



AL-HIKMAH UNIVERSITY JOURNAL OF ISLAMIC LAW

**A PUBLICATION OF THE DEPARTMENT OF ISLAMIC LAW,
FACULTY OF LAW, AL-HIKMAH UNIVERSITY,
ILORIN, NIGERIA.**

CITATION: HUJIL VOLUME 2, 2018

Vol.2 June, 2018

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MAQĀSID AL-SHARĪ'AH: A GENERAL OVERVIEW OF OBJECTIVES OF ISLAMIC LAW

AbdulHameed Badmas Yusuf•

ABSTRACT

Islamic law is a purpose-oriented divine law. All rules legislated by the Law-Giver are geared towards the realization of welfare or benefits (maslahah) of man, who is the subject of the law. The theory of maqasid al-Shari'ah has been dedicated to the study of the purpose of every given rule of the shari'ah. This paper seeks to explore the said theory with a view to exploring its multifarious aspects ranging from its definition to its types and significance. Attempt shall also be made at tracing the historical background of the theory in order to appreciate how it was developed from within the rubric of the science of usul al-fiqh by classical jurists, consolidated by medieval scholars, and promoted by contemporary scholars. As such, both historical and analytical methods shall be employed to achieve the set objectives. Among other things, it is concluded that understanding the purposes of Islamic law makes one appreciate its values and advantages to mankind, especially Muslims who subscribe to its tenets.

Keywords: *Maqasid al-Shari'ah, Maslahah, Usul al-Fiqh,*

INTRODUCTION

The theory of *maqāṣid al-sharī'ah* is a very important theme in Islamic legal theory. It deals with the ultimate objectives which the Almighty Lawgiver aims to realize in all His commands and prohibitions, in connection with the existence of legally responsible individuals (*mukallaf*), the family institution, society and the entire Ummah in all spheres of life.¹ Underscoring the theory of *maqāṣid al-sharī'ah* is a

• Lecturer, Department of Religions, Faculty of Arts University of Ilorin, Ilorin, Nigeria, abdulhameed1403@gmail.com/ or yusuf.ab@unilorin.edu.ng, Mobile Phone: 08134924170.

¹ Yusuf Al- Qaradawi, *Dirāsah fī Maqāṣid al-Sharī'ah*, (Cairo: Dār al-Shurūq, 1st edn., 1427/1996), p. 20.

fact that divine commands and sanctions are not issued by the Lawgiver in vain. Being a Wise Creator, the main purpose behind every rule He has made is the realization of interests of humankind who happens to be the subject of divine law. In all its ramifications, human interest is technically referred to as *maṣlaḥah*. As the interpreter of the *sharī'ah*, the Prophet (SAW)² was very much concerned with the necessity of realizing human interests in all his verdicts. After him, his noble companions, especially those with exceptional understanding of Islamic teachings like the second Caliph 'Umar³ and others, were ever mindful of realizing human interests in their various legal pronouncements (*fatawa*) and policies. They were very much concerned with the spirit rather than the letters of the *sharī'ah* precepts. This concern can be observed in all their *fatāwā*, i.e. legal verdicts, on various issues of life.⁴

The theory of *maqāsid* is essentially based on fundamental principles of the *sharī'ah* which include *taysīr* (making things easy), *rukḥṣah* (legal license), *raf' al-ḥaraj* (alleviation of harm), etc. In principle, every act of worship has been made simple by the Lawgiver in such a way that an average worshipper does not encounter hardship. However, in extraordinary conditions like sickness and journey where a worshipper is faced with some difficulty and hardship the *sharī'ah* has provided *rukḥṣah* (legal license) for him. As such, a sick person and a traveler are not required to observe fasting until after their conditions have improved. The sick person is only required to make up for the missed

² SAW is an acronym for *Salla Allah 'alaihi wa Sallam* which means May Allah bless and shower peace upon the Prophet.

³ 'Umar Ibn al-Khattab was the second Caliph who succeeded Abubakar. He was highly exceptional in the understanding of Islam and courage. Though, he used to be a staunch enemy of Islam. But consequent upon his conversion in the sixth year of the Prophet's mission, he became a strong defender of Islam. May Allah be pleased with him and other companions. See *The Pious Calips*, Majid Ali Khan, (Delhi: Kufub Khana Ishayat-ul-Islam, nd), p.67

⁴ For detailed expositions on how the Companions always took cognizance of *maqāsid* in their *fatāwā*, see Mohammad al-Tahir Ibn Ashur, *Maqāsid al-Sharī'ah al-Islāmiyyah*, ed. Mohamad El-Tahir El-Mesawi, (Amman: Dār al-Nafāi's, 2nd edn., 1421/2001), pp. 197-202, 312-313; Babiker, Hasan Khalifah, *Falsafat Maqāsid al-Tashrī fī al-Fiqh al-Islāmī*, (Cairo: Maktabat Wahbah, 1st edn., 1421 /2000), pp. 29-32.

days of fasting after he has recovered from sickness, while the traveler is required to do same the moment he returns from his journey. In addition, while on journey a worshipper is equally permitted to shorten his prayers. Instead of four he is only required to observe two *rak'at* (i.e. two units of prayer). These and many other legal licenses are practical manifestations of a number of Qur'ānic verses and Prophetic traditions which assert that the *sharī'ah*, nay Islam is about *usur* (ease), and not *'usr* (hardship).

Therefore, the purpose of this paper is to give a general overview of the theory of *maqāṣid al-sharī'ah*. The idea is to highlight its significance with respect to proper understanding and correct application of Islamic law. The ensuing discussion will be undertaken under the following headings: a brief historical account of the theory, definition of the theory, significance of the theory, and types of the theory. Conclusion aspect gives some recommendations regarding proper awareness of the theory of *maqāṣid al-sharī'ah*.

Definition of *Maqāṣid al-Sharī'ah*

The theory of *maqāṣid al-sharī'ah* has been defined by a number of scholars. But before delving into its various definitions, it is important to define the two words which constitute the theory, namely *maqasid* and *shari'ah*. The former word is a plural form of *maqasid* in Arabic, which means objective, purpose, intent etc. As for *Shari'ah*, its linguistic meaning is a path to water fall or spring. Technically, it means a set of divine laws which regulate the activities of Muslims in all ramifications. It is a code of law which Muslims must subscribe to for success in this life and hereafter. As a technical term, *maqasid al-shari'ah* has defined the theory by Ibn Ashur from different perspectives. He gave the definition of the general objectives of legislation (*maqāṣid al-tashrī' al-'āmmah*) in the following terms:

The general objectives of Islamic legislation consist of the deeper meanings (*ma'ānī*) and inner aspects of wisdom (*ḥikmah*) considered by the Lawgiver (*Shāri'*) in all or most of the areas and circumstances of legislation

(*aḥwāl al-tashrī'*). They are not confined to a particular type of the Sharī'ah commands. Thus, they include the general characteristics of the Sharī'ah, its general purpose and whatever notions contemplated by the legislation. They also include certain meanings and notions that are present in many, though not all, of the Sharī'ah commands.⁵

In the second instance, Ibn Ashur pointed out that the all-purpose principles (*maqṣad 'āmm*) of Islamic legislation is:

[to] preserve the social order of the community and insure its healthy progress by promoting the well-being and righteousness (*ṣalāḥ*) of that which prevails in it, namely, the human species. The well-being and virtue of human beings consist of the soundness of their intellect, the righteousness of their deeds as well as the goodness of the things of the world where they live that are put under their disposal.⁶

In the third instance, he gave a specific definition concerning human interactions (i.e. *mu'āmalāt*) which goes thus:

These objectives consist of the methods (*kayfiyyāt*) intended by the Lawgiver for realizing the useful purposes of the human beings or preserving their public interest (*maṣāliḥ 'āmmah*) relating to their private conduct. The aim here is to prevent people's pursuit of their personal interests from leading to the undermining of their established interests, owing to carelessness, whimsical errors, and vain desire. It includes any sensible measures considered in the institution of the Sharī'ah

⁵ Muḥammad al-Tahir Ibn Ashur, *Treatise on Maqāsid al-Sharī'ah*, translated from Arabic by Mohamed El-Tahir El-Mesawi, (Herndon: International Institute of Islamic Thought, 1427 /2006), p. 67.

⁶ Ibid. p. 87.

rules governing human conduct, such as documentation (*tawthīq*) of credit in a mortgage contract, the establishment of the family in a marriage contract, and the removal of permanent harm in the legality of divorce.⁷

The first two definitions above by Ibn Ashur bear the same title (general objectives), however their contents are different. In the first definition, it seems that Ibn Ashur sought to give a very abstract and general definition of the theory, whereas in the second definition, he gave a concrete and practical definition of objective of the Lawgiver.

Equally, Ibn Ashur's contemporary, Allal al-Fasi also gave another definition of *maqāṣid al-sharī'ah* as: "the ultimate purposes (of *sharī'ah*) and secrets put by the Lawgiver behind every rule of Islamic law".⁸ According to al-Raysuni, the theory refers to "the ultimate purposes laid down by the Lawgiver for the benefit of mankind".⁹

As for Muhammad al-Yubi, he has defined *maqāṣid al-sharī'ah* as "meanings and wisdom considered by the Lawgiver in the legislation generally and particularly with the purpose of realizing human benefits".¹⁰

Last but not least, Nourdeddine al-Khadimi also conceived of *maqāṣid al-sharī'ah* as:

Meanings observed in the *sharī'ah* rules...whether the meanings have to do with particular wisdom, general benefits or general features. All these converge on a particular goal, namely, to assert the worthiness of the

⁷Ibid, p. 225.

⁸ Allal al-Fasi, *Maqāṣid al-Sharī'ah al-Islāmiyyah wa Makārimuhā*, (Dār al-Garb al-Islāmī, 5th edn, 1993), p. 7.

⁹ Al-Raysuni, *Nazariyyāh al-Maqāṣid 'inda al-Imām al-Shāṭibī*, (Herndon: International Institute of Islamic Thought, 4th edn., 1416/1995), p.19.

¹⁰ Muhammad al-Yubi, *Maqāṣid al-Sharī'ah al-Islāmiyyah wa 'Alāqatuhā bi al-'Adillat al-Shar'iyyah*, (Riyadh: Dār al-Hijrah, 1418 /1998), p. 37.

Almighty Creator of worshiping and to realize benefit of the creature (mankind) in this world and the next.¹¹

Despite difference in expressions, all the above definitions explain the theory of *maqāsid al-sharī'ah* in terms of objectives, purposes, wisdom, secrets or goals that lie behind every command and prohibition sanctioned by the Lawgiver. These objectives are characterized with *maṣlaḥah* which presupposes the realization of benefits and repulsion of harms, all to the advantage of mankind. The benefits so desired for human kind may be obtainable in every legal rule (i.e. general *maqāsid*), just as they may be limited to a certain area of the *sharī'ah* (i.e. particular *maqāsid*).

A Brief Historical Account of *Maqāsid al-Sharī'ah*

Conceptually, the theory of *maqāsid al-sharī'ah* evolved from the science of *uṣūl al-fiqh* (principles of Islamic jurisprudence) under *qiyās* (analogy), and more specifically in connection with the issues of '*illah* (*ratio legis*), *munāṣabah* (suitability, appropriateness), and *maṣlaḥah mursalah* (unregulated interest).¹² Apart from the significant pioneering efforts of al-Qaffāl al-Shāshī as regards writing on *maqāsid al-sharī'ah*, it is on record that Imām al-Juwaynī also discussed the objectives of the law in the section of his chapter on analogy under the title: "Categories of Reasons and Principles" (*taqāsīm al-'ilal wa al-uṣūl*).¹³ Building on the efforts of al-Juwaynī who was his teacher, al-Ghazālī later refined the idea of *maqāsid* and developed it in his works

¹¹ Nuoureddine Mukhtar al-Khadimi, *al-Ijtihād al-Maqāsidī*, (Riyadh: Maktabat al-Rushd, 1426/2005), p. 38.

¹² Mohamad El-Tahir El-Mesawi, "al-Ta'līl wa al-Munāṣabah wa al-Maṣlaḥah: Baḥth fī Ba'd al-Mafāhīm al-Ta'sīsiyyah li Maqāsid al-Sharī'ah", *Islāmiyyat al-Ma'rifah*, vol. 13, no. 52, (1429 /2008): p. 24, where the author discusses fundamental principles from which the theory of *Maqāsid* evolved.

¹³ Abū al-Ma'ālī Al-Juwaynī, *al-Burhānī fī Uṣūl al-Fiqh*, ed. AbdulAzim al-Deeb, (Cairo: Dār al-Anṣārī, 2nd edn., 1400), pp. 923-964. Quoted in Ahmad al-Raysuni, *Imam al-Shāṭibī's Theory of the Higher Objectives and Intents of Islamic Law*, translated from Arabic by Nancy Roberts, (Kuala Lumpur: Islamic Book Trust, 1427/2006), p. 13; al-Raysuni, *Nazariyyat al-Maqāsid 'inda al-Imām al-Shāṭibī*, pp. 195-196.

on Islamic legal theory, most notably *shifā al-ghalīl* and *al-mustaṣfā*.¹⁴ He categorized the objectives of the *sharī'ah* into three levels, namely, *ḍarūriyyah* (necessity), *ḥājiyyah* (need) and *taḥsīniyyah* (enhancement). While these three categories are measures to determine priority of human interests, the first level otherwise termed as *kullīyyāt ḍarūriyyāh* (the necessary universal objectives) assumes a greater degree of importance. This is due to the fact that it boils down to the five necessary universals (*al-kullīyyāt al-ḍarūriyyah al-khams*) which include the preservation of religion (*dīn*), life (*nafs*), intellect (*'aql*), progeny (*nasl*) and property (*māl*). This shall be discussed in some detail later.

After al-Juwaynī, al-Ghazālī and other notable scholars, the study of *maqāṣid* flourished especially in the eighth century, due to remarkable efforts of Abū Ishāq al-Shāṭibī. It is true, though, that al-Shāṭibī was preceded by a number of notable scholars such as al-Rāzī, al-Āmidī, Ibn al-Ḥājjib, 'Izz al-Dīn 'Abd al-Salām, al-Qarāfī, Ibn Taymiyah and Ibn al-Qayyim. Yet, al-Shāṭibī has been widely credited with the standardization of the theory of *maqāṣid al-sharī'ah* through the means of his magnum opus: *al-Muwāfaqāt*.¹⁵ The book has become an

¹⁴ In both *Shifā al-Ghalīl* and *al-Mustaṣfā*, al-Ghazālī spells out for us the central objectives of Islamic Law around which all legitimate intents and interests revolve". However, the second book contains his mature conception of *maqāṣid* as regards issues, e.g. his division of *maqāṣid* into two, namely religious and wordly in the first book, which he later in the second book compressed to one category "perhaps because he senses the possibility that all of the objectives of the Lawgiver are at once wordly and religious". Also, it was in the second book that he made a categorical claim that preservation of the five essentials is important in all previous laws. He had exercised some caution in making such a claim in the first book, obviously due to its connection with the Mu'tazilites' belief in "the human mind's ability to distinguish between good and evil". See AbūḤāmid al-Ghazālī, *Shifā al-Ghalīl fī Bayān al-Shabāh wa al-Mukhīl wa Masālik al-Ta'līl*, ed. Hamad al-Kubaysi, (Baghdad: Maṭba'at al-Irshād, 1971), and *al-Mustaṣfā min 'ilm al-Uṣūl*, ed. Najwa Dhou, (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1st edn., 1418 /1998); al-Raysuni *Imam al-Shāṭibī's Theory of the Higher Objectives*, pp. 18-21.

¹⁵ On significance of the book and the author as highlighted by both classical and modern scholars, see Muhammad Khalid Masud, *Shāṭibī's Philosophy of Islamic Law*, (Kuala Lumpur: Islamic Book Trust, 1995), pp. 108-110.

authoritative material on the theory of *maqāsid al-sharī'ah* ever since it has been edited by some modern scholars, e.g. Abdullah Draz.¹⁶

In the modern time, the theory has been promoted by many scholars. For instance, Ibn Ashur, the eminent Tunisian scholar and the former rector of Zaytuna University, produced an invaluable work entitled: *Maqāsid al-Sharī'ah al-Islāmiyyah*. While al-Shatibi is regarded as the reformer of the theory of *maqāsid al-sharī'ah* in the classical period, Ibn Ashur is also similarly acknowledged in the modern time. Other scholars also contributed to the theory by way of articulating its significance and encouraging their students to undertake proper study of the theory. This is true of Muhammad Abduh who inspired his students to edit al-Shātibī's book, *al-Muwāfaqāt*. Abdullah Draz who was mentioned above, was one of such students who heeded the advice. His study and edition of *al-Muwāfaqāt* is therefore the most critical one.¹⁷

Significance of *Maqāsid al-Sharī'ah*

The significance of *maqāsid al-sharī'ah* was clearly articulated by al-Shātibī when he considered the knowledge of the theory as an indispensable requirement in the process of *ijtihād* (i.e. independent legal reasoning). Prior to his time, the ability to undertake *ijtihād* was largely determined by scholar's knowledge and awareness of purely linguistic and theological issues. But al-Shātibī considered all these as merely supplementary to the actual process and end of *ijtihād*. Thus, he came out boldly to review their relevance viz-a-viz *ijtihād*. Instead,

¹⁶ Abū Ishāq Ibrāhīm ibn Mūsā ibn Muḥammad al-Lakhmī al-Shātibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, ed. 'Abdullah Draz, (Cairo: al-Maktabah al-Tijāriyyah al-Kubrā, n.d.), vol. 1, p. 6.; Taha Jabir al-Alwani, *The Source Methodology in Islamic Jurisprudence*, translated from Arabic by Yusuf Talal DeLorenzo & Anas S. Al-Shaikh-Ali, (Herndon: International Institute of Islamic Thought, 3rd edn., 2003), pp. 58-59; Ahcene Lahsasna, *al-Fiqh al-Maqāsidī 'inda al-Imām al-Shātibī*, (Cairo: Dār al-Salām, 1st edn, 1429/2008), p. 27.

¹⁷ AbdulHameed Yusuf Ba'Imas, *al-Kulliyāt al-Darūriyyah Between Limitation and Open-Endedness: A Critical Analytical Study*. Phd Thesis, IIUM. 2013, p.132

he regarded knowledge of *maqāṣid al-sharī'ah* as the most crucial qualification for *ijtihād* activities.¹⁸ According to him:

Status of *ijtihād* may be attained by anyone that possesses two qualities, namely, understanding of *maqāṣid al-sharī'ah*, and ability to derive legal rulings based on such understanding.¹⁹

For al-Shātibī, "when a person attains a level of understanding where he can perceive the intent of the Lawgiver in each of the rulings of the divine law and in its various classes, he is thus qualified to be a deputy of the Prophet (SAW) in his functions of *ta'līm* (teaching), *futyā* (i.e. legal opinion) and *ḥukm* (i.e. judgment)".²⁰

Not only is *mujtahid* (i.e. a scholar who exercises his independent legal reasoning) required to possess knowledge of *maqāṣid al-sharī'ah*, it is also a requirement for *muftī* (jurisconsult). This is especially so because no one is qualified to occupy the position of *muftī* except someone who meets all the requirements of *ijtiḥād*. In other words, the *muftī* must be a *mujtahid* in order for him to explore relevant texts in the Qur'ān while addressing legal issues posed by the public. Where there is a seeming conflict as regards priority of human interests, his understanding of *maqāṣid al-sharī'ah* would guide him to give priority to the necessary human interest ahead the categories of need (*ḥajīyyat*) and enhancement (*tahsiniyat*) respectively. This would also keep him abreast of objectives of the *sharī'ah* in matters relating to rituals, transactions, matrimony, etc.

Lack of understanding of *maqāṣid al-sharī'ah* will lead the *muftī* into making erroneous *fatwā* which could violate one of the five human interests that the *sharī'ah* seeks to protect. An example in this regard is a case of one of the companions who was suffering from a kind of

¹⁸ AbdulHameed Yusuf Badmas, *Maqāṣid as a Reform Framework for Uṣūl al-Fiqh: An Analytical Study*, *The Islamic Quarterly*: 2012, vol 56, no.3, p. 271.

¹⁹ Al-Shātibī, *al-Muwāfaqāt*, vol. 4, p. 105

²⁰ Shātibī's *Philosophy of Islamic Law*, p.233

disease on his head. His condition was so serious that water should not touch his injured head. But when he had wet dream, he sought *fatwā* from his colleagues who advised him to use water to clean himself. The companion died as a result of using water to rub his injured head while cleaning himself. On hearing the incident, the Prophet (SAW) was very furious and lamented: "they have killed him; Allah will deal with them. Why didn't they ask when they did not know... It would be sufficient for him to use clay sand instead of water!"²¹

Furthermore, correct understanding of *maqāsid al-sharī'ah* provides the *muftī* with holistic view of the *sharī'ah* beyond literal interpretation of Qur'ānic verses. This quality was displayed by the second caliph, 'Umar in his policies as regards distribution of war booties and conquered lands. He refused to be persuaded by his fellow companions who quoted relevant verses that state how war booties should be divided among the Muslim soldiers. Instead he decided that the conquered lands should belong to public treasury for the sake of incoming generations. The caliph did not contravene the divine directive, rather he based his decision on the concluding part of the same verse quoted by his colleagues, which they did not take notice of. The verse reads thus

What Allah has bestowed on His Messenger (and taken away) from the people of the townships,- belongs to Allah,- to His Messenger and to kindred and orphans, the needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you. So take what the Messenger assigns to you, and deny yourselves that which He withholds from you. And fear Allah. for Allah is strict In punishment.²²

Obviously, other companions did not consider the objective behind the divine directive, but Umar did. He emphasized on such an objective which is articulated in the same verse thus: *In order that it may not*

²¹The Tradition was reported by Jābir. See Sunan Abī Dā'ūd, the Book of Cleanliness.
²². Quran 59 (surah Al-Hashr), verse 7.

(merely) make a circuit between the wealthy among you. Here the caliph was very much concerned about the public interest as against interest of individuals who could be richer than the community if the lands were to be distributed among them.²² This is a good example of how policies should be informed by the spirit of *maqāṣid al-sharī'ah* and how public interest should be given priority over the individual interest. This maqasidi approach which is concerned with the general well being of the masses is much needed in most African countries including Nigeria. More often than not, policies of the government are insensitive to the welfare of the people. Public funds have been expended in projects which only cater for the need of those in power and few elites at the expense of the masses. A case in point is privatization of many public properties like the NITEL (Nigerian Telecommunication Limited), NEPA (Nigerian Electricity Power Agency) etc. There is no doubt that after privatization, there seems to be no improvement especially in the power sector. Till date, getting uninterrupted power supply has become a mirage. While the elite can afford the exorbitant bill, the masses cannot afford it.

Types of *Maqāṣid al-Sharī'ah*

Traditionally, the theory of *maqāṣid al-sharī'ah* has been classified by classical and modern scholars in accordance with six parameters of classification; these include, classification with respect to priority of *maṣlaḥah* which is the ultimate objective of the *sharī'ah*; classification with respect to time and place where such *maṣlaḥah* manifests; classification with respect to the intent of the Lawgiver and intent of the human agent; classification with respect to the number of people covered by *maṣlaḥah*; classification with respect to evidence and proof establishing the *maṣlaḥah* to be realized; and classification with respect to whether the *maṣlaḥah* is an end in itself or a means to an

²²Muḥammad Baltaji, *Manhaj 'Umar ibn al-Khaṭṭāb fī al-Tashrī'*, (Cairo: Dār al-Salām, 3rd edn., 1427/ 2006), pp. 114-115; Yusuf al-Qaradawi *Madkhal li dirāsah al-Sharī'ah al-Islāmiyyah*, (Beirut: Al-Risalah Publishing House, 2nd edn, 1417 /1997), p. 59.

end. In a way, this multi-dimensional classification shows the dynamic nature of the theory of *maqāṣid al-sharī'ah*.²³

In the present paper, the classification of *maqāṣid al-sharī'ah* with respect to priority of *maṣlaḥah* will be discussed. This has been divided in to three types, which include *ḍarūrī*, *ḥājī*, and *taḥsīnī*. Because of its importance, the first type shall be discussed extensively, while discussion of the second and the third types shall be brief.

Firstly, *ḍarūrī* (necessary interest) refers to necessary values that are dearly needed by human beings in order to live a better life. According to al-Shāṭibī, *ḍarūrī* is:

...that which is inevitable for the attainment of benefits in this world and in the next; (something) which if lacked or forfeited, worldly benefits will not be in order, but shall be riddled by corruption, confusion, and loss of life. And in the next life, there will be forfeiture of success and pleasure, as well as an evident disastrous consequence.²⁴

Ibn Ashur also defined *ḍarūrī* as representing:

..things whose realization is essential for the community both collectively and individually. The social order of the community will not function properly if there is any defect in these *maṣāliḥ*. ...²⁵

In essence, *ḍarūrī* represents basic human needs or interests of man which should not be violated. These interests include protection of religion, life, intellect, progeny, and property. According to al-Ghazālī these interests are very crucial for human survival so much that they

²³ AbdulHameed Yusuf Badmas, *al-Kulliyāt al-Ḍarūriyyah*, p.81

²⁴ Al-Shāṭibī, *al-Muwāfaqāt*, vol. 2, p. 8.

²⁵ Ibn Ashur, *Treatise on Maqāṣid al-Sharī'ah*, p. 114.

are well protected in all belief and legal systems.²⁶ Because of their significance, the *shari'ah* has put in place measures by which to protect them against violation, on one hand. On the other hand, it has also provided measures for their sustenance and maintenance. Both measures for protection and sustenance are from negative and positive perspectives respectively. From negative perspective, the *shari'ah* has proscribed stern penalties just to ensure the protection of those values against any form of violation, while from positive vantage it has put in place methods by which each of the five values can be sustained. This shall be explained in the following discussion.

The first value, religion, is protected by the *shari'ah* against abuse by sanctioning apostasy punishment (*'uqūbah al-riddah*).²⁷ As a matter of principle, Islam does not force or compel any one to profess and embrace it. It is rather a matter of conviction and voluntary will which must emanate from one's heart.²⁸ However, as soon as one has accepted it out of conviction, one is not allowed to leave the fold of Islam. Otherwise, one will be guilty of apostasy which penalty is execution after the apostate must have been persuaded for three days to reconsider his decision to leave Islam. The rationale behind the penalty is to protect the religion against abuse. However, this punishment is not to be carried out against someone who is not a Muslim *abi initio*. In other words, a non-Muslim who has never professed the religion of Islam shall not be accused of apostasy because THERE IS NO COMPLUSION IN THE RELIGION. Also, from negative perspective, *jihad* is another measure by which the religion is protected against abuse. This physical struggle is a defensive one aimed at restoring justice and peace. It is not an offensive war as

²⁶ Al-Ghazālī, al-Mustaṣfā, vol. 1, p.217

²⁷ The Prophet (SAW) was reported to have said: "Execute whoever changes his religion". See Ṣaḥīḥ Bukārī, vol.3, p.1098, hadith no 2854.

²⁸ See Q2: 256. "Let there be no compulsion in religion: truth stands out clear from error: Whoever rejects evil and believes in Allah hath grasped the Most trustworthy hand-hold, that never breaks. and Allah heareth and knoweth all things"

widely but wrongly perceived by some misinformed people. It is only waged to repel corruption and injustice in the land.²⁹

The above is the negative perspective by which religion is protected against abuse. From the positive perspective, however, *sharī'ah* seeks to sustain the religion through different supererogatory acts of devotion that are performed as supplements to *solat* (five daily-prayer), *sawm* (fasting), *zakat* (tax poll), and *hajj* (pilgrimage). These supererogatory acts include observance of *nawafil* (supplementary prayers), *sawm tatawwu'*, (voluntary fasting on specific days (e.g. Monday, Thursday, thirteenth, fourteenth, and fifteenth days of every lunar month), *sadaqah* (charity), *'umrah* (lesser pilgrimage), *tilawatul Qur'an* (recitation of the Qur'an) among other devotional acts which purify the soul and make one's religion intact. Lastly, Da'wah is another veritable way by which to maintain and promote the religion. It is a polite invitation of people to the fold of Islam with wisdom and good exhortation. This principle of Da'wah has been well articulated in the Qur'an.³⁰

The second necessary human interest is life which is very sacred in the estimate of the Lawgiver. No one is allowed to take human life arbitrarily. This has been repeatedly articulated in the Qur'ān. In fact, the Lawgiver has considered someone who has taken a single soul as if he has killed the entire human race!³¹ This is to show how heinous the crime of murder is. As such, in order to safeguard human life, the

²⁹ Jihad is the most misunderstood concept in Islam. It is wrongly believed to be an aggressive exercise against non-Muslims. This is both conceptually and historically wrong. In fact it is against the following verse: "Fight In the cause of Allah those who Fight you, but do not transgress limits; for Allah loveth not transgressors". Q2: 190

³⁰ See Q16:125 "125. invite (all) to the way of Thy Lord with wisdom and preaching; and argue with them In ways that are best and Most gracious: for Thy knoweth best, who have strayed from His path, and who receive guidance".

³¹ See Q5: 32. "On that account: we ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief In the land - it would be As if He slew the whole people: and if any one saved a life, it would be As if He saved the life of the whole people. then although there came to them Our apostles with Clear Signs, yet, Even after that, many of them continued to Commit excesses In the land.

shari'ah has sanctioned *qishās* (retaliation)³² against whoever killed a soul unjustifiably. Although it is very severe, this penalty is regarded as 'life' according to the Qur'ānic verse in question. This is because the law of retaliation is expected to deter people from committing murder. As a consequence, this measure would protect many innocent lives against murder that would have been eliminated by unscrupulous people with impunity if there were no stiff penalty in place.³³ That is based on the negative perspective as to how life is protected against violation.

In this connection, it is apposite to say that indiscriminate killing of innocent people being perpetrated by the so-called Boko Haram in Nigeria is antithetical to this position of Islam on life. This idea points to the fact that the deadly group is in no way affiliated with Islam, the religion which values human soul, whether it belongs to Muslims or non-Muslims.

From positive perspective, life is sustained by the *shari'ah* through permission to eat and consume from *halal* food and drinks. The purpose is to ensure body growth and development. In addition, the *shari'ah* has permitted man to put on good wears and appear nicely in the public. It has also warned against self destruction in all ramifications. This is to ensure optimal sustenance and maintenance of life. However, there is a stern warning against extravagance while enjoying all these benefits.³⁴ Also, the *shari'ah* has permitted man to enjoy medical care and treat all kinds of ailment that affect him in order to achieve a healthy body and sound mind. Though, it forbids the use of drugs gotten from *haram* sources.³⁵

³²See Q2:179. "In the law of equality there is (saving of) life to you, O ye men of understanding; that ye may restrain yourselves"

³³On the verse Q2:179 see, al-Shāfi', Muḥammad Ibn Idrīs *al-Umm*, (Beirut: Dār al-Marifah, 1993), v.6. p.9; al-Rāzī, Fakhr al-Dīn, *al-Maḥṣūl*, ed. Taha Jabir al-Alwani, (Saudi Arabia: University of Imam Muhammad Ibn Suud) v.5, p. 201

³⁴Q7: 31. "O Children of Adam! wear your beautiful apparel at every time and place of prayer: eat and drink: but waste not by excess, for Allah loveth not the wasters".

³⁵Medication is allowed in Islam as a measure to fight all kinds of illness that affects man. Virtually, every kind of illness has a prescribed medication. However,

Intellect is the third necessary human interest. It makes mankind unique among other creatures of Allah. It is very important because it is the reason for legal responsibility (*taklīf*). All rules and regulations of the *sharī'ah* are addressed to a sane person due to his intellectual ability to understand and obey the commands of the Lawgiver. Thus in order to ensure good state of mind, the *sharī'ah* has forbidden consumption of alcohol and any intoxicant substance which can hinder the optimal function of the intellect.³⁵ The punishment for consumption of alcohol is eighty lashes as instituted by 'Umar, the second caliph.³⁷ Also, the *sharī'ah* prohibits the unproductive use of the intellect like learning of magic and entertainment of superstition because they are inimical to proper functioning of the intellect. This is negative perspective through which the intellect has been protected by the *sharī'ah*. Meanwhile, there are many positive ways by which intellect can be sustained. Essentially, the *sharī'ah* directs that man should put his intellect to optimal use. This is achieved through learning and acquisition of useful knowledge which is compulsory on both male and female.³⁸ This is because knowledge is central to proper

ingredients of such medication must be of *halal* substances. Otherwise, it will be considered unlawful. For, Islam prohibits the use of forbidden materials or substances as a measure of medication, except in extra-ordinary circumstances, whereby *haram* substances might be used under the principle of *darurah* (i.e. necessity). In other words, medication with *haram* substances may be taken to save a soul from life-threatening ailment, though in principle, the use of drug with *haram* substances is not lawful in Islam. This may be inferred from various Qur'anic verses concerning forbidden food and drinks. See Q5: 145. "say: "I find not In the Message received by me by inspiration any (meat) forbidden to be eaten by one who wishes to eat it, unless it be dead meat, or blood poured forth, or the flesh of swine,- for it is an abomination - or, what is impious, (meat) on which a name has been invoked, other than Allah.S". but (even so), if a person is forced by necessity, without wilful disobedience, nor transgressing due limits,- Thy Lord is Oft-forgiving, Most Merciful.". See also Q2:173 and Q16:115

³⁶Q5:90. O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination,- of Satan's handwork: eschew such (abomination), that ye may prosper.

³⁷Al-Āmidī, 'Alī Ibn Muḥammad, *al-Iḥkām Fī Uṣūl al-Aḥkām*, ed. Sayyid al-Jamil, (Beirut: Dār al-Kitāb al-'Arabī, 1404), vol. 7, p. 450

³⁸The Prophet was reported to have said: "seeking of knowledge is compulsory on every Muslim" Sunan Ibn Majah 1/81, no.224

understanding and practice of Islam. According to the Glorious Book, those with knowledge cannot be compared with those who lack it.³⁹ Also, Allah raises and promotes those with faith and knowledge to higher positions.⁴⁰ This explains why the Angels were ordered by Allah to prostrate for Prophet Adam as a mark of respect for him when he was able to answer a particular question that was put to him and the Angels by Allah which the Angels could not answer.⁴¹

Progeny or family is the fourth necessary value in the sight of the *shari'ah*. As an important unit in any community, family is established through the means of marriage which has been sanctioned by the Lawgiver. To bring about human procreation without marriage goes against the dictates of the *shari'ah*. Thus fornication and adultery is forbidden and even punishable by the *shari'ah* in the most severe manner: hundred lashes has been prescribed for an unmarried offender⁴², while stoning is the penalty for the married culprit.⁴³

On the other hand, the institution of family is sustained through marriage. The *shari'ah* has sanctioned marriage which is a union between a man and a woman with the sole purpose of procreation and continuity of lineage. By extension, polygyny is also permitted provided one meets all required conditions, topmost of which is justice. However, celibacy, family planning and anti-polygyny law contravene the objective of *shari'ah* behind marriage which is procreation.

³⁹ Q39:9 "Are those equal, those who know and those who do not know? it is those who are endued with understanding that receive admonition.

⁴⁰ Q58: 11. "Allah will rise up, to (suitable) ranks (and degrees), those of you who believe and who have been granted (mystic) knowledge. and Allah is well-acquainted with all ye do"

⁴¹ Q2:34. " ..and Behold, we said to the angels: "Bow down to Adam" and They bowed down. not so Iblis: He refused and was haughty: He was of those who reject Faith"

⁴² Q28: 2. The woman and the man guilty of adultery or fornication,- flog Each of them with a hundred stripes: let not compassion move you In their case, In a matter prescribed by Allah, if ye believe In Allah and the Last Day: and let a party of the believers witness their punishment.

⁴³ The Prophet (SAW) was reported to have ordered that Ma'iz be stoned for committing adultery. See Şaḥīḥ Bukhārī, vol. 3, p. 359, hadith no. 2549.

The last necessary value is property which has been protected by the *sharī'ah* through the penalty of amputation for theft. This is a punitive measure to deter would-be thieves from stealing people's properties.⁴⁴ The *sharī'ah* also prohibits usury for it is an illegitimate means of wealth accumulation. It is a crude way of exploiting the poor people by the rich. In view of this, the Lawgiver has even threatened whoever partakes in usury to brace for a war against Him and His messenger.⁴⁵

From the positive vantage, the *sharī'ah* intends to ensure the sustenance and maintenance of property by permitting trading and various financial transactions. These include *ijarah*, *mudarabah*, *murabahah*, *musharakah*, *muzara'ah*⁴⁶, etc. However, these transactions must be undertaken based on the following principles, namely mutual consent, fairness and justice in order to achieve the *sharī'ah* objective which is wealth circulation. As such, opposites of the above principles such as deceit, injustice, and hording are prohibited in Islamic law. Also, to ensure circulation of wealth in a lawful way, *Sharī'ah* mandates the rich to give Zakah obligatorily to the poor members of the society to alleviate poverty. In the same vein, Islam has sanctioned *mirath* to ensure a just and balanced transfer of property from the deceased person to his heirs.⁴⁷

⁴⁴ Q5: 38. As to the thief, male or female, cut off His or Her hands: a punishment by way of example, from Allah, for their crime: and Allah is Exalted In power.

⁴⁵ Q2: 279. "if ye do it not, take notice of war from Allah and His Messenger. but if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly".

⁴⁶ *Ijarah* is Contract of hire or renting; *mudarabah* is contract of partnership and sharing of profits in which the investor provides all the capital and is liable for the loss; *murabahah*, is sale at stated cost price and mark-up; *musharakah* means partnership; it is a contract between two or more people for participation in capital and its profits; and *muzara'ah* is contract for the cultivation of land between the owner of the land and the worker with the condition of sharing the produce. For details see Imran Ahsan Khan Nyazee, *Islamic Law of Business Organisation: Partnership*, (New Delhi: Kitab Bhavan, 1999).

⁴⁷ *Mirath* as law of succession in Islam is a divine system which is perfect and excellent. This fact is not only acknowledged by Muslims but also by non-Muslims. For instance, Macnaghten remarks thus: "in these provisions we find ample attention paid to the interests of all those whom nature places in the first rank of our affection; and indeed it is difficult to conceive any system containing rules more strictly just

Overall, the necessity of the above five human interests may be explained thus: History of man through ages has shown man's consciousness of religious thought. To address perennial metaphysical problems which he encounters every now and then, man cannot but feel inclined towards a particular form of religion which he holds in high esteem and for which he is prepared to make any sacrifice. This is because religion (i.e. Islam in this regard) gives meaning to man's life as it provides him with answers to ultimate questions on his origin, nature, the universe, his destiny, and his place in the world. In view of his latent religious consciousness, man may thus be regarded as "a fundamentally religious animal".⁴⁸ Also, life is precious and its sanctity may not be violated without a just cause as in the case of retributive punishment (i.e. *qisās*). As for intellect, it is a basis for legal responsibility. Because it enables man to perceive, understand, and distinguish between different values, especially when it is ably aided by revelation which provides it with guidance and right direction. Progeny is indispensable for continual existence and reproduction of human beings as vicegerents for whom Allah has put in place everything on earth. Finally, property (wealth) is necessary for a good life, sound education and proper child rearing. Ultimately, the moment each of the above human values or interests is violated, life and all that gives it meaning becomes useless. In this regard, the end result will be ultimate annihilation and total destruction. This explains why the *sharī'ah* aims to protect them via the prescription of *ḥadd* punishment. It is also obvious that by prescribing punitive penalties in form of *ḥudūd*, the *sharī'ah* is only concerned with the protection of basic human needs that must not be subject to any form of violation or abuse.

and equitable". See Muhammad Mustafa Ali Khan, "A Case For Teaching *Mirath* as an Independent Course in Nigeria", in *Islamic Law in Nigeria: Application and Teaching*, Ed. Syed Khalid Rashid, (Lagos: Islamic Publications Bureau, 1988), p.190

⁴⁸ Malik Bennabi, *The Qur'anic Phenomenon: An Essay of a Theory on the Qur'ān*, translated from Arabic by Mohamed El-Tahir El-Mesawi, (Kuala Lumpur: Islamic Book Trust, 2001), pp. 29-30. For details on the meaning of religion, see, Muhammad Abdullah Draz, *al-Dīn: Buḥūth Mumahhadah li Dirāsah al-Tārīkh al-Adyān*, (Kuwait: Dar al-Qalam, n.d.).

The second type of *maqāsid al-sharī'ah* is *ḥājī*. "It consists of what is needed by the community for the achievement of its interests and the proper functioning of its affairs. If it is neglected, the social order will not actually collapse but will not function very well. Likewise it is not on the same level with what is necessary (*ḍarūrī*).⁴⁹ According to al-Shāṭibī, *ḥājī* consists of what is needed to attain comfort and alleviate hardship. If it is neglected, human subjects will suffer distress and hardship. None-the-less, the harm resulting from neglecting it cannot be equated to the fundamental universals, i.e. the five necessary human interests highlighted above. Among the examples of *ḥājī* in 'ibādah is *rukhsah* (concession) in *ṣalat* and *ṣawm* on account of sickness or journey which otherwise may cause hardship in prayer, fasting etc.⁵⁰ If man was not given such concession in prayer and fasting, he would not die nor be exposed to destruction. The worst that could happen to him is inconvenience and bearable hardship.

The last type of *maqāsid al-sharī'ah* is *taḥsīnī*. This relates to adoption of what conforms to the best of customs ('ādāt) and avoidance of those manners which are disliked by wiser people. This type of *maqāsid* covers noble habits (ethics, morality). It also comprises what leads to the perfection of the community's condition and social order, so that it leads to a peaceful life and acquires the splendor and beauty of human society in the sight of other nations. Examples of this type include cleanliness or decency in covering the private parts of the body in prayer.⁵¹ Lack of cleanliness will not necessarily cause death, though, but it is required in order to appear well cultured and well mannered in the public.

In essence, interests relating to the categories of *ḥājī* and *taḥsīnī* are not as crucial to human survival as the category of *ḍarūrī*. As such, forfeiture of either category cannot bring about total destruction to human life as is the case with the category of *ḍarūrī*. This explains why

⁴⁹ Ibn Ashur, *Ibn Ashur's Treatise on Maqāsid al-Sharī'ah*, p.119.

⁵⁰ Al-Shāṭibī, *al-Muwāfaqāt*, vol. 2, pp. 10-11, see also, Masud, Muhammad Khalid, *Shāṭibī's Philosophy of Islamic Law*, p.152

⁵¹ Masud, Muhammad Khalid, p. 152; Ibn Ashur, p.121

scholars dedicated their time to the explanation of *ḍarūrī* more than they did with respect to *ḥājī* and *taḥsīnī*.

CONCLUSION

In conclusion, the *sharī'ah* is a divine law that caters for human interests in all ramifications. Every rule that has been made by the Lawgiver is aimed at protecting basic human interests which essentially include religion, life, intellect, progeny, and property. The foregoing analysis has shown how the *sharī'ah* has protected each of these interests by prescribing severe penalties to deter from violating any of them. Thus, far from being inimical or repugnant to human rights, the divine law provides adequate rules and regulations that ensure proper protection of those five human interests which are in actual sense inalienable rights of every human being. In view of the significance of *maqāṣid al-sharī'ah* with regard to decision making in Islam, i.e. *fatwā*, it is important that the theory be taught as an independent course in departments of Islamic Studies and Islamic law across the Nigerian universities and colleges. Its diverse nature has made it necessary for it to be taught outside *uṣūl al-fiqh* as a course. This way, various aspects of the theory can be studied properly. In addition, it is also necessary for every Muslim to have basic understanding of *maqāṣid al-sharī'ah* irrespective of his fields of study. Knowing about interests that the *sharī'ah* aims to protect for mankind gives a Muslim further assurance about the validity of the law in particular, and divine origin of Islam in general. This would also confirm the fact that: "the *sharī'ah* is all justice, kindness, common good and wisdom. Any rule that departs from justice to injustice... or depart from common good (*maṣlaḥah*) to harm (*mafsadah*)... is not part of *sharī'ah*, even if it is arrived at by literal interpretation"⁵²

⁵² Ibn al-Qayyim, *al-Jawziyyah, l'lām al-Muwaqqi'īn*, ed. Taha al-Rauf Said, (Beirut: Dār al-Jīl, 1973), vol. 3, p. 14; Masud, Muhammad Khalid, preliminary page (unnumbered)