Mohammad Hashim Kamali

MAQĀṢID AL-SHARĪ^CAH MADE SIMPLE

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MOHAMMAD HASHIM KAMALI

CONTENTS

FOREWORD

THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT (IIIT) has great pleasure in presenting this guide introducing the subject of *Maqāṣid al-Sharīʿah*, the higher objectives and intents of Islamic Law. The author, Professor Mohammad Hashim Kamali, is a well-known scholar, and specialist in this field.

Since few works in the English language have been available on the subject of *Maqāṣid al-Sharīʿah,* the IIIT decided to fill the vaccum by initiating the translation and publication of a series of books on *al-Maqāṣid* to introduce this important and difficult area of thought to English readers. These include to date, *Ibn Ashur Treatise on Maqāṣid al-Shariʿah*, *Imam al-Shāṭibī's Theory of the Higher Objectives and Intents of Islamic Law* by Ahmad al-Raysuni, *Towards Realization of the Higher Intents of Islamic Law: Maqāṣid al-Shariʿah a Functional Approach* by Gamal Eldin Attia, and *Maqasid al-Shariʿah as Philosophy of Islamic Law: A Systems Approach* by Jasser Auda.

As the topic is complex and intellectually challenging, with most books appearing on the subject written mainly for specialists, scholars and intellectuals alone, the IIIT London Office is also producing other simple introductory guides to the subject as part of its Occasional Papers series with a view to providing easy accessible material for the general reader. These include *Maqāṣid al-Sharīʿah: A Beginner's Guide* and *The Islamic Vision of Development in the Light of Maqāṣid al-Sharīʿah* by Muhammad Umer Chapra.

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MAQĀṢID AL-SHARĪʿAH
MADE SIMPLE

Maqāṣid al-Sharīʿah: The Objectives of Islamic Law

This work is presented in five main sections, the first section begins with a general characterisation of *maqāṣid al-sharīʿah* and its origins in the Qur'an. The second section addresses the classification of *maqāṣid* and a certain order of priority that is integrated into the structure of *maqāṣid*. The third section is devoted to historical developments and the contributions of some of the leading *ʿulamā'* (scholars), especially that of Abū Isḥāq Ibrāhīm al-Shāṭibī, to the theory of *maqāṣid*. Section four looks into the differential app-roaches the *ʿulamā'* have taken toward the identification of *maqāṣid*. Finally, the last section highlights the relevance of *maqāṣid* to ijtihad and the ways in which *maqāṣid* can enhance the scope and the caliber of ijtihad.

Textual Origins

Maqāṣid al-Sharīʿah, or the goals and objectives of Islamic law, is an evidently important and yet somewhat neglected theme of the Shariʿah. Generally the Shariʿah is predicated on the benefits of the individual and that of the community, and its laws are designed so as to protect these benefits and facilitate improvement and perfec-tion 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 (ṢAAS)* in such terms as: "We have not sent you but as a mercy to the worlds" (21:107). This can also be seen perhaps in the Qur'an's characterisation of itself in that it is "a healing to the (spiritual) ailment of the hearts, guidance and mercy for the believers (and mankind)" (10:57).

The two uppermost objectives of compassion (raḥmah) and guidance (hudā) in the foregoing verses are then substantiated by other provisions in the Qur'an and the Sunnah that seek to establish justice, eliminate prejudice, and alleviate hardship. The laws of the Qur'an and the Sunnah also seek to promote co-operation and mutual support within the family and the society at large. Justice itself is a manifestation of God's mercy as well as an objective of the Sharīʿah in its own right. Compassion (raḥmah) is manifested in the realisation of benefit (maṣlaḥah) which the ʿulamā' have generally considered to be the all-pervasive value and objective of the Sharīʿah and is to all intents and purposes synonymous with raḥmah.

Educating the individual (tahdhīb al-fard) is another important objective of the Sharīʿah so much so that it comes, in order of priority, even before justice and maṣlaḥah. For these are both socially-oriented values which acquire much of their meaning in the context of social relations, whereas tahdhīb al-fard seeks to make every individual a trustworthy agent and carrier of the values of the Sharīʿah, and it is through educating the individual that the Sharīʿah seeks to realise most of its social objectives. The overall purpose of a great deal of the laws and values of the Sharīʿah, especially in the spheres of ʿibādāt (devotional matters) and moral teaching, is to train an individual who is mindful of the virtues of taqwā and becomes an agent of benefit to others.[1]

The Qur'an is expressive, in numerous places and a variety of contexts, of the rationale, purpose and benefit of its laws so much so that its text becomes characteristically goal-oriented. This feature of the Qur'anic language is common to its laws on civil transactions (muʿāmalāt) as well as devotional matters (ʿibādāt). Thus

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*ṢAAS: Ṣalla Allahu ʿAlayhi wa Sallam: May the peace and blessings of Allah be upon him. This prayer is said by Muslims whenever the name of the Prophet Muhammad is mentioned, or whenever he is referred to as the Prophet of Allah.

when the text expounds the rituals of *wuḍū'* (ablution for prayer) it follows on to declare that "God does not intend to inflict hardship on you. He intends cleanliness for you and to accomplish his favor upon you" (5:6). Then with regard to the prayer itself, it is declared that "truly salah [the ritual five daily prayers] obstructs promiscuity and evil" (29:45). With reference to jihad the Qur'an similarly proclaims its purpose in such term that "permission [to fight] is given to those against whom war is being wrongfully waged" (22: 39). The purpose, in other words, of legalising jihad is to fight injustice (*ẓulm*) and the purpose of salah is to attain spiritual purity and excellence that is accomplished together with physical cleanliness through ablution before prayer. With reference to the law of just retaliation (*qiṣāṣ*), the text similarly declares that "for, in [the law of] just retribution [*qiṣāṣ*], O you who are endowed with insight, there is life for you, so that you might remain conscious of God!" (2:179); and with regard to poor-due (zakah), the Qur'an validates it "so that wealth does not circulate only among the wealthy" (59:7). According to another text, the believers are under duty to lower their gaze in their encounter with members of the opposite sex, "for this will help you to attain greater purity" (24:30).

One can add many more examples of the law which show how the Qur'an and the Sunnah are expressive of their goal justification, cause and benefit in the affirmative sense, just as one finds numerous references to evil conduct and crime which is reprimanded and made punishable, in the negative sense, in order to prevent injustice, corruption and prejudice. In the area of commerce and *muʿāmalāt*, the Qur'an forbids exploitation, usury, hoarding and gambling which are harmful and jeopardise the objective of fair dealing in the marketplace. The underlying theme in virtually all of the broad spectrum of the *aḥkām* (rules) is realisation of benefit (*maṣlaḥah*) which is regarded as the summa of *maqāṣid*. For justice is also a *maṣlaḥah* and so is *tahdhīb al-fard*. The *maṣāliḥ* (pl. of *maṣlaḥah*) thus become another name for *maqāṣid* and the *ʿulamā'* have used the two terms almost interchangeably.

Classification of Maqāṣid

The ʿulamā’ have classified the entire range of *maṣāliḥ*-cum-*maqāṣid* into three categories in a descending order of importance, beginning with the essential *maṣāliḥ*, or *ḍarūriyyāt*, followed by the complementary benefits, or *ḥājiyyāt*, and then the embellishments or *taḥsīniyyāt*. The essential interests are enumerated at five, namely faith, life, lineage, intellect and property. These are, by definition, essential to normal order in society as well as to the survival and spiritual well-being of individuals, so much so that their destruction and collapse will precipitate chaos and collapse of normal order in society. The Shariʿah seeks to protect and promote these values and validates measures for their preservation and advancement. Jihad has thus been validated in order to protect religion, and so is just retaliation (*qiṣāṣ*) which is designed to protect life. The Shariʿah takes affirmative and also punitive measures to protect and promote these values. Theft, adultery and winedrinking are punishable offenses as they pose a threat to the protection of private property, the well-being of the family, and the integrity of human intellect respectively. In an affirmative sense again, but at a different level, the Shariʿah encourages work and trading activity in order to enable the individual to earn a living, and it takes elaborate measures to ensure the smooth flow of commercial transactions in the marketplace. The family laws of the Shariʿah are likewise an embodiment largely of guidelines and measures that seek to make the family a safe refuge for all of its members. The Shariʿah also encourages pursuit of knowledge and education to ensure the intellectual well-being of the people and the advancement of arts and civilisation. The essential *maṣāliḥ*, in other words, constitute an all-encompassing theme of the Shariʿah as all of its laws are in one way or another related to the protection of these benefits. These benefits are an embodiment, in the meantime, of the primary and overriding objectives of the Shariʿah.

The second class of the interests, known as *ḥājiyyāt*, or complementary interests are defined as benefits which seek to remove severity and hardship that do not pose a threat to the very survival

of normal order. A great deal of the concessions (*rukhaṣ*) such as the shortening of salah, and opening of the fast for the sick and the traveller, which the Shariʿah has granted, are aimed at preventing hardship, but they are not essential since people can live without them if they had to. In almost all areas of obligatory *ʿibādāt* the Shariʿah has granted such concessions. In the sphere of *muʿāmalāt*, the Shariʿah validated certain contracts, such as the sale of *salam*, and also that of lease and hire (*ijārah*) because of the people's need for them notwithstanding a certain anomaly that is attendant in both. In the sphere of family law, once again the Shariʿah permits divorce in situations of necessity by way, that is, of a concession, which is aimed, in the final analysis, at ensuring the well-being of the family and defending it against intolerable conflict.

A *maṣlaḥah* of the second class is elevated to the rank of the essential *maṣlaḥah* when it concerns the public at large. To illustrate this, the validity of *ijārah* may be of secondary importance to an individual but it is an essential interest for the society at large. Similarly, certain concessions that are granted in the sphere of *ʿibādāt* may be secondary to the survival of an individual but become a matter of primary interest for the community as a whole. 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.[2] This is because the Shariʿah is more emphatic on the prevention of evil, as can be seen in the hadith where the Prophet 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 (altogether)."[3]

The third class of *maṣāliḥ*, known as *taḥsīniyyāt*, are in the nature of desirabilities as they seek to attain refinement and perfection in the customs and conduct of people at all levels of achievement. The Shariʿah thus encourages cleanliness of body and attire for purposes of prayer and recommends, for instance, the wearing of perfume when attending the congregational Friday prayer; contrariwise, it discourages the consumption of raw garlic on that

occasion. The Shariʿah also encourages charity to those in need beyond the level of obligatory taxes, and in ʿibādāt, it recommends supererogatory prayers, and so forth. In customary matters and relations among people, the Shariʿah encourages gentleness (rifq), pleasant speech and manner (ḥusn al-khulq) and fair dealing (iḥsān). The judge and the head of state are similarly counselled not to be too eager in the enforcement of penalties, such a course being considered a desirable one to take. The purpose of all this is the attainment of beauty and perfection in all areas of human conduct.

This last category of interests is perhaps of special importance as it is pervasive and relates to all other maṣāliḥ. One can perform the obligatory salah, for example, in different ways, with or without proper concentration and giving each of its parts their due attention, or perform it in a hasty and thoughtless manner, and the difference between them is that the first is espoused with the attainment of both the essential and the desirable, and the second can at best be discharged as a duty. One can extend this analysis to almost every area of human conduct and the implementation of almost all of the aḥkām of the Shariʿah.

It should be obvious, then, that the classification of maṣāliḥ need not be confined to the aḥkām of the Shariʿah or to religious matters alone as it is basically a rational construct that applies to customary, social, political, economic and cultural affairs and so forth. From this analysis, it also appears that classifying a certain interest and maṣlaḥah under one or the other of these categories is likely to be relative and involve value judgment that contemplate the attendant circumstances of each case.

Maqāṣid have been further classified into the general purposes (al-maqāṣid al-ʿāmmah) and particular goals (al-maqāṣid al-khāṣṣah). The general goals are those that characterise Islam and its Shariʿah and they are on the whole broad and comprehensive. Prevention of harm (ḍarar) is a general goal of Shariʿah and applies to all areas and subjects. Particular goals are theme-specific and relate to specific subjects. Examples of the particular goals are those that pertain to say family matters, financial transactions, labor relations, witnessing and adjudication and the like.

Another binary classification of *maqāṣid* is their division into definitive goals (*al-maqāṣid al-qaṭʿiyyah*) and speculative purposes (*al-maqāṣid al-ẓanniyyah*). The former goals are ones that are supported by clear evidence in the Qur'an and Sunnah, such as protection of property and honor of individuals, administration of justice, right to financial support among close relatives and the like. The speculative goals fall below that rank and may be the subject of disagreement. To say, for example, that even the smallest amount of wine drinking is just as forbidden and so intended by the Lawgiver as a larger amount is a doubtful position simply because it may not intoxicate, which is the effective cause of the prohibition at issue.

Al-Shāṭibī has also classified *maqāṣid* into the aims and purposes of the Lawgiver (*maqāṣid al-shāriʿ*) and the human goals and purposes (*maqāṣid al-mukallaf*). To say that securing human welfare and benefit is God's illustrious purpose behind the laws of Shariʿah illustrates the former, whereas seeking employment, for example, in order to earn a living illustrates the latter class of *maqāṣid*.

Maqāṣid have also been classified into the primary objectives (*al-maqāṣid al-aṣliyyah*) and subsidiary goals (*al-maqāṣid al-ṭabʿiyyah*). The former refers to the primary and normative goals that the Lawgiver, or a human agent, has originally intended and they constitute the basic purposes of the laws of Shariʿah in the evaluation of human acts and conduct. For example, the primary purpose of knowledge (*ʿilm*) and education is to know God and the proper manner of worshipping Him and also to explore and understand His creation. Similarly the primary goal of marriage is procreation, and the primary purpose of attending lectures is to increase one's knowledge.

The secondary goals are those which complement and support the primary ones. The secondary purpose of marriage, for example, is friendship and sexual satisfaction. The secondary purposes of seeking knowledge can be obtaining academic qualification, personal accomplishment and refinement of one's speech and conduct.[4]

Maqāṣid that relate evidently to *ḍarūriyyāt* may be regarded as definitive (*qaṭʿī*). Those which are identified by induction (*istiqrā'*)

from the clear injunctions (*nuṣūṣ*) may also be added to this category. As for *maqāṣid* that cannot be included in either of these two categories, they may still be seen as definitive if there be general consensus or clear legislation in their support. Additional *maqāṣid* that are identified outside this range may be classified as speculative (*ẓannī*) which may remain in that category unless they are elevated to the rank of definitive through consensus or legislation. In the event of a clash between these, the definitive *maqāṣid* will take priority over the speculative. An order of priority is also suggested among the definitive *maqāṣid* in favor of those which preserve faith and life over the other three, and protection of the family comes next followed by intellect and property. A similar order of priority also applies between the essential *maqāṣid* which take priority over those which are deemed complementary and then those which fall under desirabilities.

Having said this, there still remains the residual question of how can arbitrariness be actually avoided in the identification of *maqāṣid*. For *maqāṣid*, like the benefits (*maṣāliḥ*), are open-ended and still in need of a more accurate methodology to ensure unwarranted indulgence through personal or partisan bias in their identification. This is a matter to a large extent of correct understanding and it would seem that collective ijtihad and consultation would be the best recourse to ensure accuracy in the identification of *maqāṣid*. It would certainly be reassuring to secure the advice and approval of a learned council as to the veracity of a *maqāṣid* that is identified for the purpose of policy making and legislation. This could be a standing parliamentary committee that comprises expertise in Shariʿah and other disciplines and its task would be to verify, suggest and identify the more specific range of goals and purposes of Shariʿah and law in conjunction with legislation and government policy.

History of Maqāṣid

As a theme of the Shariʿah in its own right, *maqāṣid* did not receive much attention in the early stages of the development of Islamic

legal thought and, as such, they represent rather a later addition to the juristic legacy of the *madhāhib* (schools of thought). Even to this day many a reputable textbook on *Uṣūl al-Fiqh* (the principles or fundamentals of Islamic jurisprudence) does not mention *maqāṣid al-sharīʿah* in their usual coverage of familiar topics. This is partly due perhaps to the nature of the subject, which is largely concerned with the philosophy of the law, its outlook and objective, rather than the specific formulations of its text. Although *maqāṣid* as a distinctive theme of the Sharīʿah are obviously relevant to ijtihad, they have not been treated as such in the conventional expositions of the theory of ijtihad.

Islamic legal thought is, broadly speaking, preoccupied with concerns over conformity to the letter of the divine text, and the legal theory of *Uṣūl al-Fiqh* has advanced that purpose to a large extent. This literalist orientation of the juristic thought was gene-rally more pronounced in the approach of the tendency of the traditionists (the *Ahl al-Ḥadīth*) than that of the Rationalists (the *Ahl al-Raʾy*). The literalists thus tended to view the Sharīʿah as a set of rules, commands and prohibitions that were addressed to the competent individual *mukallaf* and all that the latter was expected to do was conform to its directives. The precedent of the leading Companions indicated, on the other hand, that they saw the Sharīʿah both as a set of rules and a value system in which the specific rules were seen as tangible manifestations of the overriding values. The textualist tradition of the first three centuries did not take much interest in *maqāṣid al-sharīʿah* and it was not until the time of al-Ghazālī (d. 505/1111) and then al-Shāṭibī (d. 790/1388) that significant developments were made in the formulation of the theory of *maqāṣid*.

The basic outlook that was advocated by the theory of *maqāṣid* was not denied by the leading schools, yet *maqāṣid* remained on the fringes of the mainstream juristic thought that was manifested in the various themes and doctrines of *Uṣūl al-Fiqh*. Except for the Ẓāhirīs who maintained that *maqāṣid* are only known when they are identified and declared by the clear text, the majority of ʿulamāʾ did not confine *maqāṣid* to the clear text alone. For they perceived

and understood the Shariʿah to be rational, goal–oriented, and its rules generally founded on identifiable causes. A mere conformity to rules that went against the purpose and outlook of the Shariʿah was therefore, generally considered unacceptable. A totally different approach to *maqāṣid* was taken by the Bāṭinīs who held, contrary to the Ẓāhirīs, that the essence and objective of the *nuṣūṣ* (text) were always to be found, not in the explicit words of the text, but in its hidden meaning (i.e. *bāṭin*), hence their name, the Bāṭinīs.⁵ There were also differences of orientation among the leading *madhāhib* toward *maqāṣid*: some were more open to it than others, but elaboration into the goals and objectives of the Shariʿah was generally not encouraged. This rather unspoken attitude contrasted with the fact that the Qur'an itself exhibits considerable awareness of the underlying purposes and objectives of its laws and often expounds the causes and the rationale on which they are founded. The general reticence of the ʿulamā' in respect of the identification of *maqāṣid* might have partly been due to the elements of projection and prognostication that such an exercise was likely to involve. Who can tell, for sure, for example, that this or that is the purpose and overriding objective of the Lawgiver, without engaging in a degree of speculation, unless of course, the text itself declared it so. But then to confine the scope of *maqāṣid* only to the clear declaration of the texts was also not enough, as I shall presently elaborate.

It was not until the early fourth century that the term '*maqāṣid*' was used in the juristic writings of Abū ʿAbd Allāh al-Tirmidhī al-Ḥakīm (d. 320/932) and recurrent references to it appeared in the works of Imam al-Ḥaramayn al-Juwaynī (d. 478/1085) who was probably the first to classify *maqāṣid al-sharīʿah* into the three categories of essential, complementary and desirable (*ḍarūriyyāt*, *ḥājiyyāt*, *taḥsīniyyāt*) which has gained general acceptance ever since. Juwaynī's ideas were then developed further by his pupil, Abū Ḥāmid al-Ghazālī who wrote at length on public interest (*maṣlaḥah*) and ratiocination (*taʿlīl*) in his works, *Shifā' al-Ghalīl* and *al-Mustaṣfā*. Ghazālī was generally critical of *maṣlaḥah* as a proof but validated it if it promoted *maqāṣid* of the Shariʿah. As for *maqāṣid*

themselves, Ghazālī wrote categorically that the Shariʿah pursued five objectives, namely those of faith, life, intellect, lineage and property which were to be protected as a matter of absolute priority.[6]

A number of prominent writers continued to contribute to *maqāṣid*, not all of them consistently perhaps, yet important to the development of ideas. Sayf al-Dīn al-Āmidī (d. 631/1233) identified *maqāṣid* as criteria of preference *al-tarjīḥ* among conflicting analogies and elaborated on an internal order of priorities among the various classes of *maqāṣid*. Āmidī also confined the essential *maqāṣid* to only five. The Mālikī jurist, Shihāb al-Dīn al-Qarāfī (d. 684/1285) added a sixth to the existing list, namely the protection of honor (*al-ʿirḍ*) and this was endorsed by Tāj al-Dīn ʿAbd al-Wahhāb ibn al-Subkī (d. 771/1370) and later by Muḥammad ibn ʿAlī al-Shawkānī (d. 1250/1834). The list of five essential values was evidently based on a reading of the relevant parts of the Qurʾan and the Sunnah on the prescribed penalties (*ḥudūd*). The value that each of these penalties sought to vindicate and defend was consequently identified as an essential value. The latest addition (i.e. *al-ʿirḍ*) was initially thought to have been covered under lineage (*al-nasl*, also *al-nasab*), but the proponents of this addition relied on the fact that the Shariʿah had enacted a separate *ḥadd* (a set of punishments enunciated in the Shariʿah textual sources, the Qurʾan and Sunnah) punishment for slanderous accusation (*al-qadhf*), which justified the addition.[7] ʿIzz al-Dīn ʿAbd al-Salām al-Sulamī's (d. 660/1262) renowned work, *Qawāʿid al-Aḥkām*, was in his own characterisation a work on 'maqāṣid al-aḥkām' and addressed the various aspects of *maqāṣid* especially in relationship to *ʿillah* (effective cause) and *maṣlaḥah* (public interest) in greater detail. Thus he wrote at the outset of his work that "the greatest of all the objectives of the Qurʾan is to facilitate benefits (*maṣāliḥ*) and the means that secure them and that the realisation of benefit also included the prevention of evil."[8] Sulamī added that all the obligations of the Shariʿah (*al-takālīf*) were predicated on securing benefits for the people in this world and the next. For God Most High is Himself in no need of benefit nor is He in need of the

obedience of His servants. He is above all this and cannot be harmed by the disobedience of transgressors, nor benefit from the obedience of the righteous. The Shariʿah is, in other words, concerned, from the beginning to the end, with the benefits of God's creatures.

Taqī al-Dīn ibn Taymiyyah (d. 728/1328) was probably the first scholar to depart from the notion of confining *maqāṣid* to a specific number and added, to the existing list of *maqāṣid*, such things as fulfilment of contracts, preservation of the ties of kinship, honoring the rights of one's neighbor, in so far as the affairs of this world are concerned, and the love of God, sincerity, trust-worthiness, and moral purity, in relationship to the hereafter.[9] Ibn Taymiyyah thus revised the scope of *maqāṣid* from a designated and specified list into an open-ended list of values, and his approach is now generally accepted by contemporary commentators, including Ahmad al-Raysuni, Yusuf al-Qaradawi and others.[10] Qaradawi has further extended the list of *maqāṣid* to include social welfare and support (*al-takāful*), freedom, human dignity and human fraternity, among the higher objectives and *maqāṣid* of the Shariʿah.[11] These are undoubtedly upheld by both the detailed and the general weight of evidence in the Qur'an and the Sunnah.

I propose to add economic development and strengthening of R & D (research and development) in technology and science to the structure of *maqāṣid* as they are crucially important in deter-mining the standing of the Ummah in the world community. It would appear from this analysis that *maqāṣid al-sharīʿah* remain open to further enhancement which will depend, to some extent, on the priorities of every age.

Identification of Maqāṣid

As already indicated the ʿulamāʾ have differed in their approach to the identification of *maqāṣid*. The first approach to be noted is the textualist approach, which confines the identification of *maqāṣid* to the clear text, commands and prohibitions, which are the carriers of *maqāṣid*. *Maqāṣid*, according to this view, have no separate

existence outside this framework. Provided that a command is explicit and normative it conveys the objective *maqāṣid* of the Lawgiver in the affirmative sense. Prohibitions are indicative of *maqāṣid* in the negative sense in that the purpose of a prohibitive injunction is to suppress and avert the evil that the text in question has contemplated. This is generally accepted, but there are certain tendencies within this general framework. While the Ẓāhirīs tend to confine *maqāṣid* to the obvious text, the majority of jurists takes into consideration both the text and the underlying ʿillah and rationale of the text.[12] The chief exponent of *maqāṣid*, al-Shāṭibī, has spoken affirmatively of the need to observe and respect the explicit injunctions, but then he added that adherence to the obvious text should not be so rigid as to alienate the rationale and purpose of the text from its words and sentences. Rigidity of this kind, al-Shāṭibī added, was itself contrary to the objective (*maqṣūd*) of the Lawgiver, just as would be the case with regard to neglecting the clear text itself. When the text, whether a command or a prohibition, is read in conjunction with its objective and rationale, this is a firm approach, one which bears greater harmony with the intention of the Lawgiver.[13] Al-Shāṭibī elaborated that *maqāṣid* that are known from a comprehensive reading of the text are of two types, primary (*aṣliyyah*) and secondary (*ṭabʿiyyah*). The former are the essential *maqāṣid* or *ḍarūriyyāt* which the *mukallaf* must observe and protect regardless of personal predilections, whereas the supplementary *maqāṣid* – *ḥājiyyāt* – are those which leave the *mukallaf* with some flexibility and choice.

A comprehensive reading of the textual injunctions of the Shariʿah has given rise to such questions as to whether the means to a *wājib* (the law or deed which is obligatory) or *ḥarām* (prohibited) should also be seen as a part of the objective that is pursued by that injunction; whether the means to a command, in other words, is also an integral part of that command. Another question raised is whether avoiding the opposite of a command is integral to the goal and objective that is sought by that command. The general response given to these questions is that the supplementary aspects of commands and prohibitions are an integral part of their objectives,

although disagreements have emerged over details. There is a general agreement that the opposite of a command amounts to a prohibition in the event where that opposite can be clearly identified. Most of the injunctions of the Sharīʿah are easily understood, and their objectives as well as their opposites can be known and ascertained from the reading of the clear text. It is thus noted that whatever might be necessary for the carrying out of a command or a *wājib* is also a part of that *wājib*. Al-Shāṭibī has similarly concluded that whatever is complementary to *maqāṣid* and in the service thereof is also a part of *maqāṣid*. The question then arises regarding the silence of the Lawgiver in respect of a certain conduct in situations especially where a general reading of the relevant evidence sheds light on the value of that conduct. The question may be put as follows: We know that *maqāṣid* are known from clear injunctions, but can they also be known from a general reading of the *nuṣūṣ* by way of induction? This is where al-Shāṭibī has given an original response, and this is what we take up next.

Induction (*istiqrāʾ*) to al-Shāṭibī is one of the most important methods of identifying *maqāṣid* of the Shariʿah. 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 obtained from them. A decisive conclusion may, in other words, be arrived at from a plurality of speculative expressions. Al-Shāṭibī illustrates this by saying that nowhere in the Qurʾan is there a specific declaration to the effect that the Shariʿah has been enacted for the benefit of the people. Yet this is a definitive conclusion which is drawn from the collective reading of a variety of textual proclamations.[14] Al-Shāṭibī then adds that the benefits (*maṣāliḥ*) are to be understood in their broadest sense which is inclusive of all benefits pertaining to this world and the hereafter, those of the individual and the community, material, moral and spiritual, and those which pertain to the present as well as the interests of the future generations. This broad meaning of benefits also includes prevention and elimination of harm. These benefits cannot always be verified and ascertained by human reason alone without the aid and guidance of divine revelation.[15]

The typical classification of *maqāṣid* into the three categories of essential, complementary and desirable, and the conclusion that the Lawgiver has intended to protect these are based, once again, on induction as there is no specific declaration on them in the textual sources. On a similar note, the ruling of the Shariʿah that the validity of an act of devotion (*ʿibādah*) cannot be established by means of ijtihad is an inductive conclusion which is drawn from the detailed evidence on the subject, as there is no specific injunction in the sources to that effect. These conclusions are, in the meantime, of great overall importance; they are not open to doubt, nor is their credibility a matter of speculative reasoning.[16] It is also the same inductive method which has led the ʿulamāʾ to the conclusion that the protection of the five values of faith, life, intellect, property and lineage is of primary importance to the Shariʿah – there being no textual ruling to specify any category or number of values in that order.

Al-Shāṭibī's inductive method is not confined to the identification of objectives and values but also extends to commands and prohibitions, which may either be obtained from the clear text, or from a collective reading of a number of textual proclamations that may occur in a variety of contexts.[17] Al-Shāṭibī then goes a step further to say that the inductive conclusions and positions that are so established are the general premises and overriding objectives of the Shariʿah and thus have a higher order of importance than specific rules. It thus becomes evident that induction is the principal method of reasoning and proof to which al-Shāṭibī resorted in his theory of *maqāṣid* and it is also in this regard that he has made an original contribution to this theme.

Al-Shāṭibī's approach to induction is reminiscent of the knowledge that is acquired of the personality and character of an individual that is based on sustained association with that individual and observation of his conduct over a period of time. This kind of knowledge is broad and holistic, as it is enriched with insight, and likely to be more reliable when compared to the knowledge that might be based only on the observation of specific, isolated incidents in the daily activities of the individual concerned.

Methodological Issues

The relative strength or weakness of the various *maqāṣid* in rela-
tionship to one another is a subject on which *maqāṣid* literature is
still at its early stages of development. For the rulings of Sharīʿah
found in the Qurʾan, Sunnah and juristic ijtihad are not always
evaluated on the scale and order of *maqāṣid*. The question, for
instance, as to which are the original and normative purposes
(*maqāṣid aṣliyyah*) as opposed to those that may be classified as
subsidiary goals (*maqāṣid farʿiyyah*) and even the distinction
between the means and the ends as a *maqṣad* can sometimes become
a means (*dharīʿah*) to another *maqṣad*, prompted Ibn Ashur to
saying that except for some occasional references made to them by
ʿIzz al-Dīn ʿAbd al-Salām al-Sulamī in his *Qawāʿid al-Aḥkām* and
Shihāb al-Dīn al-Qarāfī in his *Kitāb al-Furūq*, the subject has largely
remained wanting of development.¹⁸ Early contributions to this
subject are basically confined to one classification of themes into
the renowned five or six headings of the essential goals (*ḍarūriyyāt*)
whereas the other two categories of complementary (*ḥājiyyāt*) and
embellishments (*taḥsīniyyāt*) are not thematically identified. This
triple classification refers to the intrinsic merit and relative value of
maqāṣid involved.

Questions may also arise as to where for example can personal
freedom or equality be placed in this classification, or may be one
could say that this triple classification is not a fitting placement for
these subjects altogether, and that one may consider the binary
classification of normative and subsidiary (*aṣliyyah* and *farʿiyyah*) to
be a more suitable place for them. It is also possible, indeed likely,
that equality and freedom could be placed under both necessary
and normative *maqāṣid* (*ḍarūrī, aṣlī*) and would as such stretch across
categories.

Supposing we have found suitable answers to these questions,
then a range of other questions may arise as to the placement under
one class or other of the sub-varieties of freedom such as freedom
of religion, freedom of movement and freedom of expression.
Protection of lineage and its purity is an essential goal (*ḍarūrī*)

which would possibly suggest that permissibility of marriage, which is a means toward that goal, also partakes in the same, but could this evaluation be also extended to the rule that requires the presence of witnesses in a marriage contract, or indeed to the permissibility of divorce. Could we consider all of these under the complementary *maqāṣid* (*ḥājiyyāt*) in the face, for example, of the renowned legal maxim that "a means to a *wājib* also partakes in that *wājib*!" Or should one think of these under the class of subsidiary (*farʿī*) purposes and place them in the *aṣliyyah-farʿiyyah* (original-subsidiary) category of *maqāṣid*. Are there any guidelines?

The intrinsic merit indicator has obviously been used in the renowned classification of *ḍarūrī-ḥāji-taḥsīnī*, but there are other indicators that can also be used to help with identifying the correct order and placement of the various rules and goals of Shariʿah in the areas of commands and prohibitions, rights and duties and even some of the unregulated aspects of conduct under one or the other of *maqāṣid* categories. These indicators may be summarised as follows:

1) The presence or absence of a text in the Qur'an and Hadith, the precedent of Companions and their general consensus (*ijmāʿ*) provide important indicators on both the identification and relative appraisal of *maqāṣid*. In the presence of a text, the clarity or otherwise of that text, whether definitive or speculative (*qaṭʿī, ẓannī*), whether clear and self-explained (*muḥkm, mufassar*) or ambiguous and obscure (*mujmal, mutashābih*)[19] and so forth would help determining the grade and class of the ruling in question and its possible placement under a relevant class of *maqāṣid*.

2) Another indicator to help with the appraisal of *maqāṣid* is by reference to the benefit (*maṣlaḥah*) they realise or the mischief (*mafsidah*) they are likely to prevent. They would involve a rational evaluation of the possible benefits and harms in the light of prevailing social conditions. One may need to ascertain whether the benefit in question is comprehensive and general (*kullī*) that concerns the largest number of people and relates to a

vital aspect of life or whether it is a partial benefit (*juz'ī*) that lacks those attributes. To promote justice is a general and a vital benefit, and so is consultation (*shūrā*) in governance, but certain varieties of transactions such as lump sum sale (*bayʿ al-juzāt*) or even interest–free loan (*qarḍ ḥasan*) may not include the largest number nor the most vital interests of the people. Yet to ascertain the goal and purpose of Shariʿah in the validation of a *ḥukm*, the benefit it serves, or the mischief it prevents is not always known from the knowledge of the *ḥukm* itself but need to be verified through reflection, inquiry and ijtihad.[20]

3) In a similar vein, the existing fiqh literature and fatwa collections on the renowned scale of five values (*al-aḥkām al-khamsah* – seven according to the Ḥanafī school) namely the obligatory, recommended, reprehensible, permissible and forbidden (the Ḥanafīs add *Makrūh Taḥrīmī* and *farḍ*) could help in the identification and relative appraisal of *maqāṣid*. Additional information of interest can be found under the binary fiqh classification of transgressions into the major and minor sins (*al-kabā'ir wa al-ṣaghā'ir*) and indeed in the literature relating to the pillars and essentials of Islam, the *al-arkān al-khamsah*, that are grounded in the clear text. It will be noted that many of the foregoing categories consist essentially of ethical categories such as the recommended, the reprehensible, the minor sins and the like.

4) Another way of evaluating *maqāṣid*, as already noted, is by reference to punishments the Shariʿah may have provided for a certain conduct that may vindicate a certain value and purpose. The prescribed penalties of *ḥudūd* have naturally been used by the early writers on *maqāṣid* and what is just said is in line with that approach. But even among the *ḥudūd* offenses, there are some, such as slanderous accusation (*qadhf*) and wine drinking (*shurb*) that carry lesser punishments. This would suggest that the values protected by them belong to the second order of *maqāṣid* (i.e. *ḥājiyyāt*). With regard to *shurb*, one may add further that it is actually a *taʿzīr* offence that calls for a discretionary

punishment but has somehow been included in the *ḥudūd* even though the Qur'an does not specify a punishment for it.²¹

5) The Shariᶜah rulings (*aḥkām*) can also be evaluated and *maqāṣid* they pursue verified by reference to the strength or weakness of a promise of reward or a warning (*al-waᶜd wa al-waᶜīd*) that the text may contain. For a promise of reward may have an educational value, or if made in an emphatic language may well be suggestive of an essential *maqāṣid*, or one that may command a lower order of priority depending on the text which carries it and one's overall reading of the Qur'an and hadith. For example, the Qur'an promises a great reward for being good to one's parents and there is an equally emphatic warning for those who annoy them. The Prophet has also severely warned against those who attribute deliberate lies to him. The immediate purpose in both of these is self evident and may accordingly be evaluated as essential goals under family and religion respectively. Compare these with the promise of reward for one who supports his wife and family above the basic essentials of life or one who provides food for animals and birds. *Maqṣad* in the former is to promote family affection and loyalty, a complementary *maqāṣid* perhaps, and compassion to animals in the latter, which may fall under the category of *taḥsīniyyāt*.

The last objective, namely compassion to animals, tends to acquire a higher profile in some hadith texts, one of which warns of a severe punishment for a woman who had reportedly starved her cat by tying her to a pole until she died, or a promise of great reward (of entry to paradise) for a man who had saved the life of a dog that was dying from thirst in the desert. There are numerous hadith texts which promise a great reward for apparently small acts of merit pertaining to *ᶜibādāt*, such as recital of a certain verse at a certain time, or for so many times. The goal and purpose that such promises pursue are often detectable in the context. The weight attached to such acts is often symbolic, not necessarily focusing on the acts in question but the principles they visualise, which may be

mercy and compassion, or the merit attached to the remembrance of God. The expressions and in some cases figurative intended to make an impact or provide education and guidance. It has even been said that they may not necessarily invoke the reward and punishment in question.²²

It is understood from the foregoing examples that a goal and purpose of a lower order can take an unusually higher profile in stressful and life threatening situations, in which case, one would need to ascertain the immediacy of *maqṣad* in question within its surrounding circumstances, and say, for instance, in the matter of saving the life of a dying animal that the *taḥsīnī* is elevated to the rank of *ḍarūrī*. This does not change our basic position, however, that clemency to animals generally fall under the category of *taḥsīniyyāt*.

6) The value of a *ḥukm* and the goal pursued by it can also be ascertained by reference to repetition in the Qur'an and hadith. References to justice, for example, compassion (*raḥmah*) and patience (*ṣabr*) are abundant in the text. The same can be said perhaps of charity beyond the obligatory zakat which occurs frequently in the Qur'an and hadith. One may add here the proviso, however, that repetition in the sphere of obligatory duties (*wājib* and *ḥarām*) is relatively less important but it tends to play a greater role with regard to ethical values in reference to *mandūb* and *makrūh* (recommended and reprehensible). For when a *wājib* or a *ḥarām* is conveyed in a clear and categorical text, further repetition may not necessarily add anything to it, although the Ḥanafīs do take notice of this factor, namely of repletion, side by side with textual clarity, even with reference to *wājib* and *ḥarām*. Thus they raise the *wājib* into an emphatic duty (*farḍ*) and reprehensible (*makrūh*) to the level of *makrūh taḥrīmī* (reprehensible closer to *ḥarām*) as opposed to *makrūh tanzīhī* (*makrūh* for purity) which is closer to permissible or *mubāḥ*.²³ Repetition then tends to play a relatively more important role in the context of ethics than it does with regard to clear legal injunctions.

Maqāṣid and Ijtihad

Having expounded his theory of *maqāṣid*, al-Shāṭibī accentuated the knowledge of *maqāṣid* as a prerequisite of attainment to the rank of a *mujtahid*. Those who neglect acquiring mastery of *maqāṣid* do so to their own peril as it would make them liable to error in ijtihad. Included among these were the proponents of pernicious innovation (*ahl al-bidʿah*) who only looked at the apparent text of the Qur'an without pondering over its objective and meaning. These innovators (an allusion to the Kharijites) held on to the intricate segments of the Qur'an (*al-mutashābihāt*) and premised their 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 texts together. The leading *ʿulamā'* have, on the other hand, viewed the Shariʿah as a unity in which the detailed rules should be read in the light of their broader premises and objectives.²⁴ Tahir ibn Ashur, the author of another landmark work on *maqāṣid*, *Maqāṣid al-Sharīʿah al-Islāmiyyah*, has also confirmed that knowledge of *maqāṣid* is indispensable to ijtihad in all of its manifestations.²⁵ Some *ʿulamā'* who confined the scope of their ijtihad only to literal interpretations have found it possible, Ibn Ashur added, to project a personal opinion into the words of the text and fell into error as they were out of line with the general spirit and purpose of the surrounding evidence.²⁶ This may be illustrated by reference to the different views of the *ʿulamā'* on whether the zakah on commodities such as wheat and dates must be given in kind or could it also be given in their monetary equivalent. The Ḥanafīs have validated giving of zakah in monetary equivalent but al-Shāfiʿī (d. 204/820) has held other-wise. The Ḥanafī view is founded on the analysis that the purpose of zakah is to satisfy the need of the poor and this can also be achieved by paying the monetary equivalent of a commodity. Ibn Qayyim al-Jawziyyah has likewise observed regarding *ṣadaqah al-fiṭr* that there are *aḥādīth* on the subject which refer sometimes to dates and at other times to raisins or foodgrains as these were the staple food of Madinah and its environs at the time. The common

purpose in all of these was to satisfy the need of the poor rather than to confine its payment in a particular commodity.²⁷ To give another example, Mālik (d. 179/795) was asked about a person who paid his zakah ahead of time, that is, prior to the expiry of one year, whether he was liable to pay it again at the end of the year. Mālik replied that he was and drew an analogy with the ritual prayer (salah). If someone performs his prayer before its due time, he must perform it again in its proper time. Subsequent Mālikī jurists, including Ibn al-ʿArabī (d. 543/1148) and Ibn Rushd (d. 520/1126), have reversed this position and stated that early payment of zakah was permissible. There was, they added, a difference between salah and zakah in that the former was time-bound to specific times, but no such time had been stipulated for the payment of zakah. Hence zakah may be paid earlier especially if it is prepaid by only a few weeks or even longer.²⁸

Abū Ḥanīfah (d. 150/767) has often been criticised by the *Ahl al-Ḥadīth* for having departed on occasions from the wording of *aḥadīth* to an alternative ruling. But on closer examination it becomes clear that Abū Ḥanīfah has done so only when he reached a different conclusion by reading a particular hadith in conjunction with other relevant evidence in the Qurʾan and the Sunnah.

It will also be noted that on occasions *mujtahids* 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 Shariʿah. 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 that 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 (*sharīʿah al-ʿāqidayn*) if it proves to be an instrument of injustice. Such a contract must be set aside and justice, which is the goal and *maqṣūd* of the Lawgiver, must be given priority over considerations of conformity to an untenable contract.²⁹ Without going into details, instances of

conflict between the overriding objectives of the Shariʿah and a particular ruling thereof can also arise with reference to the rulings of analogy (*qiyās*). A rigid adherence to *qiyās* in certain cases may lead to unsatisfactory results, hence a recourse may be had to *istiḥsān* in order to obtain an alternative ruling that is in harmony with the objectives of the Shariʿah.[30]

Another feature of *maqāṣid* which is important to ijtihad is the attention a *mujtahid* must pay to the end result and consequence of his ruling. For a fatwa or ijtihad would be deficient if it fails to contemplate its own consequences (*ma'ālāt*). We note in the Sunnah of the Prophet instances where the Prophet paid attention to the consequence of his ruling often in preference to other considerations. There were cases, for instance, where the Prophet knew about the subversive activities of the hypocrites but he did not pursue them for reasons, as he stated himself, that "I fear people might say that Muhammad kills his own Companions."[31] The Prophet also avoided to change the location of the Kaʿbah to its original foundations where the patriarch prophet, Ibrāhīm, had laid them. The pre-Islamic Arabs of Makkah had evidently changed that location, and when ʿĀ'ishah suggested to the Prophet that he could perhaps restore the Kaʿbah to its original position, he responded: "I would have done so if I didn't fear that this may induce our people into disbelief."[32] In both of these cases, the Prophet did not take what would be thought to be the normal course, that is, to kill the hypocrites, and to restore the Kaʿbah to its original foundations because of the adverse consequences that were feared as a result of so doing.

The normal course in the context of crimes and penalties is, of course, to apply the punishment whenever the cause and occasion for it is present. There may be cases, however, where pardoning the offender appears a preferable course to take, and it is for the judge and *mujtahid* to pay attention to them, and then reflect them in his judgment. Al–Shāṭibī has in this connection drawn a subtle distinction between the normal ʿillah that invokes a particular ruling in a given case and what he terms as verification of the particular ʿillah (*taḥqīq al-manāṭ al-khāṣṣ*) in the issuance of

judgment and ijtihad. The scholar (*mujtahid*) may be investigating the normal ᶜ*illah* and identify it in the case, for example, of a poor person who qualifies to be a recipient of zakah, and also with references to the uprightness of a witness, 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 that 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 judgment that is enlightened by both the overall consequences and special circumstances of each case.[33]

Conclusion

Maqāṣid are undoubtedly rooted in the textual injunctions of the Qur'an and the Sunnah, but they look mainly at the general philosophy and objectives of these injunctions often beyond the specialities 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 the legal theory of the sources, the *Uṣūl al-Fiqh*, *maqāṣid al-sharīᶜah* are not burdened with methodological technicality and literalist reading of the text. As such *maqāṣid* integrates a degree of versatility and comprehension into the reading of the Shariᶜah that is, in many ways, unique and rises above the vicissitudes of time and circumstance. At a time when some of the important doctrines of *Uṣūl al-Fiqh* such as general consensus (*ijmāᶜ*), analogical reasoning (*qiyās*) and even ijtihad, seem to be burdened with difficult conditions, conditions that might stand in a measure of disharmony with the prevailing socio-political climate of the present–day Muslim countries, *maqāṣid* have become the focus of attention as it tends to provide a ready and convenient access to the Shariᶜah. It is naturally meaningful to understand the broad outlines of the objectives of the Shariᶜah in the first place before one tries to move on to the specifics. An adequate knowledge of *maqāṣid* thus equips the student of the Shariᶜah with insight and provides him/her with a theoretical framework in which the attempt to acquire detailed knowledge of its various doctrines can become more interesting and meaningful.

NOTES

1   Cf. Wahbah al-Zuhayli, *Naẓariyyah al-Ḍarūrah al-Sharʿiyyah*, 4th edn. (Beirut: Muʾassasah al-Risālah, 1405/1985), p.50.

2   Cf. Yusuf al-Qaradawi, *al-Madkhal li Dirāsat al-Sharīʿah al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1411/1990), pp.70–71.

3   Al-Nasāʾī, *Sunan, Manāsik, Wujūb al-Ḥajj*.

4   Abū Isḥāq Ibrāhīm al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, ed., Shaykh Abd Allah Diraz (Cairo: al-Maktabah al-Tijāriyyah al-Kubrā, n.d.), IV, p.179.

5   Cf. Ahmad al-Raysuni, *Naẓariyyāt al-Maqāṣid ʿind al-Imām al-Shāṭibī* (Rabat, Morocco: Maṭbaʿah al-Najāḥ al-Jadīdah, 1411/1991), p.149.

6   Abū Ḥāmid Muḥammad al-Ghazālī, *al-Mustaṣfā min ʿIlm al-Uṣūl* (Cairo: al-Maktabah al-Tijāriyyah, 1356/1937), 1: p.287.

7   Qaradawi, *al-Madkhal*, p.73.

8   ʿIzz al-Dīn ʿAbd al-Salām al-Sulamī, *Qawāʿid al-Aḥkām fī Maṣāliḥ al-Anām*, ed., Taha Abd al-Rauf Saʿd (Cairo: al-Maṭbaʿah al-Ḥusayniyyah, 1351 AH), 1: p.8.

9   Taqī al-Dīn ibn Taymiyyah, *Majmūʿ Fatāwā Shaykh al-Islām Ibn Taymiyyah*, comp., Abd al-Rahman ibn Qasim (Beirut: Muʾassasah al-Risālah, 1398 AH), 32: p.134.

10 Raysuni, *Naẓariyyāt al-Maqāṣid*, p.44.

11 Qaradawi, *al-Madkhal*, p.75.

12 Al-Shāṭibī, *al-Muwāfaqāt*, 2: p.393.

13 Ibid., 3: p.394.

14 Ibid., 2: p.6; see also Ibn Qayyim al-Jawziyyah, *Iʿlām al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn,* ed., Muhammad Munir al-Dimashqi (Cairo: Idārat al-Ṭibāʿah al-Munīriyyah, n.d.), vol. 1, Qaradawi, *al-Madkhal*, p.58.

15 Al-Shāṭibī, *al-Muwāfaqāt*, 1: p.243; Qaradawi, *al-Madkhal*, pp.64–65.

16   Al-Shāṭibī, *al-Muwāfaqāt*, 2: pp.49–51; *idem, al-Iʿtiṣām* (Makkah al-Mukarra-mah: al-Maktabah al-Tijāriyyah, n.d.), 2: pp.131–35.

17   Al-Shāṭibī, *al-Muwāfaqāt*, 3: p.148.

18   Muhammad Tahir ibn Ashur, *Maqāṣid al-Sharīʿah al-Islāmiyyah* (Tunis: Maṭbaʿah al-Istiqṭāmah, 1966), p.331.

19   See for details, Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 1991), chapter 3 on Rules on Interpretation.

20   Abd al-Hamid al-Najjar, "Tafʿīl al-Maqāṣid al-Sharīʿah fi Muʿalajat al-Qaḍāyā al-Muʿāṣirah li al-Ummah" in International Islamic University Malaysia Conference Proceedings, Maqasid al-Shariʿah, Kuala Lumpur, 2006, vol.1.

21   M. H. Kamali, *Punishment in Islamic Law: An Inquiry into the Hudud Bill of Kelantan* (Kuala Lumpur: Ilmiah Publisher, 2000), pp.41–42.

22   Cf. al-Najjar, "Tafʿīl al-Maqāṣid," pp.26–27.

23   See for details on these, M. H. Kamali, *Principles*, chapter on *Ḥukm Sharʿī (Law or Value of Sharīʿah)*.

24   Ibid., 4: p.179.

25   Ibn Ashur, *Maqāṣid al-Shariʿah*, pp.15–16.

26   Ibid., p.27.

27   Ibn Qayyim, *Iʿlām*, 3: p.12; Raysuni, *Naẓariyyāt al-Maqāṣid*, p.336.

28   Cf. Raysuni, *Naẓariyyāt*, pp.338–39.

29   Cf. Wahbah al-Zuhayli, *al-Fiqh al-Islāmī wa Adillatuh*, 3rd edn. (Damascus: Dār al-Fikr, 1409/1989), 4: p.32. See for detailed illustrations of this type of *Istiḥsān*, Mohammad Hashim Kamali, *Principles*, p.225 ff.

30   See for details the chapter on *Istiḥsān*, Ibid.

31   Al-Bukhārī, *Ṣaḥīḥ, Kitāb al-Manāqib, Bāb Mā Yunhā min Daʿwah al-Jāhiliyyah*.

32   Mālik ibn Anas, *al-Muwaṭṭa', Kitāb al-Ḥajj, Bāb Mā Jā' fī Binā' al-Kaʿbah*; Raysuni, *Naẓariyyāt*, p.354.

33   Al-Shāṭibī, *al-Muwāfaqāt*, 4: p.97.

Maqasid al-Shari'ah, or the higher goals and objectives of Islamic law, is an important and yet somewhat neglected theme of the Shariah. Generally the Shariah is predicated on the benefits of the individual and that of the community, and its laws are designed so as to protect these benefits and facilitate improvement and perfection of the conditions of human life on earth. This easy to read guide gives a bird's eye view of the subject, simplifying its main principles to help readers understand the subject of maqasid al-shari'ah and how it explains the wisdoms behind rulings. The paper focuses on a general characterisation of maqasid al-shari'ah and its origins in the Qur'an; the classification of maqasid; historical developments and the contributions of some of the leading ulama to the theory of maqasid; the differential approaches the ulama have taken toward the identification of maqasid; and finally the relevance of maqasid to ijtihad and the ways in which maqasid can enhance the scope and caliber of ijtihad.

IIIT