulami's (d. 660H) renowned work, *Al-Qawa'id Al-Ahkam*, was in his own characterisation a work on the *'maqasid al-ahkam'*. The work provides a comprehensive treatment of the various aspects of *Al-Maqasid*, and especially in respect of the doctrines of *'Illah* (Effective Cause) and *Maslahah* (Public Interest). It was at the outset of this work that al-Sulami wrote that "the greatest of all the objectives of the *Qur'an* is to facilitate benefits and the means that secure them", and that "the realisation of benefits also include the prevention of evil". Al-Sulami adds that "all the *takalif* (obligations) of the *Shari'ah* are predicated on securing benefits for the people, in this world and the next, for God Most High is in no need of the obedience of His servants. He is above all creation and cannot be harmed by the disobedience of transgressors".[6] Al-Sulami thus provided a very fresh reading of the *Shari'ah*, one that would help stimulate the development of the science of *Al-Maqasid* tremendously.

Taqi al-Din ibn Taimiyyah (d. 728H) was probably the first scholar to depart from the notion of confining the *maqasid* to a specific number. He added to the existing list of the *maqasid* such things as the fulfilment of contracts, the preservation of the ties of kinship and respect for the rights of one's neighbours. In relation to the Hereafter, he added an inventory of qualities, including love of God, sincerity, trustworthiness and moral purity.[7] Ibn Taimiyyah thus revised the scope of *Al-Maqasid*, from a designated and specified list to a completely open-ended list of values. This approach is the one generally adopted by contemporary scholars, including Ahmad al-Raisuni and Yusuf al-Qaradawi.[8] In fact, al-Qaradawi has further extended the list of the *maqasid* to include human dignity, freedom, social welfare and human fraternity among the higher *maqasid* of the *Shari'ah*.[9] These objectives are, of course, undoubtedly upheld by the weight of both general and detailed evidence in the *Qur'an* and *Sunnah*. Following on from al-Qaradawi, I propose that we add to the list economic development and the development of science and technology. These are, of course, crucially important in determining the standing of the *Ummah* (the Muslim community) in the world community.

It would appear from the above analysis that *Al-Maqasid Al- Shari'ah* is still open for further development and enhancement. The nature of this development and enhancement must reflect the priorities of our age and the change of circumstances that we encounter as a result.

IDENTIFICATION OF THE MAQASID

As already indicated the *ulema* have differed in their approach to the identification of the *maqasid*. The first approach to be noted is the purely textualist approach, which confines the identification of the *maqasid* to the clear text, the commands and prohibitions, which are in themselves the carriers of the *maqasid*. The *maqasid*, according to this view, have no separate existence as such. Provided that a command or prohibition is *tasrihi* (explicit) and *ibtida'i* (normative) it in itself conveys the *maqsud* of the Lawgiver.

Although it is generally accepted that textual injunctions must be respected and observed as manifestations of the intentions of the Lawgiver, the majority approach to the identification of the *maqasid* takes into consideration not only the text but also the underlying *'illah* or rationale of the text.[10] The chief exponent of *Al-Maqasid*, Abu Ishaq Ibrahim al-Shatibi (d. 790H), spoke affirmatively of the need to respect and observe the explicit injunctions, but added, that adherence to the obvious text must not be so rigid as to alienate the rationale and purpose of the text from its words and sentences. Such rigidity could, of course, then be just as much contrary to the *maqsud* of the Lawgiver as would be in the case of a conscious and direct neglect of that law. The preferred approach then is to read the text, whether it is of a command or a prohibition, in conjunction with its rationale and objective, for this is most likely to bear the greatest harmony with the intention of the Lawgiver.[11] Al-Shatibi elaborated that the *maqasid* that are known from such a comprehensive reading of the text are of two types, *asliyyah* (primary) and *tab'iyyah* (secondary). The former are the essential *maqasid*, or the *daruriyyah*, which the *mukallaf* must observe and protect regardless of his personal predilections, whereas the latter, the supplementary *maqasid*, or the *hajiyyat*, are those regarding which the *mukallaf* has some flexibility and choice.

The comprehensive approach to the textual injunctions of the *Shari'ah* has given rise to two important questions. Firstly, the question that seeks to establish whether the means to a command, a *wajib* (obligation) or a *haram* (prohibition), should also be seen as integral to the goal and objective that is sought by that command. The general response given to this question is that supplementary aspects of commands and prohibitions are indeed integral to their objectives. Thus, it is generally accepted that whatever might be necessary for the completion of a *wajib* is also a part of that *wajib*, and that whatever may lead to a *haram* is also *haram*. There has, however, been some disagreement on this, emerging from certain areas of detail.

The second question concerns the silence of the Lawgiver in respect of certain conducts, especially where a general reading of the relevant evidence casts light on the value of that conduct. The question may be formulated as follows: We know that the *maqasid* can be known from clear injunctions, but can they also be known from a general reading of the *nusus* (clear textual rulings) by way of induction? Al-Shatibi's response to this question is possibly the most original.

Istiqra' (induction), according to al-Shatibi, is one of the most important methods for identifying the *maqasid* of the *Shari'ah*. There may be various textual references to a subject, none of which may be in the nature of a decisive injunction. Yet their collective weight is such that it leaves little doubt as to the meaning that is to be obtained from them. A decisive conclusion may thus be arrived at from a plurality of inclining expressions. Al-Shatibi illustrates this with an important example. Nowhere in the *Qur'an* is there a specific declaration to the effect that the *Shari'ah* has been enacted for the benefit of the people, and yet, this must be the definitive conclusion that is to be drawn from the collective reading of a variety of textual proclamations.[12] To illustrate the point further we may give two more examples. There is no specific declaration in the textual sources on the classification of the *maqasid* into the three categories of *daruriyyah*, *hajiyyah* and *tahsiniyyah* or on the conclusion that the Lawgiver has intended that these *maqasid* must be protected — and yet, through *istiqra'*, this classification and conclusion has generally been accepted by the *ulema*. Again, there is no specific textual declaration espousing the claim that the protection of the five values of life, intellect, faith, lineage and property is of the most primary importance to the *Shari'ah* — but once again, through *istiqra'*, this has also been generally accepted by the *ulema*. It is also to be noted that the inductive method is not confined to the identification of *maqasid*-cum-*masalih* alone, but extends to commands and prohibitions.[15]

Conclusions arrived at through *istiqra'*, such as those in the above paragraph, are of great overall importance to the understanding and implementation of the *Shari'ah*. They are not to be seen as being subject to doubt or lacking in credibility by way of being based on speculative reasoning. [14] In fact, al-Shatibi's own position on this was to go so far as saying that the conclusions and positions established through *istiqra'* are the general premises and overriding objectives of the *Shari'ah*, over and above the level of the specific rules. Al-Shatibi's approach to the method of induction is reminiscent of knowledge that is acquired of the personality and character of an individual through a sustained association and observation of conduct of that individual. This kind of knowledge is broad and holistic as it is enriched with insight, and is likely to be more reliable compared to, say, knowledge based only on the observation of odd and isolated incidents in the daily activities of that individual.

AL-MAQASID AND IJTIHAD

Having expounded his theory of Al-Maqasid, al-Shatibi advocated and accentuated the need for knowledge of the science of Al-Maqasid as a prerequisite to the attainment of the rank of a *mujtahid* (jurist). Throughout Muslim history, those who neglected acquiring mastery over the science of Al-Maqasid did so at their own peril, as it made them liable to error in ijtihad. Included amongst these were the *ahl al-bida'* (the proponents of pernicious innovations), who only looked at the apparent text of the Qur'an without pondering over its ultimate aims and objectives. These innovators (an allusion to the Kharijites) held steadfastly to the literal text of even the *mutashabihah* (the intricate segments of the Qur'an) and premised many conclusions on them. They took a fragmented and atomistic approach to the reading of the Qur'an, which failed to tie up the relevant parts of the text together. The leading *ulema* have, on the other hand, always viewed the *Shari'ah* as a unity, in which the detailed rules were to be read in the light of their broader premises and objectives. [16]

Ibn 'Ashur, the author of another landmark work on *Al-Maqasid*, also stressed that knowledge of the science of *Al-Maqasid* was indispensable to ijtihad in all its manifestations.[1] Some *ulema*, who confined the scope of their ijtihad only to literal interpretations, found it possible, ibn 'Ashur observed, to project their personal opinions into the words of the text, but fell into error as they were out of touch with the general spirit and purpose of the surrounding evidence.[1] We may illustrate this by reference to the differential views taken by the *ulema* with respect to whether the *Zakah* on commodities, such as wheat and dates, must be given in kind or could also be given in their monetary equivalent. The Hanafis validated the possibility of this substitution, but some *ulema* held otherwise. The Hanafi view was founded on the analysis that the purpose of *Zakah* was to satisfy the needs of the poor, which could just as easily be achieved with the monetary equivalent of the commodity. Ibn Qayyim al-Jawziyyah likewise observed that where the ahadith on the subject of *sadaqah al-fitr* (the charity due on the Eid after Ramadan) sometimes referred to dates and at other times to raisins or food grains, the common purpose in all this was to satisfy the needs of the poor, which could be done with any of these staple foods of Madinah and its environs at that time. The purpose in any of these ahadith was not to confine the payment of the *sadaqah* to a particular commodity.[1] A similar example relates to the issue of whether a person may pay his Zakat ahead of time, that is, prior to the expiry of the one year period when it becomes due, and whether he is liable to pay again if he has already paid before that time. Imam Malik, drawing an analogy with Salah, ruled affirmatively that the person would be liable to pay again. Subsequent Maliki jurists, including Ibn al-'Arabi and Ibn Rushd, however, disagreed with this position and ruled that early payment of *Zakah* was permissible. Indeed, if someone performs his *Salah* before its due time, he must perform it again at its proper time. But, there is a difference between *Salah* and *Zakah*, in that the former is time-bound to specific times but the latter is not in any such similar ways. Hence, *Zakah* may be paid earlier, especially if it is prepaid by only a few weeks.[20] Scholars who have taken a non-literalist approach, on the other hand, have often been criticised for departing from certain parts of the textual sources. Imam Abu Hanifah, for example, was criticised by the Ahl al-Hadith (the Traditionalists), for having departed on occasions from the wordings of particular ahadith. It turns out upon closer inspection, however, that such scholars departed from the text only when they had reached a different conclusion by reading that particular text in the context of the of the other relevant evidence in the Qur'an and Sunnah.

Disharmony and conflict between the aims and objectives of the *Shari'ah* and its specific rulings may arise latently. A *mujtahid* or a judge may issue a ruling or a decision which appears at that time to be consistent with the text and *maqsud* of the

Shari'ah. With time and further scrutiny, however, it may prove to be not so consistent. A judge may, for example, uphold a duly signed contract and make it binding on the parties. With time, however, the contract may prove to be grossly unfair on one of the parties. In such an eventuality the judge or the *mujtahid* can hardly ignore the attendant unfairness and insist on the strict adherence to the letter of the contract. Indeed, according to the *Shari'ah* laws of obligations, a contract is no longer a governing instrument between the *shari'ah al-'aqidayn* (the contracting parties) if it becomes an instrument of injustice. The judge must therefore, in order to uphold the maqsud of justice, a primary and all-pervasive characteristic objective of the *Shari'ah*, set aside the contract.[21] The judge or the *mujtahid* must, likewise, give priority to the *maqasid* whenever there is such a latent discord. These discords or conflicts are most likely to occur where the specific rulings have been arrived at through the doctrine of Qiyas (Analogy). Thus, where a rigid adherence to Qiyas may lead to unsatisfactory results, recourse may be had to *Istihsan* (Juristic Preference) in order to obtain an alternative ruling that is in greater harmony with the objectives of the Shari'ah.[22]

An important feature of the '*Maqasidi'* (objectives-based) approach in relation to *ijtihad* and the formulation of specific rules is the attention that the *mujtahid* must pay to the consequences of his rulings. Indeed, an ijtihad or fatwa would be deficient if it failed to contemplate its own *ma'alat* (consequences). The importance of such contemplation is demonstrated by the Prophet's Sunnah. Therein, we note instances where the Prophet paid much attention to the possible consequences of his rulings, often in preference to other considerations. Thus, for example, although acutely aware of the treason and subversive activities of the *Munafiqun* (the Hypocrites), without and within the Muslim community, we find that he decided not to pursue them, stating simply that "I fear people might say that Muhammad kills his own Companions".[23] Similarly, although he personally would have liked very much to accept and execute 'A'ishah Siddiqah's suggestion to restore the Ka'bah to its original proportions, as founded by the patriarch Prophet, Ibrahim, again, we find that he decided not to, saying "I would have done so if I didn't fear that this may induce our people into disbelief".[24] In both these instances, therefore, the Prophet did not take what would have been thought to be the normal course because of a foresight of the potential adverse consequences.

Finally, we must turn to ijtihad in the context of crimes and penalties. Of course, the normal procedure here is to apply the punishment whenever the cause and occasion for it is present. There may, however, be instances where to pardon the offender would be a more preferable course to take. The *mujtahid* and the judge must remain open and alert to such possibilities and reflect them in their judgements whenever so required.

Al-Shatibi has in this connection drawn a subtle distinction between the normal *'illah* that invokes a particular ruling in a given case and what he terms as *'illah tahqiq manat al-khas* (the verification of the particular) in the issuance of ijtihad and judgement. The *mujtahid* (scholar) may investigate the normal *'illah* and identify it in the case, for example, of a poor person who qualifies to be a recipient of *zakah*, but such an enquiry may take a different course when it is related to a particular individual as to what might seem appropriate or inappropriate to be applied in a particular case. The *mujtahid* needs therefore to be learned not only of the law and specific evidence but must also have acumen and insight to render judgements that are enlightened by both the overall consequences as well as the special circumstances of each case.[25]

CONCLUSION

The *maqasid* are undoubtedly rooted in the textual injunctions of the Qur'an and Sunnah, but they look mainly at the general philosophy and objectives of these injunctions, often beyond the particularities of the text. The focus is not so much on the words and sentences of the text as on the goal and purpose that is advocated and upheld. By comparison to usul al fiqh, the legal theory of the sources, the *maqasid al Shari'ah* are not burdened with methodological technicalities and literalist readings of the text. As such the *maqasid* integrates a degree of comprehension and versatility into the reading of the *Shari'ah* that is in many ways unique and rides above the vicissitudes of time and circumstance. At a time when some of the important doctrines of usul al-fiqh, such as ijma' (general consensus), and qiyas (analogical reasoning) and even ijtihad, seem to be burdened with difficult conditions, conditions that might appear to stand as a measure of disharmony with the prevailing socio-political climate of the present day Muslim countries, the *maqasid* have become the focus of attention as it tends to provide ready and convenient access to the *Shari'ah*. it is naturally meaningful to understand the broad outline of the objectives of the Shari'ah in the first place before one tries to move on to specifics. An adequate knowledge of the *maqasid* thus equips the student of *Shari'ah* with insight and provides him with a theoretical framework in which the attempt to acquire detailed knowledge of its various doctrines can be more meaningful and interesting.

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REFERENCES
1. Cf. Al-Zuhayli, Nazariyyah al-Darurah, p.50
2. Cf. Al-Qaradawi, Madkhal li-Dirasah al-Shari'ah, pp. 70 – 71
3. Cf. Raysuni, Nazariyyah al-Maqasid, p. 149
4. Al-Ghazali, Al-Mustafa, I, 287
5. Cf. Al-Qaradawi, Madkhal li-Dirasah al-Shari'ah, p. 73
6. Al-Sulami, Qawa'id al-Ahkam, I, 8

7. Ibn taymiyyah, Majmu' al Fatawa, XXXII, 134
8. Ahmad al-Raysuni, Nazariyyah al-Maqasid, p.44
9. Al-Qaradawi, Madkhal li-Dirasah al-Shari'ah, p.75
10. Al-Shatibi, Muwafaqat, II, 393
11. Al-Shatibi, Muwafaqat, III, 394
12. Al-Shatibi, Muwafaqat,II, 6:see also Ibn Qayyim, I'lan, I, al-Qaradawi, Madkhal, p.58
13. Al-Shatibi, Muwafaqat, I, 243; al-Qaradawi, , Madkhal, pp. 64-65
14. Ibid, II, 49 – 51; idem, AlI'tisam, II, 131
15. Al-Shatibi, Muwafaqat, III, 148
16. Al-Shatibi, Muwafaqat, IV, 179
17. Tahir Ibn 'Ashur, Maqasid al-Shari'ah al-Islamiyyah, pp. 15 – 16
18. Id. P. 27
19. Ibn Qayyim, I'lam, III, 12; al-Raysuni, Nazaariyyah al-Maqasid, p. 336
20. Cf. Al-Raysuni, Nazariyyah, pp. 338 – 339
21. Cf. Wahbal al-Zuhayli, Al-Fiqh ai-Islami wa Adillatuh, IV, 52: See for detailed illustrations of this type of istihsan, M.H. Kamili, Principles of Islamic Jurisprudence, p. 225ff.
22. See for details the chapter on istihsan, Kamili's, Jurisprudence in the previous note.
23. Hadith muttafiqun 'aliyh reported by all major collections of Hadith
24. Malik bin Anas, Al-Muwatta, I, 363; al-Raysuni, Naziriyyah, p. 354
25. Al-Shatibi, Muwafaqat, IV, 97