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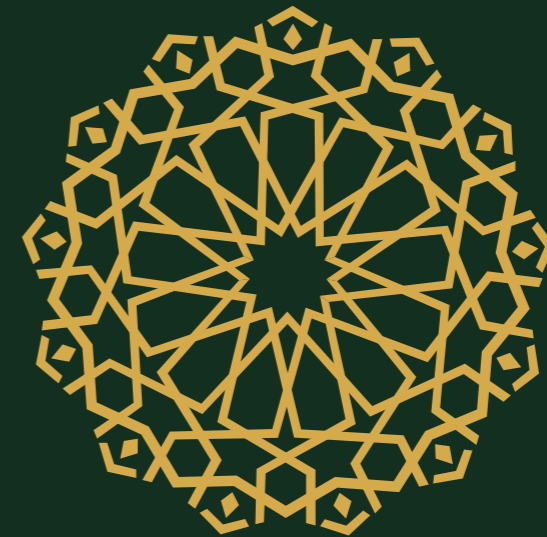


INSTITUTE OF
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THE OBJECTIVES OF THE SHARIAH: A NEW APPROACH
GAPUR OZIEV
NAAMANE DJEGHIM

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The Objectives of the Shariah: A New Approach offers a fresh perspective on the classical theory of *maqasid al-shariah* (the higher objectives of Islamic law). The book shows that these objectives are not limited to legal rulings, but also embrace the deeper meanings of Qur'anic and Prophetic texts, as well as the intentions of the Lawgiver behind legislation.

Particular attention is given to three dimensions of the shariah's objectives: the objectives of revelation texts, the objectives of legal rulings, and the objectives of the Lawgiver in the methodology of legislation. This framework helps dispel common misconceptions and rhetorical oversimplifications, while preserving the organic link between *maqasid* and the discipline of *usul al-fiqh*.

This book is intended for students, researchers, and all those interested in Islamic thought and law. It highlights the shariah as a holistic system of values aimed at human well-being, the protection of essential interests, and the harmonious development of society.

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INTRODUCTION

In the name of Allah, the Most Gracious, the Most Merciful. Praise be to God, the Lord of the worlds, and peace be upon the most honourable of the Prophets and Messengers, who was sent as a mercy to the worlds.

Maqāṣid al-Shariah (the objectives of Shariah) has gained, in recent decades, much attention in the Muslim world, among both Islamists as well as secularists.

Secularists take advantage of this concept to advance their attempts to marginalize Islamic teachings and misinterpret Shariah texts to justify Western social and economic practices and norms. Those attempts are made under various names, such as 'modernity', 'liberal Islam', 'civilizational Islam', 'enlightenment', 'reforming religious thought' ...etc.

Among Islamists, writings on *maqāṣid al-Shariah* have flourished. Although this abundance of writings has had some positive impact by highlighting the importance of *maqāṣid* in the proper interpretation and implementation of Shariah texts, these writings are not free from rhetoric, and a number of exaggerations and misconceptions. This is perhaps clearest in the writings which try to portray *maqāṣid al-Shariah* as a magic solution to our all-encompassing weaknesses that are crippling our development.

There are lots of misconceptions about *maqāṣid al-Shariah*, among which are: (a) Narrowing down its scope to the objectives of Shariah legal rulings (*maqāṣid al-ahkām al-shar'īyyah*); (b) the illusion that the discipline of *maqāṣid al-Shariah* may compete with or replace *usul al-fiqh* as the methodology of interpreting Shariah texts and deriving legal rulings from them; (c) the false claim that classical "Islamic legal thought is broadly 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"¹; (d) the illusion about conflicts between *maqāṣid al-Shariah* and the texts of Shariah and giving priority to *maqāṣid al-Shariah* over Shariah texts; (e) relating the emergence of '*maqāṣid al-Shariah*' to the writings by al-Hakim al-Tirmidhi and later scholars, which is based on confusing *maqāṣid al-*

¹ Mohammad Hashim Kamali, *History and Jurisprudence of the Maqāṣid: A Critical Appraisal*, p.4. This statement is inaccurate and reflects a misconception about the nature of *maqāṣid al-Shariah* and its relationship with *usul al-fiqh*.

Shariah per se to writings dedicated to the objectives of Shariah legal rulings (*maqāṣid al-’aḥkām al-shar’iyyah*).

Maqāṣid al-Shariah (the objectives of Shariah) did not emerge at a certain point of time, but rather has existed since the revelation of the Shariah texts (Quran and Sunnah). The objectives of the Shariah are inseparable from a proper understanding of the Shariah texts and applying them to everyday life. By understanding the Shariah texts, we realise the objectives of the Lawgiver. Any jurist who interprets Shariah texts and applies them to real life is reflecting his understanding of their objectives, whether this understanding is right or wrong, fully or partially comprehends those objectives.

The degree to which a jurist is close or far from the Lawgiver's real objectives is based on his ability of comprehension and the soundness of the methods he uses in interpreting and applying Shariah texts. The best understanding of the objectives of shariah texts and rulings and their best application in *ijtihad* was during the era of the Companions of the Prophet. That was due to the strength in their comprehension and the knowledge and practice they inherited from the era of revelation.

The main concern of scholars in the early centuries was to interpret Shariah texts and infer their objectives. Works by early jurists focused on the objectives of the Shariah texts related to legal rulings (*maqāṣid al-khiṭāb al-shar’ī*). Although jurists did not ignore the objectives of Shariah rulings (*maqāṣid al-’aḥkām al-shar’iyyah*), they did not have any specific discourse on them. They, rather, highlighted them here and there amidst their works.

With the development of discourse on scriptural texts, various branches of the Islamic sciences emerged. Some scholars attempted to discover the wisdoms behind all Shariah rulings and rituals, i.e. “the objectives of Shariah rulings/ *maqāṣid al-’aḥkām al-shar’iyyah*”.

Early scholars used the term “legal ruling/ *al-ḥukm al-shar’ī*” to express the objectives of Shariah texts (*maqāṣid al-khiṭāb al-shar’ī*). They used many words to express the objectives of Shariah legal rulings (*maqāṣid al-’aḥkām al-shar’iyyah*), including “effective cause/ العلة”, “wisdom/ الحكمة”, “the proper attribute/ المناسب”, and “the objective/ المقصد”.

This book is an attempt to reformulate the theory of *maqāṣid al-Shariah* in a new framework. It presents the concept of *maqāṣid al-Shariah* in its three dimensions: the objectives of Shariah texts (*maqāṣid al-khiṭāb al-shar’ī*), the objectives of Shariah

rulings (*maqāṣid al-'aḥkām al-shar'īyyah*), the objectives of the Lawgiver in legislation (*maqāṣid al-shari' fī manhaj al-tasharī'*).

This book clarifies the difference between *maqāṣid al-Shariah* per se, which exist with Shariah texts and cannot be separated from them, and the writings on *maqāṣid al-Shariah*, which emerged at a certain point of time.

The book adopt an approach that keeps the theory of *maqāṣid al-Shariah* closely related to the discipline of *usul al-fiqh* to keep it free from rhetoric, exaggeration, and misuse. The theory of *maqāṣid al-Shariah* should complement the theory of *usul al-fiqh*, not compete with it or replace it.

We hope it will benefit the readers and contribute to the development of the theory of *maqāṣid al-Shariah*.

CHAPTER 1 ► THE CONCEPT OF *MAQASID AL-SHARIAH* (THE OBJECTIVES OF SHARIAH)

1.1. The Concept of *Maqasid al-Shariah* (Objectives of Shariah)

1.1.1. The literal meaning of *maqāsid*

Maqāsid is the plural of *maqṣad* from the root word (قَصَدَ يَقْصِدُ قَصْدًا وَمَقْصِدًا). The word *al-qaṣd* (القَصْدُ) has multiple meanings, the most important of which are: to take a path, to rely on, heading towards, justice, and mediation. The word *al-maṣṣad* (المَقْصِدُ) means the end that a person seeks and the goal he wants to achieve. The word *al-maṣṣid* (المَقْصِدِ) is the intended place or destination. Accordingly, what is meant by *maqāsid al-Shariah* (the objectives of Shariah) are the ends and goals that are intended to be achieved from following the Shariah teachings.

The terms *al-qaṣd* (القَصْدُ) and *al-maṣṣad* (المَقْصِدُ) are used interchangeably and may be used to indicate the same meaning. For example, Al-Shatibi used the term *al-qaṣd* to denote all of the following meanings: the objectives of Shariah texts, the objectives of Shariah rulings, the objectives of the Lawgiver in legislation, and the objectives of the *mukallaf*. He, also, used the term *al-maṣṣad* to denote the intended meanings of Shariah texts.

1.1.2. The meaning of Shariah

Literally, ‘Shariah’ refers to a watering place; a resort of drinkers; a place to which people go to drink therefrom and to draw water; and a place into which people bring their beasts to drink. However, Arabs use the word ‘Shariah’ to refer to a watering place only if it is running, permanent, and overabundant.

Technically, ‘Shariah’ is the guidance revealed by God to mankind. It comprises a belief system, moral system, rituals of worshipping God, and laws which regulate day-to-day life. Therefore, the term ‘Shariah’ is used to refer to the texts of the Quran and the Sunnah.

The scripture revealed from God is called ‘Shariah’ because it is the source of guidance, the fountain from which believers gain wisdom and guidance, and the straight path to salvation.

The term 'Shariah' is wider than the term 'fiqh' as the term 'fiqh' refers to a part of 'Shariah', that is rituals of worshipping God, and laws which regulate day-to-day life. However, it should be noted that some contemporary writers reduce the use of the term 'Shariah' to 'fiqh' only. Western writers, usually, reduce the meaning of 'Shariah' to Islamic laws of marriage, transactions and penalties.

1.1.3. The general meaning of the term '*maqāsid*'

The term "*maqāsid*" in its general sense includes two parts: the objectives of creation (*maqāsid al-khalq*), and the objectives of Shariah (*maqāsid al-Shariah*).

a) **The objectives of creation** (*maqāsid al-khalq*) are the objectives of creating mankind in this universe. Those objectives are indicated in the verses of the Quran that talk about the purpose of creation such as:

﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ، (الذاريات: 56)﴾

"And I did not create the jinn and mankind except to worship Me." (51:56)

And the verses that talk about succession:

﴿وَإِذْ قَالَ رَبُّكَ لِلْمَلَائِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً قَالُوا أَتَجْعَلُ فِيهَا مَنْ يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ قَالَ إِنِّي أَعْلَمُ مَا لَا تَعْلَمُونَ، (البقرة: 30)﴾

"And [mention, O Muhammad], when your Lord said to the angels: Indeed, 'I will make upon the earth a successive authority.' They said, "Will You place upon it one who causes corruption therein and sheds blood, while we declare Your praise and sanctify You?" Allah said, "Indeed, I know that which you do not know." (2:30).

The verse that talks about trust (Amanah):

﴿إِنَّا عَرَضْنَا الْأَمَانَةَ عَلَى السَّمَاوَاتِ وَالْأَرْضِ وَالْجِبَالِ فَأَبَيْنَ أَنْ يَحْمِلْنَهَا وَأَشْفَقْنَ مِنْهَا وَحَمَلَهَا الْإِنْسَانُ إِنَّهُ كَانَ ظَلُومًا جَهُولًا، (الأحزاب: 72)﴾

"Indeed, we offered the Trust to the heavens and the earth and the mountains, and they declined to bear it and feared it; but man [undertook to] bear it. Indeed, he was unjust and ignorant." (33:72)

The verses that talk about testing (*ibtıla'*) mankind such as:

﴿وَهُوَ الَّذِي خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ فِي سِتَّةِ أَيَّامٍ وَكَانَ عَرْشُهُ عَلَى الْمَاءِ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا، (هود: 7)﴾.

“And it is He who created the heavens and the earth in six days - and His Throne had been upon water - that He might test you as to which of you is best in deed.

But if you say, "Indeed, you are resurrected after death," those who disbelieve will surely say, "This is not but obvious magic." (11:7)

﴿الَّذِي خَلَقَ الْمَوْتَ وَالْحَيَاةَ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا وَهُوَ الْعَزِيزُ الرَّحِيمُ، (الملك: 2)﴾.

“[He] who created death and life to test you [as to] which of you is best in deeds - and He is the Exalted in Might, the Forgiving,” (67:2)

b) The objectives of Shariah (*maqāṣid al-Shariah*) are the objectives related to the scriptural texts of the Quran and the Sunnah.

1.1.4. The technical meaning of ‘*maqāṣid al-Shariah*’

Al-Shatibi, the first scholar who laid down the theory of *maqāṣid*, did not give a formal definition of *maqāṣid al-Shariah*. That is because of his disapproval of formal logic definitions. He prefers to give the technical meaning by explaining the essence of the concept and mentioning its main parts and examples. Al-Shatibi clarified the concept of *maqāṣid al-Shariah* by explaining its various types, which are: the objectives of the Lawgiver, and the objectives of *mukallaf*. He divided the objectives of the Lawgiver into four types:

- a) the objectives of the Lawgiver in establishing the Shariah;
- b) the objectives of the Lawgiver in making Shariah texts intelligible;
- c) the objectives of the Lawgiver in establishing Shariah as a source of *taklīf* (commandments);
- d) the objectives of the Lawgiver in positioning the *mukallaf* under Shariah rulings.

In his book *maqāṣid al-Shariah al-'Islāmiyyah*, Muhammad al-Tahir Ibn Ashur, the second theorist of *maqāṣid al-Shariah*, confined the term ‘Shariah’ to transactions and social manners. Therefore, his work was focused on the objectives related to Shariah rulings on transactions and social manners. Ibn Ashur divided the objectives of Shariah into general and particular objectives.

He defined **general objectives** as the meanings and wisdoms considered by the Lawgiver in all or most cases of Shariah rulings, such as warding off evil and bringing benefits.² He defined **particular objectives** as the objectives considered by the Lawgiver in a certain chapter of Shariah legislation or a group of similar chapters, such as the objectives of the Lawgiver in penalties, financial transactions, monetary worships, and in establishing the family system.³

Allal Al-Fasi defined the objectives of Shariah as: "its purpose and the secrets that the Lawgiver laid down for each of its rulings."⁴

It should be noted that both Ibn Ashur and Allal al-Fasi narrowed down the concept of *maqāṣid al-Shariah* to some general characteristics of Shariah and the objectives of Shariah rulings. This narrow definition of *maqāṣid al-Shariah* has become the common definition among contemporary writers.

A careful examination of the concept of *maqāṣid al-Shariah* reveals that its technical meaning comprises of three parts/areas, namely:

- a) the objectives of Shariah texts;
- b) the objectives of Shariah rulings; and
- c) the objectives of the Lawgiver in legislation.

a) The objectives of Shariah texts (*maqāṣid al-khiṭāb al-shar‘ī/ مقاصد الخطاب الشرعي*)

These objectives refer to the intended meanings of Shariah texts that establish moral principles and legal rulings, recount historical events and inform facts about the unseen world, and guide and motivate people to perform their mission in this life.

Under this type of objectives, jurists focus on the theory of the *hukm shar‘ī* (the theory of rights and obligations). This theory deals with the origins of Islamic law, its main features and classification, the criterion for measuring human actions and the legal capacity of human beings.

b) The objectives of Shariah rulings (*maqāṣid al-’ahkām al-shar‘iyyah/ مقاصد الأحكام الشرعية*)

These objectives refer to the underlying wisdoms behind Shariah rulings and the interests to be achieved by legislating and implementing them.

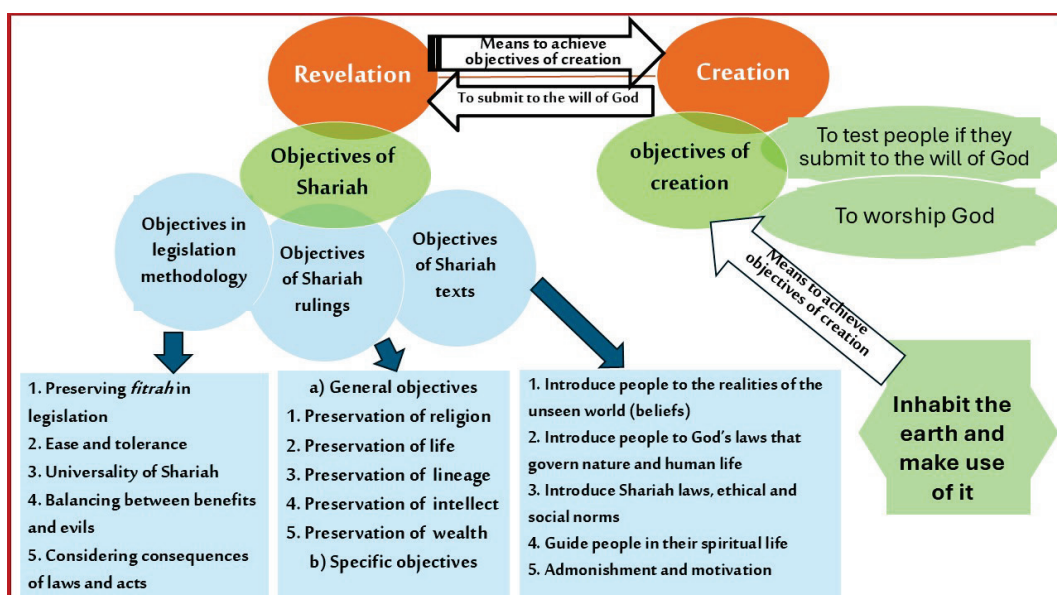
² Ibn Ashur, *Maqāṣid al-Shariah*, p.171.

³ Ibn Ashur, *Maqāṣid al-Shariah*, pp.317-384.

⁴ Allah al-Fasi, *Maqāṣid al-Shariah*, p.3.

c) The objectives of the Lawgiver in legislation (*maqāṣid al-shari‘ fī manhaj al-tasharī‘* / مقاصد الشارع في منهج التشريع)

These objectives refer to the principles and criteria the Lawgiver considered in legislating Shariah rulings. They are (i) consideration of human nature, (ii) ease and tolerance, (iii) the universality of Shariah rulings, (iv) balancing between interests and evils, (v) and consideration of the consequences of actions and rulings.



1.1.5. Examples of the three parts of *maqāṣid al-Shariah*

The following are examples of the three types/parts of *maqāṣid al-Shariah*:

First example:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا حَتِّبْ عَلَيْكُمُ الصِّيَامَ كَمَا حَتَّيْتِ عَلَى الَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ﴾ (البقرة: 183)

“O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous.” (2:183)

The above verse refers to two types/parts of *maqāṣid*: (a) the objective of this Shariah text is to impose fasting upon those who fulfil its conditions. That is the legal ruling inferred from this text. (b) the objective of that legal ruling (i.e. to observe fasting) is to achieve righteousness and piety.

Second example:

﴿...فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ﴾
(البقرة: 185).

“...So whoever sights [the new moon of] the month, let him fast it; and whoever is ill or on a journey - then an equal number of other days. Allah intends for you ease and does not intend for you hardship and [wants] for you to complete the period and to glorify Allah for that [to] which He has guided you; and perhaps you will be grateful.” (2:185)

The above verse refers to various objectives. The objective of the text is to establish the following rulings: (a) fasting is obligatory upon qualified Muslims, (b) the permissibility of breaking fast for the sick and the traveller, (c) those who are permitted to break fasting for valid reasons are required to make it up later.

The objective of fasting, as stated in the previous verse, is to achieve righteousness and piety.

The objective of giving the sick and the traveller a concession to break fasting is lifting hardship and easing their lives. That is an objective related to the methodology of legislation.

Third example:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبَاعْ بِالْمَعْرُوفِ وَأَدَاءٍ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ فَمَنْ اعْتَدَىٰ بَعْدَ ذَلِكَ فَعَلَهُ عَدَابٌ أَلِيمٌ ﴿*) وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ﴾ (البقرة: 2: 178-179).

“O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free, the slave for the slave, and the female for the female. But whoever is given any clemency from his brother, then there should be a suitable follow-up and payment to him with good conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment. (2:178) And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous.” (2:179)

The objectives of the above text (verse) are: (a) legality of retaliation for murder, (b) legality of pardoning the offender by the relatives of the victim, (c) the payment of blood-money, or part of it, in lieu of retaliation.

The verse states that the objective of the ruling on retaliation (*qisās*) is preservation of life.

The objective of legality of pardoning the offender by the relatives of the victim is relieving him and having mercy upon him. That is an objective related to the Lawgiver's methodology of legislation.

Fourth example:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ﴾ (*) إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخَمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ ﴿ (المائدة: 90)

“O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful. (90) Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?” (5:91)

The objective of the above text is to declare the prohibition of alcohol, gambling, sacrificing at altars, and divining arrows (belomancy). The second part of the verse states the objectives of prohibiting alcohol and gambling. These evil practices are prohibited because they lead to enmity among Muslims and prevent them from remembering Allah and observing their prayers.

1.1.6. The relationship between the objectives of creation and the objectives of Shariah

The objectives of creation are those for which mankind was created. The scriptural texts were revealed to guide mankind to achieve those objectives. Thus, the Shariah itself is a means to achieve the objectives of creation, while the particulars of Shariah texts are means for achieving its general objectives.

Worshiping Allah and living according to his guidance is the main objective of mankind's creation:

﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ﴾ (الذاريات: 56)

“And I did not create the jinn and mankind except to worship Me.” (51:56)

﴿الَّذِي خَلَقَ الْمَوْتَ وَالْحَيَاةَ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا وَهُوَ الْعَزِيزُ الْعَمُورُ﴾ (المالك: 2)

“[He] who created death and life to test you [as to] which of you is best in deeds - and He is the Exalted in Might, the Forgiving.” (67:2)

Revealing the scriptures for the guidance of people is the means to achieve servitude (*‘ubudiyyah*). The ultimate objective of Shariah is to free man from the grip of his whims by returning to Allah in all cases and submitting to His guidance in all circumstances.

Living on the earth and prospering is a means to achieve submission to God’s will and is not, in itself, an objective of creation. Allah has made people prosper on the earth to test them as to which of them are the best in deeds, i.e. to assure that servitude is only to Allah. That may be inferred from the following verse:

﴿وَإِلَى ثَمُودَ أَخَاهُمْ صَالِحًا قَالَ يَا قَوْمِ اعْبُدُوا اللَّهَ مَا لَكُمْ مِنْ إِلَهٍ غَيْرُهُ هُوَ أَنْشَأَكُمْ مِنَ الْأَرْضِ وَاسْتَعْمَرَكُمْ فِيهَا فَاسْتَغْفِرُوا لَهُمْ ثُمَّ تَوْبُوا إِلَيْهِ إِنَّ رَبِّي قَرِيبٌ مُجِيبٌ﴾ (هود: 61)

“And to Thamud [We sent] their brother Salih. He said, "O my people, worship Allah; you have no deity other than Him. He has produced you from the earth and settled you in it, so ask forgiveness of Him and then repent to Him. Indeed, my Lord is near and responsive." (11:61)

1.1.7. The relationship between *maqāṣid* and *maṣāliḥ* (benefits)

Scholars, while defining “*maṣlaḥah*”, mentioned that it is about: benefit, pleasure, gaiety, joy, and bliss. All these meanings are implied in the concept of *maṣlaḥah*. However, they do not always reflect “*maṣlaḥah*” in the Shariah meaning. One may have pleasure in evil and harmful things, such as someone who gets deceitful pleasure in taking drugs or in fornication, or someone who benefits from stolen or usurped property. Likewise, a person may be distressed by some things, hate them, and feel pain because of their occurrence despite them containing *maṣlaḥah* for him, as Allah says:

﴿حُبِّبَ عَلَيْكُمُ الْقِتَالُ وَهُوَ كُرْهٌ لَكُمْ وَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَهُوَ خَيْرٌ لَكُمْ وَعَسَى أَنْ تُحِبُّوا شَيْئًا وَهُوَ شَرٌّ لَكُمْ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ﴾ (البقرة: 216)

“Fighting has been enjoined upon you while it is hateful to you. But perhaps you hate a thing and it is good for you; and perhaps you love a thing and it is bad for you. And Allah Knows, while you know not.” (2:216)

Shariah punishments may cause pain to the offender, but they bring *maṣlahah* to him by contributing to his rehabilitation and to the society by protecting it from evil.

The real meaning of *maṣlahah*, in the view of the Shariah, is what fixes a person's material life (upkeeps him physically) and spiritual life by fulfilling the requirements of submission to Allah (*'ubudiyah*). *Maṣlahah* includes all that brings mankind peace of mind, happiness of soul and stability of social life. All of those benefits are possible only by adhering to the Shariah's values and principles. It is known that righteousness can only be achieved by living according to Allah's guidance.

From the above-stated meanings, we may conclude that '*maṣlahah*' is what secures physical, psychological and spiritual needs for mankind according to the Shariah's teachings and help them to fulfil the requirements of submission to Allah (*'ubudiyah*).

Maṣlahah in the Holy Quran means variously goodness, righteousness, benefit and good deeds, while *mafsadah* (evil) means sin, evilness, harm, and bad deeds. Al-Izz bin Abd al-Salam said: "The benefits (*maṣāliḥ*) and the evils (*mafāsīd*) are expressed as good and bad, benefit and harm, good deeds and bad deeds. That's because all *maṣāliḥ* are good and beneficial deeds, while all *mafāsīd* are evilness, harm and bad deeds."⁵

From the above discussion of the meaning of *maqāṣid al-Shariah* and *maṣlahah*, we may conclude that the term '*maṣlahah*' may be used to refer to the means used to achieve *ṣalāḥ* (righteousness and well-being). It may also be used to refer to *ṣalāḥ* itself (righteousness and well-being). In this latter sense, *maṣlahah* may be identical to the *maqāṣid* of Shariah legal rulings as both of them refer to the underlying wisdom of those rulings and the goals to be achieved by applying them.

1.1.8. The relationship of the Shariah texts and their objectives with *maṣlahah*

When we talk about *maṣlahah*, we refer to those benefits which fix man's soul, body and social life according to the guidance provided by the Shariah. It is not merely about material or psychological benefit to a person, regardless of whether

⁵ Izzudin bin Abdulsalam, *Qawā'id Al-Aḥkām fī Maṣāliḥ Al-Anām*, vol.1, p. 7.

it would help him to achieve righteousness and well-being, or it leads him to evil means in this world and loss in the Hereafter.

Since *maṣlaḥah* is what leads to achieving the objectives of Shariah, it is the Lawgiver Himself, through Shariah texts, who determines what the *maṣlaḥah* is for mankind.

What is regarded by man as a *maṣlaḥah* (interest) may not be always so. Thus, jurists divide *maṣlaḥah* (interest) into acknowledged and discredited. An acknowledged *maṣlaḥah* (interest) is one that is in line with Shariah texts and principles and meets its objectives. A discredited *maṣlaḥah* (interest) is one that may be assumed by someone as an interest while, in reality, it defeats the objectives of Shariah and contradicts its texts.

According to Al-Ghazali, *maṣlaḥah* is divided into three categories: acknowledged, discredited and unrestricted (*maṣlaḥah mursalah*). The acknowledged *maṣlaḥah* is one that is supported by a specific text of Shariah. A discredited *maṣlaḥah* is one that contradicts Shariah texts and principles. The unrestricted *maṣlaḥah* (*maṣlaḥah mursalah*) is one that has not been directly supported by specific Shariah texts, but it is in line with the general texts and principles of the Shariah and fulfils its general objectives. Thus, it may be included under the acknowledged *maṣlaḥah*.

There is no doubt that taking care of mankind's *maṣlaḥah* (interest) is one of the objectives of Shariah to the extent that some scholars made the general objective of the Shariah to "ward off evils and bring benefits".

Some writers try to create a fictitious conflict between *maṣlaḥah* and Shariah texts, and then claim that whenever we encounter such a conflict, priority should be given to the *maṣlaḥah* over the text. In fact, there is no such conflict. The Shariah texts and *maṣlaḥah* are like the body and the soul. There is no living body without a soul and no soul can live without a body. All Shariah texts are meant to bring *maṣlaḥah* to mankind and whatever is clearly against those texts is not a real *maṣlaḥah*. Therefore, it is wrong, methodologically, to talk about giving precedence to *maṣlaḥah* over the texts or giving the texts precedence over *maṣlaḥah* because there is no real conflict between them, and they always complement each other.

Instead of claiming conflict between *maṣlaḥah* and Shariah texts, the correct approach is to talk about considering *maṣlaḥah* while applying the legal texts. In other words, the texts are to be applied in a way that preserves the real benefits as intended by the Shariah.

If there is an apparent conflict between a Shariah text and a *maṣlaḥah*, it is either because the assumed interest is not a real *maṣlaḥah* considered by the Shariah, or because the text has been misinterpreted.

Based on the above discussion, it becomes clear that giving precedence to *maṣlaḥah* over the text, as was claimed first by Al-Tufi, then picked up and misused by some contemporary secular writers, is an incoherent and fictitious claim.

What have we said about the relationship between the text and *maṣlaḥah* may also be said about the relationship between the texts and the objectives of Shariah. It is not possible to separate Shariah texts from *maqāṣid al-Shariah*. The texts are the carriers of the objectives of Shariah, and the objectives are the ultimate ends (targets) of the texts. The purpose of the texts will be lost if we do not realize their objectives, and it is impossible to talk about *maqāṣid al-Shariah* while turning against its texts. The divine scripture is the only channel of communication between God and mankind. It is strictly through the Shariah texts that we receive guidance from Him and know His objectives. Accordingly, it is incorrect to say that the objectives are given precedence over the texts, or the texts must be given precedence over the objectives. There might be situations where the implementation of a Shariah ruling leads to a harmful or evil result. In such case, there will be a concession (exemption) given by the Shariah, or there will be an alternative ruling that meets Shariah objectives and should be given priority.

1.2. The purpose of Shariah legal rulings

There is no doubt that the Almighty has created the universe and mankind for certain objectives and revealed the divine laws for high purposes. This is evident in the texts of the Holy Quran. The fact that the Wise Lawgiver considers the objectives of the legal rulings when applying them to real situations is obvious in the texts of the Noble Quran and the Prophetic Sunnah as well as in the actions of the Companions, may God be pleased with them.

The objectives of creating the universe and man are indicated in several parts of the Holy Quran, such as:

﴿هُوَ الَّذِي خَلَقَ لَكُمْ مَا فِي الْأَرْضِ جَمِيعًا... (البقرة: 29)﴾.

“It is He who created for you all of that which is on the earth...” (2:29)

﴿وَهُوَ الَّذِي خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ فِي سِتَّةِ أَيَّامٍ وَكَانَ عَرْشُهُ عَلَى الْمَاءِ لِيَبْلُوَكُمْ أَيُّكُمْ أَحْسَنُ عَمَلًا... (هود: 7)﴾.

“And it is He who created the heavens and the earth in six days - and His Throne had been upon water - that He might test you as to which of you is best in deed...” (11:7)

﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ (الذاريات: 56)﴾.

“And I did not create the jinn and mankind except to worship Me.” (51:56)

And as for the objectives of revealing Books and sending messengers, Allah said:

﴿رُسُلًا مُبَشِّرِينَ وَمُنذِرِينَ لِقَلَّ يُكُونُ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ الرُّسُلِ وَكَانَ اللَّهُ عَزِيزًا حَكِيمًا (النساء: 165)﴾.

[We sent] messengers as bringers of good tidings and warners so that mankind will have no argument against Allah after the messengers. And ever is Allah Exalted in Might and Wise.” (4:165)

﴿لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ... (الحديد: 25)﴾.

“We have already sent Our messengers with clear evidences and sent down with them the Scripture and the balance that the people may maintain [their affairs] in justice...” (57:25)

As for the objectives of detailed legal rulings, there are many texts in the Noble Quran and the Prophetic Sunnah that talk about the objectives of those rulings, such as the objectives of ablution, prayer, fasting, hajj, zakat, expiation, punishments and others. Some of these objectives will be mentioned, later, in a specific chapter.

As for observing the objectives of the rulings when applying them, this is clearly manifested in the legal concessions (*rukhsah*), considering the consequences and end results, and balancing between benefits and evils when legislating and implementing the legal rulings. This will be explained in the chapter on the objectives of the Lawgiver in legislation methodology.

There are many cases of how the Companions considered the objectives of legal rulings when applying those rulings. For example, the Caliph Umar prohibited

Muslim men from marrying women from the People of the Book (*ahl al-Kitab*), and stopped giving *zakat* to those whose hearts are reconciled (*al-mu'allafat qulūbuhum*). That is because he realized that otherwise, the objectives of Shariah would not be achieved. There will be more discussion on these two issues in a later chapter.

Another example is what Uthman bin Affan did with the issue of stray camels. Narrated by Zaid bin Khalid:

"جاء رجل إلى النبي صلى الله عليه وسلم فسأله عن اللقطة، فقال: "اعرف عفاصها وكأءها، ثم عرفها سنة، فإن جاء صاحبها وإلا فسنألك بها". قال: فضأله الغنم؟ قال: "هي لك، أو لأخيك أو للذئب". قال: فضأله الإبل؟ قال: "ما لك ولها معها سقاؤها وحذاؤها ترد الماء، وتأكل الشجر، حتى يلقاها ربها." رواه ابن حبان

"A man came to Allah's Apostle and asked about *Al-Luqata* (lost item). The Prophet said: "Describe its container and its tying material and then make a public announcement about it for one year and if its owner shows up, give it to him; otherwise use it as you like." The man said: "What about a lost sheep?" The Prophet said, "It is for you, your brother or the wolf." The man said: "What about a lost camel?" The Prophet said, "Why should you take it as it has got its water-container (its stomach) and its hooves, and it can reach the places of water and can eat the trees till its owner finds it?" (*Ibn Hibbān*)

In this hadith, it is forbidden to pick up lost camels because camels do not need care and there is no fear of their being lost. However, things changed after that. Trustworthiness decreased and stray camels were no longer safe. Thus, Uthman bin Affan ordered for them to be picked up. The objective of the prohibition against picking up stray camels was that there was no fear of stealing them, but when they became unsafe, the objective of prohibition seized to exist. Consequently, the objective was found in picking up stray camels.

It was narrated by Imam Malik that he heard Ibn Shihab saying:

"كانت ضوال الإبل في زمن عمر بن الخطاب إبلاً مؤتلة، نتايخ لا يمسها أحد، حتى إذا كان زمان عثمان بن عفان، أمر بتعريفها، ثم تباع. فإذا جاء صاحبها، أعطى ثمنها." موطأ مالك

"The stray camels in the time of Umar ibn al-Khattab were numerous and left alone. No one touched them until the time of Uthman ibn Affan. He ordered that they be publicised and then sold, and if the owner came afterwards, he was given their price." (*al-Muwatta*)

1.3. The Objectives and the Means (*al-wasā'il*/ الوسائل)

Ibn Ashur defined the means (*al-wasilah*) as: “The rulings which have been legislated because of which other rulings are obtained. They are not objectives by themselves, but rather through them, the objectives are obtained in the best required manner. That is because, without them, the objectives may not be achieved, or they may be subject to disruption and disintegration.”⁶ On the other hand, the objectives, according to Ibn Ashur, are: “The self-intended actions and behaviours”⁷ which contain benefits and evils in themselves.

Examples of means: The marriage contract is a means to the legality of cohabitation and sexual enjoyment between the spouses. The sale contract is a means to ownership of the subject matter or the price. The lease contract is a means to benefiting from the leased property. Documentation, attestation and pledge are means to preserve debts. *Jihad* is a means to prevent injustice, protect Muslims, and protect religious freedom so that Allah's word is supreme.

1.3.1. Types of means

Means are divided into two types:

a) Pure means: something which is not usually done for its own sake, but rather is purely a means to achieve some other goals. For example, bearing testimony is a means of proving rights and obligations; consumption of food is a means of preserving life; documentation, attestation and mortgaging are means to preserve debts; and traveling is a means to perform *hajj* and *'umrah*.

b) Objective cum means: those things which are objectives by themselves, but become means to higher objectives. For example, prayer, fasting, and zakat are objectives by themselves, considering that they are acts of worship that every *mukallaf* must perform. On the other hand, they are considered as means to achieve spiritual, moral, or economic objectives.

For example, among the objectives of prayer is to help the worshipper avoid indecency and evil:

﴿...وَأَقِمِ الصَّلَاةَ إِنَّ الصَّلَاةَ تَنْهَى عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَلَذِكْرِ اللَّهِ أَكْبَرُ وَاللَّهُ يَعْلَمُ مَا تَصْنَعُونَ (العنكبوت: 45)﴾

“...Establish prayer. Indeed, prayer prohibits immorality and wrongdoing, and the remembrance of Allah is greater. And Allah knows that which you do.” (29:45)

⁶ Ibn Ashur, *Maqasid Shariah*, p.308.

⁷ Ibn Ashur, *Maqasid Shariah*, p.306.

Among the objectives of fasting is to achieve righteousness and piety:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِن قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ (البقرة: 183)﴾

“O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous.” (2:183)

The objectives of Zakat are to purify and cleanse the soul and wealth of the giver, and to help the needy:

﴿خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلَّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُم وَاللَّهُ سَمِيعٌ عَلِيمٌ (التوبة: 103)﴾

“Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them to increase, and invoke [Allah 's blessings] upon them. Indeed, your invocations are reassurance for them. And Allah is Hearing and Knowing.” (9:103)

This type of means is treated as objective, and its observation/fulfilment is mandatory. The *mukallaf* does not have the right to substitute it for something else, just as he does not have the right to choose, by himself, what he thinks will achieve those objectives.

When the Wise Lawgiver make obligatory certain means to achieve certain objectives, such means must be observed. However, when no specific means are made mandatory, the *mukallaf* may choose what he deems appropriate to achieve objectives as long as those means are within the scope of the permissible and do not violate the rulings of the Shariah.

Permissible means may become mandatory if it is the only possible means to accomplish what is obligatory. This rule is expressed in the *uṣuli* legal maxim: “That, without which an obligation cannot be fulfilled, and it is within the capacity of the *mukallaf*, is itself an obligation.” For example, ablution by itself is not always obligatory, but rather recommendable, however, when a person intends to perform prayer, it becomes obligatory. Walking and travelling are originally permissible. However, when it is needed to perform congregational prayers or *hajj*, it becomes obligatory.

1.3.2. The legal status (*hukm shar'ī*) of the means

Originally, means do not obtain their legal status (*hukm shar'ī*) from their objectives, but rather they have their own independent legal ruling. The means have legal criteria by which they are judged, and the objectives have their own legal criteria by which they are judged.

The means take their legal ruling (*hukm shar'ī*) from their objectives only in two cases:

- a) The permissible means without which an obligation cannot be fulfilled. It becomes obligatory to perform that obligation if it is within the capacity of the *mukallaf*;
- b) If permissible means are used to reach forbidden acts, those means become forbidden in that situation.

The means that can be used for legitimate objectives are the means which are originally legitimate. Prohibited means cannot be used to obtain legitimate objectives. Accordingly, it is not permissible to commit theft against stingy rich people as a means to help the poor and needy. It is not permissible to use usurious transactions as the means to earn money for helping the poor and needy. It is also not permissible to allow *riba* in banks as means to achieve economic development in Muslim societies. It is not permissible to engage in worldly affairs at the expense of performing religious rituals with the excuse that work and prosperity are among the objectives of the Shariah.

Legitimate objectives are originally conditioned to be achieved only in a legitimate way. Helping the poor and needy is one of the objectives of the Shariah, but the "help" is conditioned to be in a permissible way. Economic development is a legitimate goal, but it must be achieved in legitimate ways, and there are numerous means to achieve development without resorting to usury (*riba*). Prosperity is one of the Shariah's objectives, but it should be based on complete servitude to Allah, and there can be no servitude without adhering to religious rituals and laws.

Eating dead animals and other forbidden things, in the case of necessity, for preserving life falls under using a means which is originally prohibited to achieve a legitimate objective. However, the legality of using that prohibited means is taken from the concession granted by the Wise Lawgiver. When the Wise Lawgiver grants His concession for that, the means becomes legitimate in that case.

Permissible means should be used to achieve what is legitimate. The *mukallaf* does not have right to abuse permissible means to evade obligations. Rather, doing so would be a sinful act. An example of this is someone who, at the end of a lunar year, gives a part of his wealth in a fictitious donation that will be claimed back later for the purpose of evading the payment of *zakat* by reducing his wealth below the minimum amount for *zakat* (*niṣāb*). However, there is no objection if he gives a part of his wealth as a real gift, or gives it in charity, or uses it for some of his needs, even if the wealth falls short of the *niṣāb*. That is because he used the wealth for a real need, and not a fictitious ploy to evade *zakat*.

The prohibition of using permissible means to reach something forbidden is known as blocking the means to evil (*sadd al-dharī'a*).

If a person exercised his rights without intending to harm others, but somehow it did cause harm to others, and it was proved that it is not possible for him to obtain his right by any alternative permissible means that would not harm others, then his act is legitimate, and he should not be forced to give up his right unless he does so at his own discretion. The details of this issue will be discussed later under the topic on balancing between benefits and evils.

Scholars divide prohibitions into two types: things which are forbidden in themselves (forbidden as objectives) and things which are forbidden for external factors (forbidden as means). However, this differentiation does not mean leniency in what is considered as forbidden for external factors. When some scholars say that gazing at a woman with lust, or being alone with her, or touching her are forbidden for external factors (possible means to commit fornication), it does not mean they should be taken lightly. Even if a person is certain that he will not fall into fornication, it is still strictly prohibited to do those things. In fact, those actions are prohibited by themselves regardless of whether they will lead to fornication or not. When some scholars stated that all those actions are forbidden because they lead to fornication, they simply tried to explain the effective cause. Undoubtedly, falling into fornication is a greater sin than falling into solitude or touching: the first is a major sin while the other is less serious. However, the reason for that differentiation is not about the issue of the objectives and the means, but rather it is about the degrees of evil resulting from those actions. That is the reason for differentiating between major and minor sins.

In conclusion, the means which the Lawgiver specifically stipulated as required for achieving specific objectives should be treated as objectives in themselves. Therefore, they should be observed accordingly and not according to the whims of people.

The means that Shariah texts have stipulated as prohibited should remain prohibited in all cases. Consequently, it is not permissible to use those means only when the conditions for a legal concession (*rukhsah*) are met. In that case, it becomes permissible to use them, not just because they are means, but because the Wise Lawgiver has authorized them.

If the Lawgiver has given the *mukallaf* a choice between some means, then he may choose what suits his situation. Similarly, if the Lawgiver has not specifically stipulated the means to be used, then he may choose the means as he deems appropriate, as long as the means he chooses does not contradict the Shariah legal rulings. A wise and prudent person will always choose the best means to achieve legitimate objectives, but it is not obligatory upon him to use the best ones because people's abilities differ in perceiving the best means, and making choices are often affected by personal desires and tendencies.

CHAPTER 2 ► MAQASID THOUGHT AND THE SCIENCE OF MAQASID AL-SHARIAH

2.1. Maqasid Thought

The term '*maqāṣid al-Shariah*' is used to refer to the objectives (*maqāṣid*) of Shariah per se as well as to the discipline that discusses those objectives. As a result of confusing those two usages of the term '*maqāṣid al-Shariah*', some contemporary writers talk about the emergence of '*maqāṣid al-Shariah*' as if the early scholars were not aware of them. They confuse '*maqāṣid al-Shariah*' per se, or what we may call '*maqāṣid thought*', with '*maqāṣid al-Shariah*' as a discipline.

It is incorrect to talk about the emergence of '*maqāṣid al-Shariah*' per se (*maqāṣid thought*). That's because the objectives of Shariah are related to Shariah texts and are part of them. Shariah objectives existed simultaneously with Shariah texts and not later. *Maqāṣid thought* is inseparable from the understanding of Shariah texts and their application. Understanding Shariah texts is the result of the search for the objectives of the Lawgiver conveyed by those texts. In applying Shariah texts, the jurist takes into account the objectives that he understood from those texts. Every jurist who interprets Shariah texts and applies them to new incidents is, in fact, applying the objectives of Shariah according to his own understanding, regardless of the extent of his ability to find and comprehend the real objectives of those texts.

Understanding the objectives of the Lawgiver conveyed by His texts and rulings, and taking them into account while exercising *ijtihad* reached its peak at the time of the Companions and the generation after them. This was due to the strength of their understanding and the inherited knowledge and practice from the era of revelation.

The concern of scholars in the first centuries was focused on writing on the objectives of the Lawgiver in His texts (*maqāṣid al-khiṭāb al-shar'ī*). Jurists focused in their *fiqh* books on searching for the objectives of the Lawgiver in His texts related to legal rulings (*hukm shar'ī*). Commentators on the Noble Quran wrote exploring the objectives of its verses as well as the objectives of the legal rulings inferred from them. Hadith commentators wrote in search of the objectives of the Prophetic texts as well as the objectives of the legal rulings inferred from them.

The science of *usul al-fiqh* emerged in an attempt to develop and formalize a methodology for deducing the objectives of Shariah legal texts contained in the

Noble Quran and the Prophet's Sunnah. Scholars of *usul al-fiqh* focused mainly on the objectives of legal texts (*maqāsid al-khiṭāb al-shar'ī*). The methods of extracting the objectives from the legal texts take in consideration both words as well as meanings. Even though scholars of *fiqh* and *usul al-fiqh* did not specifically write about the objectives of legal rulings (*maqāsid al-'ahkām al-shar'īyyah*/ مقاصد الأحكام الشرعية), they never neglected them. Those objectives were always present in their writings.

The theoretical roots of the theory of *maqāsid* may be found in the discussion on causality (*ta'līl*) and appropriateness (*munāsabah*) in the chapter on analogy (*qiyas*). However, their discussion was limited to their needs in proving the validity of *qiyas* as a method of *ijtihad*. The discourse on appropriateness (*munāsabah*), in fact, is a discourse on the objectives of the legal rulings (*maqāsid al-'ahkām al-shar'īyyah*) which may be taken as the effective cause (*'illah*) and eventually as a basis for analogy. However, their discourse on in this topic was limited to what they needed to deduce legal rulings.

2.2. Emergence of the “*maqāsid*” terms

It should be clear that the history of *maqāsid* terminology is not the history of *maqāsid al-Shariah* per se. However, it is part of the history of *maqāsid al-Shariah* as a discipline.

The main terms used by early scholars in *maqāsid* theory are: '*maqāsid*' (objectives), necessities (*al-dharūriyyāt*), needs (*al-hājjiyyāt*), luxuries (*al-taḥsīniyyāt*), preservation of religion, life, lineage, intellect and wealth.

2.2.1. The emergence of the term '*maqāsid*'

The term '*maqāsid*', per se, was not used in the Quran. However, its derivatives are found in the Holy Quran on three occasions:

﴿وَأَقْصِدْ فِي مَشْيِكَ وَاغْضُضْ مِنْ صَوْتِكَ إِنَّ أَنْكَرَ الْأَصْوَاتِ لَصَوْتُ الْحَمِيرِ (لقمان: 19)﴾.

“And be moderate in your pace and lower your voice; indeed, the most disagreeable of sounds is the voice of donkeys.” (31:19)

﴿وَعَلَى اللَّهِ قَصْدُ السَّبِيلِ وَمِنْهَا جَائِزٌ وَلَوْ شَاءَ لَهَدَاكُمْ أَجْمَعِينَ (النحل: 9)﴾.

“And upon Allah is the direction of the [right] way, and among the various paths are those deviating. And if He willed, He could have guided you all.” (16:9)

﴿لَوْ كَانَ عَرَضًا قَرِيْنًا وَسَفَرًا فَاْصِيْدًا لَاتَّبَعُوْكَ... (التوبة: 42)﴾.

“Had it been an easy gain and a moderate trip, the hypocrites would have followed you...” (9:42)

The word “*qaṣd*” was also mentioned in the Prophet’s Sunnah in several places, such as:

"يا أيها الناس! عليكم بالقصد" ثلاثا "فإن الله لا يمل حتى تملوا." سنن ابن ماجه

“O people! *Be moderate*, indeed Allah never gets tired (of giving rewards) till you get tired.” (*Ibn Majah*)

"سَدِّدُوا وَقَارِبُوا، وَاغْدُوا وَرُوحُوا، وَشَيْءٌ مِنَ الدُّجَى، وَالْقَصْدَ الْقَصْدَ تَبَلَّغُوا." صحيح البخاري

“Do your duties as good as you can and try to be near to perfection; make use of the morning, evening, and part of the night. *Be moderate*, be moderate and you will reach your objective.” (*al-Bukhari*)

It is very difficult to trace the word ‘*maqāṣid*’ in the writings of the early scholars. In fact, there is no need and no use for such attempt. If we do not find the term ‘*maqāṣid*’ or ‘*maqāṣid al-shariah*’ in the early writings, it does not mean that they did not realize or consider them in interpreting Shariah texts and deducting legal rulings from them. The early scholars used the term “*ḥukm shar‘ī*” to express the objectives of legal texts (*maqāṣid al-khiṭāb al-shar‘ī*). They used many words to express the objectives of the legal rulings (*maqāṣid al-‘aḥkām al-shar‘iyyah*) such as: the meaning (المعنى), the effective cause (العلّة), the wisdom (الحكمة), the proper attribute (المناسب), and the objective (المقصد).

The concern of early scholars was directed to writing about the objectives of the legal texts (*maqāṣid al-khiṭāb al-shar‘ī*). As for the objectives of the legal rulings (*maqāṣid al-‘aḥkām al-shar‘iyyah*), while they did not neglect them, they did not give them much attention.

It appears that the oldest books which have reached us that were dedicated to the objectives of the legal rulings (*maqāṣid al-‘aḥkām al-shar‘iyyah*) are three books written by al-Hakīm al-Tirmidhi (d. 320 H) namely: “*Al-Ṣalāt wa Maqāṣiduhā*”, “*Al-Hajj wa Asraruhu*” and “*Ithbāt al-‘Ilal*”.

One of the oldest books of *uṣul al-fiqh* in which we find the use of the term “*maqāṣid al-Shariah*” is “*Al-Burhān fi Uṣul al-Fiqh*” by Imam al-Haramayn al-Juwayni. He said about the opening of prayer by saying (الله أكبر): “whoever says:

this restriction has no effect, but rather it is an incidental expression, then he has called himself to be ignorant about the objectives of Shariah, and about the issues of the objectives of the addressees with regards to what they are commanded to and forbidden from.”⁸

The use of the term “*maqāṣid al-Shariah*” become common among the scholars of *uṣul al-fiqh* who came after al-Juwayni and followed his methodology, such as al-Ghazali, al-Razi and al-Amidi. However, it remained confined to the topics on proper attribute (*al-waṣf al-munāsib*) and “preponderance” (الترجيح).

Izz al-Din bin Abdussalam made an unprecedented contribution to the development of a number of topics about the objectives of Shariah in his book “*Qawā'id al-Aḥkām fi Maṣāliḥ al-Anām*” (The principles of the rulings for the interests of people). He used the terms “*maṣāliḥ*/ interests” and “*mafāsīd*/ evils” instead of the term “*maqāṣid al-Shariah*”.

It was Al-Shatibi who developed the theory of “*maqāṣid al-Shariah*” and popularized the use of this term in his book “*Al-Muwāfaqāt*”.

2.2.2. The emergence of the terms: necessities (*al-dharūriyyāt*), needs (*al-hājjiyyāt*), and luxuries (*al-taḥsīniyyāt*)

It appears that the origins of the discussion on the three levels of interests (*maṣāliḥ*): necessities, needs, and luxuries, go back to Al-Juwayni in his book “*Al-Burhān fi Uṣul al-Fiqh*” where he divided the principles of the Shariah into five categories:⁹

- 1) That which constitutes a principle with reasonable meaning, and its reasonable meaning leads to something necessary;
- 2) That which is related to general need, but does not reach the point of necessity;
- 3) That which is neither related to necessity nor general need, but it seems to have a purpose in bringing about an honourable thing or in negating its opposite;
- 4) That which is neither related to necessity nor to a general need, but its attainment is originally and explicitly recommended;

⁸ Al-Juwayni, *Al-Burhān fi Uṣul al-Fiqh*, vol.2, p.94.

⁹ Al-Juwayni, *Al-Burhān fi Uṣul al-Fiqh*, vol.2, p.79.

- 5) That which does not entail any necessity or general need. No meaning may be inferred from it and does not create any nobleness. This category may not exist in the Shariah.

Abu Hamid al-Ghazali refined the five categories stated by al-Juwayni and put them in three levels: necessities, needs, and luxuries. Each one of the three levels has appendices which serve as complementary. al-Ghazali said: "The interest, considering its power, is divided into the levels of necessities, needs, and what is related to luxuries and embellishments which are lower than needs. Each category is attached with some appendices playing a complementary role."¹⁰

Al-Ghazali did not provide a specific definition for necessities. However, he stated that 'any proper thing that is related to the preservation of an objective that the intellect requires to be preserved, and reasonable people cannot live without, is considered in the highest level.'¹¹ Then, he stated that those necessities are five, namely: preserving religion, life, intellect, lineage, and wealth.¹²

Needs, according to al-Ghazali, are principles that are not necessary but needed in the acquisition of interests. One example of that is the guardian's authority to give a minor girl for marriage. He mentioned the benefits of that marriage as perceived by people of his social system.¹³ However, in contemporary social system, such a type of marriage is considered as a violation of children's rights. It may have harms more than benefits.

Luxuries are neither necessities nor needs, but they fall in the position of improvement and adornment, facilitation of advantages and extravagance, and considering the best methods in customs and transactions. Examples of that are prohibiting filth, not accepting the testimony of a slave, and preventing a woman from undertaking a marriage contract herself.

Al-Shatibi adopted the classification made by al-Ghazali and discussed it at length. Al-Shatibi's definition of the three levels can be summarized as follows:¹⁴

The necessities: things that are indispensable for the interests of religion and worldly life in a sense that if they are lost, the interests of the worldly life are not fulfilled, but rather face corruption, disorder and compromise. The life of the hereafter will also be marked by total loss.

¹⁰ Al-Ghazali, *al-Mustasfā*, vol.1, p.216.

¹¹ Al-Ghazali, *Shifā' al-Ghalīl*, p.163.

¹² Al-Ghazali, *al-Mustasfā*, vol.1, p.217.

¹³ Al-Ghazali, *al-Mustasfā*, vol.1, p.217.

¹⁴ Al-Shatibi, *al-Muwafaqat*, vol.2, pp.8-11.

The needs: things that are needed in terms of ease and lifting of tightness that often leads to burden and hardship. In other words, missing what is required. If the needs are not observed, the *mukallaf* will, generally, suffer from burden and hardship, but it will not reach the great amount of evil expected in the loss of necessities.

The luxuries: they refer to adopting what befits good habits and avoiding profane situations that wise minds disdain.

One of the main examples given by al-Shatibi for luxuries is high morals (*makārim al-akhlāq*). Some contemporary writers criticized al-Shatibi for this example, thinking that he was referring to all morals. This is a misunderstanding. Morals are divided into fundamental morals and high morals (*makārim al-akhlāq*). Al-Shatibi was not referring to fundamental morals such as trustworthiness, honesty, sincerity, integrity, fulfilment of promises, ...etc. These fundamental morals are necessities for the preservation of religion as well as social life. What al-Shatibi meant by *makārim al-akhlāq* is altruism, generosity, forgiving wrongdoers, leniency and kindness in treatment, benevolence, etc. These high morals are needed for the perfection of religion and social life. However, religion and social life may still be preserved in their absence.

2.2.3. The emergence of the terms related to the five universal values

The discussion about the terms related to the five universal values was linked to *hudūd* punishments (Shariah fixed punishments). The roots of the five universal values may be related to Abu al-Ḥasan al-Amiri's (d. 381 H) writings. Al-Amiri stated that *hudūd* punishments revolve around the preservation of five matters: life, wealth, intellect, lineage, and religion, saying: "As for the deterrents (punishments), its basis, among the followers of the six religions, should be on five pillars, namely: the punishment for murder such as retaliation and blood money; the punishment for theft like chopping off the hand; the punishment for adultery such as lashing and stoning to death; the punishment for false accusation of adultery such as lashing and refusal of testimony; and the punishment for renouncing one's religion such as execution for apostasy".¹⁵

Apparently, Abu Hamid Al-Ghazali was the first one who introduced the five universal values, as the objectives of the Shariah, to the books of *usul al-fiqh*. He says: "The objectives of Shariah for mankind are five: to preserve their religion, their lives, their intellect, their lineage, and their wealth. Therefore, everything

¹⁵ al-Amiri, *al-'Ilam bi Manaqib al-Islam*, p.123.

that preserves these five principles is an interest (*maṣlahah*), and everything that misses these five principles is an evil, and avoiding it is an interest (*maṣlahah*).¹⁶ This is the classification that become dominant among later scholars of *usul al-fiqh* and *maqāṣid al-Shariah*.

Al-Ghazali pointed out the link between those five values and *ḥudūd* punishments by saying: “And its example is the Shariah decree to kill the misguided infidel, and the punishment for a deviated person who spreads heresy (المبتدع) and spoils people’s religion. The decree for imposing retaliation for preserving lives; and imposing the punishment for drinking alcohol for preserving the intellect which is the essence of *taklīf*; and imposing the punishment for adultery for preserving offspring and lineage; and deterrence for restraining usurpers and thieves for preserving wealth which is the livelihood of the humankind and is indispensable for them.”¹⁷

2.3. Writings on the objectives of the Shariah

According to what have reached us, we may say that the discipline of *maqāṣid al-Shariah* started with the writings by al-Ḥakīm al-Tirmidhī (320 H). However, the early writings were focused on one type of *maqāṣid al-Shariah*, that is *maqāṣid al-’aḥkām al-shar’iyyah*. This type of writing was not appreciated within the mainstream jurists. It was not at the core of Shariah sciences and did not get much attention from early jurists. This can be seen in the comment by Abu Bakr bin al-Arabi on a book written by al-Qaffal al-Shashi. He said: “The great scholar Abu Bakr al-Shashi al-Qaffal ended up extending that even to worship, and he wrote a large book on that called ‘*Maḥāsin al-Shariah*’. However, it does not contain any impressive ideas.”¹⁸

Writings on *maqāṣid al-Shariah* may be categorized into three groups. The first group consists of those works which contributed to the emergence of the theory of *maqāṣid al-Shariah*. However, their focus was on one type of *maqāṣid al-Shariah*, that is *maqāṣid al-’aḥkām al-Shar’iyyah* (the objectives of Shariah legal rulings). The second group consists of those works which established and developed the theory of *maqāṣid al-Shariah*. The third group comprises those books which discuss the general characteristics and virtues of the Shariah, its philosophy in

¹⁶ Al-Ghazali, *al-Mustasfa*, vol.1, p.217.

¹⁷ Al-Ghazali, *al-Mustasfa*, vol.1, p.217.

¹⁸ Ibn al-’Arabi, *al-Masālik fi Sharḥ Muwatta’ Malik*, vol.6, p.47.

legislation, and its supremacy as an eternal source of guidance and governance for human life.

Following are the major books on *maqāsid al-Shariah* in chronological order:

1. *Ithbāt al-'Ilal* (Proof of effective causes) by Al-Hakim Al-Tirmidhi (320 H)

In the introduction, the author stated that he wrote this book in response to those who say that God's legal commands and prohibitions are purely devotional and cannot be explained by reason. He is of the view that those commands and prohibitions have their effective causes regardless of being realized by some people and ignored by some others. He argued with the deniers of the effective courses for Shariah obligations by saying: "tell us about Allah, the Blessed and the Most High: He commanded people with what He commanded and forbade them from what He prohibited arbitrarily or for a wisdom? If he says: it is made arbitrarily, then he neglects and disrupts commands and attribute Him to game. If he says: commands and prohibitions are made for a wisdom, then we say to him: show us that wisdom?"¹⁹

Al-Tirmidhi supported his view with many verses from the Holy Quran that mention the wisdom behind and the purpose for creation as well as for Shariah rulings.

Among those verses are the following:

﴿الم. أَحْسِبَ النَّاسُ أَنْ يَتْرُكُوا أَنْ يَقُولُوا آمَنَّا وَهُمْ لَا يُفْتَنُونَ. وَلَقَدْ فَتَنَّا الَّذِينَ مِنْ قَبْلِهِمْ فَلَيَعْلَمَنَّ اللَّهُ الَّذِينَ صَدَقُوا وَلَيَعْلَمَنَّ الْكَاذِبِينَ﴾
(العنكبوت: 3-1)

"Alif, Lam, Meem (1) Do the people think that they will be left to say, "We believe" and they will not be tried? (2) But We have certainly tried those before them, and Allah will surely make evident those who are truthful, and He will surely make evident the liars." (29:1-3)

﴿...وَمَا جَعَلْنَا الْقِبْلَةَ الَّتِي كُنْتَ عَلَيْهَا إِلَّا لِنَعْلَمَ مَنْ يَتَّبِعِ الرَّسُولَ مِمَّنْ يَنْقَلِبُ عَلَيَّ عَظِيمًا...﴾ (البقرة: 143)

"...And We did not make the qiblah which you used to face except that We might make evident who would follow the Messenger from who would turn back on his heels..." (2:143)

¹⁹ Al-Tirmidhi, *Ithbāt al-'Ilal*, p.69.

Al-Tirmidhi emphasized that searching for the effective causes of Shariah obligations is forbidden only if it is in attempt to reject servitude to God the Almighty and argue against his truthful laws. If the search for effective causes of Shariah obligations is made after submitting oneself to the will of Allah Almighty, both in principles whose cause he understands and those whose cause he does not, and after he purified his soul and his heart, then his heart will be enlightened, and his mind will realize these rulings' wisdom. That will be part of the fruits of submitting to Allah Almighty.²⁰

2. *Maḥāsīn al-Shariah* (Merits of Shariah) by Al-Qaffal al-Kabir al-Shashi (365H)

This is a *fiqh* book according to the *Shafi'i* school of jurisprudence. However, with the *fiqh* rulings, the author highlights the merits of those rulings and attempts to discover the causes and wisdoms behind some of them.

Al-Qaffal Al-Shashi started his book with an introduction explaining that Allah Almighty is Wise and Considerate towards mankind. He wants righteousness for them in this world and the Hereafter, with the blessings He bestowed on them and with what He legislated for them as religion. This indicates the wisdom of Shariah obligations. Al-Shashi demonstrated that Shariah laws are justified by bringing benefits to mankind. The various types of Shariah obligations, transactions and customs and their details, such as *salāt*, fasting, *ḥajj*, sacrifice, sales, marriage and others, have general objectives as stated by him.²¹ The specific wisdoms or causes of some Shariah legal rulings may be rationally explained, but for some others it may be hidden and beyond our comprehension, such as the number of units of prayer (*rak'ah*), repetition of prostration (*sujūd*) in prayer with only one bowing in each *rak'ah*.²²

3. *Maḥāsīn al-Islām wa Sharā'i' al-Islām* (The merits of Islam and the laws of Islam) by Muhammad bin Abdul Rahman Al-Bukhari (546 H)

The author mentioned in the introduction that he wrote this book, while he was old and weak, to explain the merits of Islam and the secrets of its laws, so that this would assist the seeker of knowledge to be patient with the hardship faced in

²⁰ Al-Tirmidhi, *Ithbāt al-'Ilal*, p.73.

²¹ Al-Shashi, *Maḥāsīn al-Shariah*, p.21-22.

²² Al-Shashi, *Maḥāsīn al-Shariah*, p.22-23.

seeking knowledge. The author attempts to discover what he believes to be the wisdoms and secrets of Shariah rulings, with focus on the main issues in each chapter of *fiqh*.

4. ***Qawāʿid al-Aḥkām fi Maṣāliḥ al-ʿAnām* (Maxims of legal rulings in the interests of people), by Izz al-Din ibn Abd al-Salam (660 H)**

The author discussed, in unprecedented detail, the concept of *maṣāliḥ* (interests) and *mafāsīd* (evils), their divisions, ranks, and weighing between them. He also discussed the relationship between means and objectives. Although the book is one of the early major works on *maqāṣid al-Shariah*, the author rarely used this term. He, rather, used the two terms '*maṣlaḥah*' and '*mafsadah*'.

5. ***Al-Muwāfaqāt*, by Abu Ishaq al-Shātibī (790 H)**

Al-Shatibi is the founder of the theory of *maqāṣid al-Shariah*. No doubt that he benefited from the contribution of earlier scholars, especially Abu Ḥamid al-Ghazali, however, he was the first one to develop a comprehensive structure of the theory of *maqāṣid al-Shariah* in the second part of his book *Al-Muwāfaqāt*.

In his unique book *al-Muwāfaqāt*, Al-Shatibi sought to reformulate the science of *usul al-fiqh* in such a way that the objectives of Shariah are the spirit that runs in it, and the thread that connects its parts. According to him, the essence of the objectives of Shariah is a good understanding of the intent of the Lawgiver from the revealed texts and internalization of its values in a way that takes people out of succumbing to their whims so that they achieve complete submission (*'ubūdiyyah*) to God. That is the ultimate interest and success for mankind.

According to al-Shatibi, the theory of *maqāṣid al-Shariah* consists of two main parts that complement each other: the intent/objectives of the Lawgiver and the intent/objectives of the *mukallaf* (people who are subjects of Shariah rulings).

Al-Shatibi took the concept of *maqāṣid al-Shariah* in its comprehensive meaning that includes: the general objectives of Shariah, the interests observed in the legislation of legal rulings, and the intended meanings from the legal texts. Therefore, Al-Shatibi included under the "intent/objectives of the Lawgiver" the following four types:

- 1) **“The intent of the Lawgiver in the establishment of Shariah”**; this section focuses on the fact that the Lawgiver laid down the Shariah to achieve the three levels of interest for mankind (necessities, needs, and luxuries). He also discussed, in detail, the relationship between *maṣlaḥah* and *mafsadah*.
- 2) **“The intent of the Lawgiver in laying down the Shariah for understanding”**; this section focuses on the methods and principles used for understanding the Quranic texts.
- 3) **“The intent of the Lawgiver in laying down the Shariah for *taklīf* (to be obeyed accordingly)”**; this section focuses on the characteristics of Shariah obligations and their relationship with the *mukallaf* in terms of his ability to comply with and the hardship resulting from the obligations.
- 4) **“The intent of the Lawgiver in bringing the *mukallaf* under the rulings of Shariah”**; this section focuses on the relationship between the intent of the Lawgiver who legislated Shariah rulings and the intent of the *mukallaf* when implementing and adhering to those rulings. It includes the following main topics: (a) for validity of his acts, a *mukallaf* should, always, make his intent according to the intent of the Lawgiver, not contradicting it. (b) The universality of the Shariah for all people at all times. (c) The relationship between the intent of the Lawgiver behind religious commands and the intent of the *mukllaf* in fulfilling those religious commands.

6. *Hujjat Allah Al-Bāligha* (The Utmost Wisdom of God), by Shah Wali Allah Al-Dehlawi (1176 H)

Al-Dehlawi believes that the most important of Shariah sciences is the one that searches for the wisdom and objectives of Shariah rulings. By realizing those secrets and objectives, the believer becomes aware of what the Shariah has brought and gets a precise understanding of the texts of the Lawgiver. Thus, the believer follows the Shariah based on deep-rooted conviction. However, Al-Dehlawi warned that engagement in this science should be exclusive to those who are qualified for it, and that it is forbidden to engage in it with a purely personal opinion that is not based on the Sunnah and the sayings of the Companions.

At the beginning of his book, Al-Dehlawi stated that the texts of the Qur’an and the Sunnah clearly indicate that Shariah rulings are based on mankind’s interests. This fact is agreed upon by scholars of the first three Muslim generations.

Scholars, throughout history, relate Shariah legal rulings to their causes and wisdom and believe that those legal rulings are based on meeting mankind's interest and goodness.

Al-Dehlawi responded to the objections raised against writings on these issues by acknowledging the difficulty of identifying those hidden secrets and wisdoms. However, it is not something impossible. In fact, with this difficulty and concealment, the superiority of some scholars over others becomes obvious. Even though there were no writings on these issues among early scholars, the Companions of the Prophet and qualified scholars spoke about many issues in this science according to their needs. He believes that researching for those wisdoms have many benefits. Among those benefits are: (a) response to the sceptics who claimed that some of the Shariah laws contravene human reason, (b) achieving tranquillity and certainty in the souls of believers who are committed to Shariah rulings, (c) Muslims who know the objectives of Shariah rulings and their wisdoms may comply to them in such a way that achieves those objectives and wisdoms for which they were legislated, (d) highlighting the superiority of this Shariah and its miracles.

7. *Hikmat al-Tashrī' wa falsafatuh* (The wisdom of legislation and its philosophy), by Ali bin Ahmed Al-Jerjawi (1961)

The author started his book with a short introduction in which he stated that Shariah rulings are not only devotional, but rather include brilliant and comprehensive wisdoms for the goodness of mankind in this life and in the Hereafter. In his view, the general objectives of the heavenly laws are four, namely: (a) knowing the Creator and His Oneness; (b) how to perform acts of worship; (c) encouraging the enjoining of good and forbidding of evil and embodying virtues and noble morals; (d) determination to fulfil the rights and prohibitions which maintain social order.

In the next section, he wrote about the wisdom behind revealing the divine laws and sending messengers, including the Seal of the Prophets and Messengers, may God bless him and grant him peace. Then, he attempted to identify the secrets and wisdoms of legal rulings from various chapters of *Fiqh*.

Among the advantages of this book is that the author benefited from scientific discoveries, at least those which had been achieved up to his time, in explaining the secrets of some of the Shariah rulings. However, the book is marked by redundancy in some of its sections, such as when talking about the wisdom of the mission of the Prophet and the wisdom of circumcision.

8. *Maqāṣid al-Shariah al-Islāmiyyah (The objectives of Shariah); by Muhammad al-Tahir Ibn Ashur (1973)*

As noted before, al-Shatibi's approach to the theory of *maqāṣid al-Shariah* was comprehensive based on using the term "Shariah" in its general and comprehensive meaning. However, Ibn Ashur limited the term "Shariah" to Shariah rulings related to transactions and social manners. Based on that, he focused on the objectives of Shariah rulings and general characteristics of the Shariah.

Ibn Ashur made significant contributions to the development and refinement of the theory of *maqāṣid al-Shariah* that was founded by Al-Shatibi.

Ibn Ashur divided the objectives of the Shariah into two categories:

1. General objectives of Shariah: under this section, he discussed some of the general characteristics of Shariah as well as the general objectives of Shariah rulings.

2. Particular objectives of Shariah: under this category, he discussed the objectives of Shariah legal rulings on family, financial transactions, bodily transactions, donations, judicial system, and punishments.

9. *Maqāṣid al-Shariah al-Islāmiyyah wa Makārimuhā (The objectives of Shariah and its virtues); by 'Allal Al-Fassi (1974)*

Al-Fassi took a different approach in this book. He did not attempt to identify the causes and wisdoms behind detailed Shariah rulings as some of the early writers on *maqāṣid* did. He also did not follow the approach adopted by *usul al-fiqh* jurists as al-Shatibi and Ibn Ashur did.

This book focuses on showing the supremacy of the Shariah, its superiority over human legislation, and its worthiness to remain the supreme law for Muslims as well as for those who want real justice among human beings. Therefore, the book discusses the origins of Shariah, its important virtues and characteristics, its approach to legislation, and its method of *ijtihad*. The book serves as a response to the doubts cast by critics of Shariah, from the West and the East, about its validity to cater for human needs and to be the eternal source of guidance and governance for human beings.

CHAPTER 3 ► THE OBJECTIVES OF SHARIAH TEXTS

3.1. An overview of the objectives of the Shariah texts

(*maqāṣid al-khiṭāb al-sharʿī* / مقاصد الخطاب الشرعي)

The objectives of shariah texts (*maqāṣid al-khiṭāb al-sharʿī*) are the intended meanings of shariah texts. The Shariah texts (the Noble Quran and the Sunnah of the Prophet) represent the channel of communication between God, the Creator, and human beings. The objective of the divine scripture is to guide mankind and direct them to what help them to achieve their interests, ward off evils, and accomplish the mission for which they were created. Therefore, it is necessary to understand the objectives of those texts through a proper method of interpretation.

Each text of the Quran and the Sunnah has its own objective(s). However, this chapter is not about detailed objectives of those texts. It focuses on the general objectives of Shariah texts, i.e., the texts of the Noble Quran and the Sunnah of the Prophet, and the proper methodology of identifying those objectives.

3.1.1. General objectives of Shariah texts

The general objectives of Shariah texts may be summarized in the following:

- a) Introducing man to the realities of this universe including: the oneness of God the Creator, the facts of the unseen world, how the universe was created, the aim of that creation, and the fate of this universe and the creatures in it.
- b) Introducing people to the history of the Messengers of God to mankind.
- c) Setting moral, social and legal norms and rules that govern human affairs on the individual as well as social level.
- d) Determining rights and duties.
- e) Nourishing souls and spiritual life.
- f) Guiding and motivating people to follow the path of faith and achieve the mission they were created for.

3.2. Requirements for a proper understanding of the objectives of Shariah texts

For a proper understanding of the objectives of Shariah texts, one needs to adhere to the following requirements:

- a) To deal with Shariah texts as a source of knowledge, not as a tool to justify or support preconceived ideas and the status quo. Our approach to Shariah texts should be to contemplate them to extract their actual meaning. Shariah texts should not be misused to justify and support preconceptions inherited from society. Preconceived ideas, usually, lead to the misinterpretation and distortion of Shariah texts.
- b) To be able to free oneself from the influence of prejudice and preconceived ideas. One must be courageous enough to review his preconceived ideas and attitudes in light of Shariah texts without any attempt to misinterpret or go around those texts to justify preconceived ideas.
- c) To avoid overreacting against opponents' views. Sometimes people, in defending their view, may overreact against opponents' views in a way that transgresses Shariah texts and principles and misuse them. For this reason, Allah says:

﴿وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ اَنْ صَدُّوْكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ اَنْ تَعْتَدُوْا (المائدة: 2)﴾

“Do not let the hatred of a people who once barred you from the Sacred Mosque provoke you to transgress” (5:2)

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ اَلَّا تَعْدِلُوا اعْدِلُوا هُوَ اَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ (المائدة: 8)﴾

“O believers! Stand firm for Allah and bear true testimony. Do not let the hatred of a people lead you to injustice. Be just! That is closer to righteousness. And be mindful of Allah. Surely Allah is All-Aware of what you do.” (5:8)

- d) Contemplative consideration of all elements that contribute to determining the intended meaning of Shariah texts (the objectives of Shariah texts). The elements that contribute to determining the intended meaning of a text include: (i) the linguistic meaning of the text, (ii) the specific context in which it is mentioned, (iii) the general context (other texts relevant to the subject), (iv) and the occasion/incident in which it was issued. All those elements should be considered in interpreting a Shariah text to determine its proper objective (meaning).

3.3. Methodology of proper determination of the objectives of Shariah texts

Shariah texts were issued in a period of more than twenty years, calling people to the Oneness of Allah and to worship Him alone, guiding the Muslim community in their individual as well as social life, and dealing with various circumstances that people face in their daily life. Those texts constitute a comprehensive system with integrated parts. No Shariah text may be interpreted in isolation from its context, the texts associated with it, and the general legislative context. Any attempt to interpret a text outside its context will lead to misunderstanding of the objectives of that text.

Determining the intended meaning of any Shariah text depends on two elements: a) The linguistic meaning of the text; and b) The usage of its words in that context.

i) The linguistic meaning of the words:

This is the basic meaning conveyed by the words of the text itself without referring to its context and the occasion in which it is mentioned. This is the first level of understanding a text. However, this basic meaning may not be sufficient to determine the intent of the Lawgiver from that text. Some words may convey different meanings in different contexts. Thus, it is necessary, for proper interpretation, to look at the context and the occasion in which the text was issued.

ii) The specific context of the text

The specific context refers to the preceding and following sentences of the interpreted text. This element complements the element of linguistic meaning. Al-Shatibi said about the Noble Quran: "The Quran was revealed in the language of the Arabs according to their accustomed wordings and styles of expressing meanings. The wordings that were innate to the Arabic language used the general expression with its apparent meaning, and the general expression with its general meaning in one case, and with its specific meaning in another case. Similarly, using a general expression with its specific meaning, and an obvious expression with its unobvious meaning. All of it is understood from the text's beginning, middle, or end. The Quran speaks with words whose beginning tells of its end, or its end tells of its beginning. It speaks of something that is understood by meaning as it is understood by allusion. It calls one thing by many

names and many things by one name. All of this is understood by its expressions without any doubt and by anyone involved in scholastic theology."²³

iii) The general legislative context

This refers to other Shariah texts related to the same topic. The texts related to one topic, even if they were revealed at different times and occasions, are interrelated to each other and address the issue from various angles and different situations. Thus, a proper and comprehensive understanding of the issue requires reading all those texts together.

iv) The context of revelation

This refers to the occasions of revelation (*asbāb al-nuzūl*/أسباب النزول), the occasions of the statements made by the Prophet (*asbāb al-wurūd*/أسباب ورود) and any other circumstances relevant to the issue.

As for the occasions of revelation, there are many writings on them. However, one should be very cautious in dealing with them. It should be noted that a lot of those narrations are not authentic, some of them are irrelevant, and some others are just examples, not real occasions.

Al-Dehlawi says: "As for the excessiveness of Muhammad bin Ishaq, Al-Waqidi and Al-Kalbi, and what they mentioned under each verse of the story, most of it is not authentic according to the scholars of Hadith, and its chain of narrators deserves reconsideration. It is an obvious mistake to consider (the knowledge about reasons for revelation) among the conditions of interpretation (*tafsir*). And whoever thinks that contemplating the Book of Allah depends on comprehending it (reasons for revelation), then he has missed his portion of the Book of Allah."²⁴

Not all of what is narrated as occasions of revelation (*asbāb al-nuzūl*) are needed in the interpretation of that text. Shah Wali Allah Al-Dehlawi summed up what is really needed in interpreting the Quranic texts into two types:²⁵

1. In the case of Quranic verses which were based on specific stories, knowing those stories is required for proper understanding of those verses;
2. The reason for the revelation that has been proven to be authentic and indicates specification of a general expression, or restriction of an absolute text, or clarification of an unclear text.

²³ Al-Shatibi, *Al-Muwafaqat*, V.2, pp.50-51.

²⁴ Al-Dahlawy, *al-Fawz al-Kabir fi Usul al-Tafsir*, p.76.

²⁵ Al-Dahlawy, *al-Fawz al-Kabir fi Usul al-Tafsir*, p.70.

Knowing the occasion of a statement made by the Prophet (*asbāb al-wurūd/ أسباب الورد*) may be very useful in determining the intended meaning of the words of the Prophet whether they are general or specific, absolute or restricted, and determining the level of the ruling, if it is in the form a command whether it is obligatory or only recommended, and if it is in the form of a proscription whether it is strictly prohibited or only disapproved of.

3.4. A model of proper determination of the objectives of Shariah texts: the relationship between rulers and citizens

The Quran ordered Muslims to obey people of authority, including religious and political authorities. This was supported by various hadiths that highlight the importance of obeying the leaders and rulers to preserve peace and the harmonious progress of a Muslim society. On the other hand, Allah has made promoting good and preventing evil as the main characteristic of the Muslim nation. This includes opposition to misconduct and evil from rulers. The Prophet also commanded Muslims to advise leaders and rulers and stand up against their evil.

There are people who deal with those texts in a selective manner. Some focus on the first group of texts and misuse them in way that justifies the evil and tyranny of rulers and prevents opposition against them. Some others focus on the second group of texts and misuse them to rebel against rulers in a way that leads to unjustified shedding of Muslims' blood. The following is a comprehensive and systematic analysis of the relevant texts that reveals the proper relationship to achieve the objectives of the Shariah.

1. Promoting good and preventing evil is the general framework governing the inter-relationship within a Muslim society– whether it is between society members themselves, or between citizens and rulers. It represents the main characteristic a Muslim society should hold on to and a constant norm that should be followed in all circumstance. Allah Almighty says:

﴿كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ وَلَوْ آمَنَ أَهْلُ الْكِتَابِ لَكَانَ خَيْرًا لَهُمْ مِنْهُمْ الْمُؤْمِنُونَ وَأَكْثَرُهُمُ الْفَاسِقُونَ، (آل عمران: 110)﴾

“You are the best nation produced [as an example] for mankind. You enjoin what is right and forbid what is wrong and believe in Allah. If only the People of the Scripture had believed, it would have been better for them. Among them are believers, but most of them are defiantly disobedient.” (3:110)

Muslims are commanded to hold to the norm of promoting good and combating evil in their societies:

﴿وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَأُولَئِكَ هُمُ الْمُفْلِحُونَ﴾ (آل عمران: 104)

“And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful.” (3:104)

Enjoining what is right and prohibiting evil is the key to success in this life and in the Hereafter. The responsibility of preserving this norm falls upon all Muslims collectively.

﴿وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ﴾ (التوبة: 71)

“The believers, both men and women, are guides to each other. They order what is just and forbid what is evil; they establish their prayers and pay the obligatory charity and obey Allah and His Messenger. On these Allah will have mercy. He is Mighty, Wise.” (9:71)

Prohibiting evil is the first line of defense and the only guarantee to preserve a Muslim society from going astray and drowning in corruption as stated in the Hadith:

"مَثَلُ الْقَائِمِ عَلَى خُدُودِ اللَّهِ وَالْوَاقِعِ فِيهَا كَمَثَلِ قَوْمٍ اسْتَهَمُوا عَلَى سَفِينَةٍ، فَأَصَابَ بَعْضُهُمْ أَعْلَاهَا وَبَعْضُهُمْ أَسْفَلَهَا. فَكَانَ الَّذِينَ فِي أَسْفَلِهَا إِذَا اسْتَقَوْا مِنَ الْمَاءِ مَرُّوا عَلَى مَنْ فَوْقَهُمْ، فَقَالُوا لَوْ أَنَّا خَرَقْنَا فِي نَصِيبِنَا خَرْقًا وَمَا نُؤْذِ مَنْ فَوْقَنَا! فَإِنْ يَتْرَكُوهُمْ وَمَا أَرَادُوا هَلَكُوا جَمِيعًا، وَإِنْ أَخَذُوا عَلَى أَيْدِيهِمْ نَجَّوْا وَبَجَّوْا جَمِيعًا" صحيح البخاري

The likeness of the man who observes the limits prescribed by Allah and that of the man who transgresses them is like the people who get on board a ship after casting lots. Some of them are in its lower deck and some of them in its upper (deck). Those who are in its lower (deck), when they require water, go to the occupants of the upper deck. Then, they said: 'If we make a hole in our lower deck so that we do not need to disturb the occupants of the upper deck.' If they (the occupants of the upper deck) leave them to carry out their plan, they all will be drowned. But if they do not let them go ahead (with their plan), all of them will remain safe." (*al-Bukhari*)

The Quranic texts also warn against punishment that would fall upon people when corruption spreads -be it political, financial or social corruption- and how it will not be limited to corrupt people themselves, but will rather affect everyone. Allah-swt- says in the Quran:

﴿وَاتَّقُوا فِتْنَةً لَا تُصِيبَنَّ الَّذِينَ ظَلَمُوا مِنْكُمْ خَاصَّةً وَاعْلَمُوا أَنَّ اللَّهَ شَدِيدُ الْعِقَابِ (الأنفال: 25)﴾

“And beware of that temptation to evil which does not befall only those among you who are bent on denying the truth, to the exclusion of others; and know that God is severe in retribution.” (8:25)

Allah -swt- cursed the descendants of Israil, after honoring them, because they stopped enjoining good and combating evil. Allah says:

﴿لُعِنَ الَّذِينَ كَفَرُوا مِنْ بَنِي إِسْرَائِيلَ عَلَى لِسَانِ دَاوُودَ وَعِيسَى ابْنِ مَرْيَمَ ذَلِكَ بِمَا عَصَوْا وَكَانُوا يَعْتَدُونَ (*) كَانُوا لَا يَتَنَاهَوْنَ عَنْ مُنْكَرٍ فَعَلُوهُ لَبِئْسَ مَا كَانُوا يَفْعَلُونَ (المائدة: 78-79)﴾

“Those who disbelieved of the Children of Israel were cursed by the tongue of (Prophets) David and Jesus, the son of Mary, because they disobeyed and transgressed. They did not forbid one another from the wrongdoing they were committing. Evil is what they were doing.” (5:78-79)

This consequence is not specific to the descendants of Israel but rather to anyone who follows their footsteps. It was reported that Abu Bakr said: “Oh people, you read the verse that says “Believers, look after your own souls, he who goes astray cannot harm you if you are guided. You shall all return to Allah, and He will inform you of what you have done.” (5:105), and I have heard the Prophet (ﷺ) say, ‘If people see an oppressor and do not prevent him from (doing evil), it is likely that Allah will punish them all.’”

We should not give up on promoting good and forbidding evil even if corruption becomes widespread and people lose hope in change, because among the objectives of this practice is to absolve ourselves of responsibility. As the Quran says:

﴿وَإِذْ قَالَتْ أُمَّةٌ مِنْهُمْ لِمَ تَعِظُونَ قَوْمًا اللَّهُ مُهْلِكُهُمْ أَوْ مُعَدِّبُهُمْ عَذَابًا شَدِيدًا قَالُوا مَعْذِرَةً إِلَى رَبِّكُم وَلَعَلَّكُمْ تَتَّقُونَ (الأعراف: 164)﴾

“And when some asked: 'Why do you admonish a nation whom Allah will destroy or sternly punish?' They replied: '(Seeking) a pardon from your Lord, and in order that they may be cautious.'” (7:164)

2. Governance in Islam is not a way to achieve personal interest, but rather a responsibility to achieve the public interest of Muslims. The Prophet (ﷺ) said: “Anyone whom Allah makes him in charge of the affairs of a group of people and he dies while he is not sincere to them, Allah will make *Jannah* unlawful for him.” (*Muslim*)

Being a ruler isn't a privilege, but rather an immense responsibility and test for the ruler. The Prophet (ﷺ) said: “Oh Abu Dharr, you are weak, and it is a trust. It will be a cause of disgrace and remorse on the Day of Resurrection, except for the one who takes it up with a full sense of responsibility and fulfills what is entrusted to him.” (*Muslim*).

In this regard, it is important to highlight a common misunderstanding of the Quranic verse:

﴿قُلِ اللَّهُمَّ مَالِكُ الْمُلْكِ تُنْزِعُ الْمُلْكَ مَنْ تَشَاءُ وَتَرْزُقُ الْمُلْكَ مِمَّنْ تَشَاءُ وَتُعَزِّرُهُ مَنْ تَشَاءُ وَتُوذِلُّ مَنْ تَشَاءُ بِيَدِكَ الْخَيْرُ إِنَّكَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ (آل عمران: 26)﴾

“Say: 'O Allah, Owner of the Kingdom. You give the kingdom to whom You will, and take it away from whom You will, You exalt whom You will and abase whom You will. In Your Hand is good, You have power over all things.’” (3:26)

Some people claim that since the ruler was given this authority, or “kingdom,” by Allah, we should not interfere with what Allah has given him. In fact, this is a grave misunderstanding of the verse. The verse speaks about the power of Allah and His will, as He honors whom He wants and exalts whom He wants. The verse does not point at the given status as a privilege to the person but rather a test for him- whether he will rule by the laws of Allah, or will he transgress and oppress. It is also a test to those who are under his rule to support him in his efforts for good governance and stand up against his mischief. Allah says:

﴿...وَنَبَلُوكُمْ بِالْأَسْوَاقِ وَالْحَرْبِ فَتَنَّا وَتِلْكَ أَلْيَسَا تُرْجَعُونَ (الأنبياء: 35)﴾

“...We will try you with a trial of evil and good. Then, to Us you shall be returned.” (21: 35)

Everything given to a person, being good or evil, is a test for him. Allah gave rulership to Pharaoh, Nimrod, and Abrahah- the Absyinnian king who attempted to destroy the Ka'bah- and the Caesars of Rome and Shahs of Persia, and many more rulers who were disbelievers and tyrants. Honor is not in being given the power to rule, but rather belongs to those who obey God and do good deeds.

3. Seeking advice and counsel “*Shurah*” is a pivotal obligation in running the general affairs of Muslims, whether with regards to choosing the ruler, or making general policies and their implementation. In describing a Muslim society, Allah says:

﴿وَالَّذِينَ اسْتَجَابُوا لِرَبِّهِمْ وَأَقَامُوا الصَّلَاةَ وَأَمْرُهُمْ شُورَىٰ بَيْنَهُمْ وَمِمَّا رَزَقْنَاهُمْ يُنفِقُونَ (الشورى: 38)﴾

“Those who answer their Lord, establish the prayers, and their affairs are by consultation; who spend of that which We have given them” (42: 38).

Seeking counsel “*shurah*” is so important that Allah -swt- ordered the Prophet (ﷺ) to practice it despite having direct revelation from Allah:

﴿...فَاعْفُ عَنْهُمْ وَاسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ فِي الْأَمْرِ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى اللَّهِ إِنَّ اللَّهَ يُحِبُّ الْمُتَوَكِّلِينَ (آل عمران: 159)﴾

“... pardon them and ask forgiveness for them. Take counsel with them in the matter and when you are resolved, put your trust in Allah. Allah loves those who trust Him” (3:159).

Therefore, an Islamic political system is that in which people have the freedom to choose the ruler, establish supervisory organizations and institutions that scrutinize government policies and practices and hold the right to remove corrupt and incompetent rulers and officials.

The Prophet (ﷺ) said: “The best among your rulers are those whom you love and who love you, upon whom you invoke God's blessings and who invoke His blessing upon you. And the worst among your rulers are those whom you hate and who hate you, who curse you and whom you curse). (*Muslim*) Therefore, those rulers who reach a point where the general public dislike them and curse them, must resign and preserve their honor, and should not let themselves be among those whom Allah Almighty has described as the worst of people.

The Islamic political system is based on the freedom to choose rulers. It is not based on imposing someone as the ruler, and then ordering people to pledge allegiance and support. Managing the public affairs of Muslims is based on true sense of “*shurah*” not on establishing superficial councils called “*shurah* councils” that are used to legislate and impose the will of the ruling authority.

4. Governance in Islam is based on the rule of Shariah. Every member of the society has to fulfill his duties with regard to public affairs. The obligation to perform duties is not left to a person's choice and desire, rather he must perform

his responsibilities in hardship and ease, and in what he likes and dislikes, unless the matter is a sin. The Prophet (ﷺ) said: “It is obligatory for you to listen to the ruler and obey him in adversity and prosperity, in pleasure and displeasure, and even when another person is given (undue) preference over you.” (*Muslim*) This hadith refers to injustice that one might face from the ruling authorities by depriving him from his financial rights such as that which is mentioned in the hadith. However, that injustice does not justify negligence of duties, rather a person must perform his duties even if he is denied some of his rights. That is what the Prophet (ﷺ) was referring to when he said: “You will see after me favouritism and things which you will disapprove of.” The Companions said: “What do you order us to do (under such circumstances)?” He replied, “Discharge (fulfill) your obligations and ask your rights from Allah.” (*Muslim*)

Since law and order cannot be sustained without obedience to the ruling authority, Allah Almighty Has commanded obedience to those in authority:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُوَلِي الْأَمْرِ مِنْكُمْ (النساء: 59)﴾

“Oh who have Believed, obey Allah and obey the Messenger and those in authority among you. Should you dispute about anything refer it to Allah and the Messenger, if you believe in Allah and the Last Day. That is better and the best interpretation.” (4:59)

And the Prophet (ﷺ) said: “Whoever obeys me, obeys Allah, and whoever disobeys me, disobeys Allah. Whoever obeys my governor (*amir*), he has obeyed me, and whoever disobeys my governor, he has disobeyed me.” (*Muslim*)

Commenting on this hadith, Al-Khattabi said: “Quraish and other Arabs were not accustomed to appointed rulers, that is why they used to rebel against them. The Prophet (ﷺ) said this to urge them to obey and submit to their leaders and rulers in all that is good and righteous, and not to rebel or fight against them, so that there will be no dispute among Muslims which may lead to defeating the message of God.”²⁶

The command to obey the authorities, which include political and religious authorities, is not absolute, but rather an extension of obeying Allah -swt- and His messenger (ﷺ). Obedience is required in a Muslim society where the rulers are righteous and competent people who exert their efforts to achieve the best of interest for Muslims. Those are the rulers (people of authority) which Allah the

²⁶ Al-Khattabi, *A'lam al-Hadith fi Sharh Sahih al-Bukhari*, p.2333-2334.

Most-Merciful commanded Muslims to obey them, because obeying them is in the benefit of the whole society and disobeying them would lead to chaos and loss of social benefits.

In principle, corrupt people are not supposed to be rulers in the first place. They should not be given authority over a Muslim society. But if they usurped power and imposed themselves as rulers of a Muslim society, then that will be an exception that needs special treatment.

Since the ruler represents the authority of the state and the interests of the Muslim community, and the purpose of his orders is to manage their affairs in what benefits them, the social status of such ruler does not matter. It is obligatory to obey the ruler regardless of his lineage, social class and physical characteristics. The Prophet (ﷺ) said: "If a slave is appointed over you who rules according to the Book of Allah, listen to him and obey." (*Muslim*)

The purpose of the command to obey the orders of the ruling authority is to take care of the interests of Muslims, and to achieve righteousness. Therefore, if the ruling authority issues a command that is against the Shariah rules, it should not be obeyed. Such orders and laws are invalid according to the rule of the Shariah. The Prophet (ﷺ) said: "It is obligatory upon a Muslim to listen (to the ruler) and obey whether he likes it or not, except when he is ordered to do a sinful thing; in such case, there is no obligation to listen or to obey." (*Muslim*)

It is narrated that the Messenger of Allah sent an army in a mission and appointed a man in charge of them. On the way, the leader lit a fire and ordered them to enter it. Some of them intended to obey him, while others objected saying we followed the message of Islam to escape from Hellfire. Upon returning, they mentioned that to the Messenger of Allah, then he said to those who intended to obey him: "If you had entered it you would have stayed there until the Day of Resurrection", and praised those who objected. Then, he said: "There is no obedience if the command involves disobedience toward Allah. Rather obedience is only (required) in that which is good." (*Muslim*)

Al-Khattabi narrated that when Umar bin Hubairah (a governor in Iraq) asked Al-Hasan Al-Basri what should he do when he receives orders from the Caliph Yazid bin Abd Al-Malik. Al-Hasan Al-Basri responded "Allah saves you from Yazid, but Yazid cannot save you from Allah, so beware of disobeying Allah, for there is no obedience to a creature in disobedience to the Creator."²⁷

²⁷ Al-Khattabi, *A'lam al-Hadith fi Sharh Sahih al-Bukhari*, p.1417.

5. The command to obey those in authority does not mean to abandon enjoining good and forbidding evil. Rather, it is obligatory to observe both of them. Ubadah narrated: "We swore allegiance to the Prophet to hear and obey; in time of difficulty and in prosperity, in hardship and in ease, to endure being discriminated against and not to dispute about rule with those in power, except in case of evident infidelity regarding which there is a proof from Allah. We swore allegiance to the Prophet to say what was right wherever we were, and not to fear from anyone's reproach." (*Muslim*)

It is obvious from the narration that Muslims should obey rulers in what is good and avoid armed rebellion against them in cases of injustice, but all of that comes with refusal to obey them in what is prohibited and admonishing them for their mischief and tyranny (to say what was right wherever we were, and not to fear from anyone's reproach), i.e. to enjoin good and combat evil. This approach is confirmed by the hadith of the Prophet (ﷺ) when he said: "Amirs will be appointed over you, and you will find them doing good as well as bad deeds. One who hates their bad deeds is absolved from blame. One who disapproves of their bad deeds is (also) safe (so far as Divine wrath is concerned). But one who approves of their bad deeds and imitates them is doomed". People asked: Messenger of Allah, shouldn't we fight against them? He replied: No, as long as they perform prayers." (*Muslim*)

In addition, the Prophet commanded us to change evil to the best of our abilities, as was reported by Abi Saeed Al-Khudari, who narrated that the Prophet (ﷺ) said "Whoever amongst you sees an evil, he must change it with his hand; if he is unable to do so, then with his tongue; and if he is unable to do so, then with his heart; and that is the weakest form of faith." (*Muslim*) The word 'hand' in the hadith refers to using authority to change evil. Anyone who has authority should use it, within its limits, to change evil. If one has no authority, he/she may use tongue (words) to change. Whoever fears death or significant harm if he attempts to stop a tyrant from doing evil, he may withhold in order to protect himself, or he may go ahead and be rewarded by Allah for his courageous sacrifice. If an attempt to change evil results in a greater evil, one should refrain from that based on the principle of balancing between interests and evils.

It should be noted that there is no conflict between the principle of 'promoting good and combating evil' against a ruler and fulfilling the pledge of allegiance to him, if there is any. That is in line with the narration: "We swore allegiance to Prophet (ﷺ) to hear and obey; in time of difficulty and in prosperity, in hardship and in ease, to endure being discriminated against and not to dispute

about rule with those in power, except in case of evident infidelity regarding which there is a proof from Allah. We swore allegiance to Prophet (ﷺ) to say what was right wherever we were, and not to fear from anyone's reproach.”
(*Muslim*)

The pledge of allegiance that must be fulfilled is the pledge that has fulfilled its legal conditions, including that it be with the free consent of the pledgee and not under the threat or coercion. However, even if the pledge does not fulfill conditions, a Muslim should be patient and not rush to cause sedition among Muslims. He should always think about the consequences of his actions, and constantly seek to weigh between the benefits achieved and the evil caused by his actions.

CHAPTER 4 ► THE OBJECTIVES OF SHARIAH RULINGS

4.1. Classification of the objectives of Shariah rulings: An overview

The objectives of Shariah rulings are the wisdoms behind those rulings and interests for which they were legislated.

Scholars have classified the objectives of Shariah rulings in various categories. Ibn Ashur divided them, relating to Shariah rulings, into three classes: the general objectives (المقاصد العامة), the specific objectives (المقاصد الخاصة), and the particular objectives (المقاصد الجزئية).

a) The general objectives are the meanings and wisdoms observed by the Lawgiver in all or most cases of legislation, such as warding off evil (*mafsadah*) and bringing benefits (*maṣlahah*).

b) The specific objectives are the objectives observed by the Legislator in one of the chapters of legislation, or in a group of homogeneous chapters, such as the objectives of the Lawgiver in punishments, financial transactions, monetary worships, and establishing the family system.

c) The particular objectives are the wisdoms and secrets that the Lawgiver considers in each particular ruling.

Ibn Ashur, also, divided the objectives of Shariah rulings, relating to the affected people, into universal objectives, and partial objectives.

a) Universal objectives are the objectives related to the entire nation on an equal basis, or to a large group of the nation or to a region.

b) Partial objectives are the objectives related to individuals, or to small groups of them. The main example of these objectives are the objectives of transactions.

The above classification is useful in the case of conflict between public interest and individual interests. The public interest may be given priority over the individual one in certain situations as will be explained later in the relevant chapter.

4.2. The main objective of the Shariah

The Noble Quran states that the goal of the heavenly revelation, including the Noble Quran, is to guide people:

﴿قُلْنَا اهْبِطُوا مِنْهَا جَمِيعًا فَإِمَّا يَأْتِيَنَّكُمْ مِنِّي هُدًى فَمَنْ تَبِعَ هُدَايَ فَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ (البقرة: 38)﴾

“We said, "Go down from it, all of you. And when guidance comes to you from Me, whoever follows My guidance - there will be no fear concerning them, nor will they grieve.” (2:38)

﴿ذَلِكَ الْكِتَابُ لَا رَيْبَ فِيهِ هُدًى لِّلْمُتَّقِينَ (البقرة: 2)﴾

“This is the Book about which there is no doubt, a guidance for those conscious of Allah.” (2:2)

﴿شَهْرُ رَمَضَانَ الَّذِي أُنزِلَ فِيهِ الْقُرْآنُ هُدًى لِّلنَّاسِ وَبَيِّنَاتٍ مِّنَ الْهُدَى وَالْفُرْقَانِ... (البقرة: 185)﴾

“The month of Ramadhan [is that] in which was revealed the Qur'an, a guidance for the people and clear proofs of guidance and criterion.” (2:185)

﴿...وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَى لِّلْمُسْلِمِينَ (النحل: 89)﴾

“...And We have sent down to you the Book as clarification for all things and as guidance and mercy and good tidings for the Muslims.” (16:89)

Guidance is a comprehensive concept that encompasses all other attributes of the heavenly revelations, such as: purification, remembrance, mercy, light, justice, and other attributes. Whoever is guided by the guidance of the Noble Quran will have those gains. The Noble Quran’s guidance of man includes both aspects of thinking and behaviour and can be summarized as follows:

- Guiding man to sound thinking that introduces him to the realities of this universe and ways of managing worldly affairs.
- Introducing man to the realities of the unseen world.
- Introducing man to the mission for which he was created and his destiny after death.

- Introducing man to his duties towards his Creator and the requirements for carrying out his mission in this life.
- Introducing man to good moral and social norms.
- Guiding man to ways of self-purification.

In general, the Quran guides man to what will make him achieve righteousness in the way that Allah likes and accepts. The relationship between guidance and righteousness is clear. Guidance is the path to righteousness, and the one who is guided by the divine law is righteous. There is no righteousness without following the divine guidance.

Based on the above, guidance is the comprehensive and inclusive objective of Shariah. This comprehensive attribute encompasses all the details of the general objectives of Shariah.

Scholars made various statements on the main objective of the Shariah, according to the angle from which each of them views the issue. Those who look at the outcomes that Shariah laws help man to achieve, such as Al-Izz bin Abdul Salam and Al-Shatibi, say that the main objective of the Shariah is to achieve benefits and ward off evils. Those who look from the angle of the purpose of human creation say that the main objective of Shariah is to guide man to worship God and inhabit the earth in a way that achieves servitude to Allah. Those who focus on the requirements for achieving the purpose of creation, such as Ibn Ashur, say that the main objective of Shariah is the preservation of the nation's system that is based on human's virtue as well as on the sustainability of that virtue. Whoever looks at the basic aspects of human life which the Shariah came to organize and preserve, such as scholars of *usul al-fiqh*, starting from Al-Ghazali, say that the general objective of Shariah is to preserve religion, life, lineage, intellect and wealth.

4.3. The general objectives of Shariah (the five universal values)

It is common among writers on *maqāsid al-shariah*, starting from Al-Ghazali, to relate the objectives of the legal rulings to five general objectives, namely: preserving the religion, life, intellect, lineage, and wealth. These five are called the five essentials, or the five universal values, or the general objectives of the Shariah. Scholars of *usul al-fiqh* have different justifications for limiting the general objectives to those five values.

The justification given by Al-Amidi is that those five values cover all aspects of human life.²⁸ It can be said that these five values encompass the needs and foundations on which human life is based. Religion represents the spiritual aspect of man and guidance by which he achieves the purpose of his existence in this universe. Preservation of life represents the preservation of the material aspect of human life. Preservation of lineage represents the aspect of continuity in human life. Preservation of intellect represents the preservation of the tool of perception, thinking, and management of life affairs and the basis of *taklif*. Preservation of wealth represents the material sources of human life.

Some scholars relate those five values to the *hudūd* punishments stated in the Quran and the Sunnah of the Prophet. For instance, Al-Ghazali says: "Its example is the law decreed to execute the misguiding infidel, and the punishment of the innovator (المبتدع) who calls for his heresy that corrupts the people's religion. The law decreed for retaliation (*qisas*) is about preserving lives. The punishment for drinking alcohol is about preserving the intellect, which is the basis for *taklif*. The punishment for adultery is about preserving the lineage and offspring. And the law to rebuff robbers and thieves is about preserving the wealth which is the necessary livelihood of people".²⁹

Based on linking those five objectives to the stipulated punishments (*hudūd*), some scholars added 'preservation of honour' to meet the punishment for false accusation.

There have been objections to restricting the general objectives to those five. For example, Al-Nabahani suggested adding preservation of the state, preservation of security, and preservation of human dignity. Thus, the necessities would be eight. Al-Qaradawi thinks that the five objectives do not include what is related to social values, such as freedom, equality, fraternity, solidarity and human rights. Thus, he suggests adding these values to those five. 'Allal Al-Fassi suggested adding the unity of the Muslim nation and equality among its members, the right to dignity, women's rights, all kinds of freedom, and the independence of the judiciary. Muhammad al-Ghazali suggested adding freedom, justice and equality. Ahmad Al-Khamlishi suggested adding fairness, rights and freedom of the individual. Izz al-Din bin Zeghiba suggested adding freedom as the sixth objective.

²⁸ Al-Amidi, *al-Ihkam fi Usul al-Ahkam*, vol.3, p.243.

²⁹ Al-Ghazali, *al-Mustasfa*, vol.1, p.217.

A careful examination of those suggestions shows that there is no real need for them. In fact, the five objectives are universal values that cover human life aspects and include many particulars and categories. The above suggestions by some contemporary scholars, such as freedom, justice, equality, dignity and other human rights, are only details which are already included under those five universal values.

It is common among classical and contemporary scholars to describe those five values as the five necessities (*dharuriyyat*). In fact, those five are universal values which include the three levels: i) necessities (*dharuriyyat*), ii) needs (*hajiyyat*), iii) luxuries (*tahsiniyyat*).

Preservation of religion has a necessary portion (*dharuriyyat*) to the religiosity of the person. That level of religiosity requires necessary means to be achieved.

Preservation of religion has a level of need (*hajiyyat*) that has its means which are *hajiyyat*.

Preservation of religion has a level which is complementary (*tahsiniyyat*), for which there are means classified as *tahsiniyyat*.

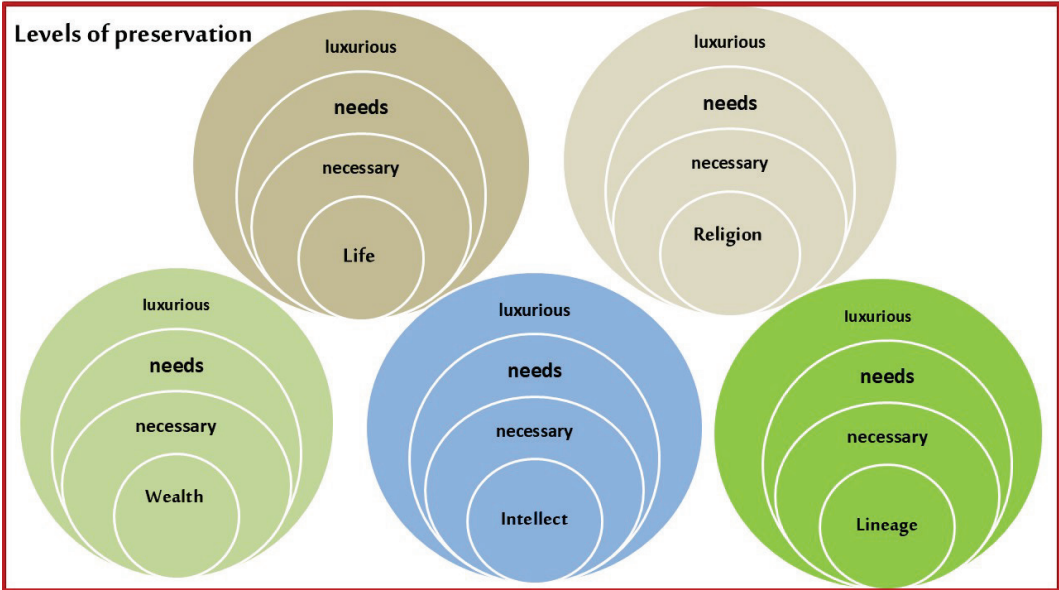
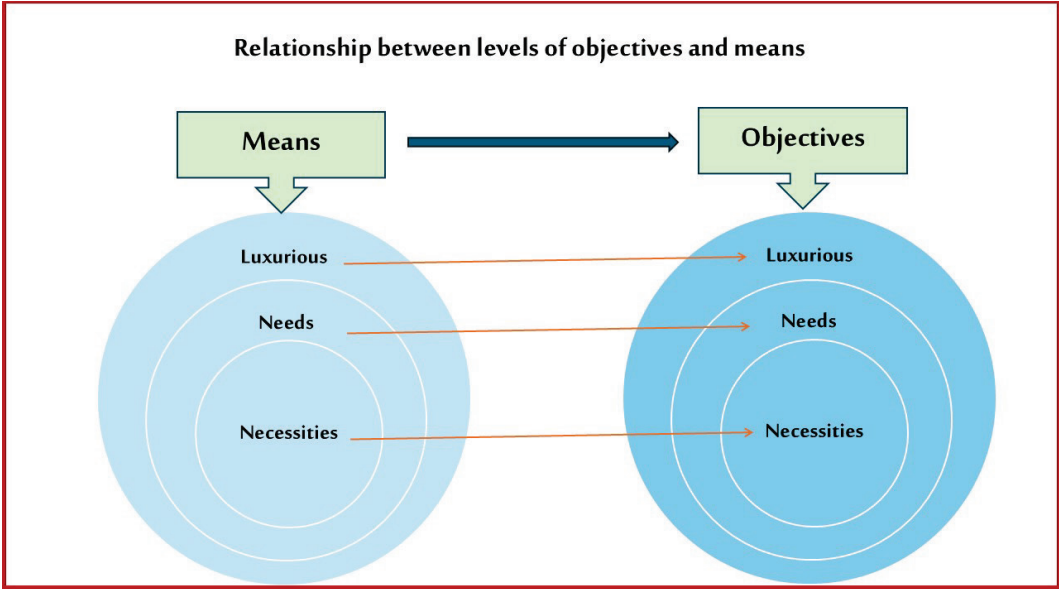
Likewise, preservation of life has a necessary portion (*dharuriyyat*), which has its necessary means to protect it from destruction, weakness, helplessness, and turmoil that may bring one to the verge of destruction or cause him to suffer extreme hardship.

Preservation of life has a lower level of needs (*hajiyyat*) with its means that make people live an easy life without considerable hardship.

Preservation of life has a third level which makes people live a luxurious life (*tahsiniyyat*). This level has its luxurious means.

The same classification goes with the remaining three universal value, i.e. preservation of lineage, preservation of intellect and preservation of wealth.

It is worth mentioning that the Lawgiver did not give a list of necessities (*dharuriyyat*) neither in the Quran nor in the Sunnah. However, the Quran and the Sunnah clearly state that human necessities are highly considered to the extent that meeting them may justify committing unlawful things as in the legal maxim: "necessities may justify the unlawful." The Quran gave some examples such as the permissibility of uttering blasphemy, while secretly one remains on the faith, in the event of falling under severe torture, and eating forbidden things under extreme hunger.



Due to the absence of precise boundaries between necessities (*dharuriyyat*) and needs (*hajiyyat*), the distinction between them may be, sometimes, subject to discretion. Certain necessities are agreed upon among scholars, while some others may be subject to different views. That is because the necessities are not identified by name but rather by features which may be subject to discretion. An

example of this is the different views on preserving honour. Some scholars raised it to the rank of necessities, while some others put in the level of needs. However, this difference does not have any impact in practice because all scholars agree on the obligation of protecting honour in all its forms, as well as on the prohibition of any assault on it, just as the Prophet said: "Every Muslim's blood, property, and honour are unlawful to be violated by another Muslim" (*Muslim*). Another example of this is that al-Shatibi, and others, consider the four pillars of Islam as necessary means for preserving religion, while Al-Bouti considers them as needs.

4.4. The specific objectives of Shariah rulings

Specific objectives are the objectives observed by the Lawgiver in one of the *fiqh* chapters, or in a group of similar chapters, such as the objectives of worships, marital relations, fighting, financial transactions, punishments, and the judicial system, etc.

4.4.1. The objectives of worship

Acts of worship have general objectives that may be summarized as follows:

- i) Achieving submission to Allah by establishing a strong relationship with Allah Almighty, following His guidance, being cautious of Him and feeling the need for His assistance. All these objectives are evident in all acts of worship: prayer, zakat, fasting, pilgrimage, remembrance and supplication. Ibn Rashid Al-Qafsi says about the purposes of worship: "The origin of moral corruption is following desires, and the origin of its treatment is to subdue them. If you understand that then acts of worship are the only medicines for diseases of the hearts, and God Almighty sent them down as a mercy to people and to polish the mirror of their hearts so that they may reach His cordial atmosphere in the fold of His holiness."³⁰
- ii) Emphasizing the principle of equality among people, whereby all people are equal in these acts of worship: the poor and the rich, the strong and the weak, the old and the young.

³⁰ Al-Qafsi, *Lubab allubab*, V.1, p.106.

- iii) Asserting the principle of brotherhood and unity among Muslims through the knowledge and cooperation it gives. For example, the congregational prayer at the neighbourhood mosque leads to the spread of harmony and cooperation among people. When the neighbourhood residents ask about someone they missed in that prayer, they go to visit him if he is sick and assist his family if he is absent. Fasting makes the rich feel the need of the hungry poor. The pilgrimage is a chance for contact among Muslims and promotes brotherhood and cooperation among Muslims from different countries. Zakat promotes harmony and cooperation between the rich and the poor.

4.4.1.1.Objectives of Prayers

Allah has ordained praying for several objectives. We know some of them, while some others may be hidden. In this section, we limit our discussion to those objectives expressed in Shariah texts:

- i) Humility towards Allah. The performance of bowing down, prostration, and supplications is the highest rank of submission to Allah.

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا ارْكَعُوا وَاسْجُدُوا وَاعْبُدُوا رَبَّكُمْ وَأَفْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ﴾ (الحج: 77).

"O you who have believed, bow and prostrate and worship your Lord and do good - that you may succeed." (22:77)

Ibn Rashid Al-Qafsi says about the wisdom for ordaining prayer: "Humility and submission to Allah, Who is Worthy of glorification, and softening hearts by Allah's remembrance."³¹

- ii) Refining behaviour:

﴿وَأَقِمِ الصَّلَاةَ إِنَّ الصَّلَاةَ تَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَلَذِكْرُ اللَّهِ أَكْبَرُ وَاللَّهُ يَعْلَمُ مَا تَصْنَعُونَ﴾ (العنكبوت: 45).

"And establish prayer. Indeed, prayer prohibits immorality and wrongdoing, and the remembrance of Allah is greater. And Allah knows that which you do." (29:45)

- iii) Strengthening the bond of brotherhood among Muslims through congregational prayer.

³¹ Al-Qafsi, *Lubab allubab*, V.1, p.152.

﴿وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ﴾ (التوبة: 71).

“The believers, both men and women, are allies of one another. They enjoin good, forbid evil, establish Prayer, pay Zakah, and obey Allah and His Messenger. Surely Allah will show mercy to them. Allah is All-Mighty, All-Wise.” (9:71)

iv) Purification from sins and bad deeds:

عن عثمان رضي الله عنه، عن النبي صلى الله عليه وسلم قال: "ما من امرئ مسلم تحضره صلاة مكتوبة، فيحسن وضوءها وخشوعها وركوعها، إلا كانت كفارة لما قبلها من الذنوب، ما لم يؤت كبيرة، وذلك الدهر كله." صحيح مسلم

Uthman reported God's messenger as saying: "When the time for a prescribed prayer comes, if any Muslim observes proper ablution, humility and bowing, it will be an expiation for his past sins, so long as he has not committed a major sin; and that means for all time." (*Muslim*)

v) Teaching patience in hardship:

﴿يَا أَيُّهَا الْمَرْمَلُ (*) قُمْ اللَّيْلَ إِلَّا قَلِيلًا (*) نَضْمُهُ أَوْ انْقُصْ مِنْهُ قَلِيلًا (*) أَوْ زِدْ عَلَيْهِ وَرَتِّلِ الْقُرْآنَ تَرْتِيلًا (*) إِنَّا سَنُلْقِي عَلَيْكَ قَوْلًا تَقِيًّا﴾ (المزمل: 1-5).

“O you who wraps himself [in clothing] (*) Arise [to pray] the night, except for a little (*) Half of it - or subtract from it a little (*) Or add to it, and recite the Qur'an with measured recitation. (*) Indeed, We will cast upon you a heavy word.” (72:1-5)

vi) Attaining internal peace and tranquillity:

عن أنس بن مالك رضي الله عنه أن النبي صلى الله عليه وسلم قال: "حَبَّبَ إِلَيَّ مِنَ الدُّنْيَا النِّسَاءَ وَالطِّيبَ، وَجَعَلَ قِرَّةَ عَيْنِي فِي الصَّلَاةِ." سنن النسائي

The Messenger of Allah said: "In this world, women and perfume have been made dear to me, and my comfort has been provided in prayer." (*al-Nasa'i*)

4.4.1.2 Objectives of Fasting

i) Obtaining rewards and erasing sins:

قال صلى الله عليه وسلم: "من صام رمضان إيمانًا واحتسابًا، غُفِرَ له ما تقدم من ذنبه." صحيح البخاري

The Prophet (ﷺ) said, "He who observes fasting during the month of Ramadan with faith while seeking its reward from Allah, will have his past sins forgiven". (*al-Bukhari*)

- ii) Fasting is a means to achieve piety. Piety is an attitude that emanates from spiritual and moral transcendence.

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِن قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ﴾ (البقرة: 183).

“O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous.” (2:183)

- iii) Moral discipline: When a person fasts, he practices patience by refraining from the desires of food, drink, and sex, which are among the strongest desires in the human soul. He also practices being patient with the desire for revenge.

قال رسول الله صلى الله عليه وسلم: "الصيام جنة فلا يرفث ولا يجهل، وإن امرؤ قاتله أو شاتمه فليقلل إني صائم مرتين." صحيح البخاري

The Messenger of Allah said: "Fasting is a protection for you, so when you are fasting, do not behave obscenely or foolishly, and if anyone argues with you or abuses you, say: 'I am fasting. I am fasting.'" (*al-Bukhari*)

The person who is fasting is required to avoid falling into all kinds of injustice.

قال رسول الله صلى الله عليه وسلم: "من لم يدع قول الزور والعمل به، فليس لله حاجة أن يدع طعامه وشرابه." صحيح البخاري

The Prophet said: "Whoever does not leave false speech, and acting according to it, then Allah is not in any need of him leaving his food and his drink." (*al-Bukhari*)

Fasting increases compassion and feeling of mercy towards the poor.

"كان صلى الله عليه وسلم أجود الناس بالخير، وكان أجود ما يكون في رمضان..." صحيح البخاري

“God’s messenger was the most generous of men, and he was as generous as possible in Ramadan...” (*al-Bukhari*)

- iv) Strengthening health: Fasting has great health benefits that have been demonstrated by contemporary scientific research. Kris Gunnars summed up some of the benefits as follows: (a) Increasing growth hormones by up to five times, which helps to burn fat and strengthen muscles. (b) Stimulating the process of repairing body cells, especially cleaning them of waste. (c) Reducing weight and activating the metabolism to maintain cell life. (d) Reducing insulin resistance which helps reduce blood sugar levels and protect against type 2 diabetes. (e) Reducing the levels of oxidation and inflammation in the body. (f)

Animal studies have shown that fasting helps prevent cancer. (g) Lowering blood pressure level. (h) Reducing triglyceride levels that are as dangerous to the body as cholesterol. (i) Protecting the nervous system by maintaining its cells and helping to grow new ones.³²

Allah Almighty was Truthful when he said:

﴿وَأَنْ تَصُومُوا خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ﴾، (البقرة: 184).

“But to fast is best for you, if you only knew.” (2:184)

4.4.1.3. Objectives of Zakat

- i) Purification of the soul and elevating it from avarice and love of money.

﴿خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ﴾، (التوبة: 103).

“Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them increase, and invoke [Allah 's blessings] upon them. Indeed, your invocations are reassurance for them. And Allah is Hearing and Knowing.”

(9:103)

- ii) Fostering brotherhood and harmony among community members. This happens when *zakat* payers become compassionate to the poor and share a portion of their wealth with them. On the other hand, the poor feel gratefulness and affection which purify their souls from envy and hatred towards the rich.
- iii) Materialising gratefulness to God. Being thankful to Allah is not just a saying, but rather a positive act. The rich must express gratitude to God by spending some money on helping others.

﴿اعْمَلُوا آلَ دَاوُدَ شُكْرًا وَقَلِيلًا مِنْ عِبَادِيَ الشَّكُورِ﴾، (سبأ: 13).

“Work, O family of David, in gratitude. And few of My servants are grateful.”

(34:13)

- iv) Achieving social solidarity by helping the poor and the needy to meet their needs. It is reported that the Prophet said about *zakat*:

"فَأَعْلَبَهُمْ أَنَّ اللَّهَ افْتَرَضَ عَلَيْهِمْ صَدَقَةً فِي أَمْوَالِهِمْ تُؤْخَذُ مِنْ أَعْيُنَائِهِمْ وَتُرَدُّ عَلَى فُقَرَائِهِمْ." صحيح البخاري

³² Kris Gunnars, 10 Evidence-Based Health Benefits of Intermittent Fasting: <https://www.healthline.com/nutrition/10-health-benefits-of-intermittent-fasting>

“Then inform them that Allah has ordained a charity upon their wealth, which is to be taken from the rich among them and given to the poor among them.”

(*al-Bukhari*)

- v) Contributing to economic development by making the rich invest their money so that it will not be reduced gradually as a result of repeated *zakat*. That investment will lead to creating employment opportunities for those in need of work. As a result, the money of the rich increases, hence the amount of *zakat* increases too. Additionally, *zakat* may be used as small capital to help the poor start small business. This may bring them out of poverty and contribute to economic development in general. It may even make them *zakat* payers in the future.

4.4.1.4. Objectives of Pilgrimage

- i) Devotion towards Allah: A person going to *hajj* leaves his family, his money, and his country and goes to the Sacred House in Makkah to answer the call to pilgrimage, as well as to ask for Allah's grace and forgiveness.

﴿وَأَذِّنْ فِي النَّاسِ بِالْحَجِّ يَأْتُوكَ رِجَالًا وَعَلَى كُلِّ ضَامِرٍ يَأْتِينَ مِنْ كُلِّ فَجٍّ عَمِيقٍ﴾ (الحج: 27).

“And proclaim to the people the *hajj* [pilgrimage]; they will come to you on foot and on every lean camel; they will come from every distant pass.”(22:27)

Devotion reaches its pinnacle when one reaches the appointed places of *ihrām*. There, he showers, puts on perfume, wears the *ihrām* dress, which is a simple dress reminiscent of the shroud used to cover the dead, and then begins to echo the devotional calls, announcing his response to God's call:

"لبيك اللهم لبيك، لبيك لا شريك لك لبيك، إن الحمد والنعمة لك والملك، لا شريك لك." صحيح البخاري

“I am here answering Your call, O Allah, I am here answering Your call. I am here answering Your call, You have no partner, I am here answering Your call.

Surely the praise, and blessings are Yours, and the dominion. You have no partner.” (*al-Bukhari*)

- ii) Honouring Allah's sacred rites: The basis of this is that the Sacred House (البيت الحرام) is the symbol of uniformity and submission to Allah, and it is the first of God's houses founded on earth.

﴿إِنَّ أَوَّلَ بَيْتٍ وُضِعَ لِلنَّاسِ لَلَّذِي بِبَكَّةَ مُبَارَكًا وَهُدًى لِّلْعَالَمِينَ ﴿٩٦﴾ فِيهِ آيَاتٌ بَيِّنَاتٌ مِّمَّا وُضِعَ لِلنَّاسِ حِجُّ الْبَيْتِ مَن اسْتَطَاعَ إِلَيْهِ سَبِيلًا وَمَن كَفَرَ فَإِنَّ اللَّهَ غَنِيٌّ عَنِ الْعَالَمِينَ﴾ (آل عمران: 96-97).

“Indeed, the first House [of worship] established for mankind was that at Makkah - blessed and a guidance for the worlds. In it are clear signs [such as] the standing place of Abraham. And whoever enters it shall be safe. And [due] to Allah from the people is a pilgrimage to the House - for whoever is able to find thereto a way. But whoever disbelieves - Allah is free from need of the worlds.” (3:96-97)

﴿ثُمَّ لِيُقْضَىٰ لَهُمْ وُكُوفُهُمْ وَإِيَّاهُ يَدْعُونَ بِالْبَيْتِ الْعَتِيقِ ﴿٢٩﴾ ذَلِكَ وَمَن يُعْظَمَ حُرْمَاتِ اللَّهِ فَهُوَ خَيْرٌ لَهُ عِنْدَ رَبِّهِ﴾ (الحج: 29-30).

“Then let them end their untidiness and fulfil their vows and perform *tawāf* around the ancient House. That [has been commanded], and whoever honours the sacred ordinances of Allah - it is best for him in the sight of his Lord.” (22:29-30)

- iii) Seeking Allah's bounty: The seeking could be both for the Hereafter reward and for the worldly benefits.

﴿لِيَشْهَدُوا مَنَافِعَ لَهُمْ وَيَذْكُرُوا اسْمَ اللَّهِ فِي أَيَّامٍ مَّعْلُومَاتٍ عَلَىٰ مَا رَزَقَهُم مِّن بَهِيمَةِ الْأَنْعَامِ فَكُلُوا مِنْهَا وَأَطْعِمُوا الْبَائِسَ الْفَقِيرَ﴾ (الحج: 28).

“That they may witness benefits for themselves and mention the name of Allah on known days over what He has provided for them of [sacrificial] animals. So eat of them and feed the miserable and poor.” (22:18)

﴿لَيْسَ عَلَيْكُمْ جُنَاحٌ أَن تَبْتَغُوا فَضْلًا مِّن رَّبِّكُمْ فَإِذَا أَقَضْتُم مِّن عَرَفَاتٍ فَأَذْكُرُوا اللَّهَ عِنْدَ الْمَشْعَرِ الْحَرَامِ وَاذْكُرُوهُ كَمَا هَدَاكُمْ وَإِن كُنْتُمْ مِنْ قَبْلِهِ لَمِنَ الضَّالِّينَ﴾ (البقرة: 198).

“There is no blame upon you for seeking bounty from your Lord [during *hajj*]. But when you depart from 'Arafat, remember Allah at *al-Mash'ar al-Haram*. And remember Him, as He has guided you, for indeed, you were before that among those astray.” (2:198)

- iv) Teaching patience in the obedience of God: The pilgrimage journey, especially in ancient times, is a difficult one. Travelling, standing at 'arafāt, sleeping in *mina* for 3 days, crowding into throwing the

pebbles (*jamarāt*) and circumambulation, as well as being away from one's family, are all hard and tiring.

﴿الْحَجُّ أَشْهُرٌ مَّعْلُومَاتٌ فَمَنْ فَرَضَ فِيهِنَّ الْحَجَّ فَلَا رَفَثَ وَلَا فُسُوقَ وَلَا جِدَالَ فِي الْحَجِّ﴾ (البقرة: 197).

"Hajj is [during] well-known months, so whoever has made Hajj obligatory upon himself therein [by entering the state of *ihrām*], there is [to be for him] no sexual relations and no disobedience and no disputing during Hajj." (2:197)

- v) Meeting and promoting brotherhood and cooperation among Muslims from all around the world.

4.4.2. Objectives of Marital Relations

4.4.2.1. Objectives of marriage:

- i) Reproduction for the purpose of human continuity and inhabiting the earth according to Allah's guidance.

﴿يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً وَاتَّقُوا اللَّهَ الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا﴾، (النساء: 1).

"O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed, Allah is ever, over you, an Observer." (4:1)

"تزوجوا الودود الولود فإني مكاثر بكم الأنبياء يوم القيامة." ابن حبان

The Prophet (ﷺ) said: "Marry women who are beloved (due to their good characteristics), prolific in bearing children, for I shall outnumber the Prophets by you on the Day of Resurrection." (*Abu Dawud and Ahmed*).

- ii) Creating the right environment for preserving lineage. The objective of marriage is not only reproduction, because that may be done through free sexual relations, but rather to protect the offspring through proper care and upbringing, which can only be achieved through the cooperation of responsible and committed parents. It should be noted that the basis of responsibility is the marriage which

is a contract conducted to be permanent and to create a united family whose parties feel responsible for each other and cooperate in their interests. Also, the family system is based on responsibility and fulfilment. It is shown in the carefulness and sacrifice of the spouses to each other, the spouses to the children, and the children to their parents when they grow up, thus creating a family based on the principle of care, cooperation, fulfilment, and sacrifice. It is well known that free sexual relations lack in those advantages and cannot build a coherent society. Those relations rather contribute to the destruction of social fibre.

- iii) Achieving tranquillity, affection, and mercy between spouses. Thus, a person does not suffer from loneliness, and emotional deprivation, but lives in the atmosphere of a family full of affection, mercy, and cooperation on matters of religion and life.

﴿وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَعْقِلُونَ﴾، (الروم: 21)﴾.

“And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.” (30:21)

- iv) Creating social relations network through kinship.

﴿وَهُوَ الَّذِي خَلَقَ مِنَ الْمَاءِ بَشَرًا فَجَعَلَهُ نَسَبًا وَصِهْرًا وَكَانَ رَبُّكَ قَدِيرًا﴾، (الفرقان: 54)﴾.

“And it is He who has created from water a human being and made him [a relative by] lineage and marriage. And ever is your Lord competent [concerning creation].” (25:54)

Marriage in Islam is not only a relationship between a man and a woman but between two families. Shariah has ordained the marriage proposal and required the guardian's consent so that the relationship would be between two families and not just two persons. Those who call for the removal of the requirement of the guardian's consent for marriage are oblivious to this objective and seek to destroy the network of social relations on which the Muslim community is based.

- v) Gratifying sexual desire in a regulated and responsible manner. Marriage creates the right atmosphere for gratifying sexual desire

with commitment and responsibility between couples and towards the offspring that results from that relationship. This way of sexual gratification is, usually, safe from sexual diseases that spread because of free sexual relations.

4.4.2.2. Objectives of Divorce

Divorce has negative effects on all parties, especially the children, and has therefore been described as “The most hated *halal* in the eyes of God.” However, the permissibility of divorce is based on the rule of “taking the least of two evils” when marital life becomes unbearable.

To avoid divorce, Islam called for patience with the other party and looking at the positives more than the negatives.

قال صلى الله عليه وسلم: "لا يَفْرُكُ [أي لا يُغَضُّ] مُؤْمِنٌ مُؤْمِنَةً، إِنْ كَرِهَ مِنْهَا خُلُقًا رَضِيَ مِنْهَا آخَرَ." صحيح مسلم

“It is reported that Allah’s Messenger (ﷺ) said, “A believer must not hate a believing woman; if he dislikes one of her characteristics, he will be pleased with another.” (*Muslim*)

The spouses’ relatives were also ordered to reconcile between the spouses:

﴿وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا﴾ (النساء: 35).

“And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things].” (4:35)

When the damage of continued marriage becomes greater than the damage caused by separation, divorce becomes the proper solution.

The objectives of divorce can be summarized as follows:

- i) Limiting the harm caused by the continuation of the marriage. Marriage should be based on affection, mercy and tranquillity. When marital life is lacking in affection, mercy, and tranquillity, and its continuation causes major harm to the parties or to one of them, the marriage bond should be terminated because it is not fulfilling its purposes anymore.

﴿وَإِنْ يَتَفَرَّقَا يُغْنِ اللَّهُ كُلًّا مِنْ سَعَتِهِ وَكَانَ اللَّهُ وَاسِعًا حَكِيمًا﴾ (النساء: 130).

“But if they separate [by divorce], Allah will enrich each [of them] from His abundance. And ever is Allah Encompassing and Wise.” (4:130)

Such termination shall be either through divorce by the husband, or through the dissolution of the marriage contract by a judge if the husband causes considerable harm to the wife and refuses to divorce her.

- ii)** To free oneself from blame in the case of inability to fulfil marital rights. Once either of the spouses reaches a degree of repulsion and hatred towards the other that they cannot fulfil their marital obligations, then it would be better to opt for termination of marriage instead of causing harm to the other side resulting in sin and disobedience to Allah’s teachings. This situation is one of the legitimate reasons for the wife to apply for dissolution of marriage through *khul’* (خُلْع).

﴿فَإِنْ خِفْتُمْ أَلَّا يُبَيِّنَا حُدُودَ اللَّهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيمَا افْتَدَتْ بِهِ تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ﴾ (229).

“But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself.

These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers.” (1:229)

عن ابن عباس رضي الله عنهما أنّ امرأةً ثابت بن قيس أتت النبي صلى الله عليه وسلم فقالت: يا رسول الله ثابت بن قيس ما أعتب عليه في خلق أو دين، ولكني أكره الكُفْر في الإسلام. فقال رسول الله صلى الله عليه وسلم: أتردّين عليه حديقته؟ قالت: نعم، قال رسول الله صلى الله عليه وسلم: اقبل الحديقة وطلقها تطليقة. " صحيح البخاري

Ibn ‘Abbas said that the wife of Thabit bin Qais came to the Prophet (ﷺ) and said, “O Messenger of Allah, I do not reproach Thabit bin Qais in respect of character or religion, but I do not want to be guilty of infidelity in Islam.” Allah’s Messenger asked her if she would give him back his garden, and she replied that she would. He told him to accept the garden and make one count of divorce.” (*al-Bukhari*)

The guilt of infidelity here means failure to fulfil husband's rights. Even though the husband was of high moral character and fulfilled his duties towards his wife, she did not love him anymore. She was afraid that in such a situation she would not be able to fulfil her duties towards him. That would be a sinful act from her side. As such, she preferred dissolution of the marriage rather than falling sinful in her relationship with her husband.

4.4.2.3. The objectives of revocable divorce

A husband is given two chances to divorce and revoke his divorce. The objective of revocable divorce is to correct the past mistakes and fix what can be repaired. After divorce, spouses may realize that divorce and its consequences are greater than the marital problems that led to the divorce, and hence decide to remarry in order to try to repair their problems. If divorce and revocation occur twice without a real change in matrimonial lifestyle, and divorce occurs for a third time, it indicates that the possibility of reforming matrimonial life is very low or impossible. Therefore, there is no value in returning to that life for the third time.

To increase the possibility of revoking divorce, Allah has ordained that the wife stays in the marital home during the waiting period to encourage the spouses to compromise and reconsider resuming marital life:

﴿يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يُخْرَجْنَ إِلَّا أَنْ يَأْتِيَنَّ بِفَاحِشَةٍ مُبَيَّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُخْدِثُ بَعْدَ ذَلِكَ أَمْرًا، (الطلاق: 1)﴾.

“O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period and keep count of the waiting period, and fear Allah, your Lord. Do not turn them out of their [husbands'] houses, nor should they [themselves] leave [during that period] unless they are committing a clear immorality. And those are the limits [set by] Allah. And whoever transgresses the limits of Allah has certainly wronged himself. You know not; perhaps Allah will bring about after that a [different] matter.” (65:1)

Commenting on the abovementioned verse, Ibn Kathir said: Allah's saying ﴿لَا تُخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يُخْرَجْنَ﴾ (Do not turn them out of their houses, nor should they leave) means that during the waiting period, the wife has the right to stay in the matrimonial house. The husband does not have the right to ask her to leave the house and she is not permitted to leave it because she is in waiting period for the

husband's right. Allah's saying: ﴿لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا﴾ (You know not: perhaps Allah will bring about after that a [different] matter) means Allah has ordained that the divorced woman stays in the husband's house during the waiting period, as the husband might regret the divorce and would reconsider returning to the bond of marriage, in which case it would be easier.

4.4.2.4. The objective of restricting divorce to three times

In the pre-Islamic era, some people used divorce to abuse women. The man would divorce his wife and leave her until the end of her waiting period then return her to his bond. Shortly after that, he divorces her again and returns her before the end of the second waiting period. Then he keeps repeating that process without any limit.

As such, the Shariah restricted divorce to three times to teach the husband responsibility and caution in managing marital disputes, and to avoid threatening his wife with divorce. The husband has to understand that his opportunity to use divorce to address marital disputes is limited. Another purpose is to stop the husband from misusing divorce to harm the wife in marital disputes. If the counts of divorce are unlimited, then irresponsible husbands will misuse it in a way that neither keeps the wife in an honourable way nor let her free to live a new life.

﴿الطَّلَاقُ مَرَّتَانٍ فَإِمْسَاكٌ بِمَعْرُوفٍ أَوْ تَسْرِيحٌ بِإِحْسَانٍ﴾ (البقرة: 229)

“Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment” (2:229)

﴿وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِيَتَّعْتِدُوا وَمنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ وَلَا تَتَّخِذُوا آيَاتِ اللَّهِ هُزُوًا﴾ (البقرة: 231)

“And when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them]. And whoever does that has certainly wronged himself. And do not take the verses of Allah in jest.” (1:231)

4.4.3. Objectives of Financial Transactions

4.4.3.1. Objectives of donations

The objectives of donations (charity/*sadaqah*, donation/ *hibah*, will/ *wasīyyah*, etc.) are to achieve solidarity, promote cooperation, strengthen brotherhood ties among Muslims, and earn rewards for the Day of Judgment where wealth will not benefit anyone.

Financial donations reflect high morality. A donation is a manifestation of compassion, and a means of seeking pleasure from Allah. Hence, it should not lead to injustice and violation of others' rights. When donations are made to children, there should be no discrimination among them. Discrimination among children provokes hatred among them, on the one hand, and between the disadvantaged children and their unjust parents, on the other.

عن النُّعْمَانَ بْنِ بَشِيرٍ رَضِيَ اللَّهُ عَنْهُمَا، قَالَ: أَعْطَانِي أَبِي عَطِيَّةً، فَقَالَتْ عَمْرَةُ بِنْتُ زَوَاحَةَ: لَا أَرْضَى حَتَّى تُشْهَدَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَأَتَى رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: إِيَّيْ أَعْطَيْتَ ابْنِي مِنْ عَمْرَةَ بِنْتِ زَوَاحَةَ عَطِيَّةً، فَأَمَرْتَنِي أَنْ أَشْهَدَكَ يَا رَسُولَ اللَّهِ، قَالَ: «أَعْطَيْتَ سَائِرَ وَلَدِكَ مِثْلَ هَذَا؟»، قَالَ: لَا، قَالَ: «فَاتَّقُوا اللَّهَ وَاعْدِلُوا بَيْنَ أَوْلَادِكُمْ»، قَالَ: فَرَجَعَ فَرَدَّ عَطِيَّتَهُ. صحيح البخاري

Narrated by An-Nu`man bin Bashir: "My father gave me a gift but `Amra bint Rawaha (my mother) said that she would not agree to it unless he asked Allah's Messenger (ﷺ) to witness it. So, my father went to Allah's Messenger (ﷺ) and said, 'I have given a gift to my son from `Amra bint Rawaha, but she ordered me to ask you to witness it, O Allah's Messenger (ﷺ)!'. Allah's Messenger (ﷺ) asked, 'Have you given (the like of it) to everyone of your children?' He replied in the negative. Allah's Messenger (ﷺ) said, 'Be afraid of Allah, and be just to your children.' My father then returned and took back his gift." (*al-Bukhari*)

The Shariah also forbids harming one's heirs through the will (*wasīyyah*); therefore, its percentage is limited to only one-third of the estate to preserve their rights.

عَنْ سَعْدِ بْنِ أَبِي وَقَاصٍ قَالَ: عَادَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي حَجَّةِ الْوُدَّاعِ مِنْ وَجَعِ أَشْفَيْتِ مِنْهُ عَلَى الْمَوْتِ، فَقُلْتُ: يَا رَسُولَ اللَّهِ، بَلِّغْنِي مَا تَرَى مِنَ الْوَجَعِ، وَأَنَا ذُو مَالٍ، وَلَا تَرْتِنِي إِلَّا ابْنَةً لِي وَاحِدَةً، أَفَأَتَصَدَّقُ بِمُلْتَنِي مَالِي؟ قَالَ: «لَا»، قَالَ: قُلْتُ: أَفَأَتَصَدَّقُ بِشَطْرِهِ؟ قَالَ: «لَا، الثُّلُثُ، وَالثُّلُثُ كَثِيرٌ، إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ، خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ». صحيح مسلم

Sa'd bin Abi Waqqas said, "O Allah's Messenger, I have wealth and no one to inherit from me except my one daughter. Shall I give two-thirds of my property as *sadaqah*?" He replied, "No." I said, "Shall I give half of it as *sadaqah*?" He replied, "No." I said, "Shall I give a third of it as *sadaqah*?" He replied, "You may give a third as *sadaqah*, which is still a lot. To leave your heirs rich is better than to leave them poor and begging from people." (*Muslim*)

Furthermore, financial contributions and donations should not be used to escape paying debts. The indebted should give priority to the repayment of his debts. The money donated by an indebted person may, in fact, belong to the debtor, since the portion of the money equivalent to his debt is not genuinely his own.

The purpose of financial donations is to foster stronger bonds of brotherhood and assist the needy. For this reason, the Shariah prohibited donors from reclaiming their donations, as it goes against this objective. Reclaiming such donations weakens the bonds of brotherhood instead of strengthening them, which is contrary to the objectives of donations.

"ليس لنا مثلُ السوء، الذي يعود في هبته كالكلب يرجع في قيئه." صحيح البخاري

The Messenger of Allah (ﷺ) said, "He who gives something (to someone) as a gift and then claims it back (from him or her) is like a dog which eats its own vomit." (*al-Bukhari*)

Additionally, the Shariah prohibited injuring the feelings of the recipients by reminding them of the aid given to them.

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُبْطِلُوا صَدَقَاتِكُمْ بِالْمَنِّ وَالْأَذَى، (البقرة: 264)﴾

"O you who have believed, do not invalidate your charities with reminders or injury." (1:264)

﴿قَوْلٌ مَعْرُوفٌ وَمَغْفِرَةٌ خَيْرٌ مِنْ صَدَقَةٍ يُتْبَعُهَا أذى وَاللَّهُ عَنِّي حَلِيمٌ، (البقرة: 263)﴾

"Kind speech and forgiveness are better than charity followed by injury. And Allah is Free of need and forbearing." (1:263)

4.4.3.2. Objectives of financial transactions

Since no individual can produce all his needs by himself, it is inevitable for members of society to engage in exchanging goods, money, services, and benefits. The Shariah has granted people flexibility in selecting the ways and techniques to facilitate those exchanges. This flexibility aligns with the legal maxims: "The underlying rule for transactions is permissibility", and "contracts are based on intention and meaning, rather than on mere words and expressions."

The major objective of financial exchange is to fulfil people's needs for goods, money, services, or benefits. To attain such objectives, transactions must be equitable and free from exploitation, deceit, ambiguity, and causes of dispute among people.

4.4.4. Objectives of Punishments in Islam

The general objective of punishments is to preserve society. Society is preserved by preventing feuds, sedition and aggression. This can only happen by full and proper implementation of Shariah law; otherwise, people will fight evil with evil.³³

The main purposes of punishments in Islam can be summarized in the following:

- a) **Teaching people to be responsible for their actions:** Punishments make people face the painful consequences of their bad actions, which make them learn how to take responsibility for their actions, and refrain from wrongful actions:

﴿وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ﴾ (المائدة: 38).

"[As for] the thief, the male and the female, amputate their hands in recompense for what they committed as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise." (5:38)

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْتُلُوا الصَّيْدَ وَأَنْتُمْ حُرُمٌ وَمَنْ قَتَلَهُ مِنْكُمْ مُتَعَمَّدًا فَجَزَاءٌ مِثْلُ مَا قَتَلَ مِنَ النَّعَمِ يَحْكُمُ بِهِ ذَوَا عَدْلٍ مِنْكُمْ هَدْيًا بَالِغَ الْكَعْبَةِ أَوْ كَهْمَاءً طَعَامًا مَسَاكِينَ أَوْ عَدْلٌ ذَلِكَ صِيَامًا لِيَتُوبَ وَيَأْتِيَ اللَّهُ بِأَمْرٍ غَنِيٍّ عَمَّا سَلَفَ وَمَنْ عَادَ فَيَنْتَقِمِ اللَّهُ مِنْهُ وَاللَّهُ عَزِيزٌ ذُو انْتِقَامٍ﴾ (المائدة: 95).

³³ Ibn Ashur, *Maqasid Shariah*, p. 381.

“O you who have believed, do not kill game while you are in the state of *iḥrām*.

And whoever of you kills it intentionally - the penalty is an equivalent from sacrificial animals to what he killed, as judged by two just men among you as an offering [to Allah] delivered to the Ka'bah, or an expiation: the feeding of needy people or the equivalent of that in fasting, that he may taste the consequence of his deed. Allah has pardoned what is past; but whoever returns [to violation], then Allah will take retribution from him. And Allah is Exalted in Might and Owner of Retribution.” (5:95)

- b) Satisfying the victim and preventing revenge:**³⁴ The victims need to be satisfied by seeing the offenders duly punished. However, to avoid chaos that may result from revenge, the Shariah did not assign the execution of punishments to individuals, but rather to the state through the judicial system. Fair punishment of the offender is achieved by an impartial authority that does not have the anger felt by the victim that may lead to unfair retaliation.
- c) Deterrence from committing crimes:** when people see that committing a crime entails a legal penalty and they witness the execution of such penalties, this makes them wary of committing such acts. Thus, punishments corroborate self-discipline that emanates from faith and piety. Some punishments may be executed in public to deter people from committing crimes.

﴿فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِئَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِنَ الْمُؤْمِنِينَ﴾، (النور: 2).

“Lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment.” (24:2)

- d) Providing security and maintaining law and order.** To achieve stability, people need security to protect their religion, their life, their money, and other rights. For example, the punishment for apostasy is to provide religious security for the community. Imposing *qisas* is for the purpose of

³⁴ Ibn Ashur, *Maqasid Shariah*, p. 382.

providing security to lives so that people do not dare to kill. *Qisas* is the best way to preserve life as the Qur'an says:

﴿وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ﴾ (البقرة: 179)

“And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous.” (1:179)

The penalty imposed on theft or robbery is to protect people's money and property. Thus, no one shall dare to steal others money. The penalty for false accusation was imposed to protect people's honour, hence no one shall dare to accuse others of adultery and cast doubt on their honour and lineage.

e) Limiting the punishment and its effects to the offender as far as possible: the Shariah intends to limit the punishment to the offender himself and avoid affecting the members of his family or society in general. Therefore, the punishments set forth in the Holy Qur'an and the Prophet's Sunnah are focused on corporal punishments, the effect of which is limited only to the offender. It is important to mention that imprisonment is not an original penalty in the Islamic system. A penalty similar to imprisonment is indeed mentioned in the Quran:

﴿وَاللَّاتِي يَأْتِيَنَّكَ الْفَاحِشَةُ مِنْ نِسَائِكُمْ فَاسْتَشْهَدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا﴾ (النساء: 15)

“Those who commit unlawful sexual intercourse of your women - bring against them four [witnesses] from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them [another] way.” (4:15)

However, the punishment mentioned in the verse is restricted to confining a guilty woman to her house which is different from imprisonment. Since it is merely house arrest, the woman is not separated from her family and there is no harm to the family. Moreover, it was abrogated and replaced with lashing.

The Prophet Mohammad (ﷺ) did not punish any offender with imprisonment. There were cases of temporary detention of some people in the mosque or elsewhere. However, that detention was temporary and only until determining their fate. It was never a punishment by imprisonment and cannot be used as authority to support imprisonment as a punishment.

At the time of Umar bin al-Khattab, an incident happened with the poet Al-Hutai'a (Jarwal bin Aws Al-Absi), who was known for satirizing people in his poems. One of his victims complained to Umar bin al-Khattab. Umar ordered the offender to be imprisoned. After days in prison, Al-Hutai'a sent him a poem starting with the following lines:

What would you tell the little birds?

They are hungry and homeless.

As you caged their breadwinner.

So pardon me, may God's peace be upon you O Omar.

When Omar heard that poem, he realized that he might have, unduly, victimized his children and family by imprisoning their breadwinner. Therefore, he ordered the poet's release. It was reported that Umar paid him a sum of money to stop satirizing Muslims, to which Al-Hutai'a pledged to do so.

Scholars have authorized the detention of a debtor, who refuses to pay his debt for the purpose of pressuring him to do so. They also authorized the detention of a suspect in a serious crime until he is investigated, and then sentenced accordingly. However, those cases cannot be interpreted as authorizing long-term imprisonment as a punishment in the Islamic legal system.

In Muslim history, imprisonment, as punishment, was introduced by oppressive and corrupt rulers who imprisoned those who criticized their corruption and oppression. That practice was reinforced by introducing Western laws to the Muslim world. Then, it became an essential part of the modern penal system.

Imprisonment infringes upon the rights of the wife and children by depriving them of the person responsible for their care and support. It also wastes prisoners' life without any benefits, has the potential of corrupting prisoners by mingling with hard criminals, and is a waste of state funds.

The solution is to stick to corporal punishments and community service for non-serious offences. The effect of corporal punishment is limited to the offender. Proponents of imprisonment argue that corporal punishment is a violation of human dignity. That is nonsense. Who can claim that imprisonment is not an insult to human dignity? What can violate human dignity more than wasting the life of someone in prison without meaningful purpose? Which one is less insulting to human dignity: To flog a person a number of lashes facing the consequence of his bad deed, then release him to live his life, support his family, and benefit himself and his community, or imprisoning him for years, wasting

his life, depriving him of his family, depriving his family of his care and support, affecting his wife and children, restricting his freedom and preventing society from benefiting from his talents and experience? The psychological, social, and economic effects of imprisonment are, undoubtedly, much greater than those of corporal punishment. In fact, there is no reasonable justification for imprisoning a person unless he is a hard criminal, and the only way to stop his evil from society is by imprisoning him.

4.4.5. Objectives of judicial system

There is no doubt that a judicial system is vital for every society. The objectives of establishing the judicial system may be summarized as follows:

1. Punishing oppressors and offenders who violate the rights of others relating to their bodies, property, or reputation.

Punishment is entrusted to the judiciary not to the victim for two reasons: (a) Leaving punishments in the hands of the victims may result in irrational reaction and injustice, ultimately leading to disorder and the breakdown of social order because the situation can devolve into a cycle of revenge. This could happen because the victim is typically consumed by anger and a desire for retribution against the offender, which often leads to exaggerated punishment and unjust actions. This, in turn, provokes the offender and his relatives to seek revenge in response. As a result, the victim will seek assistance from his community, escalating the conflict into a cycle of retaliation, chaos, and widespread disorder. (b) The offender may be more powerful than the victim. In such cases, the victim is unable to punish the offender, hence, punishments will only be imposed on the vulnerable, leaving the powerful unpunished. Therefore, the power to punish is given to the judiciary, which is authoritative, unbiased, and not motivated by revenge.

2. Resolving disputes between people and granting each their rightful entitlement. The Shariah focuses on calling people to exert themselves to be righteous, urging them to exercise self-control, requiring them to respect the rights of others and show tolerance and reconciliation. However, God knows that self-determination is not enough to deter all individuals, hence, there is an urgent need for penalties executed by the authority represented by the judiciary. Moreover, points of view may differ leading people to dispute some of their entitlements. Since each

party perceives themselves to be in the right, it is necessary to have a third party to evaluate the different points of view impartially and judge accordingly.

3. Speeding up the resolution of disputes. As it is said: "justice delayed is justice denied." Ibn Ashur says: "the delay in delivering the right to its owner for a duration that exceeds the required time for resolving the dispute provokes many corruptions; including denying the owner access to benefiting from his entitlement, which is prejudicial to him. Moreover, the non-deserving person will be benefiting from something which does not originally belong to him, which is unfair to the rightful person, as a result the quarrel continues between the two parties, leading to further corruption and instability in society."³⁵

4.4.6. The Objectives of Fighting (*jihad*) in Islam

Fighting against enemies and transgressors among non-Muslims has several objectives, which can be summarized as follows:

a) Eliminating injustice

The first objective for which fighting was permitted in Islam is to eliminate injustice caused to or that might be caused to Muslims. This objective is clearly stated in the following verses:

﴿أُذِنَ لِلَّذِينَ يُقَاتَلُونَ بِأَنَّهُمْ ظَلَمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ﴾ (*) الَّذِينَ أُخْرِجُوا مِنْ دِيَارِهِمْ بِغَيْرِ حَقٍّ إِلَّا أَنْ يَقُولُوا رَبُّنَا اللَّهُ وَلَوْلَا دَفْعُ اللَّهِ النَّاسَ بَعْضَهُمْ بِبَعْضٍ لَفُتِنَتِ كُلُّ دِينٍ وَاللَّهُ عَزِيزٌ عَلِيمٌ ﴿٣٩-٤٠﴾

"Permission [to fight] has been given to those who are being fought, because they were wronged. And indeed, Allah is competent to give them victory. [They are] those who have been evicted from their homes without right - only because they say, "Our Lord is Allah." Had Allah not repelled [the aggression of] some people by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned. And Allah will surely support those who support Him. Indeed, Allah is Powerful and Exalted in Might." (22:39-40)

³⁵ Ibn Ashur, *Maqasid Shariah*, p. 376.

The Quran clearly stated that fighting may be required to help oppressed Muslims:

﴿وَمَا لَكُمْ لَا تُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ الَّذِينَ يَقُولُونَ رَبَّنَا أَخْرِجْنَا مِنْ هَذِهِ الْقَرْيَةِ الظَّالِمُ أَهْلُهَا وَاجْعَل لَنَا مِنْ لَدُنْكَ وَلِيًّا وَاجْعَل لَنَا مِنْ لَدُنْكَ نَصِيرًا﴾ (النساء: 75).

And what is [the matter] with you that you fight not in the cause of Allah and [for] the oppressed among men, women, and children who say, "Our Lord, take us out of this city of oppressive people and appoint for us from Yourself a protector and appoint for us from Yourself a helper?" (4:75)

The verse is clear in terms of the legitimacy of fighting to eliminate injustice against vulnerable Muslims who have been unable to protect themselves or migrate from the land of disbelief.

The Quran is clear that what is legitimate is war to repel aggression and eliminate injustice without any transgression:

﴿وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ﴾ (*) *وَأَقْتُلُوهُمْ حَيْثُ تَقْتُلُوهُمْ وَأَخْرِجُوهُمْ مِنْ حَيْثُ أَخْرَجْتُمْ وَالْفِتْنَةُ أَشَدُّ مِنَ الْقَتْلِ وَلَا تُقَاتِلُوهُمْ عِنْدَ الْمَسْجِدِ الْحَرَامِ حَتَّى يُقَاتِلُوكُمْ فِيهِ فَإِنْ قَاتَلُوكُمْ فَاقْتُلُوهُمْ كَذَلِكَ جَزَاءُ الْكَافِرِينَ﴾ (البقرة: 190-191).*

“Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors. And kill them wherever you overtake them and expel them from wherever they have expelled you, and *fitnah* is worse than killing. And do not fight them at *al-Masjid al-Haram* until they fight you there. But if they fight you, then kill them. Such is the recompense of the disbelievers.”
(1:190-191)

The first verse indicates that the objective of fighting is to repel aggression and eliminate the injustice caused by the disbelievers who are fighting Muslims, and such fighting should be carried out without any transgression.

Some commentators claimed that ﴿وَأَقْتُلُوهُمْ حَيْثُ تَقْتُلُوهُمْ﴾ (And kill them wherever you overtake them) abrogates ﴿وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ﴾ (Fight in the way of Allah those who fight you but do not transgress). However, this claim is not true. It contradicts the views of most commentators who say that this verse is not abrogated. Commenting on the claim of abrogation, Ibn Taymiyyah said: "It is weak, abrogation needs proof, and there is nothing in the Qur'an that contradicts with this verse, but there is something that agrees with it."³⁶

³⁶ Ibn Taymiyyah: *Qaidat Mukhtasarah Fi Qital Alkuffaar Wa Muhadanatihim Wa Tahrim Qatlihim Limujarrad Kufrihim*, p.101.

Ibn Taymiyyah affirms the opinion of scholars who say that this verse is not abrogated since the objective of fighting infidels is to keep their evil and aggression away from people, especially Muslims. The evil and aggression caused by infidels is revoked when they enter peace arrangements and treaties with Muslims.³⁷

The claim of abrogation is based on a misunderstanding of the verse: ﴿...وَأَقْتُلُوهُمْ حَيْثُ﴾ (and kill them wherever you overtake them). They think that the pronoun 'them' refers to all unbelievers. In fact, it refers only to those mentioned in the previous part of the verse: ﴿...الَّذِينَ يُقَاتِلُونَكُمْ...﴾ (those who fight you). Thus, there is no conflict between the two parts of the verse and there is no ground for the claim of abrogation.

b) Preventing *fitnah* in religion

The second objective of fighting is to prevent unbelievers from causing *fitnah* (sedition) to Muslims or to those who are likely to embrace Islam.³⁸ The following verses indicate this:

﴿وَقَاتِلُوهُمْ حَتَّىٰ لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ كُلُّهُ لِلَّهِ فَإِنِ انْتَهَوْا فَإِنَّ اللَّهَ بِمَا يَعْمَلُونَ بَصِيرٌ﴾ (*) وَإِن تَوَلَّوْا فَاعْلَمُوا أَنَّ اللَّهَ مَوْلَاكُمْ نِعْمَ الْمَوْلَىٰ وَنِعْمَ النَّصِيرُ، (الأنفال: 39-40)﴾.

“And fight them until there is no sedition (*fitnah*) and until the religion, all of it, is for Allah. And if they cease – then indeed, Allah is seeing of what they do. (*) But if they turn away – then know that Allah is your protector. Excellent is the protector, and Excellent is the helper.” (8:39-40)

﴿وَقَاتِلُوهُمْ حَتَّىٰ لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ لِلَّهِ فَإِنِ انْتَهَوْا فَلَا عُدْوَانَ إِلَّا عَلَى الظَّالِمِينَ، (البقرة: 193)﴾.

“Fight them until there is no [more] *fitnah* and [until] worship is [acknowledged to be] for Allah. But if they cease, then there is to be no aggression except against the oppressors.” (2:193)

³⁷ Ibn Taymiyyah: *Qaidat Mukhtasarah*, p.214.

³⁸ What is meant by sedition is anything that distracts Muslims from the religion of truth by intimidation, torture and temptation.

The term '*fitnah*' refers to anything that distances Muslims or those who are likely to embrace Islam away from the religion of Islam by intimidation, temptation, and torture.

The abovementioned verses state two objectives for fighting. The first one is to prevent nonbelievers from distancing people from the right religion (Islam). The second is to make the right religion (Islam) to prevail. This means that the religion of Allah shall be the dominant religion to eliminate *fitnah* and ensure true freedom of religious choice.

c) Making the whole religion for Allah

This objective is an extension to the previous objective; because the absence of *fitnah* in religion is achieved by the fact that authority belongs to Islam.

﴿وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةً وَيَتَّخِذُوا الدِّينَ لِلَّهِ فَإِنْ انْتَهَوْا فَلَا عُدْوَانَ إِلَّا عَلَى الظَّالِمِينَ﴾ (البقرة: 193)

"Fight them until there is no [more] *fitnah* and [until] worship is [acknowledged to be] for Allah. But if they cease, then there is to be no aggression except against the oppressors." (2:193)

The abovementioned verse could mean that all people should convert to the religion of Islam, or it could mean that "Allah's religion prevails over all other religions."³⁹ The first meaning is inadvertent since the Holy Qur'an allowed the 'People of the Book' to maintain their faith and live under the Islamic rule. Both the Prophet Mohammad and the Caliphs did the same, as they allowed the 'People of the Book' and the Magians to maintain their faith under the rule of Islam. Thus, what is meant by 'the religion being for Allah' is that there is no predominance to atheism. Ibn Taymiyyah says: "The whole religion for Allah means to put the 'word of Allah' [his commands] above all things, and the 'word of Allah' is a name that brings together all his commands which are mentioned in His Book."⁴⁰

³⁹ Ibn Kathir, *Tafsir al-Quran al-Azim*, vol.1, p. 493.

⁴⁰ Ibn Taymiyyah, *Majmu' Alfatawa*, vol.28, p. 263.

CHAPTER 5 ► OBJECTIVES OF THE LAWGIVER IN THE LEGISLATION METHODOLOGY

The objectives of the Lawgiver in legislation methodology (*maqāṣid al-shari‘ fi manhaj al-tasharī‘* / مقاصد الشارع في منهج التشريع) refer to the principles and criteria the Lawgiver considered in legislating Shariah rulings. They are (i) consideration of the *fiṭrah* (human nature), (ii) ease and tolerance, (iii) the universality of Shariah rulings, (iv) balancing between interests and evils, (v) and consideration of the consequences of actions and rulings.

5.1. Consideration of *fiṭrah* (human nature)

5.1.1. The concept of *fiṭrah* (human nature)

Ibn Attiya defined *fiṭrah* as: "The creation, character and appearance that is inside the child's soul, which was prepared to distinguish the creatures of God, to lead him to his Lord, to know his laws, and to believe in him."⁴¹

Ibn Ashur divided *fiṭrah* into two types: (1) Physical *fiṭrah*, which is the physical characteristics upon which the person was created. (2) Intellectual *fiṭrah*, which is the ability to understand and know the laws.⁴²

Fiṭrah is the mental, physical and psychological dispositions of a person as he was created. Ibn Taymiyah says: "Allah created people with the capability of knowing and believing the truth, knowing the falsehood and disbelieving in it, knowing the appropriate benefit and loving it, as well as knowing the harmful and naturally detest it."⁴³

5.1.2. Criterion of determining *fiṭrah*

The basic criterion in determining what is compatible with the human *fiṭrah* and what is contrary to it is the teachings of the divine revelation, which are concluded in the Shariah of Islam. The teachings of Islam are the real manifestation of human *fiṭrah*. If we want to learn about the human *fiṭrah*, we should examine what those divine laws have brought. Therefore, what the

⁴¹ Ibn Attia al-Andalusi, *Al-Muharrar Al-Wajiz fi Tafsir Al-Kitaab Al-Aziz*, vol.4, p.336.

⁴² Ibn Ashur, *Maqasid Shariah*, p.191.

⁴³ Ibn Taymiyyah, *Naqd al-Mantiq*, p.29.

Shariah has imposed represents the human *fitrah*, and what it has forbidden is contrary to the human *fitrah*. In describing the Islamic religion, Allah says:

﴿فَأَيُّمٌ وَجْهَكَ لِلدِّينِ حَيْثُمَا فِطْرَةَ اللَّهِ الَّتِي فَطَرَ النَّاسَ عَلَيْهَا لَا تَبْدِيلَ لِخَلْقِ اللَّهِ ذَلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ﴾ (الروم: 30)

“So direct your face toward the religion, inclining to truth. [Adhere to] the *fitrah* of Allah upon which He has created [all] people. No change should there be in the creation of Allah. That is the correct religion, but most of the people do not know.” (30:30)

God’s religion is innate, since the *fitrah* is based on monotheistic belief in Allah and readiness to do good.⁴⁴ This is proved by Allah’s saying:

﴿إِنَّمَا خَلَقْنَا الْإِنْسَانَ فِي أَحْسَنِ تَقْوِيمٍ﴾ (*) ثُمَّ رَدَدْنَاهُ أَسْفَلَ سَافِلِينَ﴾ (التين: 4-5)

“We have certainly created man in the best of stature; Then We return him to the . lowest of the low.” (95:4-5)

Regarding the significance of these verses, Ibn Ashur says: "There is no doubt that the verse is intended to elevate the mind being the source of true beliefs and good deeds; and by “We return him to the lowest of the low” He means that people move to acquire vices based on false beliefs and vile acts. It is not intended to elevate the image of humans, because the image has not been altered or diminished.”⁴⁵

5.1.3. Manifestations of observing *fitrah* in the Shariah

- a) **Meeting human innate needs in a balanced manner:** taking *fitrah* into consideration is manifested in the fact that Allah’s religion has not prohibited what human nature needs:

﴿رِيقٌ لِلنَّاسِ حُبُّ الشَّهَوَاتِ مِنَ النِّسَاءِ وَالْبَنِينَ وَالْقَنَاطِيرِ الْمُقَنْطَرَةِ مِنَ الذَّهَبِ وَالْفِضَّةِ وَالْخَيْلِ الْمُسَوَّمَةِ وَالْأَنْعَامِ وَالْحَرْثُ ذَلِكَ مَتَاعُ الْحَيَاةِ الدُّنْيَا وَاللَّهُ عِنْدَهُ حِشْؤُ الْمَأْتَبِ﴾ (آل عمران: 14)

“Beautified for people is the love of that which they desire – of women and children, heaped-up sums of gold and silver, fine branded horses, and cattle and tilled land. That is the enjoyment of worldly life, but Allah has with Him the best return.” (3:14)

⁴⁴ al-Razi, *al-Tafsir al-Kabir*, vol. 25, p.120-121.

⁴⁵ Ibn Ashur, *Maqasid Shariah*, p.192.

In this verse, there is an acknowledgement of peoples' need to satisfy their innate desires of sex, children and money.

﴿يَا بَنِي آدَمَ خُذُوا زِينَتَكُمْ عِندَ كُلِّ مَسْجِدٍ وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ﴾ (*) قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ قُلْ هِيَ لِلَّذِينَ آمَنُوا فِي الْحَيَاةِ الدُّنْيَا خَالِصَةً يَوْمَ الْقِيَامَةِ كَذَلِكَ نُفَصِّلُ الْآيَاتِ لِقَوْمٍ يَعْلَمُونَ﴾ (*) قُلْ إِنَّمَا حَرَّمَ رَبِّي الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَالْإِثْمَ وَالنَّبِيْءَ بِغَيْرِ الْحَقِّ وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لَا تَعْلَمُونَ، (الأعراف: 31-33)﴾.

“O children of Adam, take your adornment at every *masjid*, and eat and drink, but be not excessive. Indeed, He likes not those who commit excess. (*) Say, "Who has forbidden the adornment of Allah which He has produced for His servants and the good [lawful] things of provision?" Say, "They are for those who believe during the worldly life [but] exclusively for them on the Day of Resurrection." Thus, do We detail the verses for a people who know. (*) Say, "My Lord has only forbidden immoralities - what is apparent of them and what is concealed - and sin, and oppression without right, and that you associate with Allah that for which He has not sent down authority, and that you say about Allah that which you do not know." (7:31-33)

The Shariah permits the fulfilment of pleasure and satisfaction of human needs. However, these verses affirm that the Shariah rejects immoralities and wicked deeds that lead to corrupting the human nature and cause harm to people.

Nevertheless, the Holy Quran warned against disregarding the Hereafter [life after death] and focusing solely on this life's pleasures, hence, urging people to prepare for their next life:

﴿قُلْ أُوْتَيْتُكُمْ بِخَيْرٍ مِنْ ذَلِكَمِ لِلَّذِينَ آمَنُوا عِنْدَ رَبِّهِمْ حَنَاتٌ تَبْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا وَأَزْوَاجٌ مُطَهَّرَةٌ وَرِضْوَانٌ مِنَ اللَّهِ وَاللَّهُ بَصِيرٌ﴾
بِالْعِبَادِ، (آل عمران: 15)﴾.

“Say, "Shall I inform you of [something] better than that? For those who fear Allah will be gardens in the presence of their Lord beneath which rivers flow, wherein they abide eternally, and purified spouses and approval from Allah. And Allah is Seeing of [His] servants.” (3:15)

It is, therefore, required to balance the rights of oneself, the rights of Allah, and the rights of others.

"آخَى النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَيْنَ سَلْمَانَ وَأَبِي الدَّرْدَاءِ، فَتَزَارَ سَلْمَانُ أَبَا الدَّرْدَاءِ فَرَأَى أُمَّ الدَّرْدَاءِ مُتَبَيِّدَةً فَقَالَ لَهَا: مَا شَأْنُكِ! قَالَتْ: أَخُوكَ أَبُو الدَّرْدَاءِ لَيْسَ لَهُ حَاجَةٌ فِي الدُّنْيَا. فَجَاءَ أَبُو الدَّرْدَاءِ فَصَنَعَ لَهُ طَعَامًا فَقَالَ: كُلْ، قَالَ: فَإِنِّي صَائِمٌ، قَالَ: مَا أَنَا بِكَائِلٍ حَتَّى تَأْكُلِ، قَالَ: فَأَكَلَ. فَلَمَّا كَانَ اللَّيْلُ ذَهَبَ أَبُو الدَّرْدَاءِ يَتَوَمُّ قَالَ: تَمَّ، فَنَامَ، ثُمَّ ذَهَبَ يَتَوَمُّ، فَقَالَ: تَمَّ، فَلَمَّا كَانَ مِنَ آخِرِ اللَّيْلِ قَالَ سَلْمَانُ: فَمُ الْآنَ، فَصَلَّيْتُ، فَقَالَ لَهُ سَلْمَانُ: إِنَّ لِرَبِّكَ عَلَيْكَ حَقًّا، وَلِنَفْسِكَ عَلَيْكَ حَقًّا، وَلِأَهْلِكَ عَلَيْكَ حَقًّا، فَأَعْطِ كُلَّ ذِي حَقٍّ حَقَّهُ. فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَذَكَرَ ذَلِكَ لَهُ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: صَدَقَ سَلْمَانُ." صحيح البخاري

"The Prophet (ﷺ) made a bond of brotherhood between Salman and Abud-Darda'. Salman paid a visit to Abud-Darda' and found Umm Darda' (his wife) dressed in shabby clothes and asked her why she was in that state. She replied: "Your brother Abud-Darda' is not interested in (the luxuries of) this world. In the meantime, Abud-Darda' came in and prepared a meal for Salman. Salman requested Abud-Darda' to eat (with him) but Abud-Darda' said: "I am fasting." Salman said: "I am not going to eat unless you eat." So, Abud-Darda' ate (with Salman). When it was night and (a part of the night passed), Abud-Darda' got up (to offer the night prayer) but Salman asked him to sleep, and Abud-Darda' slept. After some time Abud-Darda' again got up but Salman asked him to sleep. When it was the last hours of the night, Salman asked him to get up, and both of them offered (*Tahajjud*) prayer. Then Salman told Abud-Darda': "You owe a duty to your God; you owe a duty to your body; you owe a duty to your family; so you should give to everyone his right. Abud-Darda' came to the Prophet (ﷺ) and reported the whole story. The Prophet (ﷺ) said, "Salman is right." (*al-Bukhari*)

Commenting on this hadith, Dr. Abdelmadjid Al-Najjar says: "This *hadith* proves the balance upon which the human soul has been created, a thread connects it to God, another connects it to oneself, a third connects it to the family, and a fourth connects it to the society symbolized by the guest. These threads represent the psychological network through which man interacts with life. So, for it to be a viable network, all the strands should be strong, thereby preserving their balance. The fact of appointing everyone with a right is due to preserving the balance on which this psychological network is built.⁴⁶

Allah has condemned the Christians for going against human nature by creating abstention from marriage (monasticism).

⁴⁶ Abdul Majid Al-Najjar, *Maqasid Shariah bi Ab'ad Jadidah*. p.93.

﴿وَرَهْبَانِيَّةً ابْتَدَعُوهَا مَا كَتَبْنَاهَا عَلَيْهِمْ إِلَّا ابْتِغَاءَ رِضْوَانِ اللَّهِ فَمَا رَعَوْهَا حَقَّ رِعَايَتِهَا فَآتَيْنَا الَّذِينَ آمَنُوا مِنْهُمْ أَجْرَهُمْ وَكَثِيرٌ مِنْهُمْ فَاسِقُونَ،
(الحديد: 27)﴾

“And monasticism, which they innovated; We did not prescribe it for them except [that they did so] seeking the approval of Allah. But they did not observe it with due observance. So, We gave the ones who believed among them their reward, but many of them are defiantly disobedient.” (57:27)

Furthermore, Allah criticized them for not managing to observe what they imposed on themselves. That behaviour was obviously an affliction that goes against human nature as explained in the following verses:

﴿وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَعْتَمِرُونَ، (الروم: 21)﴾.

“And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed, in that are signs for a people who give thought.” (30:21)

b) Forbidding what contravenes and corrupts the *fitrah*: The Shariah, normally, prohibits what contravenes and corrupts the *fitrah* such as the following:

i) Prohibition of castration:

عن عبد الله بن مسعود رضي الله عنه قال: "كُنَّا نَعْرُوُ مَعَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَلَيْسَ مَعَنَا نِسَاءٌ، فَقُلْنَا: أَلَا نَحْتَصِي؟ فَنَهَانَا عَنْ ذَلِكَ، فَخَصَّ لَنَا بَعْدَ ذَلِكَ أَنْ نَتَزَوَّجَ الْمَرْأَةَ بِالنُّوبِ" ثُمَّ قُرَأَ: ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحْرُثُوا طَيِّبَاتٍ مَا أَحَلَّ اللَّهُ لَكُمْ، (المائدة: 87)﴾. " صحيح البخاري

Narrated by Abdullah bin Masud: “We used to participate in the wars carried on by the Prophet (ﷺ) and we had no women (wives) with us. So, we said (to the Prophet (ﷺ)): "Shall we castrate ourselves?" But the Prophet (ﷺ) forbade us to do that and subsequently he allowed us to marry a woman (temporarily) by giving her even a garment, and then he recited: “O who believe! Do not make unlawful the good things which Allah has made lawful for you. (5:87)” (*al-Bukhari*)

وعن سعد بن أبي وقاص قال: "رَدَّ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَلَى عُثْمَانَ بْنِ مِظْعُونِ النَّبِيلِ، وَلَوْ أُذِنَ لَهُ لَأَخْتَصَمْنَا." صحيح البخاري

“Allah’s Messenger objected to ‘Uthman b. Maz’un living in celibacy. If he had given him permission, we would have had ourselves castrated.” (*al-Bukhari*)

ii) Forbidding monasticism (abstention from marriage):

جاء ثلاثة زهطٍ إلى نبيِّ صلي الله عليه وسلم، يسألون عن عبادة النبي صلي الله عليه وسلم. فلما أُخبروا كأنهم تَفألوهَا، فقالوا: وأين نُحزُّ من النبي صلي الله عليه وسلم؟ قد عُفِرَ لَهُ مَا تَقَدَّمَ مِنْ ذَنْبِهِ وَمَا تَأَخَّرَ! قال أخذهم: أمَّا أنا فإني أصلي الليل أبداً، وقال آخر: أنا أصوم الدهر ولا أفطر، وقال آخر: أنا أعتزلُ النساء فلا أتزوج أبداً! فحاء رسول الله صلي الله عليه وسلم إليهم، فقال: "أنتم الذين فُلتُم كذا وكذا؟ أمَّا والله إني لأخشاكم لله وأتقاكم له، لَكِي أَصُومُ وَأُفْطِرُ، وَأُصَلِّي وَأُزْفِدُ، وَأَتَزَوَّجُ النِّسَاءَ، فَمَنْ رَغِبَ عَنِّي فليَسْ مِي." صحيح البخاري

Three men came to the houses of the wives of the Prophet (ﷺ) to inquire about the worship of the Prophet (ﷺ). When they were informed, they considered his worship insignificant and said: "Where are we in comparison with the Prophet (ﷺ) while Allah has forgiven his past sins and future sins". One of them said:

"As for me, I shall offer *salat* (prayer) all night long." Another said: "I shall observe *sawm* (fasting) continuously and shall not break it". Another said: "I shall abstain from women and shall never marry". The Prophet (ﷺ) came to them and said: "Are you the people who said such and such things? By Allah, I fear Allah more than you do, and I am most obedient and dutiful among you to Him, but still I observe fast and break it; perform *salat* and sleep at night and marry women. So, whoever turns away from my Sunnah does not belong to me." (*al-Bukhari*)

iii) Forbidding tattoos, tweezing eyebrows and artificially creating spaces between teeth in which they alter the features created by Allah.

قال عبد الله بن مسعود رضي الله عنه: "لعن الله الواشمات والمستوشمات، والمتنمصات، والمتفلجات للحسن، والمغيرات خلق الله تعالى. مالي لا ألعن من لعن النبي صلي الله عليه وسلم." صحيح البخاري

Abdullah bin Mas'ud reported that the Prophet (ﷺ) said: "May Allah curse the women who tattoo and those who get tattooed, and those women who pluck their eyebrows, and the women who have their teeth separated to look beautiful, the women who change the features created by Allah. Should I not curse those whom the Messenger of Allah (ﷺ) cursed?" (*al-Bukhari*)

iv) Forbidding men to imitate women and women to imitate men:

عن ابن عباس، أنَّ النبي صلي الله عليه وسلم "لعن المُتَشَبِّهِينَ مِنَ الرِّجَالِ بِالنِّسَاءِ، وَلَعَنَ الْمُتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ." سنن ابن ماجه

Ibn Abbas reported that the Prophet (ﷺ) said: "Allah has cursed men who imitate women and women who imitate men." (*Ibn Majah*)

- v) Forbidding the mutilation of animals as mentioned in the Quran about the acts of Satan:

﴿وَأُضِلُّهُمْ وَلَا تَعْلَمُ لَهُمُ الْآيَاتُ فَلْيُبَيِّنُوا لَهُمْ بَيِّنَاتٍ مِنَ الْكَلِمَاتِ وَأَلْمِزْنَهُمْ وَلَا تُؤْمِنُوا بِهِمْ وَلَا يُغْنِيَنَّ عَنْهُمْ كَسَبَ بَنِي إِسْرَائِيلَ وَلَا هَدَى اللَّهُ لَبِيسًا وَمَنْ يَتَّخِذِ الشَّيْطَانَ وَلِيًّا مِنْ دُونِ اللَّهِ فَقَدْ خَسِرَ خُسْرَانًا مُبِينًا﴾ (النساء: 119).

“And I will mislead them, and I will arouse in them [sinful] desires, and I will command them so they will slit the ears of cattle, and I will command them so they will change the creation of Allah.” And whoever takes Satan as an ally instead of Allah has certainly sustained a clear loss.” (4:119)

5.2. Ease and Tolerance

The Holy Qur’an stated in several verses that the Shariah is easy and tolerant, and that Allah did not intend to legislate the Shariah to overwhelm and restrict people but rather to facilitate and ease their lives:

﴿وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ مِلَّةَ أَبِيكُمْ إِبْرَاهِيمَ هُوَ سَمَّاكُمُ الْمُسْلِمِينَ مِنْ قَبْلُ وَفِي هَذَا لِيَكُونَ الرَّسُولُ شَهِيدًا عَلَيْكُمْ وَتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ فَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَاعْتَصِمُوا بِاللَّهِ هُوَ مَوْلَاكُمْ فَنِعْمَ الْمَوْلَى وَنِعْمَ النَّصِيرُ﴾ (الحج: 78)

“And strive for Allah with the striving due to Him. He has chosen you and has not placed upon you in the religion any difficulty. [It is] the religion of your father, Abraham. Allah named you “Muslims” before [in former scriptures] and in this [revelation] that the Messenger may be a witness over you and you may be witnesses over the people. So, establish prayer and give *zakat* and hold fast to Allah. He is your protector; and excellent is the protector, and excellent is the helper.” (22:78)

The Prophet Mohammad said that the most beloved religious practice to Allah is *tawhīd* (monotheism) and tolerance:

“أحبُّ الدين إلى الله الحنيفية السمحة.” صحيح البخاري

“The most beloved religious practice to Allah is *tawhīd* (monotheism) and tolerance.” (*al-Bukhari*)

Even though Allah imposed retaliation for murder to save lives, He permitted the relatives of the victim to pardon the murderer as a manifestation of ease and tolerance. Allah says:

﴿فَمَنْ عَفِيَ لَهُ مِنْ أُجْبِيهِ شَيْءٌ فَاتَّبَاعَ بِالْمَعْرُوفِ وَأَدَاءٍ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ فَمَنْ اعْتَدَى بِكُمْ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ،
(البقرة: 178)﴾.

“But whoever is given any forgiveness from his brother, then there should be a suitable follow-up and payment to him with good conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment.” (2:178)

5.2.1. The Concept of Ease and Tolerance

Al-Yusr means easiness and leniency. *Al-Taysir* means to facilitate and make things easy.⁴⁷ Ibn Ashur defines as such: “Tolerance is ease of moderate treatment. It is between restriction and leniency, and it refers to the meaning of moderation, justice, and mediation”⁴⁸, namely: “the laudable ease is what people think of as strictness, whereas it’s laudable because it does not lead to harm or corruption.”⁴⁹

The antonym of *taysir* is *haraj* and *mashaqqah* (hardship, difficulty). *Haraj* may mean discomfort. Allah says:

﴿ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَزَجًا مِمَّا قُضِيَتْ وَ يُسَلِّمُوا تَسْلِيمًا، (النساء: 65)﴾

“Then they find no discomfort within themselves from what you have judged and submit in [full, willing] submission.” (4:65)

In the Quran, the term *haraj* is used in the meaning of sin and guilt,⁵⁰ as Allah says:

⁴⁷ Al-Raghib Al-Isfahani, *Al-Mufradat fi Gharib Al-Quran*, pp. 891-892.

⁴⁸ Ibn Ashur, *Maqasid Shariah*, p. 196.

⁴⁹ Ibn Ashur, *Maqasid Shariah*, p. 197.

⁵⁰ Al-Raghib Al-Isfahani, *Al-Mufradat fi Gharib Al-Quran*, pp. 226-227.

﴿لَيْسَ عَلَى الضُّعْفَاءِ وَلَا عَلَى الْمُرْضَىٰ وَلَا عَلَى الَّذِينَ لَا يَجِدُونَ مَا يَنْفِقُونَ حَرَجٌ إِذَا نَصَحُوا لِلَّهِ وَرَسُولِهِ مَا عَلَى الْمُحْسِنِينَ مِنْ سَبِيلٍ﴾ (التوبة: 91)

“There is not upon the weak or upon the ill or upon those who do not find anything to spend any discomfort (i.e., guilt) when they are sincere to Allah and His Messenger. There is not upon the doers of good any cause [for blame].” (9:91)

Hardship (*mashaqqah*) means severe suffering, since in Arabic terminology *shaqqa* means to crack open, hence the person will feel like he was split into two. Allah says:

﴿وَتَحْمِلُ أُنْفُسُكُمُ إِلَىٰ بَدَلٍ لَّمْ تَكُونُوا تَالِعِيهِ إِلَّا بِشِقِّ الْأَنْفُسِ﴾ (النحل: 7)

“And they carry your loads to a land you could have not reached except with great hardship to yourself.” (16:7)⁵¹

Taysir does not mean total absence of fatigue and hardship, as that is not possible in this life. Life, in its nature, involves difficulties and fatigue. Everything a person desires carries some cost. In this context, Allah says:

﴿لَقَدْ خَلَقْنَا الْإِنْسَانَ فِي كَبَدٍ﴾ (البلد: 4)

“We have certainly created man to face hardships.” (90:4)

Hardship that is excluded from the Shariah is the unusual hardship that may confuse individuals, disrupt their behaviour and make them more anxious on how to face that hardship. For such type of hardships, concessions (*rukhsah*) are given in the Shariah. However, if the hardship is the result of extremism and exaggeration in performing religious rituals, that is burdening oneself, such practices become forbidden. It was mandated for individuals to be moderate and perform their rituals in a way that does not cause them severe hardship. The Prophet (ﷺ) said:

“...عَلَيْكُمْ بِمَا تُطِيعُونَ فَوَاللَّهِ لَا يَمَلُّ اللَّهُ حَتَّى تَمَلُّوا وَكَانَ أَحَبَّ الدِّينِ إِلَيْهِ مَا دَامَ عَلَيْهِ صَاحِبُهُ.” صحيح البخاري

“...You should do what you are able to do, for Allah does not grow weary until you do. The most pleasing acts to Allah are those which are done most continuously.” (*al-Bukhari*)

⁵¹ Ibn Faris, *Mu'jam maqayis al-Lughah*, vol.3, p.171.

The usual slight hardship in performing religious rituals does not justify concession (*rukhsah*) as it is part of normal human life. The usual hardship has no effect on the weariness of souls. That is a hardship which is usually tolerated by people, and it does not cause real harm. Mindful people consider those who cease to perform a certain act due to the presence of such usual hardship as lazy. Striving for self-control is not considered a real hardship nor a reason for concession since the Shariah has come to guide people towards righteousness away from sin.

The difference between the usual bearable hardship and the real laborious hardship in performing religious rituals is the effect: if continuing with rituals leads to interruption and causes real harm to one's body, wealth, or mental condition, the hardship is out of the ordinary. If there is none of that, it is a usual hardship that should be tolerated.

Ease and tolerance do not mean laziness, not taking religious duties seriously or not striving for high morals and virtues. On the contrary, their objective is to hold the life of the individual and society in a balanced and orderly manner, free from laziness and ineffectiveness.

For example, living an easy social life requires a secure environment. Providing security requires strictness with criminality from all its sources. Punishments are for the purpose of easing people's lives because failure to stop criminals increases corruption and abuse of people and their wealth and honour. Punishment would bring security and stability to society, and people's lives would flow smoothly and regularly.

Living an easy life requires the provision of material needs. Achieving that requires hard work, dedication, diligence, and proficiency which requires efforts and a kind of hardship.

Living an easy life requires fulfilling the spiritual needs which requires devotion to religious rituals and good deeds.

Living an easy life requires contentment, modesty, simplicity, and avoiding excessive consumerism.

Living an easy life entails preventing injustice, tyranny, and fraud in transactions.

Living an easy life also entails preventing gambling which leads to great hardship on those who lose and whose families face difficulty in fulfilling their basic needs. It also leads winning gamblers to take people's money unjustly, thus

learn the vice of gaining effortlessly and unproductively. Added to that, gambling results in conflicts, demoralization, and corruption of social relations.

Living an easy life requires the prevention of alcohol and drugs that cause serious health, social, and mental illnesses.

The bottom line is that to live an easy, secure and happy life, one must follow the commands of Allah; yet, not attending to them leads to discomfort and suffering. Allah Almighty says in this context:

﴿فَمَنْ اتَّبَعَ هُدَايَ فَلَا يَضِلُّ وَلَا يَشْقَىٰ (*) وَمَنْ أَعْرَضَ عَن ذِكْرِي فَإِنَّ لَهُ مَعِيشَةً ضَنْكًا وَنَحْشُرُهُ يَوْمَ الْقِيَامَةِ أَعْمَىٰ﴾ (طه: 123-124)

“And if there should come to you guidance from Me, then whoever follows My guidance will neither go astray [in the world], nor suffer [in the Hereafter] (*) And whoever turns away from My remembrance—indeed, he shall endure a difficult life, and We will gather [i.e., raise] him on the Day of Resurrection blind.” (20:123-124)

5.2.2. Causes of Hardship

The Shariah is easy, and abiding by it—in ordinary circumstances—makes life easy, but discomfort and hardship can occur due to following reasons:

1. The occurrence of emergency situations - such as illness, disability, famine, or natural disasters - that make the ordinary Shariah teachings difficult for the person. The Shariah has dealt with such emergency situations by granting concessions in a way that eliminates hardship or reduces it.
2. Extremism and exaggeration in religious practice resulting in undue hardship. The Shariah has forbidden such extremism and urged its followers to be moderate in their practice.
3. Burdening oneself with inappropriate social customs and practices which are not required by the Shariah at all.

5.2.3. Manifestations of Ease and Tolerance

Ease and tolerance in the Shariah have various manifestations, among them:

1. The Shariah does not overburden people or require them to do what is beyond their capabilities. Allah says:

﴿لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ﴾ (البقرة: 286)

“Allah does not charge a soul except [with that within] its capacity. It will have [the consequence of] what [good] it has gained, and it will bear [the consequences of] what [evil] it has earned.” (2:286)

He also says:

﴿وَلَا نُكَلِّفُ نَفْسًا إِلَّا وُسْعَهَا وَلَدَيْنَا كِتَابٌ يَنْطِقُ بِالْحَقِّ وَهُمْ لَا يُظْلَمُونَ﴾ (المؤمنون: 62)

“And We charge no soul except [with that within] its capacity, and with Us is a record which speaks with truth; and they will not be wronged.” (23:62)

2. Lifting the hardship (shackles) imposed on the people of Israel for their misconduct. Allah says when describing the Prophet (ﷺ):

﴿الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الَّذِي جَاءَهُمْ بِبَيِّنَاتٍ مِمَّا كُنْتُمْ تَحْتُمُونَ وَمَنْ يُضِغْ عَلَيْهِمْ الصَّالِحِينَ وَالْحَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ﴾ (الأعراف: 157)

“Those who follow the Messenger, the illiterate Prophet, whom they find written [i.e., mentioned] in what they have of the Torah and the Bible, who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves them of their burden and the shackles which were upon them.” (7:157)

3. The Shariah limited prohibitions in foods and drinks to those things which are harmful to people. All useful and healthy foods and drinks are permitted, so that people can enjoy them. In transactions, the Shariah limited prohibition to unfair practices that violate the rights of others.

﴿يَأْمُرُهُم بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ﴾ (الأعراف: 157)

“Who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil.” (7:157)

If a person is in situation where he cannot get permitted food and drink, and he has reached a point of starvation, the Shariah permits him to consume prohibited food or drinks to survive since the harm caused by not eating is greater than the harm caused by eating prohibited food. Once obtaining permitted food is possible, the concession (*rukhsah*) to consume the forbidden food ceases to exist.

Allah, the Almighty, says on eating forbidden food:

﴿إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالْدَّمَ وَالْحَنِيزِ وَمَا أَهْلًا بِهِ لِيُغَيِّرَ اللَّهُ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ﴾ (البقرة: 173)

“He has forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allah. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allah is Forgiving and Merciful.” (2:173)

4. People who face severe hardship in practicing religious rituals are granted a concession (*rukhsah*) in the form of a reduction such as permitting the shortening and combination of prayers; or a substitute such as *taymmum* instead of ablution and breaking fast during the month of Ramadan with making it up later; or relief from some obligations such as expiation for those who are unable to fast or make some rites of pilgrimages.

﴿فَمَنْ شَهِدَ مِنْكُمُ الشَّهْرَ فَلْيَصُمْهُ وَمَنْ كَانَ مَرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ،﴾ (البقرة: 185)

“So, whoever sees [the new moon of] the month, let him fast it; whoever is ill or on a journey — then an equal number of other days. Allah intends for you ease and does not intend for you hardship.” (2:185)

﴿وَإِنْ كُنْتُمْ مَرْضَى أَوْ عَلَى سَفَرٍ أَوْ جَاءَ أَحَدٌ مِنْكُم مِّنَ الْمَغَائِظِ أَوْ لَامَسْتُمُ النِّسَاءَ فَلَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ مِنْهُ مَا يُرِيدُ اللَّهُ لِيَجْعَلَ عَلَيْكُمْ مِنْ حَزَجٍ وَلَكِنْ يُرِيدُ لِيُطَهَّرَكُمْ وَلِيُسِّمَ نِعْمَتَهُ عَلَيْكُمْ لَعَلَّكُمْ تَشْكُرُونَ،﴾ (المائدة: 6)

“But if you are ill or on a journey or one of you comes from the place of relieving himself or you have contacted women and do not find water, then seek clean earth and wipe over your faces and hands with it. Allah does not intend to make difficulty for you, but He intends to purify you and complete His favour upon you that you may be grateful.” (5:6)

5.2.4. Examples of the Objective of Ease and Tolerance

The following are some of the examples of ease and tolerance in the Shariah:

1. **Ease and tolerance when treating people**, as the Prophet (ﷺ) says: "May Allah's mercy be on him who is lenient in his buying, selling, and in demanding back his money." (*Al-Bukhari*)

Allah, the Almighty, says regarding debtors who are unable to repay their debts:

﴿وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ﴾ (البقرة: 280)

"And if someone is in hardship, then [let there be] postponement until [a time of ease]. But if you give [from your right as] charity, then it is better for you, if you only knew." (2:280)

The Prophet (ﷺ) said:

"من نَفَسَ عن مؤمن كربة من كُرب الدنيا نَفَسَ اللهُ عنه كربة من كُرب يوم القيامة، ومن يَسَّرَ على مُعْسِرٍ يَسَّرَ اللهُ عليه في الدنيا والآخرة."
صحيح مسلم

"If anyone relieves a Muslim believer from one of the hardships of this worldly life, Allah will relieve him of one of the hardships of the Day of Resurrection. If anyone makes it easy for the one who is indebted to him (while finding it difficult to repay), Allah will make it easy for him in this worldly life and in the Hereafter." (*Muslim*)

2. **Ease in performing congregational prayers and considering the situation of the vulnerable.**

عن جابر بن عبد الله الأنصاري رضي الله عنه قال: "أقبل رجلٌ بناضحين وقد جَنَحَ اللَّيْلُ، فوافق مُعَاذًا يُصَلِّي، فترك ناضِحَهُ وأقبل إلى مُعَاذٍ، فقرأ بسورة البقرة -أو النساء- فإطلق الرجلُ. وبلَعَهُ أَنْ مُعَاذًا نَالَ مِنْهُ، فَأَتَى النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فشكا إِلَيْهِ مُعَاذًا. فقال النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: "يا مُعَاذُ، أَفَتَأْتَانِ أَتَتْ" -أو "أَفَاتَيْنِ؟"- ثلاثَ مرارٍ: "فلولا صَلَّيْتُ بِسَبِّحِ اسْمِ رَبِّكَ، والشَّمْسِ وضحاها، واللَّيْلِ إِذَا يَغْشَى، فَإِنَّهُ يُصَلِّي وَرَأَيْكَ الْكَبِيرُ وَالضَّعِيفُ وَذُو الْحَاجَةِ." صحيح البخاري

Jaber bin Abdullah al-Ansari reported: "Once a man was driving two *nadihas* (camels used for agricultural purposes) and night had fallen. He found Mu`adh praying so he made his camel kneel and joined Mu`adh in the prayer. The latter recited Surat 'Al-Baqara" or Surat "An-Nisa", (so) the man left the prayer and

went away. When he came to know that Mu`adh had criticized him, he went to the Prophet and complained against Mu`adh. The Prophet said thrice, "O Mu`adh! Are you putting the people to trial?" It would have been better if you had recited (سَبِّحْ اسْمَ رَبِّكَ الْأَعْلَى) (87), (وَالشَّمْسِ وَضُحَاهَا) (91)", or (وَاللَّيْلِ إِذَا يَغْشَى) (92)", for the old, the weak and the needy pray behind you." (*al-Bukhari*)

Anas reported that the Prophet (ﷺ) said:

يَسِّرُوا وَلَا تُعَسِّرُوا، وَبَشِّرُوا وَلَا تُنْفِرُوا " صحيح البخاري

"Make things easy and do not make them difficult, cheer the people up by conveying glad tidings to them and do not repulse (them)." (*al-Bukhari*)

وعن أنس بن مالك "أنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ سَمِعَ بُكَاءَ صَبِيٍّ فِي الصَّلَاةِ، فَخَفَّفَ، فَخَفَّفَ، فَخَفَّفَ، فَظَنَّنَا أَنَّهُ خَفَّفَ مِنْ أَجْلِ أُمِّهِ فِي الصَّلَاةِ رَحْمَةً لِلصَّبِيِّ."
مسند أحمد

And according to Anas Ibn Malik, "the Prophet (ﷺ) heard the crying of a young boy in the prayer, so he shortened the prayer, and we thought that he did so because of his mother, by being merciful to the boy." (*Musnad Ahmad*)

- 3. Avoiding exaggeration and extremism in voluntary religious rituals** which may lead to self-exhaustion, interruption, and negligence in the rights of family members.

قال صلى الله عليه وسلم: "هَلَكَ الْمُتَنَطِّعُونَ، قالها ثلاثا." صحيح مسلم. وقال صلى الله عليه وسلم: "إِنَّ الدِّينَ يُسْتَرُّ، وَلَنْ يُشَادَّ هَذَا الدِّينَ أَحَدٌ إِلَّا عَلَبَهُ، فَسَدُّوا وَقَارِبُوا وَأَبْشِرُوا وَاسْتَعِينُوا بِالْعَدْوَةِ وَالرَّوْحَةِ وَشَيْءٍ مِنَ الدُّجْحَةِ." صحيح البخاري

The Prophet (ﷺ) said: "Ruined, were those who are extreme! He repeated this thrice" (*Muslim*) He also said: "Religion is very easy and whoever overburdens himself in his religion will not be able to continue in that way. So, you should not be extremists, but try to be near to perfection and receive the good tidings that you will be rewarded; and gain strength by worshipping in the mornings, the afternoons, and during the last hours of nights." (*Al-Bukhari*)

Urwa ibn al-Zubayr reported that Aishah, the Prophet's wife, said that: the Prophet (ﷺ) was sitting with me when a woman – Al-Hawla' bint Tuwayt -

came to me. He said: Who is she? I said: She is Al-Hawla' bint Tuwayt and they claim she does not sleep throughout night. He said: She does not sleep at night! Take from the ritual [work] only what you are capable of doing, by Allah, Allah does not grow weary until you grow weary. The religious act most pleasing to Him is one the doer of which does it continuously." (*Muslim*)

According to Urwa, Uthman bin Madh'un's wife came to Aishah in a bad mood. Aishah asked her what the matter was, so she said, "my husband prays all night, and fasts all day," then the Prophet (ﷺ) came and Aishah narrated what she heard. Then the Prophet (ﷺ) met Uthman and said: 'O Uthman, monasticism is not preordained upon us, take me as a good example, for by Allah, I am the most God-fearing amongst you and the best observing of His limits." (*Musnad Ahmad*)

Aishah said: "whenever the Prophet had to choose between two options, he would choose the easiest of them if it is not a sin." (*al-Bukhari*)

4. Ease in *fatwa* and guidance: the criterion for making *fatwa* is to adhere to what is in the Shariah texts. In matters where there is an explicit text that is agreed upon by scholars, Muslims must follow the *hukm* specified by that text. That is real ease; because all Shariah rulings are, originally, easy. In cases of disagreement among scholars, the *mufti* must prioritize what he believes to be the more probable opinion based on the proofs provided for each opinion. In cases of *ijtihad* concerning new matters, a scholar must abide by the proper methodology.

Easiness in *fatwa* does not mean to deviate from clear Shariah texts and proper *ijtihad* methodology, nor to seek the weak opinions from early scholars, nor to satisfy people's whims and desires. Ease and tolerance are not intended to compromise one's religion. It is not meant by ease and tolerance to teach people laziness in religious practice.

5.3. The Universality of Shariah Teachings

Allah, the Almighty, intends to make the Shariah universal/general in terms of targeted people, time, subjects and aspects of life.

In terms of targeted people and time, the Shariah addresses all people until the Day of Judgement. Allah says in this regard:

﴿قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا﴾ (الأعراف: 158)

“Say [O Muhammad], ‘O mankind, indeed I am the Messenger of Allah to you all’” (7:158)

And in another verse:

﴿وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِّلنَّاسِ بَشِيرًا وَنَذِيرًا وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ﴾ (سبأ: 28)

“And We have not sent you except comprehensively to humankind as a bringer of good tidings and a warner. But most people do not know.” (34:28)

In terms of subjects, the Shariah covers all aspects of life:

﴿قُلْ إِنَّ صَلَاتِي وَنُسُكِي وَمَحْيَايَ وَمَمَاتِي لِلَّهِ رَبِّ الْعَالَمِينَ﴾ (الأنعام: 162)

“Say, ‘Indeed, my prayer, my rites of sacrifice, my living and my dying are for Allah, Lord of the worlds.’” (6:162)

Accordingly, the objective of the Wise Lawgiver in legislative methodology is to address all people in different places and various conditions, covering all aspects of life to achieve righteousness. To achieve that, the Lawgiver intended to diversify legislation (a) between duties and recommendations, prohibitions and discouraged acts, and permissions; (b) general norms and detailed provisions; (c) motivation, promises and threats; (d) legislation for ordinary time as well as for the times of difficulty and distress; (e) rules that should be followed strictly and exceptions that require concession.

5.3.1. The Shariah's Approach in Accommodating People's Conditions

The Shariah's approach in accommodating people's conditions is based on two things:

- (a) The majority of Quranic legislation is in the form of general norms and principles, so that it may accommodate all possible new incidents in the future. Scholars can use those norms and general principles to judge new incidents and infer *hukm* from them. Therefore, it may be said that one of the objectives in legislative methodology is to increase the number of general norms and principles to provide guidance for any progress in people's lives at various times and places.
- (b) Making analogical reasoning (*qiyas*) on the specific cases decided by the Prophet to find solutions for new cases faced by Muslims at any time. However, before any attempt of analogical reasoning (*qiyas*) is made, the *mujtahid* should identify the effective cause ('*illah*) for the *hukm* given by the Prophet to that case, and whether that *hukm* is extendable to new cases or not.

5. An Overview of Shariah Legislative Approach

Beliefs

Beliefs represent faith in the realities of the unseen world. Those realities do not differ with different times or people's perceptions. The only source of true beliefs is the divine revelation. They cannot be realized through mere thinking or use of senses. Any attempt to perceive those beliefs on mere thinking is just a guess that is subject to gross errors.

The Quran talks about some beliefs in detail and mentioned some of them in general. The Quran mentions some of the attributes of Allah in general terms without detail such as *istiwa'* on the throne (الرَّحْمَنُ عَلَى الْعَرْشِ اسْتَوَى). The Prophet (ﷺ) and his Companions did not have any discourse on their details. For those attributes, it is a must for Muslims to believe in them without any discourse on their details. The companions understood that the Wise Lawgiver intended not to go into further details, so neither they nor their followers went into details and that is why they were in the best of religion. Some people later occupied themselves with a futile discourse about details of those attributes. The only result of that futile discourse was bickering and enmity among Muslims. Undoubtedly, engaging in such futile discourse is an innovation that has taken place after the era of companions and their followers. The early scholars (*salaf*)

refrained from talking about those issues. They accept those texts and believe in them as they are. Imam Malik, who was asked by a man about (*al-istiwa'*), said: (*al-istiwa'*) is not unknown, but its "how" is not conceivable, belief in it [*al-istiwa'*] is obligatory and asking about it is an innovation (*bid'ah*) and I think you are a malicious innovator.' Then he ordered that the man be led out. Imam Malik clearly stated that discussing those issues was considered an innovation by the early scholars (*salaf*).

﴿هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ الْفِتْنَةِ وَابْتِغَاءَ تَأْوِيلِهِ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ وَالرَّاسِخُونَ فِي الْعِلْمِ يَقُولُونَ آمَنَّا بِهِ كُلٌّ مِنْ عِنْدِ رَبِّنَا وَمَا يَذَّكَّرُ إِلَّا أُولُو الْأَلْبَابِ، (آل عمران: 7)﴾

"It is He who has sent down to you, [O Muhammad], the Book: in it are verses [that are] precise—they are the foundation of the Book—and others unspecified. As for those in whose hearts is deviation [from truth], they will follow that of it which unspecified, seeking discord and seeking an interpretation [suitable to them]. And no one knows its [true] interpretation except Allah. But those firm in knowledge say, We believe in it. All [of it] is from our Lord." And no one will be reminded expect those of understanding." (3:7)

Acts of Worship

Worship is the core of spiritual life: It revives the soul, so it remains connected to its Creator, the Almighty. Through it, the human soul is purified from vices and reprehensible behaviour, thereby achieving the message of servitude to Allah the Almighty. It also adorns this universe with the remembrance of Allah the Omnipotent.

Islam has imposed the practices of worship that are necessary for the preservation of religion and has made what is not necessary an encouraged deed (*mandūb*) in a manner that is commensurate with one's energy and zeal. When it comes to *salat*, the five prayers were made obligatory for each Muslim. Along with the obligatory acts (*farā'idh*) some regular *sunan* were made to complement them. In addition, volunteering was made open all the time depending on the human's energy and zeal. As far as fasting is concerned, the fasting of the month of *Ramadan* was made an obligation. It is a *sunnah* to fast six days of *Shawwal*, and every Monday and Thursday. Anything beyond that is optional and welcome any days throughout the year depending on one's capacity. In terms of spending (*infāq*) and social solidarity, *zakat* is imposed on those who have reached the fixed amount (*niṣāb*) and met the required conditions. The payment of *zakat* is expected to achieve the minimum level of social solidarity. People are also highly

encouraged to spend on the needy as much as they can. They are promised high rewards on the day of Judgement for such spending.

﴿مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سُنْبُلَةٍ مِئَةُ حَبَّةٍ وَاللَّهُ يُضَاعِفُ لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ،
(البقرة: 261)﴾

“The example of those who spend their wealth in the way of Allah is like a seed [of grain] which grows seven spikes; in each spike is a hundred grains. And Allah multiplies [His reward] for whom He wills. And Allah is all-Encompassing and knowing.” (2:261)

Pilgrimage (*hajj*) was made a once-in-a-lifetime duty for those who were able to do so. Performing ‘*umrah* and the voluntary *hajj* are highly recommended for those who have the potential to do so.

The core of our mission in this life is to worship Allah, the Almighty. In worshipping Him, we must adhere to those devotional rituals singled out by Him without additions or omission.

Some acts of worship are mentioned in the Quran in absolute form. One example of that is *dhikr* (glorifying, revering and remembering Allah).

﴿الَّذِينَ يَذْكُرُونَ اللَّهَ قِيَامًا وَقُعُودًا وَعَلَىٰ جُنُوبِهِمْ وَيَتَفَكَّرُونَ فِي خَلْقِ السَّمَاوَاتِ وَالْأَرْضِ رَبَّنَا مَا خَلَقْتَ هَذَا بَاطِلًا سُبْحَانَكَ فَقِنَا عَذَابَ النَّارِ،
(آل عمران: 191)﴾

“They who remember Allah while standing or sitting or [lying] on their sides and give thought to the creation of the heavens and the earth, [saying], ‘Our Lord: You did not create this aimlessly: exalted are You [above such a thing]: then protect us from the punishment of the Fire.’” (3:191)

﴿فَإِذَا قَضَيْتُمُ الصَّلَاةَ فَادْكُرُوا اللَّهَ قِيَامًا وَقُعُودًا وَعَلَىٰ جُنُوبِكُمْ، (النساء: 103)﴾

“And when you completed the prayer, remember Allah standing, sitting, or [lying] on your sides.” (4:103).

The legitimacy of collective *dhikr* is clearly stated in the Sunnah of the Prophet. However, the legitimacy of some forms of collective *dhikr* may be disputed

among scholars such as collective *dhikr* and *du'a* (supplication) after congregational prayers. Some scholars consider it legitimate based on the original legitimacy of collective *dhikr*. Some others believe that the absence of such forms of *dhikr* during the Prophet's (ﷺ) time and during the time of the Companions indicates their illegitimacy, and thus consider it as a *bid'ah* (innovated act)

There are two guiding principles that should be considered regarding those devotional rituals which did not exist during the time of the Prophet's (ﷺ) and his Companions, and their legitimacy is disputed among later scholars:

(1) Muslims should adhere to the teachings of the Holy Quran and the authentic Sunnah of the Prophet. We must always remember the Prophet's (ﷺ) saying: "Whoever introduces into this matter of ours (meaning Islam) something that does not belong to it shall have it rejected." (*al-Bukhari*) Another narration by Muslim reads: "Whoever does something that is not in accordance with this matter of ours shall have it rejected." The Prophet (ﷺ) also said:

"إِنَّ الْحَلَالَ بَيِّنٌ، وَإِنَّ الْحَرَامَ بَيِّنٌ، وَبَيْنَهُمَا مُشْتَبِهَاتٌ لَا يَعْلَمُهُنَّ كَثِيرٌ مِنَ النَّاسِ، فَمَنْ اتَّقَى الشُّبُهَاتِ اسْتَبْرَأَ لِدِينِهِ وَعَرْضِهِ، وَمَنْ وَقَعَ فِي الشُّبُهَاتِ وَقَعَ فِي الْحَرَامِ، كَالرَّاعِي يَرْعَى حَوْلَ الْحِمَى يُوشِكُ أَنْ يَرْتَعَ فِيهِ، أَلَا وَإِنَّ لِكُلِّ مَلِكٍ حِمًى، أَلَا وَإِنَّ حِمَى اللَّهِ تَحَارُمُهُ." صحيح مسلم

"What is lawful is clear and what is unlawful is clear, but between them are certain doubtful things which many people do not know. So, he who guards against doubtful things keeps his religion and his honour blameless. But he who falls into doubtful things falls into that which is unlawful, just as a shepherd who grazes his cattle in the vicinity of a pasture declared prohibited (by the king); he is likely to stray into the pasture. Mind you, every king has a protected pasture and Allah's involved limits is that which He has declared unlawful." (*Muslim*)

And Allah Most-Merciful says in this context:

﴿قُلْ هَلْ نُنَبِّئُكُمْ بِالْأَخْسَرِينَ أَعْمَالًا الَّذِينَ ضَلَّ سَعْيُهُمْ فِي الْحَيَاةِ الدُّنْيَا وَهُمْ يَحْسَبُونَ أَنَّهُمْ يُحْسِنُونَ صُنْعًا﴾ (الكهف: 103-104)

"Say, [O Muhammad], 'Shall we [believers] inform you of the greatest losers as to [their] deeds? (*) [They are] those whose effort is lost in worldly life, while they think that they are doing well in work.'" (18:103-104)

Accordingly, Muslims should move away from suspicions and what could be considered as *bid'ah*. It is feared that one may tire himself of an act of worship that he deems it would bring him closer to Allah the Almighty; however, on the Day of Judgement he would discover that he was wasting his efforts in a rejected *bid'ah*.

The rule in Islam is that acceptance of any act of worship is subject to two conditions: sincerity to Allah (*ikhhlās*) and correctness (being clearly legitimated by the Quran and the Sunnah). Good intention is not enough unless it goes in accordance with the teachings of the Quran and the Sunnah. There are plenty of acts and forms of worship which are clearly legitimated by the Quran and the Sunnah and agreed upon by all scholars. The safest approach is to stick to those acts and forms of worship and avoid any other acts and forms whose legitimacy is questioned.

(2) What is disputed among scholars based on reasonable proofs should be tolerated and should not become a cause of bickering and enmity among Muslims. Whoever wants to defend his view should do that through polite academic debate. Disagreement in those matters should not be a reason for ruining fraternal relations in the Muslim society, stirring up discord and bias that would weaken Muslim society.

There should be a distinction between pure worship and activities held on religious occasions such as the Prophet's birth, the Prophet's migration, the Night Journey and the Ascension into Heavens (*israa' wa al-mi'raaj*), as well as activities related to social events such as marriage, the spring equinox, harvest season and others. Those activities are not acts of worship which are subject to the concept of *bid'ah* (innovation) because the concept of *bid'ah* in its religious meaning is limited to beliefs and acts of worship.

Activities related to social events are carried out by people for the purpose of sharpening determination and solidarity or for the purpose of entertainment and fun. They are judged on their purpose, the way they are carried out, and the accompanying acts. If the activity is originally legitimate, done in a legitimate way and not accompanied by any prohibited act, then it is considered as legitimate. If it is done in a prohibited manner or accompanied by other prohibited acts, then the activity becomes prohibited even if it is originally permissible.

For religious singing (*inshād*) and activities related to religious events, if they are practiced in a manner that is not contrary to the teachings of Shariah, they may have some benefits such as filling people's free time in a way that does not corrupt their religion and morals. However, if someone believes that those activities are integral parts of Islam or intends to perform them as forms of worship, then he is totally wrong and such performance amounts to *bid'ah*. The most dangerous consequence is to misuse those activities to distract people from their religious and social responsibilities and make them feel that, by doing such folkloric activities, they have disposed of their religious duties.

Take, for example, the issue of celebrating the Prophet's birthday. Anyone who believes that he would bring any benefit to the Prophet (ﷺ) by celebrating his birthday, or that he is worshiping Allah by celebrating the Prophet's birthday, is totally mistaken. The worship related to the Prophet (ﷺ), after his death, is to follow his Sunnah and *salat* on him which should be said by every Muslim at every time and place, as Allah says:

﴿إِنَّ اللَّهَ وَمَلَائِكَتَهُ يُصَلُّونَ عَلَى النَّبِيِّ يَا أَيُّهَا الَّذِينَ آمَنُوا صَلُّوا عَلَيْهِ وَسَلِّمُوا تَسْلِيمًا﴾ (الأحزاب: 56)

“Indeed, Allah confers blessing upon the Prophet, and His angels [ask Him to do so]. O you who have believed, ask [Allah to confer] blessing upon him and ask [Allah to grant him] peace.” (33:56)

If someone considers celebrating the birthday of the Prophet as an act of worship in Islam, then he is doing *bid'ah* (heresy). If it were an act of worship, it would have been stated by the Shariah texts and practiced by his Companions and early Muslims. If the person does not believe that it is an act of worship, but just an occasion to remember and express joy about the birth of the Prophet peace and blessings of Allah upon him, the act should not be categorized as *bid'ah* (heresy). In such case, if the celebration is not accompanied by any prohibited act, it may be tolerated. However, it should be known that celebrating birthdays have never been an Islamic practice. It is a practice of pagan origins.

Foods and Beverages

Allah, the Almighty, has created foods and drinks for mankind to survive and enjoy those bounties. All creatures are created for a wisdom and role to play, whether we realize it or we do not realize it. The legal maxim that governs food and drinks is: "the underlying principle regarding useful things is that they are originally permissible"; hence, it is not allowed for anyone to prohibit something based on his taste or customs. Prohibition can only be based on clear proofs from the Quran and the Sunnah. Allah Almighty says:

﴿قُلْ مَنْ حَرَّمَ زِينَةَ اللَّهِ الَّتِي أَخْرَجَ لِعِبَادِهِ وَالطَّيِّبَاتِ مِنَ الرِّزْقِ﴾ (الأعراف: 32)

“Say, “Who has forbidden the adornment of [i.e., from] Allah which He has produced for His servants and the good [lawful] things of provision.” (7:32)

The Prophet (ﷺ) made this clear when he was served some food containing the flesh of a lizard. He refrained from eating it. When he was asked if it was prohibited, he replied: "No, it is not *ḥarām*, but I grew up in an environment not accustomed to eating it, thus I feel disgusted by it." (*al-Muwatta'*)

Prohibition of food and drinks in Islam is based on harm, filth, and violation of the rights of others:

﴿وَيُجْلَىٰ هُمْ الطَّيِّبَاتِ وَيُحْرَمُ عَلَيْهِمُ الْخَبَائِثُ﴾، (الأعراف: 157)

"They shall be deprived of the good and they shall be forbidden of the evil."

(7:157)

Prohibition of foods and drinks is universal and not subject to differences in customs, time and place. What is decided by the Shariah as prohibited is prohibited on everyone at all times and places. That is because the grounds for prohibition (harm, filth and violation of the rights of others) do not change based on people, time, customs or places.

Ethics

Islam gives very high importance to all kinds of ethics: personal, social and professional. Personal ethics make human beings self-righteous, while social and professional ethics make social life orderly, harmonious and fruitful.

Fundamental bad morals such as lying, cheating, treachery, betrayal, tyranny, injustice, theft, and so forth, corrupt individuals' souls and social relations, destroy the social fibre and harm human beings. Therefore, their prohibition is absolute and universal. This prohibition applies equally to all people at all times and circumstances. On the other hand, the fundamental good morals such as honesty, sincerity, integrity, fulfilment of promise, and justice are the backbone of social as well as individual life. They must be always observed by all people at all times and circumstances.

High morals such generosity, forgiveness, altruism, charity, and helping others, are highly recommended by the Shariah and rewarded by Allah, but without making them obligatory. It is left to everyone to do what they can do.

Customs and Transactions

Transactions and customs are means of meeting people's material and psychological needs. The underlying principle in the Shariah with regard to transactions and customs is permissibility. Since the Shariah aims at establishing human life on justice and balance, its laws set guidelines that safeguard the rights of all parties. The Shariah, on the one hand, prohibits unfair and harmful practices and transactions, and, on the other hand, makes obligatory the fulfilment of the elements required for transactions to be useful, just and fair.

Transactions and customs may vary from one place to another and one time to another. The Shariah has strictly prohibited usury (*riba*), fraud and gambling. Some transactions were prohibited by name because they are harmful, unjust, unfair or absurd. Other than that, the Shariah left people free to choose transactions and customs which may suit them as long as they do not contradict Shariah teachings. Any innovated transactions and customs are left to the scholars to judge them in light of Shariah texts and principles.

The Prophet (ﷺ) said: "Allah has imposed obligations (*fara'idh*) that you should not neglect, set limits that you should not transgress, forbidden things that you should not violate, and He is silent about things for He has mercy on you. Therefore, do not inquire about them." (*al-Daraqutni*)

For example, regarding clothing, the Shariah stipulates that one's clothes must cover the '*awrah*' (parts of the body that must not be exposed); men should not imitate women in their dress and vice versa; Muslim clothes should not resemble nonbelievers' religious clothes and symbols; one's clothes should not manifest vanity and arrogance; and men should not wear gold and silk. However, when it comes to the manner, colour, and details of the dress, the Shariah did not impose anything specific. Rather, they are left to people's customs and traditions as long as they do not contradict the regulations established by the Shariah.

The Prophet (ﷺ) and his companions dressed in the clothes of their people from the Arabian Peninsula. They also dressed in the clothes imported from Yemen and *Sham* (Syria) which were inhabited by Christians and polytheists. Neither the Prophet (ﷺ) nor his Companions attempted to create specific clothes for Muslims. Therefore, any dress that meets the Shariah requirements as mentioned above is fit for Muslims to wear regardless of its origins. No one can impose their type of dress on others on the grounds that it is the only Islamic dress. In this regard, Ibn Ashur says: "we believe that the other people's habits—as they are—are not entitled to be borne by other people in legislation."⁵²

⁵² Ibn Ashur, *Maqasid Shariah*, p.235.

International Relations

The purpose of Shariah teachings on international relations is to regulate the relationship between Muslims and non-Muslims in situations of peace and war so that Muslims are protected in their religion and worldly interests.

The relationship with non-Muslims is based on their stance towards Islam and Muslims. Peace and good relations shall be established with those who respect Islam and Muslims and believe in coexistence with them:

﴿لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِنْ دِيَارِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ﴾ (*) ﴿إِنَّمَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ قَاتَلُوكُمْ فِي الدِّينِ وَأَخْرَجُوكُمْ مِنْ دِيَارِكُمْ وَظَاهَرُوا عَلَىٰ إِخْرَاجِكُمْ أَنْ تَوَلَّوهُمْ وَمَنْ يَتَوَلَّهُمْ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ﴾ (الممتحنة: 8-9)

“Allah does not forbid you from those who do not fight you because of religion and do not expel you from your homes—from being righteous toward them and acting justly toward them. Indeed, Allah loves those who act justly (*) Allah only forbids you from those who fight you because of religion and expel you from your homes and aid in your expulsion—[forbids] that you make allies of them.

And whoever makes allies of them, then it is those who are the wrongdoers.”

(60:8-9)

The message of Islam is to invite all people to believe in the oneness of God and follow the religion of Islam. Good treatment is the best way to advocate the religion of Islam and attract people to it.

Those who are hostile to Islam and Muslims should face fierce action:

﴿وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقَاتِلُونَكُمْ وَلَا تَعْتَدُوا ۗ إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ ۗ وَأَقْتُلُوهُمْ حَيْثُ تَقْتُلُوهُمْ وَأَخْرِجُوهُمْ مِّنْ حَيْثُ أَخْرَجُوكُم ۗ وَالْفِتْنَةُ أَشَدُّ مِنَ الْقَتْلِ﴾ (البقرة: 191-192)

“Fight in the cause of Allah against those who wage war against you, but do not exceed the limits. Allah does not like transgressors. Kill them wherever you come upon them and drive them out of the places from which they have driven you out. For persecution is far worse than killing.” (2:190-191)

﴿فَإِنَّمَا تُنَفِّقُهُمْ فِي الْحَرْبِ فَمَشَرَدٌ بِهِمْ مِّنْ خَلْفِهِمْ أَعْلَهُمْ يَدَكَّرُونَ﴾ (الأنفال: 57)

“If you ever encounter them in battle, make a fearsome example of them, so perhaps those who would follow them may be deterred.” (9:57)

5.4. Weighing Between *Maṣlahah* and *Mafsadah*

The main objective of the Shariah, as stated by some scholars, is to bring *maṣlahah* (benefit) to people and ward off *mafsadah* (evil).

The underlying rule is that people are permitted to acquire the *maṣāliḥ* (benefits) they want and to avoid any *mafsadah* they may face. However, there are situations where *maṣlahah* and *mafsadah* come together and one has to find a way to weigh between them. There are situations where various *maṣāliḥ* clash with each other and one has to give preference to the best of them and sacrifice others. There are situations where one may face various *mafāsīd* and cannot avoid all of them. Thus, one has to accept the lesser of them and try to repel the worst. In all of these situations there should be rules for weighing and giving preference.

One of the objectives of Shariah in its legislative methodology is weighing between *maṣlahah* and *mafsadah* whenever there is a conflict between them. This chapter explains the main rules of that methodology.

5.4.1. Levels of *Maṣlahah* and *Mafsadah*

Maṣlahah is what secures physical, psychological and spiritual needs for mankind according to Shariah teachings and helps to fulfil the requirements of submission to Allah (*‘ubudiyyah*).

Generally, *maṣlahah* may be related to preservation of religion, preservation of life, preservation of lineage, preservation of intellect, or preservation of wealth. *Mafsadah* is what causes physical, psychological or spiritual harm to mankind and hinders achieving submission to Allah. *Mafsadah* may be related to religion, life, lineage, intellect or wealth.

Maṣlahah is of various levels. Allah, the Almighty, said regarding the levels of good deeds:

﴿أَجْعَلْتُمْ سِقَايَةَ الْحَاجِّ وَعِمَارَةَ الْمَسْجِدِ الْحَرَامِ كَمَنْ آمَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَجَاهَدَ فِي سَبِيلِ اللَّهِ لَا يَسْتَوُونَ عِنْدَ اللَّهِ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ﴾ (التوبة: 19)

“Have you made the providing of water for the pilgrim and the maintenance of *al-Masjid al-Haram* equal to [the deeds of] one who believes in Allah and the Last Day and strives in the cause of Allah? They are not equal in the sight of Allah.

And Allah does not guide the wrongdoing people.” (9:19)

Some of the unbelievers in Makkah used to serve pilgrims by providing them water and maintaining *al-Masjid al-Haram*. They thought those acts were sufficient to save them and give them privilege over *al-Masjid al-Haram*. The Quran acknowledges those acts as good deeds; however, they are not enough to save them or give them any privilege over *al-Masjid al-Haram*. Believing in the oneness of God and striving in the cause of Allah are much higher than those deeds.

When the Prophet (ﷺ) was asked about the best deeds, he said: "Faith in Allah and His Messenger." He (ﷺ) was asked, "What is next?" He (ﷺ) replied, "Jihad in the cause of Allah." Then he was asked: "What is after that (in goodness)?" He (ﷺ) replied, "Hajj *mabrur* (which is accepted by Allah)." (*al-Bukhari*)

As explained in Chapter Two, Scholars divided *maṣāliḥ*, regarding their significance to human life, into three categories: necessities, needs and luxuries.

Mafsadah is of various levels. For example, the Holy Quran divided sins into major sins (*kaba'ir*) and minor sins (*sagha'ir*). Allah the Almighty says:

﴿الَّذِينَ يَجْتَنِبُونَ كَبَائِرَ الْإِثْمِ وَالْفَوَاحِشَ إِلَّا اللَّمَمَ إِنَّ رَبَّكَ وَاسِعُ الْمَغْفِرَةِ﴾ (النجم: 32)

"Those who avoid the major sins and immoralities, only [committing] slight ones. Indeed, your Lord is vast in forgiveness." (53:32)

In another verse, He says:

﴿إِنْ تُحِبُّوا كَبَائِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّئَاتِكُمْ وَنُدْخِلْكُمْ مُدْخَلًا كَرِيمًا﴾ (النساء: 31)

"If you avoid major sins which you are forbidden, We will remove from you your lesser sins and admit you to a noble entrance [into Paradise]." (4:31)

It is reported that the Prophet (ﷺ) was asked: "What is the greatest sin in the sight of Allah?" He said, "That you associate a partner with Allah though He Alone created you." I said, "That is indeed a great sin." Then he was asked, "What is next?" He said, "To kill your child lest he should share your food with you." I asked, "What is next?" He said, "To commit illegal sexual intercourse with your neighbour's wife." (*al-Bukhari*)

5.4.2. How to Identify *Maslahah* and *Mafsadah*?

The fundamental criterion in the identification of *maṣlahah* is the rule of the Shariah. What the Shariah requires, encourages or permits is a *maṣlahah* in its origin. What the Shariah forbade is *mafsadah*. It is possible to identify what is *maṣlahah* or *mafsadah* regarding worldly affairs by human reasoning and experience guided by Shariah teachings. However, when it comes to what is *maṣlahah* and *mafsadah* relating to the Hereafter, the only criterion for that is Shariah texts.

Izzudin bin Abdulsalam says: "Every obligated act has a *maṣlahah* in the worldly life and the Hereafter or in one of them, and what is forbidden is *mafsadah* in one or both of them."⁵³

5.4.3. Justification for Weighing Between *Maslahah* and *Mafsadah*

The objective of weighing between *maṣlahah* and *mafsadah* is clearly stated in the texts of the Holy Quran and the Prophet's Sunnah. Following are some of those texts:

a) Allah the Almighty says:

﴿سَأَلْنَاكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ فُلَانٌ قِتَالٌ فِيهِ كَبِيرٌ وَصَدُّ عَنْ سَبِيلِ اللَّهِ وَكُفْرٌ بِهِ وَالْمَسْجِدِ الْحَرَامِ وَإِخْرَاجُ أَهْلِهِ مِنْهُ أَكْبَرُ عِنْدَ اللَّهِ وَالْفِتْنَةُ أَكْبَرُ مِنَ الْقَتْلِ﴾ (البقرة: 217)

“They ask you about the sacred month—about fighting therein. Say, “Fighting therein is great [sin], but averting [people] from the way of Allah and disbelief in Him and [preventing access to] *al-Masjid al Haram* and the expulsion of its people therefrom are [evil] in the sight of Allah. And *fitnah* is greater than killing.”

(2:217)

The Holy Quran acknowledged that fighting during the month of *Muharram* was a great evil, but what was done by the unbelievers against Islam and Muslims such as averting people from embracing Islam, disbelieving in Allah, violating the sacredness of the Holy Mosque and forcing believers out of it, are acts of greater evil than fighting in that month. Thus, those greater evils justify the evil of fighting during the month of *Muharram* despite it being a *mafsadah*.

⁵³ Izzudin bin Abdulsalam, *Al-Qawaid Al-Kubra*, vol.1, p.11.

b) Allah the Almighty says:

﴿يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا، (البقرة: 219)﴾

“They ask you about wine and gambling. Say, “In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit.” (2:219)

The Holy Quran states that there might be some benefit in wine and gambling. However, they cause great evil, and their evil is much greater than their benefit. Thus, Allah prohibited them.

c) Allah the Almighty says:

﴿هُمُ الَّذِينَ كَفَرُوا وَصَدُّوكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ وَالْهَدْيِ مَعْكُوفًا أَنْ يَبْلُغَ حَيْلَهُ وَلَوْ لَا رِجَالٌ مُؤْمِنُونَ وَنِسَاءٌ مُؤْمِنَاتٌ لَمْ تَعْلَمُوهُمْ أَنْ تَطَّوَّهُمْ فَنُصِيبِكُمْ مِنْهُمْ مَعْرَةً بَغَيْرِ عِلْمٍ لِيُدْخِلَ اللَّهُ فِي رَحْمَتِهِ مَنْ يَشَاءُ لَوْ تَزَيَّلُوا لَعَذَّبْنَا الَّذِينَ كَفَرُوا مِنْهُمْ عَذَابًا أَلِيمًا، (الفتح: 25)﴾

“They are the ones who disbelieved and obstructed you from *al-Masjid al-Haram* while the offering was prevented from reaching its place of sacrifice. And if not for believing men and believing women whom you did not know — that you might trample [i.e., kill] them and there would befall you because of them dishonour without [your] knowledge — [you would have been permitted to enter Makkah]. [This was so] that Allah might admit to His mercy whom He willed. If they had been apart [from them], We would have punished those who disbelieved among them with painful punishment.” (48:25)

These verses were revealed after the *al-Hudaibiyah* truce, when the unbelievers attempted to prevent the Prophet and his companions from entering Mecca to perform ‘*umrah*. The situation ended with the signing a truce, whose provisions included that the Muslims refrain from performing ‘*umrah* that year with the condition that they would be allowed to perform it the following year.

This verse points out that forcibly entering Mecca could lead to mistakenly killing some believers, men and women, who concealed their faith and kept their embrace of Islam a secret. The Quran considered killing those believers mistakenly a greater evil than preventing the Prophet and his companions from performing ‘*umrah* that year. Killing those innocent believers is something that

cannot be reversed, however, *'umrah* could be performed in the next year. Moreover, signing that peace convention was one of the greatest benefits for Islam. As result of that, thousands of people embraced Islam. That is why the Holy Quran called it a clear victory (فَتْحًا مُبِينًا).

- d) After conquering Mecca, the Prophet (ﷺ) refrained from rebuilding the *Kaaba* on the foundations laid down by Ibrahim. After being demolished by a torrent, Quraysh rebuilt it with a vow to use only good money from lawful sources. The good and lawful money they had was not enough for them to rebuild it on the foundations laid down by Ibrahim. Thus, they left part of it unbuilt. After conquering Mecca, the Prophet (ﷺ) wished to rebuild it on the foundations laid down by Ibrahim but feared that there would be *fitnah* (sedition) among the people who were new to Islam. They might think that the Prophet was violating the sacredness of the *Ka'bah*. Although rebuilding the *Ka'bah* on its real foundations was a great *maṣlahah*, the expected *fitnah* was considered to be greater than that *maṣlahah*.

In this regard, Aishah narrated: 'I asked the Prophet (ﷺ) about the wall (adjacent to the *Ka'bah*). "Is it regarded as part of the *Ka'bah*?" He replied, "Yes." I said, "Then why didn't the people include it in the *Ka'bah*?" He said, "(Because) your people ran short of money." I asked, "Then why is its gate so high?" He replied, "Your people did so to admit to it whom they would and forbid whom they would. Were your people not still close to the period of disbelief (*jahiliyyah*) and were I not afraid that their hearts might deny my action, then surely, I would include the wall in the *Ka'bah* and make its gate touch the ground." Aisha said that the Prophet (ﷺ) said to her, "O Aisha! Were your people not close to the pre-Islamic period of ignorance, I would have had the *Ka'bah* demolished, and would have included in it the portion which had been left, and would have made it at a level with the ground and would have made two doors for it, one towards the east and the other towards the west, and then by doing this it would have been built on the foundations laid by Ibrahim." (*al-Bukhari*)

- e) It is known that the hypocrites caused great *mafsadah* (harm) to the Muslim community. However, the Prophet (ﷺ) refrained from killing them for fear of resulting in greater *mafsadah* such as preventing some people from embracing Islam after the spreading of rumours that the

Prophet kills some of his companions. Outsiders thought that the hypocrites were companions of the Prophet since they were part of the Muslim community.

It was reported that during one of the expeditions led by the Prophet (ﷺ), there was some quarrelling between a group of *Muhajirīn* and *Anṣār*. Commenting on the event, the head of the hypocrites, Abdullah bin Ubayy bin Sallul said:

“أما واللّه لئن رجعنا إلى المدينة ليخريحن الأعرض منها الأذلّ، فبَلَغَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، فَقَامَ عُمَرُ فَقَالَ: يَا رَسُولَ اللهِ: دَعْنِي أُضْرِبُ عُقْبَ هَذَا الْمَنَافِقِ، فَقَالَ النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: "دَعْنَهُ، لَا يَتَحَدَّثُ النَّاسُ أَنَّ مُحَمَّدًا يَقْتُلُ أَصْحَابَهُ." صحیح البخاری

“By God, if we return to Medina, the respectable (referring to himself) would turn away the mean (referring to the Prophet and his companions). Thereupon, Omar said: Permit me to strike the neck of this hypocrite. But the Prophet said: Leave him, so that people would not say that Muhammad kills his companions.”

At that time, the Prophet (ﷺ) considered the damage of the rumours that Muhammad was killing his companions, and the fact that those rumours may prevent people from converting to Islam was greater than the damage caused by hypocrites in the Muslim society.

From the above examples, it is clear that one of the legislator's objectives in legislative methodology is weighing between *maṣlahah* and *mafsadah*.

5.4.4. Criteria for Weighing Between *Maṣlahah* and *Mafsadah*

The best suggested criteria for weighing between *maṣlahah* and *mafsadah* I have seen is the one introduced by Pr. Dr. Abdul Majeed Al-Suswa in his book: "*Fiqh al-Muwazanat fi al-Shariah al-Islamiyyah*". The basic parts of those criteria are sound and useful. However, there is inaccuracy in some of its details. In this book, I am going to adopt those criteria with some significant modifications.

The seven criteria set by al-Suswa are: (1) Preferring the highest in the category of *ḥukm shar'ī*. (2) Preferring the higher in the rank of *maṣlahah*. (3) Preferring the higher in the kind/area of *maṣlahah*. (4) Preferring the public interest over the private one. (5) Preferring the higher *maṣlahah* in value. (6) Preferring the more lasting *maṣlahah*. (7) Preferring the more certain to be achieved. In this book, criteria (5) and (6) will be merged in one criterion. Thus, the total will be 6 criteria only.

5.4.4.1. First Criterion: Preferring the Higher in the Category of *Hukm Shar'i*

The first criterion for weighing between *maṣlahah* and *mafsadah* is the category of *hukm shar'i*.

It should be noted that what is forbidden by Shariah is *mafsadah*, and what is required or permitted is *maṣlahah*. Allah said:

﴿يَأْمُرُهُم بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُجِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ، (الأعراف: 157)﴾

“Who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves them of their burden and the shackles which were upon them.” (7:157)

This criterion is based on the fact that the category of *hukm shar'i* is related to the level of the expected *maṣlahah* or *mafsadah*. Based on the level of the expected *maṣlahah*, the *hukm shar'i* is ranked from obligation to recommendation. The obligatory is of a higher rank than the recommended because the obligatory contains a greater *maṣlahah* than the recommended. Thus, whenever there is a conflict, the obligatory is preferred over the recommended and the permissible, and the recommended is preferred over the permissible. Prohibition is based on *mafsadah*. The level of *mafsadah* in the forbidden is higher than its level in the reprehensible. Thus, whenever there is conflict between the prohibited and the reprehensible, avoidance of the prohibited is preferred.⁵⁴

5.4.4.1.1 Weighing between the duties related to the rights of Allah and the duties related to the rights related to human beings

The relationship between Allah's rights and the rights of human beings may be detailed as follows:

1. Should the rights of Allah be among the necessary religious duties; they shall precede the rights of people.

For example, one of the rights of parents is to honour and obey them, but should parents order their child to do something forbidden, such as

⁵⁴ Izzudin bin Abdulsalam, *Al-Qawaid Al-Kubra*, vol.1, pp.75-77.

associating partners with Allah, injustice, leaving prayer, or other necessary religious duties, Allah's obedience shall precede obedience to one's parents. Allah Almighty said:

﴿وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ حَمَلَتْهُ أُمُّهُ وَهْنًا عَلَىٰ وَهْنٍ وَفِصَالُهُ فِي عَامَيْنِ أَنِ اشْكُرْ لِي وَلِوَالِدَيْكَ إِلَيَّ الْمَصِيرُ (14) وَإِن جَاهَدَاكَ عَلَىٰ أَنْ تُشْرِكَ بِي مَا لَيْسَ لَكَ بِهِ عِلْمٌ فَلَا تُطِعْهُمَا وَصَاحِبُهُمَا فِي الدُّنْيَا مَعْرُوفًا وَاتَّبِعْ سَبِيلَ مَنْ أَنَابَ إِلَيَّ ثُمَّ إِلَيَّ مَرْجِعُكُمْ فَأُنَبِّئُكُمْ بِمَا كُنتُمْ تَعْمَلُونَ، (لقمان: 15)﴾

“And We have enjoined upon man [care] for his parents. His mother carried him, [increasing her] in weakness upon weakness, and his weaning is in two years. Be grateful to Me and to your parents; to Me is the [final] destination. (*) But if they endeavour to make you associate with Me that of which you have no knowledge, do not obey them but accompany them in [this] world with appropriate kindness and follow the way of those who turn back to Me [in repentance]. Then to Me will be your return, and I will inform you about what you used to do.” (31:15)

Likewise, Muslim rulers have right to be obeyed in their commands. However, if those commands violate the teachings of the Shariah, there should be no obedience. The Prophet Muhammad said:

"السَّمْعُ وَالطَّاعَةُ حَقٌّ مَا لَمْ يُؤْمَرْ بِالْمَعْصِيَةِ، فَإِنِ أُمِرَ بِمَعْصِيَةٍ فَلَا سَمْعَ وَلَا طَاعَةَ." صحيح البخاري

“It is obligatory upon a Muslim to listen (to the ruler) and obey, except when he is ordered to do a sinful thing; in such case, there is no obligation to listen or to obey.” (*al-Bukhari*)

The wife and children have the right to maintenance. However, should their maintenance require earning from prohibited sources, then that shall be avoided.

If a person borrows money from another person, then he is unable to repay except by taking money from what is forbidden, he should not do what is forbidden to pay off the debt. Rather, the creditor must give the debtor time until he is able to repay. Allah, the Almighty, said:

﴿وَإِن كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِن كُنتُمْ تَعْلَمُونَ، (البقرة: 280)﴾

“And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you, if you only knew.” (2:280)

2. If the rights of Allah are not among the necessities of religion, such as voluntary acts of worship, then it is possible to prioritize the rights of the people over them, such as prioritizing the rights of parents over voluntary prayers.

5.4.4.1.2 Weighing between the current obligation and an obligation that may be delayed

In case of conflict between a current obligation that cannot be delayed and another obligation that has extended time for performance, the current obligation must be given preference. Neglecting the current duty is a sinful act, while the duty that has extended time may be performed later after accomplishing the current duty. By doing this, one will be able to perform both obligations.

5.4.4.1.3 Weighing based on the availability of a substitute

What is irreplaceable is given priority over what can be substituted. Saving a drowning person, extinguishing a fire, or self-defence shall precede the performance of prayers even once they are overdue.⁵⁵ If a person is preoccupied with saving a person's life from drowning, fire, or other disasters, or is preoccupied with self-defence, and that emergency continues until the time of prayer begins, then he must not stop fighting the aggressor or saving the one who is exposed to death in order to perform the prayer on time, rather he should continue what he was doing. If he is done before the time of prayer ends, that is all the better. If that takes the whole prayer's time, he must make up for the missed prayer afterward. This is, of course, if there is no other person who would replace him in accomplishing that task in order for him to perform prayer then return to complete it. This happened with the Prophet (ﷺ) and his companions on the day of the battle of *Al-Aḥzāb*. Ali bin Abu Talib narrated:

⁵⁵ Izzudin bin Abdulsalam said: "Rescuing the drowning infallible people is preferred over performing prayers; that's because rescuing them is better for Allah than performing the prayer. Combining the two benefits is also possible by rescuing the drowning people and then completing the prayer. It is known that missing the benefit of performing the prayer does not come close to saving a Muslim soul from destruction". (*Al-Qawaid Al-Kubra*, vol.1, p.96.)

"لَمَّا كَانَ يَوْمُ الْأَحْزَابِ، قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "مَلَأَ اللَّهُ قُبُورَهُمْ وَبُيُوتَهُمْ نَارًا كَمَا حَبَسُونَا وَشَغَلُونَا عَنِ الصَّلَاةِ الْوَسْطَى حَتَّى غَابَتِ الشَّمْسُ." صحيح مسلم

"When it was the day (of the Battle) of *Al-Ahḏāb*, the Messenger of Allah (ﷺ) said: May Allah fill their graves and houses with fire, as they prevented us and diverted us from the middle prayer, till the sun set." (*Muslim*)

5.4.4.1.4 Weighing between collective duties (*farḍ kifāyah*)

Regarding collective duties, the duty that no one has undertaken shall be given preference over a duty that was undertaken by some, even if it is not fully accomplished, because achieving part of the collective duty is better than abandoning it entirely. Preference, also, should be given to the collective duty that was performed by an insufficient number of people over another collective duty that is taken by a sufficient or redundant number of people.

5.4.4.1.5. Weighing between the individual duty (*farḍ ‘ain*) and the collective duty (*farḍ kifāyah*)

Al-Juwayni was of the opinion that collective duties should be given priority over the performance of individual duties. He argued that the performer of the collective duty replaces the entire community in fulfilling the duty and relieving them of the blame, while the benefit of the individual duty is limited to the one who does it. Al-Nawawi supported him in this view.⁵⁶ However, al-Shatibi took a different stance. He divided the individual duty into two types: (a) What is related to religious matters, namely worship. (b) What is related to worldly affairs, such as working to support oneself and his dependants.⁵⁷

(a) Conflict between the individual religious duties and the collective duties

If there happens to be a conflict between an individual duty related to religious matters and a collective duty related to community benefits, and the preoccupation with the collective duty violates an individual religious duty, such as the necessary acts of worship and the prohibitions that must be avoided, then

⁵⁶ Al-Nawawi, *Al-Majmu' sharī Al-Muhazzab*, vol.1, p.442.

⁵⁷ Al-Shatibi, *Al-Muwafaqat*, vol.2, p.48.

the individual duty shall precede the collective duty. Therefore, Muslims shall not seek to participate in those collective duties if preoccupation with them violates their individual religious duties.

However, if being busy with collective duties does not violate individual religious duties, but rather causes them to have some deficiency that prevents perfection, then such a deficiency shall be tolerated because perfection falls under recommendation. One should not refrain from carrying out collective duties that bring public interest in order to avoid that deficiency seeking perfection in his worship. An example of this is the thoughts one may get during prayer which are related to work. It was reported that Umar bin Al-Khattab used to have thoughts about preparing the army when he was performing prayers.

(b) Conflict between individual duties related to worldly affairs and collective duties

If performing a collective duty which is for the benefit of the public makes someone unable to perform his worldly personal duties such as earning money to support himself and his dependents, he may proceed with performing that collective duty with the condition that the community arranges for some remuneration in a way that helps him to fulfil his personal responsibilities and does not overburden the community. That may be done by taking remuneration from the public treasury or from a *waqf*. In this way, both the collective and the individual interests can be fulfilled without causing harm to any of the parties. An example of this is the governors, administrators, judges ...etc. who give their full time to fulfil the collective duties.

5.4.4.2. Second Criterion: Preferring the Higher in the Rank of *Maṣlaḥah*

Maṣlaḥah is divided, regarding its level of importance to human life, into three levels: the necessities (*al-dharuriyyāt*), the needs (*al-ḥajjiyyāt*), the luxuries (*al-taḥsīniyyāt*). Whenever there is a conflict of interest between these three levels, necessities shall take precedence over both needs and luxuries, and needs shall take precedence over luxuries.

This criterion falls under the legal maxim: “committing the lesser of two evils.”

We may include under this criterion the following sub-criteria: (a) preserving the whole is given priority over preserving some of its parts if attempts to fulfil some parts lead to sacrificing the whole. For example, if there is a disease in an organ

that runs to the rest of the body, and the removal of that organ stops the spread of the disease, then the organ should be removed to preserve the whole body.

(b) The core of *maṣlaḥah* should be given priority over what complements it if attempting to fulfill the complements leads to sacrificing the core. For example, it is preferable to perform *ṣalāt* on time without facing the Qiblah if it is not possible to face it, or without completing some of its conditions if it is not possible to fulfil them, over delaying *ṣalāt* until its time has passed.

5.4.4.3. Third Criterion: Preferring the higher in the kind/area of *maṣlaḥah*

If conflicting interests are equal in rank such as conflict between necessities, or between needs, or between luxuries, preference will be based on the level of the five areas of *maṣlaḥah* (the five universal values).

The common ordinal arrangement of those five areas (universal values) is the one given by Al-Ghazali: "The Lawgiver's purpose of creation is five: to preserve their religion, lives, intellect, offspring, and wealth. All that involves preserving these five elements is a *maṣlaḥah*, and all that violates these elements is *mafsadah* and repelling what causes *mafsadah* is considered as *maṣlaḥah*."⁵⁸ Although Al-Ghazali did not explicitly state that the ordinal arrangement should be in this manner, it seems that he sees it in this way. After al-Ghazali, the majority of scholars adopted this order.

Al-Amadi disagreed with this order. He prioritized lineage over intellect, and arranged them as follows: religion, life, lineage, intellect, and wealth.⁵⁹ He justified that by saying: "Accordingly, the objective in preserving lineage is prior to the objective in preserving intellect and wealth, because preserving lineage is related to preserving life."⁶⁰

It should be noticed that when the scholars of *usul al-fiqh* arranged those five, they did not look at their existence and attainment, but rather at weighing them in cases of conflict according to their importance. They did not mean that a person should first begin with attaining and preserving religion, then life, then lineage, then intellect, and lastly wealth. In fact, all those five essentials need to be attained and preserved simultaneously. However, if there is a conflict between

⁵⁸ Al-Ghazali, *Al-Mustafa*, vol.1, p. 217.

⁵⁹ Al-Amidi, *Al-Iḥkam fi Usul Al-Aḥkam*, vol.4, p.338.

⁶⁰ *Ibid*, vol.4, p.340.

them and it is impossible to combine them, it will be necessary to weigh between them, and that prioritization shall be according to the stated order based on its importance.

(a) Putting religion in the first position does not mean it has absolute prioritization over the other four. The foundation of religion, especially beliefs, is given absolute priority over the other four whenever there is a conflict. However, some religious rituals may be compromised to save life, intellect, lineage or wealth.

For example, if a Muslim is given an ultimatum to renounce his religion or sacrifice his life, he should give priority to preserving his religion over preserving his life. However, if he is given an ultimatum to neglect some religious rituals or sacrifice his life, the priority should be given to preserving life.

The fact that preserving the foundation of religion precedes the preservation of life is unquestionable in the Shariah. The Quran praised those who sacrificed themselves to preserve the foundation of their religion in the story of the people of the ditch:

﴿قَاتِلْ أَصْحَابَ الْأُخْدُودِ﴾ (* النَّارِ ذَاتِ الْوُقُودِ *) (إِذْ هُمْ عَلَيْهَا قُعُودٌ) (* وَهُمْ عَلَىٰ مَا يَفْعَلُونَ بِالْمُؤْمِنِينَ شُهُودٌ *) (وَمَا نَقَمُوا مِنْهُمْ إِلَّا أَنْ يُؤْمِنُوا بِاللَّهِ الْعَزِيزِ الْحَمِيدِ) ﴿البروج: 4-8﴾

“Condemned are the makers of the ditch—the fire [pit], filled with fuel—when they sat around it, watching what they had [ordered to be] done to the believers, who they resented for no reason other than belief in Allah—the Almighty, the Praiseworthy.” (85:4-11)

Allah, the Almighty, commanded those who face religious persecution to emigrate, if they are able to do so, to another place where they can practice their religion, and threatened those who died while they were infidels with painful punishment:

﴿إِنَّ الَّذِينَ تَوَفَّاهُمُ الْمَلَائِكَةُ طَالِبِي أَنفُسِهِمْ قَالُوا فِيمَ كُنْتُمْ قَالُوا كُنَّا مُسْتَضْعِفِينَ فِي الْأَرْضِ قَالُوا أَلَمْ تَكُنْ أَرْضَ اللَّهِ وَاسِعَةً فَتُهَاجِرُوا فِيهَا فَأُولَئِكَ مَأْوَاهُمْ جَهَنَّمُ وَسَاءَتْ مَصِيرًا﴾ (* إِلَّا الْمُسْتَضْعِفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانِ لَا يَسْتَطِيعُونَ حِيلَةً وَلَا يَهْتَدُونَ سَبِيلًا *) (فَأُولَئِكَ عَسَى اللَّهُ أَنْ يَعْتَمُرَ عَنْهُمْ وَكَانَ اللَّهُ عَزُومًا غَفُورًا) ﴿النساء: 97-99﴾.

“Indeed, those whom the angels take [in death] while wronging themselves - [the angels] will say, "In what [condition] were you?" They will say, "We were

oppressed in the land." The angels will say, "Was not the earth of Allah spacious [enough] for you to emigrate therein?" For those, their refuge is Hell - and evil it is as a destination. (*) Except for the oppressed among men, women and children who cannot devise a plan nor are they directed to a way – (*) For those it is expected that Allah will pardon them, and Allah is ever Pardoning and Forgiving." (4:97-99)

(b) Prioritizing preservation of life over some religious rituals is indicated in the permission to utter the word of disbelief in the event of compulsion, provided that the heart remains full of faith:

﴿مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أُكْرِهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ وَلَكِنْ مَنْ شَرَحَ بِالْكُفْرِ صَدْرًا فَعَلَيْهِمْ غَضَبٌ مِنَ اللَّهِ وَلَهُمْ عَذَابٌ عَظِيمٌ﴾
(النحل: 106).

“Whoever disbelieves in Allah after his belief... except for one who is forced [to renounce his religion] while his heart is secure in faith. But those who [willingly] open their chest to disbelief, upon them is wrath from Allah, and for them is a great punishment;” (16:106)

(c) What is essential for preserving life is given priority over lineage, intellect and wealth. However, some needs for preservation of life may be compromised to save the necessary requirements for preserving lineage, intellect and wealth.

To sum up, some religious matters fall into the rank of necessity, some of them fall into the rank of needs, and some of them fall into the rank of luxuries. The same applies to life, lineage, intellect and wealth. In case of conflict, the necessities related to religion shall be given precedence over the necessities related to life, lineage, intellect and wealth. The necessities of life are given precedence over the necessities of lineage, intellect and wealth. The necessities of each kind of the five universal values are given priority over the needs and compliments of the other kinds. Needs are always given priority over luxuries. However, when it comes to weighing within the rank of needs, things may be needed to be examined case by case even though, in general, the needs for preserving religion may be given priority over the needs for preserving life.

5.4.4.4. Fourth Criterion: Preferring Public *Maṣlaḥah* over the Private one

5.4.4.4.1. Weighing between private and public *maṣlaḥah*

One of the *fiqh* legal maxims is: "personal harm shall be incurred to prevent public harm."⁶¹

Most of those who wrote about weighing between private and public benefits state that public benefits should take precedence over private benefits. They substantiate their opinion with examples most of which are inaccurate or irrelevant.⁶²

The proper criterion for weighing between public benefit and private benefit, in case of conflict, is the following:

Situation 1. When the private benefit is an existing fixed right of its owner. For example, a person owns a land that is needed by the Muslim community to set up a project for public welfare, that could only be established on that land, and the landowner agrees to give his property either as a donation or with compensation. In this situation, there is no problem. This occurred in the Prophet's time during the construction of his mosque:

عن أنس بن مالك رضي الله عنه: "لما قدم رسول الله صلى الله عليه وسلم المدينة وأمر ببناء المسجد، أرسل إلى ملاء بني النجار، قال فجاءوا... فقال لهم: "يا بني النجار ثامنوني بمائتكم هذا. قالوا: لا والله لا نطلب ثمنه إلا إلى الله." صحيح البخاري

Anas Bin Malik said: "When the Prophet (ﷺ) arrived Medina, he ordered that a mosque should be built and sent to the leaders of Banu-An-Najjar. When they came, the Prophet said: "O Bani An-Najjar! Suggest to me the price of this piece of land of yours. They replied, "No! By Allah! We do not demand its price except from Allah." (*al-Bukhari*)

However, if the owner of the property refuses to relinquish his property even for compensation, is it permissible to force him to do so?

Al-Samhoudi stated that when Umar Bin Al-Khattab wanted to expand the Prophet's Mosque, he offered three choices to homeowners who were part of the expansion plan: (a) compensation from the treasury for those who wanted to sell

⁶¹ Al-Hamawi, *Ghamz 'Uyun Al-Basair*, vol. 2, p.93.

⁶² You may see some of those example are in: Al-Hamawi, *Ghamz 'Uyun Al-Basair*, vol.1, pp.280-282.

their houses, (b) donation for those who wanted to give it as charity, (c) compensation by building another house at the expense of the state treasury in a place of their choice. When Al-Abbas bin Abdul-Mutalib refused to relinquish his house in any of the three forms, both Al-Abbas and Umar bin Al-Khattab went to Ubay bin Ka'ab to break the tie. Ubay bin Ka'ab told them that the Prophet Muhammad said: "Allah revealed to Dawud to build a mosque in which the name of Allah is much mentioned. Dawud planned a map of the construction of the Holy House, but part of his yard was at the corner of a man's house from the Tribe of Israel. Dawud went to ask the man to sell his house, but the man refused to do so. After that, Dawud considered taking it from him by force. Then Allah revealed to him: "I instructed you, Dawud, to build a house in which my name is much mentioned, and you wanted to bring the force into my house, and this is none of my business, and your punishment is not to build it." Therefore, Umar told Al-Abbas: "Go, I do not want to take your house." Al-Abbas said, "If you say that, I have given it as charity to Muslims in order to extend their mosque."⁶³

There is an opinion that it is possible to forcibly take the property in return for compensation or at least an amount equal to the price of that property, since in this case, the person with a private benefit will not have lost his benefit but rather it will be compensated for with its equal or what satisfies him.

At its fourth session (18-23 Jumada Al-Akhirah, 1408 A.H.), the Islamic Fiqh Academy issued a resolution setting out the conditions for the dispossession of private property in favour of public benefit. The conditions are: (a) The dispossession of the property shall be in return for immediate and fair compensation estimated by experts, not less than the market price. (b) The person responsible for dispossession shall be the ruler or his representative in that area. (c) The dispossession of private property is only for a public necessity or a public need, such as mosques, roads, and bridges. (d) The property dispossessed from its owner shall not be used for government or private investment, and its dispossession shall not be expedited prematurely.⁶⁴

Situation 2. When a person is prevented from acquiring a deserved right in order to preserve the public *maṣlahah*. In this situation, there is no existing ownership, however, the person is entitled to acquire such a right.

⁶³ Al-Samhudi, *Wafa' alwafa' bi Akhbar dar Almustafā*, vol.2, p.68-69.

⁶⁴ Majma' Al-Fiqh Al-Islami, *Qararat wa Tawsiyat*, (1406H -1409H/ 1985-1988), p.64.

If the acquisition of this right is harmful to others, whether individuals or groups of Muslims, the person may be prevented from acquiring such a thing.

An example of this is forbidding town-dwelling merchants to buy countryside farmers' products before they reach town. There are two reasons for this prohibition. The first one is that if farmers are allowed to sell their product directly to consumers, they sell it for a price less than the price fixed by middlemen (town-dwelling merchants). This reduction in price benefits the whole community. The second reason is that the middlemen merchants offer a lower price to the farmers and fix much higher price to consumers. This situation is unfair to farmers as well as to the community members, and the only winners are the middlemen.

In this example, the town-dwelling middlemen, originally, have right to buy and sell (this is a private *maṣlahah*). However, they are prohibited from doing so to preserve the *maṣlahah* of the community.

Another example is the prohibition of hoarding essential foodstuffs. Originally, merchants have right to buy goods and keep them until they manage to sell them for a high price (this is a private *maṣlahah*). However, hoarding essential foods is harmful to the Muslim community. That is why it is prohibited to preserve the public *maṣlahah*.

Other examples of this are the decision made by Umar Bin Al-Khattab not to distribute the conquered lands of Iraq among the fighters,⁶⁵ and his command not to marry non-Muslim women and leave Muslim women unmarried.

In those examples, the reason for preventing such an act is to avoid public harm. Some people were prevented from private *maṣlahah* to preserve the public *maṣlahah*. This falls under the right of the Muslim ruler to put restrictions on the permissible if it leads to public damage.

Situation 3. Prevention of misusing rights (private *maṣlahah*) in a way that causes harm to the community. One example of this is forcing hoarders of

⁶⁵ Umar Bin al-Khattab refrained from dividing the land of Iraq's *Sawad* over the conquerors in order to safeguard the public benefit of Muslims. Although fighters are, originally, entitled to a portion of the war spoils including land, Umar felt that giving them this right would result in most of the conquered territories becoming the property of a group of Muslims, while the general Muslim population, especially the coming generations, would be deprived of it.

essential foodstuffs to sell them at market price. Originally, merchants have right to hold commodities until they decide to sell them. However, hoarding essential foodstuffs causes scarcity that leads to high prices. This practice is seriously harmful to the community members. Such a practice is regarded as misuse of private right. Thus, forcing hoarders to sell those foodstuffs is necessary for preserving the public *maṣlahah*. Moreover, there is no real harm to the hoarder as he is forced to sell at the original market price which gives him fair profit and preserves the community from exploitation.

Prohibiting misuse of private right to harm others is found in many parts of the Quran. Among them is prohibiting husbands from abusing the right to return the divorced wife for the purpose of prolonging her waiting period. Allah said:

﴿وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ،
(البقرة: 231)﴾.

“And when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them]. And whoever does that has certainly wronged himself.” (2:231)

The Quran also prohibited divorced women to use the right of breastfeeding to harm the husband by asking for a high alimony for breastfeeding, and prohibited husbands to use their parental rights to harm the mother by taking the child from her, as Allah said:

﴿لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ، (البقرة: 233)﴾.

“No mother should be harmed through her child, and no father through his child.” (2:233)

Situation 4. When the private *maṣlahah* can be included in the public *maṣlahah*. For example, scholars stated that if resources are insufficient to defend the Muslim territories, in the case of war the ruler may impose some taxes on the rich to provide the necessary funds. In this situation, the defence of the Muslim territories is a public *maṣlahah* that includes the private *maṣlahah* of those who are taxed in their money.

5.4.4.4.2. Weighing between a private *maṣlahah* and another private *maṣlahah*

Whenever there is a conflict between a person's own *maṣlahah* and that of another person, the criteria for prioritization shall be as follows:

1. The underlying principle is that everyone is entitled to use his property/right exclusively, and no one should be prevented from enjoying his legitimate right for the sake of preserving the *maṣlahah* (benefit) of another person.
2. Everyone is entitled to secure his *maṣlahah* (benefit) at the levels of necessities and needs regardless of the negative effect on others' *maṣlahah* as long as he is exercising his legitimate right without any misuse. However, if he is trying to secure a *maṣlahah* (benefit) at the level of luxuries in a way that causes harm to others, he shall be prevented from doing so. The principle of warding off harm shall be applied. That is based on the saying of the Prophet:

"لا يُمنع فضل الماء لِيُمنع به الكأء." صحيح البخاري

"One should not prevent others from watering their animals with the surplus of his water in order to prevent them from food." (*al-Bukhari*)

This hadith refers to a case where there is grass around a private water well, and there is no other water source around. The owners of livestock cannot graze their livestock in that area unless they are able to use that well to water their livestock. If they are prevented from watering their herds, they will not be able to graze.⁶⁶ The owner of the well should not prevent herders from using surplus water to prevent them from grazing their livestock in the nearby area.

In this case, the owner of the well has priority over others. Should the water only be enough for his needs, then he shall have the priority in using it, and it is not permissible to take it from him even if other herders are affected. However, if the water is more than what he needs, he should not prevent the herders from using the excess water in order to prevent them from grazing their livestock in the nearby area.

3. Should a person's benefit be in surplus to his need and someone else is in dire need of it, he shall give the surplus to him without losing right to ask for compensation.

⁶⁶ Ibn Hajar, *Fath Al-Bari*, vol. 5, p.32.

5.4.4.5. Fifth criterion: Preferring the higher *maṣlahah* in value

If two *maṣlahahs* (benefits) are equal in rank and type, the amount of each shall be considered. The largest, more lasting and most useful shall be prioritized.

5.4.4.6. Sixth criterion: Preferring the definite *maṣlahah*

If there is a conflict between a *maṣlahah* that is certain and another one that is probable, the certain one should be given priority.

5.5. Consideration of Consequences of Shariah Rulings and Human Actions

5.5.1. Consideration of Consequences

One of the objectives considered by the Wise Lawgiver in legislating Shariah rulings (*ḥukm shar‘i*) is to look at the effects and consequences of Shariah rulings and human actions.

The objective of considering effects and consequences is manifested in two areas:

(a) Considering the effects and consequences in deciding the Shariah ruling. This consideration is based on the negative effects and consequences of the subject-matter of the Shariah ruling. It is apparent from the Lawgiver’s methodology of legislation that if the effect and consequence of the subject-matter of the Shariah ruling is pure evil or mainly evil, then the Shariah prohibits such a thing or action. An example of this is the prohibition of transactions and behaviours that lead to taking people’s money unjustly, transactions which cause dispute and enmity, as well as the prohibition of wicked deeds, and harmful foods and drinks. If the effect of the subject-matter of the Shariah ruling is pure benefit or mainly beneficial, the Shariah authorizes it, such as transactions that are based on fair exchange of benefits and wholesome foods and drinks.

(b) Considering the consequences while applying Shariah rulings in real life. This consideration may lead to modification in the ruling. If the application of the Shariah ruling leads to *mafsadah* (harm/ evil), there will some modification of such a ruling either by mitigating, replacing, or cancelling the ruling.

Scholars, in issuing *fatwa* on new issues, are supposed to apply this objective. They have to consider the effects and consequences of their decrees on people when they are applied to real life.

5.5.2. Examples of the objective of considering effects and consequences

It is well established that Shariah rulings have been enacted for the purpose of reforming people's lives in a way that leads to total submission to God and welfare in this life and in the Hereafter. Al-Shatibi says: "The objective of Shariah rulings is not to act per se, but to realize the *maṣlahah* for which they were legislated."⁶⁷

There are plenty of examples that clearly indicate consideration of effects and consequences of Shariah rulings, such as the following:

1. The Quranic verses which state that the Shariah aims to ease people's lives (2:185) and that religion is not meant to put hardship on people (22:78). Those texts indicate that the Lawgiver took into account, in making commands and proscriptions, the hardship that they might cause to people, and that those commands and proscription are within human capacity.
2. The Quranic texts that grant concessions to relieve those who may face serious hardship in applying some Shariah rulings.
3. The Shariah texts which state that Shariah rulings are legislated to achieve certain objectives for the welfare of people, such as the objective of attaining piety by fasting (2:183); the objective of preserving life by retaliation (*qiṣās*) (2:179); the objective of preserving people's money in prohibiting unfair actions (2:188); the objective of deterring enemies by preparing force and power (8:60); the objective of establishing people's lives on justice by adopting divine laws (57:25); the objective of preserving the rights of the heirs by limiting the bequest to one third, as the Prophet said:

قال رسول الله صلى الله عليه وسلم: "الثُلُثُ، وَالثُلُثُ كَثِيرٌ. إِنَّكَ أَنْ تَدَّرَ وَرَثَتَكَ أَغْنِيَاءَ، خَيْرٌ مِنْ أَنْ تَدَّرَهُمْ عَالَةً يَتَكَفَّمُونَ النَّاسَ. وَإِنَّكَ لَنْ تُنْفِقَ نَفَقَةً تَبْتَغِي بِهَا وَجْهَ اللَّهِ، إِلَّا أُجِرْتَ. "موطأ مالك

"You may will away a third, and that is a lot. To leave your heirs rich is better than to leave them poor and begging from people. You will not spend anything, seeking thereby to please Allah, without being rewarded for it..." (*al-Muwata'*)

⁶⁷ Al-Shatibi, *Al-Muwafaqat*, vol.2, p.385.

Preserving the ties of kinship by forbidding a woman to marry the husband of her paternal aunt or maternal aunt while their marriage is intact:

عن ابن عباس رضي الله عنه، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى أَنْ تُزَوِّجَ الْمَرْأَةُ عَلَى الْعَمَّةِ وَعَلَى الْحَالَةِ، وَقَالَ: "إِنَّكُمْ إِنْ فَعَلْتُمْ ذَلِكَ قَطَعْتُمْ أَرْحَامَكُمْ." المعجم الكبير للطبراني

Ibn Abbas said that the Messenger of Allah (ﷺ) forbade a woman to marry the husband of her paternal or maternal aunt, and he said: "If you do that, you will cut off your ties of kinship." (*al-Tabarani*)

All those texts demonstrate that the Lawgiver considered consequences, in the form of benefits or evils, while legislating Shariah rulings.

4. Allah Almighty prohibited certain actions, which are originally permissible, because of the resulting evils, such as insulting the polytheists' gods if this may lead to a response of insulting Allah:

﴿وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ، (الأنعام: 108)﴾.

"And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge." (6:108)

Likewise, Allah forbade the Companions to say the word "راعنا" to the Prophet Muhammad (ﷺ) because Jews used it to insult the Prophet and diminish his status:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقُولُوا رَاعِنَا وَقُولُوا انظُرْنَا وَاسْمَعُوا وَلِلْكَافِرِينَ عَذَابٌ أَلِيمٌ، (البقرة: 104)﴾.

"O you who have believed, say not [to Allah 's Messenger], "ra'ina" but say, "unthurna" and listen. And for the disbelievers is a painful punishment." (2:104)

The same applies to the prohibition of polygamy when it leads to the oppression of some wives.

﴿فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَى وَثُلَاثَ وَرُبَاعَ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ أَدْنَىٰ أَلَّا تَعُولُوا﴾ (النساء: 3).

“And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hand possesses.

That is more suitable that you may not incline [to injustice].” (4:3)

5. Allah Almighty prohibited misuse of rights in a way that causes harm to others, such as the prohibition of using the right to return the wife to the bond of marriage just for the purpose of harming her by prolonging her waiting period, as Allah said:

﴿وَإِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرِّحُوهُنَّ بِمَعْرُوفٍ وَلَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا وَمَنْ يَفْعَلْ ذَلِكَ فَقَدْ ظَلَمَ نَفْسَهُ﴾ (البقرة: 231).

“And when you divorce women and they have [nearly] fulfilled their term, either retain them according to acceptable terms or release them according to acceptable terms, and do not keep them, intending harm, to transgress [against them]. And whoever does that has certainly wronged himself.” (2:231)

Another example is the prohibition of using bequests to harm the inheritors:

﴿مَنْ بَعْدَ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ﴾ (النساء: 12).

“after any bequest which was made or debt, as long as there is no detriment [caused].” (4:12)

The objective of considering effects and consequence is well manifested in three areas: (a) blocking means to evil (*sadd al-dhari'a*), (b) prohibition of legal tricks (*al-hiyyal*), (c) legal concessions (*al-rukhsah*).

5.5.3. Blocking Means to Evil (*sadd al-dhari'a*)

5.5.3.1. Meaning of "*sadd al-dhari'a*"

The concept of *sadd al-dhari'a* is used when a lawful means is expected to lead to an unlawful result, or when a lawful means is used to procure an unlawful result. Hence, those means should be blocked to prevent the person from achieving those results which are contrary to the objectives of the Shariah.

5.5.3.2. Views of scholars on the validity of the concept of "*sadd al-dhari'a*"

Maliki scholars were famous for adopting the principle of blocking means to evil. The main topic to which they apply this principle is differed sales (*buyū' al-'ājāl*) that people usually misuse to take usury (*riba*). *Maliki* scholars differed in their opinions about the reason for prohibiting differed sales (*buyū' al-'ājāl*). Some of them are of the view that the reason is that it is among the most common usurious transactions. According to this view, the judgment on such transactions should be based on people's custom. Whoever usually misuses such contracts to obtain usury, his contract falls within this classification and shall be considered null and void. Whoever is not known to misuse this contract to obtain usury, his contract shall be considered as valid. Some other *Maliki* scholars argued that the reason was to block the means to usury. Therefore, when such contracts become common in a community, they should be disallowed regardless of individual intention to misuse them to obtain usury or not.⁶⁸ Ibn Ashur is of the view that Imam Malik used suspicion of usury to prohibit such differed sales (*buyū' al-'ājāl*) because people misused it until it became a common practice causing the mischief for which usury was prohibited. Therefore, the criterion of preventing such contracts is not the person's intention, but rather it is the prevalence of misusing such contracts to obtain prohibited usury.⁶⁹

Maliki scholars based their opinion for the validity of the principles of *sadd al-dhari'a* on two types of arguments: (a) Analogical reasoning by extending the *ḥukm shar'i* from the cases prohibited by Shariah texts based on evil consequences of acts which are originally permissible. That prohibition clearly represents the

⁶⁸ Al-Qarafi, *Al-Furuq*, vol.3, p.411.

⁶⁹ Ibn Ashur, *Maqasid al-Shariah*, p.270.

principle of blocking means to evil. (b) Shariah texts that call for avoiding suspicious and doubtful matters.

Imam al-Shafi'i was famous for rejecting the principle of blocking the means (*sadd al-dhari'a*), arguing that judgments in Islam are based only on apparent evidence without any consideration for suspicion or hidden intention. He argued that "a contract can only be void by its terms and conditions. It cannot be invalidated by anything that precedes it or comes after its conclusion, nor by assumption or common practice. We do not invalidate any transaction only by the content of its contract. We do not say transactions are invalid because it is a means to something prohibited or because of bad intention. .. If a person buys a sword for the purpose of killing someone, even though his intention is prohibited, the purchase is permissible and the transaction is valid. Similarly, if someone sells a sword to someone who uses it to kill another one, the sale is permissible and valid."⁷⁰

Likewise, Ibn Hazm al-Zahiri rejected the principle of forbidding something by suspicion, doubtfulness, or precaution. He is of the view that what is forbidden is only what is expressly prohibited by the Shariah, and what is not expressly forbidden by the Shariah is permissible. He considers piety and avoiding suspicions desirable but not duty-bound, and no one may commit people to consider piety and avoid suspicions. Ibn Hazm summarizes his opinion on suspicions by saying: "We urge people to be as pious as the Prophet (ﷺ) has urged them to be, and we point to them by avoiding all that creates doubt, as well as we do not deny or oblige anyone to do so, just as the Prophet Muhammad (ﷺ) did."⁷¹

A careful examination of the arguments introduced by Imam al-Shafi'i and Ibn Hazm shows that they are applicable to making judgments especially by the judiciary. Judgments by the judiciary should be based on apparent evidence rather than on suspicion, doubtfulness, and precaution. However, it should be made clear to the people that the judgment by the judiciary based on apparent evidence does not release them from religious and moral responsibility for their bad intentions, misconduct and deception. For instance, consider a man who uses an expression that alludes to his intention to divorce his wife, but then claims in court that he did not intend divorce but rather used the expression in its apparent meaning. If the judge, based on his claim, rules that divorce did not occur, the judge's ruling does not nullify the divorce and make his wife permissible for him. The decision by the judge does not render *ḥarām* as *ḥalāl* or vice versa.

⁷⁰ Al-Shafii, *Al-Umm*, vol.7, p.32.

⁷¹ Ibn Hazm, *Al-Iḥkam fi Usul Al-Aḥkam*, p.790.

5.5.3.3. Standards for applying the principle of *sadd al-dhari'a*

A careful examination of the arguments introduced by those who endorse the principles of "*sadd al-dhari'a*" and those who reject it shows that both parties have merits and defects in their views. Therefore, there is a need to develop a new approach to the issue. The approach is based on three areas of application, namely: (a) the area of *fatwa* and guidance; (b) the area of adjudication; (c) the area of governance (*siyāsah shar'iyah*).

5.5.3.3.1. The area of *fatwa* and guidance

Fatwa and guidance are about teaching people virtues and high morals, guiding them to the path of goodness and righteousness, and warning them of evil and corruption. It includes advising people to avoid what is suspicious and doubtful and teaching them to take responsibility for their actions, as well as developing people's inner conscience as the Prophet Muhammad (ﷺ) said:

قال رسول الله صلى الله عليه وسلم: "الْبِرُّ حُسْنُ الْخُلُقِ، وَالْإِيمُ مَا خَاكَ فِي نَفْسِكَ، وَكَرِهْتَ أَنْ يَطَّلِعَ عَلَيْهِ النَّاسُ." صحيح مسلم

"Virtue is noble behaviour, and sin is that which creates rankles with you and you do not like people to know about it." (*Muslim*)

Scholars who give *fatwa* and guidance to people should advise them to achieve piety and righteousness, obey God's commands, stay away from prohibitions, and avoid suspicious and doubtful acts as the Prophet (ﷺ) said:

قال رسول الله صلى الله عليه وسلم: "الْحَالُلُ بَيِّنٌ، وَالْحَرَامُ بَيِّنٌ، وَبَيْنَهُمَا مُشَبَّهَاتٌ لَا يَعْلَمُهَا كَثِيرٌ مِنَ النَّاسِ، فَمَنْ اتَّقَى الْمُشَبَّهَاتِ اسْتَبْرَأَ لِدِينِهِ وَعَرْضِهِ، وَمَنْ وَقَعَ فِي الشُّبُهَاتِ: كَرَاعٍ يَزْعَمِي حَوْلَ الْحِمَى، يُوشِكُ أَنْ يُوَاقِعَهُ، أَلَا وَإِنَّ لِكُلِّ مَلِكٍ حِمًى، أَلَا إِنَّ حِمَى اللَّهِ فِي أَرْضِهِ مَحْرَمُهُ." صحيح

البخاري

"What is lawful is clear and what is unlawful is clear, but between them are certain doubtful things which many people do not recognize. He who guards against doubtful things keeps his religion and his honour blameless, but he who falls into doubtful things falls into what is unlawful, just as a shepherd who pastures his animals round a preserve will soon pasture them in it. Every king has a preserve, and Allah's preserve is the things He has declared unlawful."

(*al-Bukhari*)

Accordingly, a Muslim scholar should not advise people to do suspicious matters. It is not permissible for a scholar, under the pretext of making things easy for people, to guide people to evade Shariah rulings by using legal tricks, nor to teach them the methods of evading and cheating Shariah rulings, such as getting usury (*riba*) through superficial contracts and transactions, returning the irrevocably divorced wife with a *tahlil* marriage contract, and evading atonements and duties by tricks. Any scholar doing so is corrupting people's religion and morals. Therefore, in exercising *fatwa* and guidance, scholars should apply the principle of blocking means of evil (*sadd al-dhari'a*). They should guide people to avoid misusing permissible contracts and actions to achieve unlawful results and contradict the objectives of Shariah rulings. They should guide people to be honest and guard against bad intentions and behaviour.

5.5.3.3.2. The area of adjudication

It is well known that judges do not know unseen facts. They pass their judgements based on the apparent evidence presented by the litigants. The judge's error in judgment does not make a forbidden thing permissible to any party. The Prophet (ﷺ) said:

"إِنَّمَا أَنَا بَشَرٌ، وَإِنَّهُ يَأْتِيَنِ الْحُصْمُ، فَلَعَلَّ بَعْضَهُمْ أَنْ يَكُونَ أَتْلَعُ مِنْ بَعْضِي، فَأَحْسِبُ أَنَّهُ صَادِقٌ، فَأَقْضِي لَهُ. فَمَنْ قَضَيْتَ لَهُ مِنْ حَقِّ مُسْلِمٍ، فَإِنَّمَا هِيَ قِطْعَةٌ مِنَ النَّارِ، فُلْيَحْمِلْهَا أَوْ يَدْرُهَا." صحيح مسلم

"I am a human being, and the claimants bring to me disputes. Some of them may be more eloquent than the others, so I think he is the rightful, thus I decide in his favour. So, he whom I, by my judgment, give the undue share out of the right of a Muslim, I give him a portion of Fire; he may burden himself with it or abandon it." (*Muslim*)

The rule in Islam is that judgments shall be based on what is apparent. What is hidden shall be entrusted to people's conscience, and Allah will hold them accountable for that on the Day of Judgement.

There was a case of *li'an* (cursing) in which the Prophet (ﷺ) did not punish any of the parties, because the husband swore that he was truthful in accusing his wife of adultery, the wife swore that her husband lied in accusing her, the one who was accused of adultery denied that he did so, and there were no witnesses to the incident. At the end of the process of *li'an*, the Prophet said:

"انظروها، فَإِنْ جَاءَتْ بِهِ أَحْمَرٌ قَصِيرًا مِثْلَ وَحْرَةٍ، فَلَا أَرَاهُ إِلَّا قَدْ كَذَبَ، وَإِنْ جَاءَتْ بِهِ أَسْحَمٌ أَعْيَنَ ذَا الْبَيْتَيْنِ، فَلَا أَحْسِبُ إِلَّا قَدْ صَدَقَ عَلَيْهَا"،
فَجَاءَتْ بِهِ عَلَى الْأَمْرِ الْمَكْرُوبِ. " صحيح البخاري

"Wait for her! If she delivers a red short (small) child like *wahra* (a short red animal), then I will be of the opinion that he (the husband) has told a lie, but if she delivered a black big-eyed one with big buttocks, then I will be of the opinion that he has told the truth about her.' Ultimately she gave birth to a child that proved the accusation." (*al-Bukhari*)

With the appearance of that sign, the woman's lie was revealed, and the husband's accusation became clearly true, however, the Prophet (ﷺ) did not change the judgment, nor did he punish her, because the judgment should be based on the apparent evidence as Allah said:

﴿وَيَذَرُ عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعَ شَهَادَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ، (النور: 8)﴾.

"But it will prevent punishment from her if she gives four testimonies [swearing] by Allah that indeed, he is of the liars." (24:8)

There is another case that shows the difference between the area of adjudication and the area of *fatwa* and guidance. In the story of the dispute over the son of Zam'a, a slave-girl, the Prophet's judgment was based on apparent evidence, however, when he saw that the apparent evidence contradicted the reality, he advised his sister to treat him as a stranger not as her brother. The story is as follows:

عن عائشة رضي الله عنها قالت: "كَانَ عُثْبَةُ بْنُ أَبِي وَقَّاصٍ عَهْدَ إِلَى أَحِيهِ سَعْدِ بْنِ أَبِي وَقَّاصٍ أَنَّ ابْنَ وَليدَةَ زَمْعَةَ مَيِّ، فَأَقْبَضَهُ إِلَيْكَ. قَالَتْ: فَلَمَّا كَانَ عَامَ الْفَتْحِ أَخَذَهُ سَعْدٌ، وَقَالَ: ابْنُ أَحِي قَدْ كَانَ عَهْدَ إِلَيَّ فِيهِ. فَقَامَ إِلَيْهِ عَبْدُ بْنُ زَمْعَةَ، فَقَالَ: أَحِي وَابْنُ وَليدَةَ أَبِي، وَوُلِدَ عَلَيَّ فِرَاشِهِ. فَتَسَاوَقَا إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ سَعْدٌ: يَا رَسُولَ اللَّهِ! ابْنُ أَحِي، قَدْ كَانَ عَهْدَ إِلَيَّ فِيهِ. وَقَالَ عَبْدُ بْنُ زَمْعَةَ: أَحِي، وَابْنُ وَليدَةَ أَبِي، وَوُلِدَ عَلَيَّ فِرَاشِهِ. فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "هُوَ لَكَ يَا عَبْدُ بْنُ زَمْعَةَ"، ثُمَّ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "الْوَلَدُ لِلْفِرَاشِ، وَلِلْعَاهِرِ الْحَجَرُ"، ثُمَّ قَالَ لِسُودَةَ بِنْتِ زَمْعَةَ: "احْتَجِي مِنْهُ"، لِمَا رَأَى مِنْ شَبَهِهِ بِعُثْبَةَ بْنِ أَبِي وَقَّاصٍ. قَالَتْ: فَمَا رَأَاهَا حَتَّى لَقِيَ اللَّهُ عَزَّ وَجَلَّ".

موطأ مالك

"Utba ibn Abi Waqqas disclosed to his brother, Saad ibn Abi Waqqas, that he was the father of the son of the slave-girl of Zam'a, and made him promise to look after him (after his death). In the year of the conquest, Saad took him and said: 'He is the son of my brother. He pledged with me about him.' Abd ibn Zam'a stood up and said: 'He is my brother and the son of my father's slave-girl. He was born on his bed.' They went to the Messenger of Allah (ﷺ). Saad said,

'Messenger of Allah! He is the son of my brother, he made a pledge with me about him.' Abd ibn Zam'a said, 'He is my brother and the son of my father's slave-girl and was born on my father's bed.' The Messenger of Allah (ﷺ) said, 'He is yours, Abd ibn Zam'a.' Then the Messenger of Allah (ﷺ) said, 'A child belongs to the household (where he was born) and the stone for the adulterer.' Then he told Sawda bint Zam'a, 'Veil yourself from him,' since he saw in him a resemblance to Utba ibn Abi Waqqas." A'isha added, "He did not see her until he met Allah, the Mighty, the Majestic!"

The Messenger decreed that the child should be given to the person on whose bed he was born because the apparent evidence was that the child was his, but when he saw that the child resembled the claimant, he instructed the woman, who was considered a sister to that child, to treat him like a stranger and to veil herself from him.

The judgment here was based on what was apparent, and the *fatwa* and guidance were based on what the Prophet believed to be the truth.

Judges may rule against reality based on the apparent evidence and arguments presented before them, but the *fatwa* should be that litigants should act in accordance with the truth even if it is contrary to the judge's ruling. An erroneous judgment does not permit what is *ḥarām* nor does it prohibit what is *ḥalāl*.

To sum up, the principle of blocking means of evil (*sadd al-dhari'a*) does not apply to the area of adjudication. Judgments should be based on apparent evidence. On the Day of Judgement, Allah will hold people accountable for what they really did.

5.5.3.3.3. The area of governance (*siyāsah shar'īyyah*)

Basically, the governing authority has the right to put restrictions on certain actions and transactions which are originally permissible to preserve private and public benefits. This occurs when people misuse those actions and transactions to cause harm to Muslim group or individuals or to achieve what is prohibited and against the objectives of the Shariah.

It should be noted that such restrictions by the governing authority do not fall within the scope of religious prohibition, but rather under the right to restrict the permissible to prevent the abuse of rights with the intention of causing harm to others or to defend the objectives of the Shariah.

Restricting what is permissible and preventing misuse of rights has precedents in the actions of the Rightly Guided Caliphs. This includes Umar bin Al-Khattab's forbidding Muslim men from marrying women of the People of the Book (Christian and Jewish). Originally, the Holy Qur'an permitted marriage to chaste women from the People of the Book. However, when Umar bin Al-Khattab feared misuse of that permissibility, he issued a warning to Muslim leaders to avoid such marriages. There were three reasons for that warning, namely: (a) fear of marrying unchaste women; (b) fear that Muslims might marry beautiful non-Muslim women and leave Muslim women unmarried; (c) the possibility of some of those non-Muslim wives becoming spies if they were married to Muslim leaders.

Al-Bayhaqi reported that when Huthaifah bin Al-Yaman married a Jewish woman, Umar wrote to him to divorce her saying: "I am afraid that you will leave Muslim women to marry adulterous women." Huthaifah wrote back to him asking: "Is it prohibited to marry her?" Umar replied: "No, but I am afraid that you will marry the adulterous from them." *al-Bayhaqi*)

Umar bin Al-Khattab warned against marrying Christian and Jewish women for the reasons mentioned, but he did not claim that such a marriage became prohibited. Permissibility remained in force when there is need for such marriage without serious adversities to the Muslim community.

Another example of restricting rights is the refusal of distributing the conquered lands in Iraq to Muslim warriors as war bounties, considering that the distribution of the land to the conquerors was a matter of permissibility, not a matter of obligation, and that the Messenger did that sometimes as in Khaybar, and sometimes refrained from doing so such as when he conquered Mecca.⁷² Accordingly, what Umar bin Al-Khattab did falls under restricting permissibility in order to protect the benefit of the Muslim community. Umar bin Al-Khattab refrained from distributing those lands to prevent accumulating wealth in the hands of a small class of society and depriving the majority population, especially future generations, of the benefits of that wealth.

Another example is the annulment of the marriage that is done within the waiting period and preventing them from remarrying in the future if the marriage was consummated. Imam Malik reported that:

⁷² Ibn Taymiyyah, *Majmu' Al-Fatawa*, vol.20, p.312.

"أَنَّ طُلَيْحَةَ الْأَسَدِيَّةَ كَانَتْ تَحْتَ رُشَيْدِ الثَّقَفِيِّ، فَطَلَّقَهَا، فَتَكَحَّتْ فِي عِدَّتِهَا، فَضَرَبَهَا عُمَرُ بْنُ الْخَطَّابِ، وَضَرَبَ زَوْجَهَا بِالْمُخَفِّقَةِ ضَرْبَاتٍ، وَفَرَّقَ بَيْنَهُمَا. ثُمَّ قَالَ عُمَرُ بْنُ الْخَطَّابِ: أَيُّمَا امْرَأَةٍ تَكَحَّتْ فِي عِدَّتِهَا، فَإِنْ كَانَ زَوْجُهَا الَّذِي تَزَوَّجَهَا لَمْ يَدْخُلْ بِهَا، فُورِقَ بَيْنَهُمَا، ثُمَّ اعْتَدَّتْ بِقِيَّةِ عِدَّتِهَا مِنْ زَوْجِهَا الْأَوَّلِ، ثُمَّ كَانَ الْآخِرُ خَاطِباً مِنَ الْخَطَّابِ. وَإِنْ كَانَ دَخَلَ بِهَا، فُورِقَ بَيْنَهُمَا، ثُمَّ اعْتَدَّتْ بِقِيَّةِ عِدَّتِهَا مِنْ زَوْجِهَا الْأَوَّلِ، ثُمَّ اعْتَدَّتْ مِنَ الْآخِرِ، ثُمَّ لَا يَجْتَمِعَانِ أَبَدًا." موطأ مالك

"Tulayha al-Asadiyah was the wife of Rushayd ath-Thaqafi. He divorced her, and she got married in her waiting period. Umar bin al-Khattab beat her and her husband with a stick several times and dissolved their marriage. Then Umar bin al-Khattab said, "If a woman marries in her waiting period, and the new husband has not consummated the marriage, then separate them, and when she has completed the waiting period of her first husband, the other may become a suitor. If he has consummated the marriage separate them, then she must complete her waiting period from her first husband, and then the waiting period from the other one, and they are never to be reunited." (*al-Muwata'*)

Originally, whoever marries a woman during her waiting period has committed a forbidden act, and that marriage is considered invalid and shall be annulled. That forbidden act does not make the woman prohibited to him forever. However, Umar bin Al-Khattab restricted that permissibility, and decided to prevent them from remarrying forever to deter people from committing such an evil act.

Another example was when Uthman bin Affan ruled that a divorced woman who was divorced by her husband irrevocably on his deathbed shall inherit. As stated in *Muwata' Malik*:

"أَنَّ عَبْدَ الرَّحْمَنِ بْنَ عَوْفٍ طَلَّقَ امْرَأَتَهُ الْبَيْتَةَ وَهُوَ مَرِيضٌ، فَوَرَّثَهَا عُثْمَانُ بْنُ عَفَّانَ مِنْهُ، بَعْدَ انْقِضَاءِ عِدَّتِهَا." موطأ مالك

"Abd ar-Rahman ibn Awf divorced his wife irrevocably while he was terminally ill, and Uthman ibn Affan made her an heir after the end of her waiting period." (*al-Muwata'*)

Originally, divorce is permissible to the husband at any time, even during the time of illness, and a woman divorced irrevocably is not entitled to inheritance. However, Uthman restricted one of the effects of irrevocable divorce on the deathbed by ruling that the divorcee shall be entitled to inheritance, because there is high suspicion of misusing divorce to deprive the wife of her right to inheritance.

In conclusion, it is well established that the Wise Lawgiver had considered the principle of blocking means to evil in making Shariah rulings. Even though, practically, it may be difficult to find a scholar who never applied this principle in his *ijtihad*, there was, on theoretical level, disagreement among scholars on the validity of this principle. However, a careful examination of the issue shows that the principle of blocking the means to evil should be applied in the area of *fatwa* and guidance in the sense of advising people to avoid misusing the permissible to achieve the prohibited and what defeats the objectives of Shariah. It should also be used by the governing authorities to enact laws and regulations that prevent people from misusing their rights to violate the rights of others and commit what is prohibited. However, the principle of blocking means to evil should not be used in the area of adjudication because judgments should be based on apparent evidence, not on assumptions.

5.5.4. Legal Tricks (الحيل الفقهيّة)

5.5.4.1. Meaning of 'trick/ حيلة'

The term “حيلة” has three meanings:

1. Good management and precise decisions to achieve what is legitimate by legitimate means.
2. Tricking people, without their attention, to do things they do not want or ignore, or using illegal or suspicious means to infringe on others' rights.
3. Presenting a prohibited action in the form of a permissible one or presenting an action that is not legally recognized in the form of an acceptable action for the purpose of avoiding its blame.”⁷³ This happens when a person does something that is originally permitted but not to achieve its original purpose, rather to present something that is prohibited in the form of a legitimate action, or to get rid of what is obligatory by doing what appears to be legitimate.

This last meaning of “حيلة” is the one that is meant in this context.

There are many examples for those ‘illegitimate’ legal tricks as follows:

- a) Someone who is obligated to pay *zakat*, but when the time for paying *zakat* comes, he gives part of his money as a fictitious gift to reduce his money below

⁷³ Ibn Ashur, *Maqasid Shariah*, p. 259.

the *niṣāb* to evade paying *zakat*. When the time for paying *zakat* has passed, he recovers that gift. Originally, giving gifts is legitimate and rewarded, but the person did not use it for that purpose, but rather did so as a trick to evade paying *zakat*.

b) Two persons who jointly own a flock of sheep which is due for *zakat*. However, when the time for *zakat* comes, they divide the flock so that the share of each one will fall below the *niṣāb*. Such division was not done for a real need as they may mix it again, but is just a trick for the purpose of evading *zakat*.

c) One who irresponsibly divorces his wife irrevocably (3 counts) then, he or the divorcee herself, arranges with someone to marry her for a short time and then divorce her. This arranged marriage is just a trick to make the divorcee lawful for her previous husband. This process can be seen in its ugliest form nowadays in India and Pakistan where it has become a business! You can see people offering their services for that temporary marriage online. They are not satisfied with gratifying their lust with that short marriage, but also ask for big amounts of money for that 'service'. Therefore, some women who were victims of irresponsible husbands who irrevocably divorce them become victims of those 'beasts' who assault them through that superficial marriage and force them to pay a sum of money for that assault. Those poor aggrieved women just want to return to the abusive husbands to take care of their children. The scandal has come to the point where the Indian fanatic Hindu Prime Minister intervened to ask the Supreme Court to rule on the illegality of irrevocable divorce in one sitting. Indeed, what he wanted has happened, and the fanatic anti-Muslim Hindu Prime Minister became a hero defending Muslim women's rights!

d) Some examples relating to swearing oaths, such as one who swears not to wear a dress, then a '*sheikh*' cuts off part of that dress and tells him: "Wear it, it's another dress! There will be no blame on you", or one who swears not to enter a house, then a '*sheikh*' tells him: "you can enter the house from the roof or climb its wall, and there will be no blame on you!"

e) The transactions conducted by "Islamic banks" in the process of financing their clients. The essence of those transactions is a loan for interest. However, the financing is not done under the name of a "loan", but rather through some superficial contracts made on paper only without any real effect. At the end, the customer will get the amount he wants, then repay that amount with an increase (they call it a profit) in instalments within a specified period.

5.5.4.2. Shariah ruling on “legal tricks”

The aim of the Shariah, as al-Shatibi stated, is to prevent people from following their desires and guide them to achieve total submission to Allah:

﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ﴾ (الذاريات: 56)

“I have only created Jinns and men, that they may serve Me.” (51:56)

There is no doubt that indulgence in desires leads to corruption as Allah said:

﴿وَلَوْ اتَّبَعَ الْحَقُّ أَهْوَاءَهُمْ لَفَسَدَتِ السَّمَوَاتُ وَالْأَرْضُ وَمَنْ فِيهِنَّ﴾ (المؤمنون: 71)

“But if the Truth had followed their inclinations, the heavens and the earth and whoever is in them would have been ruined.” (23:71)

Fulfilling submission to Allah means to honestly follow His teachings in all matters of life. The commands and prohibition from the Wise Lawgiver must be followed in letter and spirit. A Muslim should be honest in practicing his religion and should not intend to contradict the objectives of those commands and prohibitions. Whoever intends to contradict those objectives, his actions shall be void.

When the Wise Lawgiver set up penalties for certain actions, He intends to correct people's behaviour and teach them to take responsibility for their words and actions. Accordingly, jurists should not attempt to look for “exits/tricks” to get offenders out of the consequences of their bad words and actions. That is encouragement of immorality and evading Shariah rulings and defeating its objectives.

The term "exits/مخارج" is merely a refined term for "evading responsibility". A person who commits an offence and then wants to evade responsibility for that offence usually goes to look for a way out. If the offence is a matter of worldly life, he will seek intervention or giving bribe to escape the punishment. If the offence is a matter of religion, he will seek a "sheikh" who will give him a way out. That "sheikh" who would give people exits/tricks will be teaching them to evade responsibility for their words and actions. The real role of scholars is to teach people a sense of responsibility for their words and actions and help them to develop religiosity.

One may say that teaching people "exits/tricks" is intended to prevent them from falling directly into the forbidden. However, this claim may be refuted by arguing that refraining from teaching them tricks is the right way to discipline them and make them abide by Shariah teachings and fulfil its objectives.

Teaching people "exits/tricks" will make them take Shariah rulings lightly and instil in them evasion of responsibility for the consequences of their actions. That will result in transgressing Allah's boundaries, as some of them will not care about pronouncing irrevocable divorce, because they will find someone to give them a "way out" to return their divorcees. Some will take the name of 'Allah' lightly in their oaths because they will find someone to give them a "way out" to evade the consequences of those oaths. "Islamic" banks and their customers may deal with usurious loans under the name of some superficial contracts which are empty of their essence, then they find someone who will try to justify that with some "theoretical justification".

The Wise Lawgiver has provided an "exit" to those who have committed a bad action: Whoever swears an oath and is not able to fulfil it, the Lawgiver has set up an 'exit' for him which is atonement so that he learns how to be responsible for his words. Whoever divorces his wife an irrevocable divorce, the Lawgiver has provided an 'exit' for him, which is to marry another woman, thus learning in the future the responsibility of marital life and not being reckless in uttering the word of divorce, in addition of being an example to others. Whoever falsely accuses others of adultery has an 'exit' which is eighty lashes on his back, thus learning how to control his tongue.

Let no one say that among the purposes of Shariah are easiness, tolerance, forgiving the abuser, preserving the family, etc. Thus, why do we not give people "exit options" that will make their lives easier? In such cases, the objective of the Lawgiver is to punish the offender to teach him responsibility and good behaviour. That is the way that will make people's lives easy.

'Easiness' is not about corrupting people's behaviour and teaching them to infringe Shariah rulings. People's lives will be easy when they improve their morals, discipline their behaviours, and abide by Shariah rulings. If this is achieved, their lives will be systematic, and their rights will be preserved. Teaching people "tricks/exits," is the way to hardship because that is the way of corrupting people's morals, teaching them to evade responsibility and encroach on Allah's boundaries. Whoever learns to evade the rights of Allah, he will learn to evade people's rights, and vice versa, and the effect of all this will be making people's lives hard as Allah said:

﴿وَمَنْ أَعْرَضَ عَنْ ذِكْرِي فَإِنَّ لَهُ مَعِيشَةً ضَنْكًا وَنَحْشُرُهُ يَوْمَ الْقِيَامَةِ أَعْمَى﴾ (طه: 124).

"And whoever turns away from My remembrance - indeed, he will have a depressed life, and We will gather him on the Day of Resurrection blind." (20:124)

CHAPTER 6 ► USEFULNESS OF KNOWING THE OBJECTIVES OF SHARIAH

6.1. The benefit of knowing the objectives of Shariah texts

The objectives of Shariah texts are the basis and the core of the objectives of the Shariah. The other two types of objectives (the objectives of Shariah rulings and the objectives of the Lawgiver in legislation methodology) are supportive and complementary to this type.

Knowing the objectives of Shariah texts means to know Allah's guidance to mankind. Shariah texts are the only link between Allah and man. They introduce us to the truths of the universe and life, teach us our mission in this life, guide us to the path of righteousness in this world and salvation in the Hereafter, and determine our rights and duties. Through them man knows what he is required to do and what he is required to avoid, and how he should worship Allah. They set the laws that regulate our inter-relations, transactions and all matters relating to our lives.

6.2. The benefit of knowing the Lawgiver's objectives in legislation methodology

Knowing the Lawgiver's objectives in legislation methodology has two benefits:

(a) Introducing people to the Islamic approach in legislation and the foundations of that legislation. It introduces us to the philosophy of Islamic legislation.

(b) Knowing those objectives serves as guidelines in the process of *ijtihad*. Scholars are supposed to be guided by the Lawgiver's objectives in legislation methodology in their approach of *ijtihad*. That is why Al-Shatibi considers the main requirements of *ijtihad* as comprehending the objectives of the Shariah and the ability to make decrees in light of them.

It should be noted that this type of objectives serves as general guidelines for *ijtihad*. It cannot be used as the sole proof for deducing detailed Shariah rulings.

6.3. The benefit of knowing the objectives of Shariah rulings

The basic objective of knowing the purposes of Shariah rulings is to comprehend Shariah rulings and principles. Such comprehension gives Muslims a better understanding of Shariah texts and meaningful application of its rulings.

The benefits of identifying the objectives of Shariah rulings may be summarized in the following:

6.3.1. Comprehension of Shariah and proper application of its rulings

There is no doubt that realizing the general as well as particular objectives of Shariah rulings leads to deep comprehension of Shariah texts. Such comprehension leads to the ability to infer rulings for new incidents. This what is meant by Al-Shatibi when he summarized the requirements for *ijtihad* into two things: (a) full understanding of the objectives of the Shariah, (b) ability to derive Shariah rulings in light of those objectives.

Additionally, knowing the objectives of Shariah rulings means recognizing Allah's wisdom in all parts of the Shariah. Knowing those wisdoms helps in strengthening one's faith in the greatness of the Shariah and its importance in managing people's affairs and achieving happiness in this life and in the Hereafter. That power of faith boosts one's determination to abide by Shariah rulings and implement them in the right manner.

For example, when one knows that among the purposes of fasting (*sawm*) is to achieve piety, learn patience, sympathize with the poor, rest the digestive system and help the body get rid of toxins, then he will be fasting in a way that leads to achieving those goals. He will restrain from forbidden things, use part of his money to feed the poor, will not exhaust his digestive system at night with fatty food and sweets, spend part of his nights in worshipping Allah not in eating, watching TV and hanging out. The same applies to prayer (*salat*), zakat, pilgrimage, other worships, and in all his activities.

6.3.2. Weighing between conflicting texts and rulings

Among the topics discussed in the discipline of '*maqāsid al-Shariah*' is the classification of *maṣlahah* in its three ranks (necessities, needs, and luxuries) and the criteria for ranking the five universal values (preservation of religion, life,

intellect, lineage, and wealth). Therefore, knowledge of the details of that classification and criteria is very useful for jurists in weighing between conflicting *maṣāliḥ* (benefits) and *mafāsid* (evils).

6.3.3. Determining the level of Shariah ruling

Commands in Shariah texts may indicate obligations (*wājib*) or recommendations (*mandūb*). Proscriptions in Shariah texts may indicate strict prohibition (*ḥarām*) or reprehension (*makrūh*). If the text is not explicit in one of those degrees, the jurist shall look at the circumstantial evidence related to the text to determine the intended degree of command (obligation or recommendation) or proscription (prohibition or reprehension).

One type of circumstantial evidence that may be used to decide the degree of the *ḥukm shar‘i* is the objective of that command or proscription, especially if the objective was indicated by the Lawgiver explicitly or implicitly, or if the objective was mentioned by the companion who narrated the hadith.

For example, there are several, apparently conflicting, texts regarding leasing out agricultural land. One of them is the narration by Rafi' bin Khadij:

قال رافع بن خديج رضي الله عنه: "أن رسول الله صلى الله عليه وسلم نهى عن كراء المزارع" موطأ مالك

Rafi' bin Khadij said that "the Messenger of Allah (ﷺ) had proscribed leasing out agricultural land." (*al-Muwatta'*)

And the hadith narrated by Jaber:

عَنْ جَابِرِ رَضِيَ اللَّهُ عَنْهُ، قَالَ: كَانَتْ لِرِجَالٍ مِّنَا فُضُولٌ أَرْضِينَ، فَقَالُوا: نُؤَاجِرُهَا بِالثُّلُثِ وَالرُّبْعِ وَالنِّصْفِ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ كَانَتْ لَهُ أَرْضٌ، فَلْيَزْرَعْهَا أَوْ لِيَمْنَحْهَا أَخَاهُ، فَإِنْ أْبَى، فَلْيَمْسِكْ أَرْضَهُ» صحيح البخاري

"Some men had superfluous land. They said that they would give it to others for cultivation on the condition that they would get one-third or one-fourth or one half of its yield. The Prophet (ﷺ) said, "Whoever has land should cultivate it himself or give it to his brother or keep it uncultivated." (*al-Bukhari*)

The proscription in the above-mentioned texts may indicate strict prohibition or only disapproval.

On the other hand, there are some other narrations which indicate the objective of that proscription. Among them is the saying by Rafi' bin Khadij:

«كُنَّا أَكْثَرَ أَهْلِ الْمَدِينَةِ مُؤَدَّرَعًا، كُنَّا نُكْرِي الْأَرْضَ بِالتَّاحِيَةِ مِنْهَا مُسَمًّى لِسَيِّدِ الْأَرْضِ»، قَالَ: «فَمِمَّا يُصَابُ ذَلِكَ وَتَسَلَّمَ الْأَرْضُ، وَمِمَّا يُصَابُ الْأَرْضُ وَتَسَلَّمَ ذَلِكَ، فَتُهَيِّنَا، وَأَمَّا الذَّهَبُ وَالْوَرِقُ فَلَمْ يَكُنْ يُؤَمَّنِيذٍ» صحيح البخاري.

“We had farms more than anybody else in Medina. We used to rent the land at the yield of specific portion of it to be given to the landlord. Sometimes the vegetation of that portion was affected by blights etc., while the rest remained safe and vice versa, so the Prophet (ﷺ) forbade this practice. At that time gold or silver were not used (for renting the land).” (*al-Bukhari*)

This narration and other similar narrations indicate that the objective of the prohibition is to ward off risk and injustice arising from leasing out land for the produce of a determined part of it. Based on this objective, Salem bin Abdullah bin Umar, Urwa bin Al-Zubayr, Saeed bin Al-Musayyib, and Malik bin Anas were of the view that the prohibition is limited to that method of leasing, but leasing out for gold and silver should be permitted.⁷⁴

Another narration also referred to another objective of that proscription which is to encourage the companions to console each other in those difficult economic circumstances as Rafi' bin Khadij said:

“لَقَدْ نَهَانَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ أَمْرٍ كَانَ بِنَا زَائِفًا...”

“Allah's Messenger (ﷺ) proscribed leasing out land for the purpose of consoling us ...”

The above-mentioned narration indicates that proscription in this case is due to disapproval of leasing out agricultural land rather than strictly prohibiting it. This is supported by Ibn Abbas saying:

إِنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمْ يَنْهَ عَنْهُ وَلَكِنْ، قَالَ: «أَنْ يَمْتَحَ أَحَدُكُمْ أَخَاهُ خَيْرٌ لَهُ مِنْ أَنْ يَأْخُذَ عَلَيْهِ خَرْجًا مَعْلُومًا» صحيح البخاري.

“The Prophet (ﷺ) did not forbid that, but said: One had better give the land to one's brother gratis rather than charge a certain amount for it.” (*al-Bukhari*)

⁷⁴ See the views of scholars regarding the ruling on renting the land in: Ibn Battal, *Sharh Sahih Al-Bukhari*, vol.6, p.463-471.

Another example is when the companion Zaid Bin Thabit understood that the Prophet's proscription on selling fruits before their ripeness was intended to advise the companions to avoid a sale that would lead to a dispute between its parties, not to strictly prohibit that sale in all situations. Imam Al-Bukhari narrated the hadith of Zaid Bin Thabit who said:

عَنْ زَيْدِ بْنِ ثَابِتٍ رَضِيَ اللَّهُ عَنْهُ، قَالَ: كَانَ النَّاسُ فِي عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، يَتَّبِعُونَ التَّمَارَ، فَإِذَا جَدَّ النَّاسُ وَخَضَرَ تَقَاضِيهِمْ، قَالَ الْمُبْتَاعُ: إِنَّهُ أَصَابَ التَّمَرَ الدُّمَانُ، أَصَابَهُ مُرَاضٌ، أَصَابَهُ قُشَامٌ، غَاهَاثٌ يَخْتَجُونَ بِهَا، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمَّا كَثُرَتْ عِنْدَهُ الْخُصُومَةُ فِي ذَلِكَ: «فِيمَا لَا، فَلَا تَتَّبِعُوا حَتَّى يَبْدُوَ صَالِحَ التَّمَرِ» كَالْمَشُورَةِ يُشِيرُ بِهَا لِكَثْرَةِ خُصُومَتِهِمْ. صحيح البخاري.

“The people used to sell fruits before they were clearly in good condition. When people harvest fruits, and the time for paying the price comes, the buyer says: The fruits have been smitten by *duman*, *qusham* and *murad*, fruit diseases on which they used to dispute. When their disputes which were brought to the Prophet (ﷺ) increased, the Messenger of Allah (ﷺ) said to them as an advice: “No, do not sell fruits till they are matured,” due to the large number of their disputes and differences.” (*al-Bukhari*)

6.3.4. Considering the objectives of Shariah in applying Shariah rulings and looking at the consequences

It is a well-established fact that every Shariah ruling is meant to either bring a *maslahah* (benefit) or repel a *mafsadah* (evil). However, when it comes to practice in applying such rulings to individuals, the situation might be different due to external factors. The application of certain Shariah rulings in some situations may not achieve their objectives or even lead to opposite results due to adverse circumstances. In that situation, the *mujtahid* shall reconsider the application of such a ruling to that particular incident in order to reach the appropriate objective. Considering the consequences of applying Shariah rulings does not mean arbitrary suspension of those rulings with the excuse that they do not achieve their objectives. It is about looking for the appropriate ruling for that case with those circumstances. The consideration may be in the form of a concession, exception, or an alternative ruling.

For example, Umar bin Al-Khattab stopped giving a share of zakat to ‘those whose hearts are to be reconciled/ *المؤلفة قلوبهم*’. The Holy Qur’an deemed those weakly faithful people as recipients of *zakat*.

The objective of giving such people a portion of *zakat* is to soften their hearts and bring them closer to Islam or to protect Muslims from their evil. That objective was achieved during the time of the Prophet Muhammad (ﷺ). During the time of Umar, Muslims became strong enough to protect themselves. Therefore, the objective of that ruling was no longer realized. It should be noted that Umar bin Al-Khattab never decided to cancel that ruling forever and deprive the people 'whose hearts are to be reconciled' of *zakat* but decided not to give them only in such circumstances. Whenever there are circumstances to achieve the objective of that ruling, 'people whose hearts are to be reconciled' should be given their share of *zakat*.

Another example is what Umar did regarding marrying Christian and Jewish women. The Quran allowed marrying them, but when Umar bin Al-Khattab feared misuse of that permissibility, he warned against such marriages and ordered a Muslim leader to divorce his newly married Jewish wife. However, it should be noted that Umar did not claim that marriage from those women is to be prohibited. He clearly stated that it is, originally, permissible as long as it meets required conditions and fulfills its objectives.

Another example is the decision by Umar bin Al-Khattab not to punish the slaves of Hatib bin Abi Balta'ah when they stole a she-camel and slaughtered it for eating. When the matter reached Umar bin Al-Khattab, he said to their master: "If I didn't know that you are starving them until one of them did what Allah forbade, I would have cut off their hands. I will let them free, but I will fine you." Then Umar imposed on him a fine of twice the price of that she-camel. (*al-Bayhaqi*) Here, Umar considered the hunger faced by those slaves to be a form of coercion that overruled the punishment for theft.⁷⁵ So, the penalty of theft was not applied to them because there was no reason for it, as some conditions for its application were not met.

6.3.5. Using objectives of Shariah rulings as effective cause (علة الحكم)

Objectives of detailed Shariah rulings may be used as the 'effective cause' for analogical reasoning. This is possible when the objective is the wisdom behind a Shariah ruling and such an objective meets the requirements for being the 'effective cause' of such ruling, thus, used as the basis for extending that ruling to new similar incidents. This is according to the opinion of *Uṣūl al-Fiqh* jurists who are of the view that 'wisdom/ objective' could be the basis for analogical reasoning if it is apparent, constant and extendable.

⁷⁵ Rawwas Qal'aji, *The Encyclopedia of Fiqh of Omar Ibn Al-Khattab*, p.491.

CONCLUSION

Reflecting on the key concepts, it becomes clear that Maqasid al-Shariah, encompasses the objectives of Shariah texts, Shariah rulings, and the Lawgiver's legislative methodology.

The discipline of Maqasid al-Shariah emphasizes the interconnectedness of Shariah texts and their objectives, purposefulness of Shariah rulings, consideration of circumstances and consequences in understanding Shariah texts and applying them to real life, the articulation of the levels of *maṣlahah*, and the criteria for weighing between *maṣlahah* and *mafsadah*.

Scholars unanimously agreed that the main goal of Islamic law is to guide people to the right path. Preservation of religion, life, intellect, lineage, and wealth are the five universal objectives which reflect the wisdoms and interests placed by the Legislator in His legislation.

When formulating Shariah rulings, the Lawgiver considered human nature, promoting ease and tolerance, ensuring universality, carefully balancing between benefits and harms, and assessing the consequences.

Comprehending the objectives in legislation methodology provides a framework for Islamic legal theory and guides scholarly efforts in deriving new rulings. While realizing the objectives of specific Shariah rulings fosters deeper comprehension, facilitates nuanced application, and aids in resolving apparent conflicts between texts, ultimately leading to a more holistic and meaningful implementation of Islamic law.

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