The Conception of the Idea of maṣlaḥa in Islamic legal Theory and its Evolution into the Central Theme of Maqāsidal-sharī`ah: An Historical analysis

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Abstract

The central theme of Maqāsidal-sharī`ah constitutes the concept of maṣlaḥa or public interest. This paper attempts to investigate the origin and development of the idea of maṣlaḥa from an unnoticed legal tool of Maliki School into the fundamental principle of Higher Intents of Islamic Law (Maqāsidal-sharī`ah). The study examines the early conception of the idea of maṣlaḥaover the periods which starts from the age of Prophet's companions until the time of Imam al-Shatibi. The study investigates the historical development of the theme maṣlaḥa from its conceptual evolution, interpretations and reflections of different scholars of various schools of jurisprudence. This study analyses the formative use of this term in Maliki Madhab in the name of masalih al-mursala as a legal tool for deriving rules besides the primary sources of rulings namely Quran and Sunnah. The study makes a brief survey of the development of maṣlaḥa from a restricted and limited legal source of law making to the broad sense of maqāsid which constitutes a wide meaning of comprehensive benefits for human both for this world and the hereafter. The study gives more emphasize on the theorization and development of the term in the broader sense by Imam al-Shātibi, who expanded the idea from an unnoticed tool of lawmaking into the fundamental principle of law making in Usul al-fiqheither with the textual evidences or without.

Keywords: *Maṣlaḥa*, *maqāsidal-sharī`ah*, Islamic Legal theory, Imam al-shatibi, Maliki School of Jurisprudence.

Introduction

The *maqāsidal-sharī`ah*, or the Higher Objectives of Islamic Law, as a branch of Islamic legal theory has been gained due attention in academic world. Recently, study of *maqāsidal-sharī`ah* or studying a contemporary issue through the *maqāsid* perspective has been widely recognized trend in the academia. In a discussion pertaining on *maqāsidal-sharī`ah* would not be completed unless the reference of *Imam al-Shātibi*, and his great contributions in the field of Islamic legal theory. Before it is developed to an independent field of study, there have been vague and uncertain ideas in the field of Islamic Legal theory *(Usūl al-fiqh)*. The transforming process of an idea namely *maṣlaḥa* and its technical implications in its theoretical and application levels proposed by different scholars in different ages have gradually led to the full bloom of the realization of *maqāsidal-sharī`ah*. The base of the *maqāsidal-sharī`ah*as designed by *Imam Shātibi* is based purely on the concept *maṣlaḥa*. Before it has been the central theme of *Maqāsidal-sharī`ah,* the concept, though it was in limited sense, had been used and practiced in Maliki school of thought in the early stages of Islamic legal theory. As we have witnessed in the past, the quest of knowledge and impartial attitude for the sound understanding of *din* did not prevent them from using and practicing the various legal tools of opposing schools of Islamic law.

The history of the development of Islamic jurisprudence, therefore, promulgates the great lessons of inclusiveness of different opinions from different schools of law. It is not unusual to see in the history, many scholars of shafi school of Islamic legal theory have studied and have readily used different legal tools of other schools of law and vice versa. An idea which evolved in Hanafi School of jurisprudence has gradually been developed by Malik scholars and vice versa. This was a great phenomenon among the early scholars who, in the learning, accepted a unique policy of give and take, exchanging knowledge from all sources at their hand. It is because of this exceptional nature of scholarship in the field of *Usūl al-Fiqh*, they could manage to add, supplement and develop imperfect ideas to a full-fledged branch of knowledge. It resulted, consequently the expansion of knowledge and the proper understanding of Islam in to a state of maturity. The development of *Maqāsidal-sharī`ah* as an independent science of knowledge is a fine example of our early scholars' impartial attitude to the knowledge. The most important feature of this branch of study is; it is the final result of the great efforts of different scholars from various schools of thought in Islamic legal theory. Although the final mark left by Al-Shātibi constitutes the pivotal role in *Maqāsidal-sharī`ah,* the intellectual contributions of his predecessors from all schools of thought including the Mutazilah and Shī`ite cannot be ignored.

Maslaha before Imam Shatibi

As we understand, the central theme of *Maqāsidal-sharī`ah* lies on the concept of *maṣlaḥa*. The study on this terminology in *Usūl al-fiqḥ*, lead us to many facts which expose the intellectual contributions of various jurists and scholars of different schools of thought in developing as an independent science of knowledge. Here the researcher takes a brief survey on the origin and development of *maṣlaḥa* as a terminology of *Usūl al-fiqḥ*, from the early Maliki school of thought to the exposition of a broad meaning and fundamental principle of *Maqāsidal-sharī`ah* by Imam al-Al-Shātibi. Before the analysis of al-Shātibi's concept of maṣlaḥa, it is significant to make a short review of the origin of this very concept and its development in the system of Islamic Legal Theory since the third century to the eighth century.

Maṣlaḥa; Meaning and Definitions: The word *maṣlaḥa* is derived from the root word s-l-h. The verb *saluha* is used to indicate when a thing or a man becomes good, uncorrupted and right, just, virtuous, honest or it is alternatively employed to indicate the state of possessing these virtues[1]. When it is used with the preposition *li* it gives the meaning of suitability. Maṣlaḥa in its relational sense means a cause, a means, an occasion, or a goal which is good. It is also said of a thing, an affair or a piece of business which is conducive to good or that aims at good. Its plural form is *maṣaliḥ*. *Mafsada,* is its exact antonym. The sentence *fi'l- amrmaṣlaḥa* is used to say: in the affair there is that which is good (or the cause of good). Istiṣlaḥ, the tenth form, means to seek *maṣlaḥa.* Juridically, maṣlaḥa carries the meaning of "welfare," and the jurists applied the term to mean "general good" or "public interest"[2]

Saied Ramadan al-Buti says; all the things which bring the benefit are *maslaha*[3]. And the removal of what is harmful is also come under the category of *maslaha.*

Quran; The various derivations of the root *s-l-h* are concurrently stated in the Quran, the word *maṣlaḥa,* however, does not appear there. The Quran uses *ẓalama* (worong) [5:9] and *fasada* (He/it got corrupted) as opposite terms to *ṣaluḥ. ṣaliḥ,* the active participle of *ṣ-l-ḥ,* occurs very frequently. If we take the very root of maṣlaḥa, i.e, sulh, it does mean settlement, or compromise[4]. On one occasion the meaning of this term is elaborated textually as follows:

They believe in God and in the last day and enjoin goodness and forbid evil and hasten to do good deeds, and these are the *righteous ones* (ṣaliḥin). [3:114][5]

The maslah has been classified into two by Muhammad Ruwwas in *al-mawsu'ah al-Fiqhiya al-muyassarah,* they are as follows: The *maṣlaḥa* either for the *Haq* (right) of Allah or for the right of subjects. Imam Al-Shātibi defines *Maṣlaḥa* in his book *Unwan al-Ta'rif* as that which produces a benefit for

people at the collective or individual level and is acceptable to the human beings because of its importance for their lives[6].

Imam IbnAshur gives a definition which seems to render the most comprehensive meaning in reference to *Maqāsidal-sharī`ah*. According to him, *maṣlaḥa* can be defined as being an "attribute of the act *(fi'l)* whereby righteousness and goodness *(salah)* takes place, that is to say utility and benefit *(naf')* always or mostly for the public or individuals." A contemporary scholar of *Maqāsidal-sharī`ah,* Jasser Auda says about two kinds of maṣlaḥa. The first one is *ma ṣlaḥa* which is supported by scripts namely Quran and Prophetic tradition and the second one is a Maslaha which is not mentioned in the scripts[7].

***Maṣlaḥa* from the Companions of the Prophet (pbuh) until the four Imams:** Al-Shātibi's philosophy of Islamic Law is, in fact, a continuation of the discussion of the concept of *maṣlaḥa* that had appeared in major works of Usul al-fiqh prior to al-Shātibi. We have mentioned before that the concept of maṣlaḥa has been developed and used in the name of *istiṣlaḥ* in the Maliki school of thought as a tool of deriving laws. It is generally known to students on Islamic jurisprudence that the idea of taking maṣlaḥa or public interests into consideration was warmly welcomed by Imam Malik (d.179/795) and his followers. The rudimentary form of maṣlaḥa in Maliki School of jurisprudence was not purely *maṣlaḥa* rather it has been coined as *maṣaliḥ al-mursala.*

Wan Azhar Wan Ahmad, a young Malaysian researcher has made a brief survey of the Maṣlaḥa form Prophetic era to until seventh/ thirteenth century scholars in his book "*Public Interest (al-Maṣaliḥ al-Mursal) in Islamic Jurisprudence: An Analysis of the concept in the Shafi school*". He enumerated the incidents in which the public interests were preferred by the rightly guided Khalifas, other companions and their successors over the course of time. Among the successors, Qadi Shurayh b. al-Harith al-Kindi (d.80) Said bin al Musaayib (d.93), Urwah bin Zubayr (d.94) and some other jurists of Madina were believed to have taken the maṣlaḥa into account[8]. According to Wan Azhar, Public interest had been a major theme to Imam Abu Hanifa himself although he did not use the very term *maṣlaḥa*. Besides relying the four primary sources of Islamic Law, Imam Abu Hanifa, in certain occasions reported to have go beyond in exercising his personal reasoning which is technically known as *istihsan* in Hanafi School. Although he did not use the term *Istiṣlaḥ* or Maṣlaḥa, quoting the analysis of later scholars like al-sarakshi and Abu Bakr al Jassas, Wan Azhar argues that the *istihsan* was also exercised by Imam abuHanifa in the same sense.

Imam Malik is regarded as the first Jurist who introduced and used the Maṣlaḥa as a legal terminology in Islamic jurisprudence. Malik once said "it is permissible to kill one-third of the people for the interests of the remaining two thirds."[9] Like Abu Hanifa, Malik comes out with no precise definition of the principle of public interest. After Imam Malik, some Maliki

jurists have expounded the concept of malslaha into broader meaning with concrete definition. For Example, Ibn al-Arabi (d.231) sees juristic preference as a departure from certain proofs (dalil) presented in favour of customs, public interests, convenience and the removal of hardship[10].

According to Wan Azhar, Imam Shafi has exercised the public interest in certain occasions. Although he is regarded as the Imam who severely criticized and refuted the juridical preference, he has been in favour of considering public interest at a time where textual evidences were not opposing the possibility of bringing the maṣlaḥa[11]. Imam Ahmad bin Hanbal has also used *maṣaliḥ al-mursala*h in the same sense of Maliki madhab used it. Hanbalis included al-maṣaliḥ al-mursala in their rule of the change of fatwa according to change of circumstances'[12]. The great Hanbali scholars IbnTaimiyyah and Ibn al Qayyim Al Jaqziyah have extensively written on it.

Imam al-Haramayn al-Juwayni (438/1047): Being *maṣlaḥa*as itself, from Imam al-Ḥaramayn al-Juwayni's al-Burḥan, it appears that by his time the validity of reasoning on the basis of *maṣlaḥa,* for which he uses the term *istiṣlaḥ*, had become a problem. Due to the writings of early *mutakallimūn*, Imam al-Juwayni maintains his position that the *istiṣlaḥ* can be acceptable at some occasions which has a specific textual basis (asl). According to the previous scholars, since the maṣaliḥ al-mursala is not based on the textual evidence, cannot be relied for deriving the Islamic Law.

Imam al-Juwaini is considered as the first person who gave a wide and rich meaning for the connotation of the term *al-maṣlaḥa*. Juwayni considered *Istiṣlaḥ* in his system of *illa* and divided in into five categories. First is the category where its (*ma´na*) concept is rationally understandable affirming the end of *al-iyalat al-kulliya* and al *siyyasat al-amiyya* (public interest). It is related to essential necessities which are inevitable. The second category concerns what is a general need (*al-hajat al-amma*), but below the level of *ḍarūri*. Third is the category which belongs to neither of the above, but rather concerns something which is noble (*mukarrama*) e.g. cleanliness. The Fourth category is similar to the third in terms of need, yet, in terms of need, yet, in terms of priorities, the fourth comes later as it is only a means to a commendable matter, for example *kitaba* (writing contract) is a cause for a commendable matter, namely manumission of slave. The fifth category concerns those *usūl* whose meanings are not clear, and is demanded by neither darura nor by haja; nor is it required as a *mukarrama*. Examples of this category are the purely physical 'Ibadat.

According to al Juwaini the *istiṣlaḥ* should be considered reasons in judging a particular case with regard to universal rules. He considers *Istiṣlaḥ* as a partial *qiyas*. Juwayni clarifies that *ḥaja* is the root and *istiṣlaḥ* is a branch (far). It is noteworthy that Al-Shātibi distinguishes himself from all his predecessors in a notion that he asserted maṣlaḥa as the basic of principle for the various categories of need.

Abu Husayn al-Basri (d.108): One of the Mutazali scholars, Abu Husayn al-Basri (d.478/1085) has coined the term maṣlaḥa in a general sense as well as a technical term. He refers maṣaliḥ in reference of istiṣlaḥ (reasoning) and illa (reason), and in arguments against his opponents who maintain that maṣaliḥ cannot be known through reasoning at all. He says that "when a correct sign (amara) indicates (dallat) a quality (wasf) being reason (illa) we decide that it is the basis of *masalaha*…. It indicates that the basis of maṣlaḥa is to be found wherever an *illa* is found."[1].

Imam al-Ghazali (505/1111): Eminent Shafi`ite scholar Abu Hamid al-Ghazali discussed the problem of Maṣlaḥa more clearly than Basri and Juwayni. Ghazali defines maṣlaḥa in his famous book *al-mustafsfa* as follows:

In essential meaning (*aṣlan*) it (*maṣlaḥa*) is an expression for seeking something useful (*manfa´a*) or removing something harmful (*maḍarra*). But this is not what we mean, because seeking utility and removing harm are the purposes (maqasid) at which the creation (khalq) aims and the goodness (ṣalaḥ) of creation (mankind) consists in realizing their goals (maqasid). What we mean by maṣlaḥa is the preservation of the maqasid. What we mean by maṣlaḥa is the preservation of the maqāsid of the law (shar') which consists of five things: preservation of religion, of life, of reason, of descendents and property. What assures the preservation of these five principles (usul) is maṣlaḥa and whatever fails to preserve them is *mafsada* and its removal is *maṣlaḥa*.

Al-Ghazali reduced the five categories of maṣlaḥa propounded by al-Juwaini, into three categories. Contrary to ẓahiri scholars and some traditional Shafi scholars, al-Ghazali argued that the maṣlaḥa should be considered for judging the law, even though not supported by textual evidences. So he categorized three kinds of maṣlaḥa, one is supported by the textual evidence and the second one is the type which is rejected by textual evidence. The third is the type which has neither textual evidence in favour nor against it. The third one is the type other is not supported by it. Imam al-Ghazali was able to present a good example in order to substantiate his views on al *maṣlaḥa*. He argues that *maṣaliḥ al-mursala* would could be considered even it is not supported by textual evidence. According to him, it will be accepted as has three qualities: darua, qati'iya, kulliyya. Ghazali illustrates the point with an example:

If unbelievers shield themselves with a group of Muslims captives, to attack this shield means killing innocent Muslims-a case which is not supported by textual evidence. If Muslims attack is withheld, the unbelievers will advance and conquer the territory of Islam. In this case it is permissible to argue that even if Muslims do not attack, the lives of the Muslim captives are not safe. The unbelievers, once they conquer the territory, will rout out all Muslims. If such is the case, then it is necessary to save the whole of the Muslim community rather than to save a part of it. This would be the reasoning which is acceptable, as it

refers to the above three qualifications. It is ḍarūri because it consists of preserving one of the five principles, i.e. protection of life. It is qat' I because it is definitely known that this way the lives of the Muslims will be saved. It is kulli, because it takes into consideration the whole of the community, not part of it[13].

From Ghazali's treatment of maṣlaḥa, it can be concluded in general, though he made extensive use of this concept into various dimensions, he also made some reservation. Khalid Abdullah Masud has observed that it may be because it has been viewed through the theological point of view[1]. He was also in the same position as his predecessors and successors except al-Shātibi in viewing the Maṣlaḥa as subordinate to qiyas. He did not reject maṣlaḥa at all rather he treated it considerably. As we see in the later stages of Usul al-fiqh, the connotations of Maṣlaḥa have been treated extensively into multi dimensions. It is significant to note that the mark left by Ghazali is evidently seen in the science of usul al-fiqh in later time, particularly in reference of maṣlaḥa.

Imam Fakhr al-Din al-Razi (d.606/1209): The *Mahṣul* is the renowned combined study of two books in *Usūl al-fiqḥ* namely al-mustasfa by Ghazali and al-mu´tamad of Basri. This book has had a great impact in the science of Maliki and Hanafi *Usūl al-fiqḥ* in later ages. In his work, we cannot see that Razi has given a definition for maṣlaḥa but it seems that in his thinking *munasib* and *maṣlaḥa* are quite closely associated with each other.

Muhammad Khalid Masud, have identified Razi's treatment of maṣlaḥa reading the meanings between the lines. He says; "Razi stresses that no motive or cause can be attributed to God's acts or commands; yet he admits that God's commands coincide with maṣlaḥa of the people, and this *maṣlaḥa* and *munasaba* can be considered *illa* for that command." It is al so be noted here that the maṣlaḥa in some way questioned by Razi. Its wider applicability is questioned and reduced by Razi, as such Imam Shafi and other Shafite scholars on the ground of theological impact which resulted different trends among the jurists in the later ages. Maliki jurist shihab al-din al-Qarafi (684/1285) accepting Razi's criticism of maṣlaḥa, has raised questions and denied its scope in the descipline of usul al-fiqh.

Izz al-Din ibnAbd al-Salam (660/1261): Izz bin Abdu al-Salam, a prominent Shafi scholar in his time, has also talked about *maṣlaḥa.* To ibnAbd al-Salam maṣlaḥa means *ladhdha* (pleasure) and *faraḥ* (happiness) and the means leading to it[14]. As he was a person leaned to *tasawwuf* he gave a sufi oriented meaning for maṣlaḥa. According to him, the maṣlaḥa can be divided in to two; maṣaliḥ of this world and the maṣaliḥ of the hereafter. The former can be known by reason, while the latter can only be known by naqal (revelation)[1].

Imam IbnTaymiyya (728/1328) and Imam Ibn al-qayyim (751/1350): A trend which aroused through the views of ibnTaimiya and Ibn al-Qayim is also highly significant in the

discussion about *maṣlaḥa*. Ibn Tamiya tried to stick on a middle way between the two extremes of total rejection and total acceptance of *maṣlaḥa*. He considered *al-maṣaliḥ al-mursala* similar to the methods of ra'y, *istiḥsān*, kashf (mystic relation) and *dhawq* (mystic taste) of whose validity he was suspicious, and hence rejected them. On the other hand, he refuted the moral implications of the denial of *maṣlaḥa* to the commands of God.

IbnTaimiya also counts *al-maṣaliḥ al-mursala* as one of the seven ways of knowing the commands of God, along with the traditional sources of law. He defines *al-maṣaliḥ al-mursala*as follows: It is a decision when a *mujtahid* considers that a particular act seeks a utility which is preferable, and there is nothing in shari'a that opposes this [consideration]. He admits that sharia is not opposed to *maṣlaḥa,* but when human reason finds *maṣlaḥa* in certain case where there is no supporting citation in the text to be found, only two things are meant. Either there definitely is a text which the observer does not know or one is not dealing with a *maṣlaḥa* at all[15].

Ibn al-Qayyim, the student of Ibn Taimiya and an outstanding scholar has also had the view on maslaha. However, He often calls at siyasa, plays an important part in explaining legal obligations, legal reasoning and legal change in Ibn al-Qayyim's*I'lam al-muwaqq'in*. He made a clear statement on Shariah in which his treatment of maṣlaḥa is also dealt properly.

This chapter is of great significance. Due to the ignorance of the matters grave errors have been committed in reference to sharia. As a result hardship and severity have been brought forth (upon people). Such obligations have been imposed as are not required, if one judges by the magnificent shariah are laid on the hikma and maṣaliḥ al-Ibad, in this world of living (ma'ash) and in the world of return (ma'ad). The shariah is all justice, kindness, maṣaliḥ and hikma. Hence any rule which departs from justice to injustice…from maṣlaḥa to mafsada…. is not part of shariah even though it is arrived at by ta'wil (literal interpretation)[16].

Najm al-Din al-Tufi (d.1716/1316): Contrary to previous scholars, Najm al-Din al-Tufi justified the use of *maṣlaḥa* even to the extent of setting aside the text. He stressed *maṣlaḥa* as the basic and overriding principle of Shariah. Therefore, *maṣlaḥa* prevails over all other methods such as ijma'[17]. So, al-Tufi regards maṣlaḥa as a fundamental principle. Although he preferred *maṣlaḥa* as a fundamental principle of sharia' a over the textual sources, he did not elaborate any concrete criterion for determining and establishing *maṣaliḥ* precisely.

From the above discussion, we see the concept of *maṣlaḥa* was treated by different scholars in different ways. The sum up of above survey of early scholars unfolded the various aspects and dimensions of *maṣlaḥa*. It has been viewed through theological, legal and utilitarian point of views. In short, we see that the concept of *maṣlaḥa* and its various implications were prevailed

even among the companions of Prophet and salaf though its names were different. Over the course of time, the jurists have taken the very concept into consideration much vigorously grasping the changes occur in the society.

Masalaha in the Theory of Imam Al-Shātibi

Kitab al-maqāsid is the portion in *al-muwafaq at* which deals with the theory of Maqasid. Through this book Shatibi, is trying to establish a notion that the rulings in the religion is for *maṣlaḥa* which can simply be translated in to good things, or goodness. Al-Shātibi argues, the primary objective of the Lawgiver is the *maṣlaḥa* of the people. All rulings and sanctions in the religion are either to bring goodness or to protect them from the evils in this world and hereafter[18]. Relying on this argument Imam al-Shātibi quotes some Quranic verses in the introductory chapter incorporating the views of some predecessors.

Maslaha itself is the Maqsada of Shairah: The primary objective of the Lawgiver, According to Al-Shātibi, is the goodness or *maṣlaḥa* of the people whether it explicitly articulated or not. The rulings of Sharia concern the protection of the *Maqāsid* of the *Sharia* which in its turn aims to protect the *Maṣaliḥ* of the people. Wael B. Hallaq observes the fundamental Shariah principle proposed by Shatibi as follows; the aim of Shariah is to ensure (protect) the interests (maṣaliḥ) of Muslims are preserved in the best of fashions in this world and in the hereafter[19]. Al-Shātibi defines masalaha as: I mean by maṣlaḥa that which concerns the subsistence of human life, the completion of man's livelihood, and the acquisition of what his emotional and intellectual qualities require of him, in an absolute sense. When it the term Maṣlaḥa is referred in our discussion includes the meaning of benefit and harm in both this world and the next. This meaning has been affirmed by the jurists and scholars since the term is being discussed in *Usul al fiqh*. Explaining the concept of *maṣlaḥa* (interest) in Maqāsidal-sharī`ah developed by Imam al-Shātibi, Sheikh Ahmed Raysuni states "*maṣlaḥa*" as it relates to the life to come is whatever brings God's favour and blessing, while harm as it relates to the life to come is God's disfavor and chastisement[20].

In order to avoid any confusion in relation to the concept of interest, al-Al-Shātibi makes it clear that true interests are those which serve no to destroy life, but to support and nurture it, and which contribute to the attainment of blessedness in the life to come. He writes,

Whatever benefit is achieved and whatever harm is avoided are considered only on the basis of whether and how this earthly life prepares the way for the life to come; they are not considered on the basis of whether they help to satisfy the desire to achieve one's own interests and to avoid harm as these terms are ordinarily understood. For the Law has come in order to deliver human beings from the tyranny of their selfish desires and whims in order that they might become servants of God alone.

And if this is true, then it is a truth which cannot be reconciled with the premise that Islamic Law was established in harmony with selfish ambitions and the pursuit of immediate gratification however one choose. As our Lord has declared, "But if the truth were in accord with their own likes and dislikes, the heavens and the earth would surely have fallen into ruin, and all that lives in them (would long ago have perished) (Quran, 23:71) Hence, the Law takes into consideration that which is of greater significance, namely, the achievement of people's best interest-the pillar of both our material and spiritual existence-not what people happen to like or dislike.

The meaning of *maṣlaḥa* here also bears the sense of protection of interests. Al-Shātibi explains that *sharī´ah* deals with the protection of *maṣaliḥ* either in a positive manner as when to preserve the existence of *maṣaliḥ*, *sharī´ah* adopts measures to support their bases. Or in a preventive manner; to prevent the extinction of *maṣaliḥ* it adopts measures to remove any elements which are actually or potentially disruptive of *maṣaliḥ*[21].

Classifications of *maslaha* or *maqasid:* In Al-Shātibi's theory, *maṣaliḥ* itself is the *maqāsid*. The *maqāsid* of the Law giver is the *maṣaliḥ* of the human. Al-Shātibi also divides *maṣaliḥ* into three categories as did Imam al- Ghazali which as follows: *ḍarūri* (necessary), *Hājiyāth* (needed or needs) and Tahsīnāt (commendable). The *ḍarūrimaqāsid* are called necessary since they are indispensable in sustaining the *maṣaliḥ* of *dīn* and *dunya* (religion and the hereafter). If they are disrupted the stability and consistency of the *maṣaliḥ* of the world will also be disrupted. Their disruption results in the termination of life in the world, and in the hereafter it results in losing salvation and blessings. The *ḍarūri* category consists of the following five: *Dīn* (Religion), *Nafs* (Life), *Nasl* (family), *Mal* (Property), and *´aql* (Intellect).

According to Al Al-Shātibi, the sharia is for maṣlaḥa. It does mean all the rulings and injunctions of *Shariah* for the welfare of humanity here and hereafter. He describes these *maṣaliḥ* in two ways; positive and preventive manners of protection. Falling into the positive group are *ibādāt* (rituals, worship), *'adāt* (habits and customs) and *muamalat* (transactions), and falling into the preventive group are *jināyāt* (penalties or punishments)

ibādāt aim at the protection of *din* (religion). The beliefs in the fundamental principles of Islam and the obligations like *Solah, zakah*, fasting and *hajj* come under the category of the protection of din. For the protection of life one has to take food, drink, clothing and shelter are examples of *'adāt*. The penal codes of Islam are to protect five necessities of the life. While the former is the positive way of protecting the necessities the latter protects the same in a preventive way. For example the injunction of *Qisas* is a preventive method of protecting *nafs*. Punishing someone who used intoxicant is for the protection of Aql. The *hājiyath* which comes under the second category of

Islamic injunctions is also for the benefit of human beings. If the hajiyat are not taken into consideration along with the ḍarūriyat the people on the whole face hardship. The hajiyath is supplementary to ḍarūriyat. The disruption of Hajiyat is, however, not disruptive of the whole of maṣaliḥ, as is the case with the *ḍarūriyat*. Al-Shātibi gives the various examples of hajiyat; in Ibadat, concessions in prayer and fasting will be provided due to the sickness or journey which otherwise may cause hardship in prayers, fasting, etc..; in customs and practices the lawfulness of hunting; in *muamalat*, permission for *Qirad* (money lending or commenda), and in jinayat, allowances for weak and insufficient evidence in decisions affecting public interest.

Tahsiniyat refers to customs which brings goodness and perfection in matters. It means to embrace what conforms to the best of customs (*adat*) and to avoid those manners which are disliked by wiser people. This type of maṣlaḥa covers noble habits (ethics, morality): examples of this type are as follows: In Ibadat, cleanliness (tahara) or decency in covering the private parts of the body in prayer: In Adat, etiquette, table manners, etc.; in muamalat, prohibition of the sale of unclean (najis) articles or the sale of surplus food and water, and depriving a slave of the position of witness and leadership, etc; for Jinayat, the prohibition of killing a free man in place of a slave[21].

Imam Al-Shātibi systematically arranged division of *maṣaliḥ* consisting of three grades, which are connected to one another. In his detailed analysis, he clearly demonstrates how it related to one another[21].

In short, Shatibi's main proposal of Shariah can be summarized as follows. *Darura* is the basis of all *maṣaliḥ*. Therefore, the disruption or any distortion of a *ḍarūri* makes in turn, the disruption of other benefits as well. The disruption of needs (haji) or a *tahsīni* does not necessitate or make the disruption of the ḍarūri itself. But it would be comparatively less problematic. However, in certain cases, an absolute disruption of Tahsini will make the whole system disrupted. So, the preservation needed and luxury also very important at least for the sake of preservation necessary[21].

Nature of Maslaha and its similarity to mafsada: Another important aspect al-Shātibi puts forward in his theory is about the nature of maṣaliḥ. As we mentioned before he divided maṣaliḥ into two categories: one is maṣaliḥ in the world and second one is maṣaliḥ in the hereafter. The worldly maṣaliḥ are also two; one is the maṣaliḥ which exists and the second one can be observed on the basis of shai'a proclamation.

As far as the first category is concerned; those *maṣaliḥ* are not supposed to appear as pure complete *maṣaliḥ*. Rather masalih are always mixed with hardship and discomfort. No masalih can be attained unless it is associated with certain kinds of mafsada or discomfort. Sometimes, it may be big and in some occasions it may be relatively less and small. The mafsadamay precede,

accompany or follow the *maṣaliḥ*. As far as the *mafasid is concerned, in nature it is also similar to the Masalih.* It would not be purely *mafasid,* ratherthey are found mixed with certain amount of comfort and enjoyment. Therefore the solution for this predicament is that *maṣaliḥ* and *mafasid* in this world can be known on the basis of the predominant side; if the *maṣlaḥa* is greater than *mafsada*, should be considered. So what is sharia's objective is to take the thing which is predominant to *maṣlaḥa*. Imam al-Shātibi has elaborated in detail this area clarifying how the maṣlaḥa can be determined from the various confusing issues in which *maṣlaḥa* and *mafasada* cannot be easily distinguished. From the lengthy discussion al-Shātibi deduces the following rules as characteristics of *maṣlaḥa*: i. The purpose of divine law (*tashri*) is to bring and establish (*iqama*) *maṣaliḥ* in this world and hereafter through a system which in no way would disrupt the system of shar'. ii. The law giver intends the *masalih* to be absolute and complete. iii. The reason of why the masalih are primary objectives of the Shariah is; that shariah has been instituted to be *abadi* (eternal, continuous), *kulli* (universal) and *'amm* (general) in relation to all kinds of obligations (taklif) *mukallafin* (subjects of law) and *ahwal* (conditions, states)[21]. The ultimate purpose of these kinds of injunctions are the pure benefits of mankind both in this world and hereafter.

Al-Shātibi's classification of *maṣlaḥa* into two categories such as universal *maṣlaḥa* and relative *maslaha* were also very important in eliminating the confusions in this regard[21]. Al-Shātibi presents his views on *maṣlaḥa* as an answer to the questions a raised by previous scholars like Imam al-Razi, Qarafi and Izz bin Abd al-salam. He could give contented answers to their questions.

Imam al-Shātibi was not presenting merely an idea in to the field of Islamic theory rather he put forward a concrete formula of application in order to substantiate his theory. What we see in the field of Usul-al fiqh the theory and concept al-Shātibi presented becomes the ground breaking principle of legal methodology. The validity of *maṣlaḥa* as a legal evidence has been the most debated question in Islamic legal theory. As we have mentioned in the previous discussion, maṣlaḥa is usually considered an evidence external to four sources i.e., the Quran, Sunna, Ijma' and Qiyas. What distinguishes Imam Al-Shātibi is he does not treat maṣlaḥa in the framework of the four generally accepted sources rather he considers it as the primary objective of the shariah. Instead of using *maṣlaḥa* as a tool of deriving rule in absence of textual indications, He put it at the primary position of all rulings stipulated with or without textual proof. Al-Shātibi uses the terminologies *istiṣlaḥ, istidlal* and *al-maṣaliḥ al-mursala*, *al-istidlalal-mursal* and *istihsan* as synonyms of *maṣlaḥa*. In order to substantiate his theory he illustrates ten examples from the opinions of the companions of the prophet. In short, it is to say that Al-Shātibi has succeeded in analyzing and finding the primary objective of *shariah*; that is the *maṣlaḥa* of people in this world and hereafter. The Quranic guidance and the Prophetic tradition were also sent for the same.

Conclusion

The central theme of the *maqāsidal-sharī`ah* lied on the principle of *Maṣaliḥ*. The term *maṣlaḥa* in the field of *maqāsidal-sharī`ah* is used as the synonym of *maqāsid*. Before the development of *Maqāsidal-sharī`ah* as an independent branch of knowledge, the term *maṣlaḥa* was used by different jurists in different schools in various connotations. The use of this term primarily came to the field of *usūl al-fiqh* in Maliki school of thought, which considered it as a supplementary legal tool which can be practiced in rare occasions where the four primary sources were in sufficient to extract the ruling. The usage and different implications of the term maṣlaḥa have been gradually developed under the treatment of different jurists and scholars. In no way it has been viewed as a primary objective of *al-sharī`ah* until Imam Al-Shātibi consider it the Primary objective of the *al-sharī`ah*. The concept of *maṣlaḥa* in broader sense as the central theme of *maqāsidal-sharī`ah* is developed by the efforts of different scholars of different school of Islamic jurisprudence. Shafi'ite Scholars like Imam al-Juwayni, Imam al Ghazali, Imam al-Razi and Izz bin Abd al-Salam, Hanbali scholars like Imam ibnTaymiya, Ibn al-Qayim and Imam Najm al-Din al-Tufi, Malikite scholars like Imam al-Qarafi and Mutazilite scholar imam al-Basri were the scholars who seriously dealt the concept of *maṣlaḥa.* from the above survey the researcher concludes that the concept of *maṣlaḥa* with its simple beginnings unfolded its various aspects as it came into contact with theology, tasawwuf, logical analysis and most significantly, with social and legal changes.

The concept of *maṣlaḥa* in *usul al-fiqh* has been theoretically changed in the treatment of Shatibi. Instead of regarding it as supplementary tool of legal formation, Al-Shātibi put it as the fundamental of Shariah on which the legal rulings are derived. It was not an easy job for him to present the theory of *maṣlaḥa*, as a fundamental principle of Usul al-fiqh. Moreover, he had to establish the theory by clarifying all the doubts and ambiguities raised by the scholars prior to him. He established his theory in a convincing manner. Shatibi reiterated the very foundations of law and its three classifications which have been presented and developed by early scholars like al Jawayni and Imam Ghazali. He argues that laws in any human society are based on the following three universals: Necessities *(Daruriyat)*, Needs (*Hajiyat*) and Embellishments (*Tahsinat*). These three universals are certain in Islam as wellfor they conform not only to the human reason but also to the revelation. These principles, though it has not been directly taken from particular verse or certain verses from the primary sources, they are derived by induction from the primary sources itself. Instead of considering the textual evidences, for determining *maslaha* of the people, he takes into account the reason, social practices and traditions to a greater extent. The theory of distinguishing between *maslaha* and mafsada seem to be little bit difficult to understand and its scope and validity depends on the capacity of a jurist for analyzing it properly. The problem of certainty and uncertainty has also been analyzed by Shatibi. He categorized the understanding of *maqsad* of the Lawgiver in to different groups and he could present a systematic methodology of finding the exact maqasid of the rules where the law giver silent about the objectives of the *hukm.* To sum up, more than presenting a theory Imam Shatibi was able to come up with a methodology of his theory by which the jurists can legislates the laws in accordance with the intent of God.

Finally, it is imperative to say that, the scheme of *maqasidshariah* advocated by Imam al Shatibi has great significance in the contemporary society where revolutionary changes have been occurring rapidly in every moment. Many issues facing the Muslim society today- whether it is Individual or social- neither have explicit and unequivocal indications of guidance from Quran and Sunnah nor the exact instances form the previous Muslim societies in order to find a right way toward which we are intended to guide by Allah. In such situations, the final resort of the Muslim society is to recourse to the Divine law which is full of Mercy and blessings and to find out the guidance on the basis of *maslaha* of the subjects. Every new predicament, which has no explicit and categorical rule in the available primary sources, encountered by Muslims should be viewed and judged on the basis of *maslaha,* since it is the fundamental objective of the *shariah*. Since the Shari'ah bears its most significant feature of universality and the character of natural disposition, it has to adjust with the changes which have been occurring unceasingly in every society in every moment, keeping the divine spirit as intact. The only way to keep the divine guidance and His please in all human endeavors is to know what His intention is, i.e., to approach the issue on the basis of *Maqasid Shariah*. Here we see the relevance of the theoryand methodology of deriving the rules based on the higher principles of Islamic law which teaches us that the most Benevolent and the Most Merciful God intends only the *maslaha,* goodness for the humanity either in this world and hereafter.

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