# TOPICAL ISSUES IN ARABIC AND ISLAMIC STUDIES

## [ESSAYS IN MEMORY OF ABUBAKAR ALIYU GWANDU]

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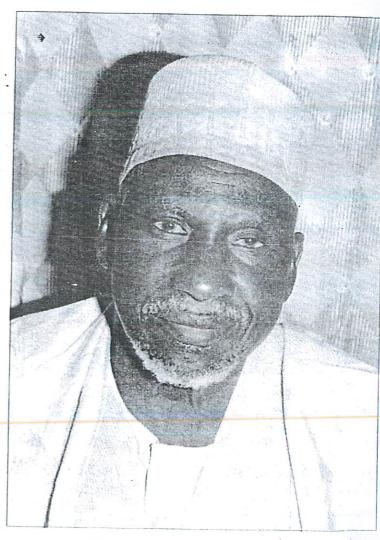
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# CHAPTER TEN

## AN EXPOSITION OF MULTI-DIMENSIONAL TAXONOMY OF MAQĀṢID AL-SHARĪʿAH (OBJECTIVES OF ISLAMIC LAW)

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### Introduction

The theory of *maqāṣid al-sharīʿah* 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, the family institution, society and the entire Ummah in all spheres of life.[1] Underscoring the theory of *maqāṣid al-sharīʿah* is the valid assumption 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 the interests of humankind who happens to be the subject of divine law. In all its ramifications, human interest is technically referred to as *maṣlaḥah*.[2]

The theory of *maqāṣid al-sharīʿah* has been classified by classical and modern scholars in accordance with different parameters. This paper shall discuss six parameters of classification which include; classification with respect to priority of *maṣlaḥah* which is the ultimate objective of the *sharīʿah*; 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 number of people involved; 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 end. In a way, this multi-dimensional taxonomy shows the dynamic nature of the theory of *maqāṣid al-sharīʿah*. As shall be noted in the following discussion, great jurists like al-Juwaynī, al-Ghazālī, al-Shāṭibī, and Ibn Ashur made the most outstanding and original contributions to this systematic taxonomy of the theory of *maqāṣid al-sharīʿah*.

### Classification with Respect to Priority of Maṣlaḥah

Human benefits which the Lawgiver aims to realize through His many commands and prohibitions are not at the same level. In terms of their importance and priority these benefits fall under three distinctive categories. Imam al-Juwaynī was that scholar who first invented the three-fold classification of *maqāṣid al-sharīʿah*, which includes *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt*. These three things were sifted from his initial classification of the rulings of the *sharīʿah* into five categories based on what he regards as the rationales (*ʿilal*) and foundations (*uṣūl*) of the *sharīʿah*.[3] The first category has to do with a necessary matter (*amr ḍarūrī*); the second with a general need (*ḥājah ʿāmmah*); the third with a noble deed (*makrumah*); the fourth with something recommended (*mandūb*); and the fifth division does not have any apparent manifestations.[4]

The first category is a necessary matter (*amr ḍarūrī*), and according to al-Juwaynī it pertains to the proper governance or order of people's affairs (*iyālah*) in a universal (*kulliyyah*), political (*siyāsah*) and general manner (*ʿammiyyah*). This category comprises necessary matters such as the legality of sale (*bayʿ*) which is necessary because people cannot survive without buying and selling activities.

The second category, i.e., a general need (*ḥājah ʿāmmah*) constitutes a "sheer longing and desire without the assumption of harm when abstaining from [the needed]."[5] Examples given in this regard include the legality of renting or leasing (*ijārah*) a residence "due to the urgent need for shelter for those people who cannot afford owning a house. As such, renting is not as necessary as sales. It merely constitutes what is needed by people.

The third category is that (i.e. *makrumah*) which neither belongs to the first category (i.e. *amr ḍarūrī*) nor to the second one (i.e. *ḥājah ʿāmmah*). It relates to procurement of noble character traits or aversion of their appearance. The obligation to perform ablution after ritual impurity (*ḥadath*) is a case in point.

The fourth category is that (*mandūb*) which is neither based on need nor necessity, rather, it is only recommended. Example is the permissibility of contractual enfranchisement (*kitābah*) whereby a slave seeks liberation through his labour. This permission is to ensure emancipation of slaves as enjoined by the *sharīʿah*.

The fifth category, according to al-Juwaynī, is that which cannot be located in any of the preceding categories. Practically, this category is indefinite. Al-Juwaynī explained that the last three categories cannot serve as bases for extending legal rulings like the first two. He also hinted on the possibility of merging both the third and fourth categories together. Thus, we are left with the three categories, having disregarded the fifth one because it is unimaginable.[6]

However, the actual downsizing of these five divisions to the three famous categories took place as a result of efforts of subsequent scholars especially al-Ghazālī who was al-Juwaynī's discipline. In a more categorical term, al-Ghazālī articulated the three surviving categories (i.e. *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt*) under the third division of *istiṣlāḥ* or *maṣlaḥah* i.e. the kind of *maṣlaḥah* that enjoys neither consideration nor invalidation by a concrete text of

the authoritative sources. Thus, he enlisted *arūrāt*, *ājāt*, and *ta sīnāt*, which later became a standard classification of *maqā id al-sharī'ah*. He defined each of these categories providing many examples and illustrations. For instance, he explained the category of *arūrāt* in terms of protection of five necessary universals (i.e. religion, life, intellect, progeny, and property) asserting that they constitute the highest level of *ma la ah* whose preservation is universally necessary. The second category, i.e. *ājāt* pertains to human need, but does not reach the level of necessity. The last one *ta sīnāt* is neither up to the category of necessity nor that of the need, but concerns improvements and embellishments regarding good customs and conduct. In addition to this, al-Ghazālī highlighted complements i.e. *takmilah* or *tatimmah* for each of the three categories.[8]

In this sense, al-Juwaynī can be regarded as the main brain behind the classification of *maqā id al-sharī'ah* into *arūriyyāt*, *ājiyyāt*, and *ta sīniyyāt* on one hand and the classification of the first category into five necessary universals on the other. Although these classifications as well as his many other invaluable contributions to the theory of *maqā id* got to the state of fruition through the efforts of a number of later scholars particularly his disciple, al-Ghazālī.

## Classification with Respect to Time and Space

Benefits which the *sharī'ah* seeks to guarantee for human beings do not materialize in vacuum as regards time and place. In view of the fact that some of these benefits take place in this world, while some others materialize only in the next world, al-Ghazālī has classified them into worldly and otherworldly. This classification, which he made in his book *shifā al-ghalīl*[9] is one of his original contributions to the theory of *maqā id al-sharī'ah*, beside his improvement on the earlier achievements of his teacher, al-Juwaynī.

The otherworldly objectives pertain to benefits which materialize in the next world, without this precluding the manifestation of such benefits in the present world in a partial way. For example, benefits derivable from the sanction of financial expiation (*al-kaffārah bi al-māl*) by the *sharī'ah* relate to both this world and the next: while the poor people benefit from the money, the Muslim who is giving it out gets reward in the Day of Judgment. As for the worldly objectives, they concern benefits that are attainable in this world only. This entails benefits that accrue from the three major categories of *maqā id*, namely *arūriyyāt*, *ājiyyāt*, and *ta sīniyyāt*.[10]

However, it should be noted that, al-Ghazālī's classification of benefits into worldly and otherworldly represents the embryonic stage in the development of his ideas on the theory of *maqā id al-sharī'ah*. This becomes clear when we understand that this classification features in his much earlier work, *shifā al-*

*ghalīl* after which he wrote *al-musta fā*, which is believed to comprise of his "final pronouncement" on the issue [of *ma la ah*].[11] Otherwise the interplay of benefits relating to worldly and otherworldly is too intimate to be separated. Evidences to justify this separation would be far-fetched if not lacking. Perhaps, that was why al-Ghazālī decided to disregard this dichotomous classification in his more precise work, *al-musta fā*. Instead, he began by the mentioning of religion as the first of the five necessary universals of the *sharī'ah*.[12]

Despite this, this dichotomous classification of the benefits into worldly and otherworldly was later adopted by some jurists who came after al-Ghazālī. For instance, having divided *munāsib* into *aqīqī* (real) and *iqnā ī* (persuasive), al-Rāzī further divided the former into benefits that pertain to this world (*ma la ah tata'allaqbi al-dunyā*) and those concerning the next(*ma la ah tata'allaqbi al-ākhirah*). Later, the benefit that has to do with this world is enumerated in the light of the three categories of *maqā id al-sharī'ah*, *arūrah*, *ājah*, and *ta sīn*. As for that attainable in the next world, it entails acts that enhance the refinement of character and discipline of the soul, which brings about happiness in the next world.[13]

## Classification with Respect to the Lawgiver and the Religiously Accountable (*Mukallaf*)

The proper understanding and realization of objectives of the *sharī'ah* hinge on two important agents: the first one is divine, namely, the Lawgiver, while the second one is human, namely, the person for whom the law has been legislated. On this basis, al-Shā ibī adopted a first level binary classification whereby *maqā id al-sharī'ah* are categorized into the intent of the Lawgiver (i.e. *Qa d al-Shāri*) who legislates the law, and intent of the human agent (*Qa d al-Mukallaf*) for whom the law has been legislated. The intent of the Lawgiver is further classified into four categories.[14] Al-Shā ibī explained each category in light of several premises, principles as well as many examples to drive home his point. Major highlight of each of these four categories will be sufficient here in order to avoid digression.

The first category is the intent of the Lawgiver behind establishing the law. This is explained in light of the fact that the Lawgiver actually legislates with the sole purpose of ensuring human benefit (*ma la ah*) which cuts across the three major levels, namely: *arūriyyāt*, *ājiyyāt*, and *ta sīniyyāt*. Accordingly, al-Shā ibī delineated the nature of relationship among these three levels; the first level is superior to the second and third levels, because it includes the five necessary universals of the *sharī'ah* (religion, life, intellect, progeny, and property). These five universals can be preserved in two ways: the positive, by providing what

strengthens them, and the negative by guarding them against what could expose them to danger. Like al-Ghazālī before him, al-Shā ibī also highlighted complements (takmilāt) that enhance each of the three major levels. Being subordinate, the complements must always serve the five objectives, and must not in any way be considered at their expense.[15]

The second category is the Lawgiver's intent behind establishing the law for people's understanding. This pertains to methods and guidelines for understanding the texts of the Qur ān. Al-Shā ibī argued that the sharī'ah is originally Arabic and that the sharī'ah is unlettered (umiyyah). From the first premise it follows that for proper understanding of the law, mastery of Arabic language is a necessary requirement. As for the second, he argued that the unletteredness of the sharī'ah is in tandem with the status of the immediate community (i.e. the Arab) for whom the law was first revealed. Revealing the law unlettered due to this consideration, according to al-Shā ibī, was more conducive to the realization of human benefits.[16]

The third category is the Lawgiver's intent behind establishing the law as a standard of conduct. This has to do with principles of the law with respect to ability of the mukallaf (religiously accountable person) to comply with the law and possible hardship (mashaqqah) that he may encounter in the process. In principle, al-Shā ibī made it clear that the Lawgiver does not oblige man what he cannot bear. As a religiously accountable person, man is only obliged to comply with the rule of the sharī'ah based on his capacity, because there are no impossible obligations in the sharī'ah. As for hardship which is often encountered in some religious acts of worship, though in turn of reward which is ma la ah, al-Shā ibī argued that only the predominant aspect of ma la ah in a ruling is the objective of the Lawgiver's intention. The mundane aspect of mafsadah that results from attaining ma la ah is legally not intended, though in the reality of human action it is inevitable". Thus the benefit that is legally intended by the Lawgiver is pure and devoid of harm.[17]

The fourth category is the Lawgiver's intent behind bringing human beings under the law's jurisdiction. Al-Shā ibī's argument here is that the Lawgiver intended to subjugate the religiously accountable person to His law in order to rescue him from being enslaved by his whims and self-desires. So that he can become voluntarily an obedient servant to Allah just as he has been to Him by default. And it is only by adhering to the dictates of the Lawgiver that mankind may attain the real benefit, and not by following his desires. Al-Shā ibī asserted that following one's desires ultimately leads to fight and destruction. This fact is not only established in the Qur'ān and Sunnah but is also evident through custom and experience.[18]

As for the second division, i.e. qa d al-mukallaf (the intent of the human agent). it relates to what the religiously accountable person intends in his action, for every action shall be judged according to underlining intention. In this regard, al-Shā ibī reiterated the fact that the religiously accountable person must ensure that his intentions and actions are in harmony with the intents of the Shāri (the Lawgiver).This is because the Lawgiver's intent is nothing but the realization of man's personal benefits in this world and the next. Should he seek to realize intents other than those pertaining to the Lawgiver's, his action shall be rendered null and void, lacking substance and merits in the estimate of the Lawgiver. Therefore, it will be counterproductive for the mukallaf to engage in an obviously lawful act with ulterior motive that contradicts the actual intent of the Lawgiver.[19]

## Classification with Respect to the number of People Involved

The sharī'ah rulings as sanctioned by the Lawgiver are meant for religiously accountable person,the ultimate purpose being to ensure both his secular and spiritual benefits. However, the benefits that result from the sharī'ah rulings may either concern the entire Muslim community as a whole or affect specific individuals in the community. It is on this basis that maqā id or ma la ahhas been divided into two categories; the universal(al-Ma la ahal-Kulliyyah)and particular(al-Ma la ah al-Juz iyyah).

According to Ibn Ashur, the first category "means that which equally concerns the whole community, very large number of its individuals or one whole country. Some examples of this category include the protection of Muslim sovereignty and land; reuniting of the community; ensuring the existence and continuity of the religion of Islam; protection of the two sanctuaries of Makkah and Madinah from falling into the hands of non-Muslims," etc. Some varieties of the arūrī and ājī belong to the universal benefits. Still, falling under this first type are benefits and harms that affect large groups relating to regions, tribes, and countries, e.g. judicial legislations for settling disputes, etc. However, the second type of ma la ah, namely particular al-Ma la ah al-Juz iyyah, "concerns interest of individuals or small number of individuals. It consists of various kinds and degrees and it has been covered by the rules and commands regulating the different types of transactions.[20]

## Classification with Respect to Evidence

As important as the realization of human benefit (ma la ah) is, evidences that establish it vary in terms of authenticity and validity. So, based on the evidence and authenticity, ma la ah is classified into three types: categorical (ma la ahqa iyyah), probable (ma la ahanniyyah), and illusionary (ma la ahwahmiyyah). Ibn Ashur has explained these three types in his book, maqā id al-sharī'ah.[21]

The first type i.e. categorical (*maṣlaḥaqaṭʿiyyah*). refers to benefits established by explicit textual proofs which admit of no far reaching interpretation. An example is the command to perform pilgrimage in the Qurʾān which has been made in an explicit textual proof.[22] Benefit can also be considered categorical when such is concurrently established by multiple proofs based on the categorical inference from the *sharīʿah* sources, as in the case of the five inductive universals (*al-kulliyyāt al-ḍarūriyyāt al-khams*). Lastly, the categorical *maṣlaḥah* "includes whatever reason has proven the need for realizing or avoiding it owing to its great benefit or great harm on the community, such as fighting those who refused to pay Zakah during AbūBakr's caliphate".[23]

The second type i.e. probable benefit (*maṣlaḥah ẓanniyyah*) consists of what the intellect considers to be most likely beneficial. An example of this is keeping the watchdogs in urban homes as a security measure.[24]

The third type, illusionary (*maṣlaḥah wahmiyyah*) is what seems to be beneficial, whereas, upon a thorough study its harm becomes evident. According to Ibn Ashur, this can be due either to the covertness of its evil, e.g. the consumption of narcotic drugs such as opium and the like, or that its benefit is outweighed by its evil as in the case of consumption of alcohol whose harmful effect the Qurʾān has exposed.[25] In addition, falling under the illusionary type of *maṣlaḥah* is a purported verdict made by a so-called scholar that the Jumaʿat prayer should be observed on Sunday in some western countries. Based on faulty premise, this wrong verdict considered difficulty faced by many Muslims residing in the western countries to observe Jumaʿat prayer as the period of the prayer falls within office hours. So based on the principle of *maṣlaḥah*, the scholar submitted that it would be more appropriate to observe the prayer on Sunday because it is a holiday! No doubt, this verdict contradicts the clearly established rules on Jumaʿat prayer.

## Classification with Respect to the Ends and Means

The Islamic legal rulings that regulate affairs of religiously accountable Muslims are different in terms of whether the actual action required of them by the Lawgiver is the ultimate end in itself or a means to an end.[26] According to this consideration, there are two types of *maqāṣid*, namely *maqāṣid al-uṣūl* and *maqāṣid al-wasāʾil*. The first type, *maqāṣid al-uṣūl*, refers to actions of the religiously accountable Muslim which he or the Lawgiver as the case may be, considers as an end, hence the ultimate objective in its own right. In other words, it is a kind of *maqāṣid* that once a particular interest has been realized the ultimate purpose is considered met, and there is nothing to be expected afterwards. Examples of this type are preservation of life, shelter and peace with respect to marriage, social justice among other things.[27] Similarly, the five

universals, namely religion, life, intellect, progeny, and property are the ultimate ends of the *sharīʿah*.

The second type i.e. *maqāṣid al-wasāʾil*, are objectives considered as a prelude or means to the realization of the ultimate objectives. Those objectives cannot by themselves bring about the desired interests of mankind. Rather they are necessary means by which the real objectives become possible. For instance, publicity of marriage is a means toward the protection of marriage institution against immoral tendencies, and to ensure stability, tranquility, and perpetual peaceful co-existence of the couples. All of these are some of the ultimate objectives of the *sharīʿah* regarding the institution of marriage.[28] In the same vein, observation of prayers, fasting, and other rituals is a means by which the protection of the religion, which is the ultimate end of the *sharīʿah*, can be achieved.

## Conclusion

The theory of *maqāṣid al-sharīʿah* can be regarded as philosophy of Islamic law, for it deals with higher objectives which the Lawgiver desires to achieve through various rules and regulations. In all legislations, achievement of human benefits is the ultimate goal of the divine law. The proper understanding of the theory can be enhanced by considering its multi-dimensional taxonomy which shows its dynamic nature. Overall, the theory is a veritable factor as far as understanding and application of Islamic law are concerned. Therefore, in making legal verdict (*fatwā*), the juris-consult (*muftī*) must keep in mind the need to base his verdict on the spirit of *maqāṣid al-sharīʿah* so that fundamental human interests such as religion, life, intellect, progeny, and property can be protected. Otherwise, objectives of the *sharīʿah* would be impossible to realize. All in all, the theory of *maqāṣid al-sharīʿah* gives credence to the fact that Islamic law promotes ease and abhors hardship, all to the advantage of mankind.

## Notes and References

1. Yusuf Al-Qaradawi, *Dirasah fi Maqasid al-Shari'ah*,(Cairo: Dar al-Shuruq, 1st edn, 1427), p.20.

2. Abdulhameed Yusuf Badmas, *Al-Kulliyat al-Daruriyyah between Limitation and Open-endedness; A Critical Analytical Study,* (Unpublished PhD Thesis, International Islamic University, Malaysia, 2013), p.1.

3. Al-Juwaynī, *al-Burhān fi Uṣūl al-Fiqh*, ed. AbdulAzim al-Deeb, (Cairo: Dār al-Anṣārī, 2nd edn.,1400), vol. 2, pp. 923-947; al-Raysuni, *Nazariyyat al-Maqāṣid ʿinda al-Imām al-Shāṭibī*, (Herndon: International Institute of Islamic Thought, 4th edn., 1416/1995), pp. 49-51; FelicitasOpwis,

Ma□la□a and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th/ to 8th/14th Century, (Leiden-Boston: Brill, 2010), p. 49.

4. Al-Juwaynī, al-Burhān, vol. 2, pp. 923-947; al-Raysuni, pp. 49-50, Opwis, p. 50.

5. Al-Juwaynī, Ghiyāth al-Umamfīlltiyāth al-□ulam, ed. AbdulAzim al-Deeb, (Qatar: Idārat al-Shu□ūn al-Dīniyyah, 1339 AH), pp. 480-481.

6. Al-Juwaynī, al-Burhān, vol.2, pp. 924, 930, 938-941; 927-928; al-Raysuni, Na□ariyyat al-Maqā□id □inda al-Imām al-Shā□ibī, p.51, Opwis, Ma□la□a and the Purpose of the Law, pp.50-54.

7. As observed by Nyazee, al-Ghazālī's effort in this regard "was to knit, in his organized and systematic manner, most of al-Juwaynī's ideas into a comprehensive theory. He also changed and refined the terminology used by al-Juwaynī. A theory that appeared ordinary in al-Juwaynī's work suddenly became alive in al-Ghazālī's hand". Nyazee, Imran Ahsan Khan, Theories of Islamic Law, (Kuala Lumpur: Islamic Book Trust, 2002), p. 196.

8. For detailed explanations on the three categories and their complements see Al-Ghazālī, al-Musta□fā, vol. 1, p. 217; Opwis, Ma□la□a and the Purpose of the Law, pp. 70-74.

9. Al-Ghazālī, Shifā□, pp. 159-161; al-Raysuni, Na□ariyyat al-Maqā□id □inda al-Imām al-Shā□ibī, p.53; Badawi, Maqā□id al-Sharī'ah □inda Ibn Taymiyyah, pp. 124-125.

10. Mu□mmad Ibn A□mad Ibn □Abdul□Azīz Ibn □Alī al-Fatū□ī Ibn al-Najjār, Shar□ al-Kawkab al-Munīr, ed. Muhammad al-Zuhayli and NazihHammad, (Maktabat al-□Ubaykān, n.d.), vol. 4, p. 171.

11. Opwis, Ma□la□a, and the Purpose of the Law, p. 72.

12. See al-Raysuni, Nazariyyat al-Maqā□id □inda al-Imām al-Shā□ibī, pp. 54-55.

13. Fakhr al-Dīn Mu□ammad ibn □Umar al-Rāzī, al-Ma□□ūlfī□Ilm al-U□ūl, ed. Taha Jabir Fayyad al-Alwani, (Beirut: Mu□assasat al-Risālah, n.d) vol. 5, p. 159-161; Ibn al-Najjār also divided munāsib into three types, namely, dunyawī (worldly), ukhrawī (otherworldly), and iqnā□ī (persuasive). Under the first category are □arūriyyāt, □ājiyyāt, and ta□sīniyyāt. However, the relevance of iqnā□ī (persuasive) to dunyawī (worldly), ukhrawī (otherworldly) is not clear. The last two categories are no doubt more relevant. Ibn al-Najjār, Shar□ al-Kawkab al-Munīr, vol. 4, p. 171; Opwis, Ma□la□a, and the Purpose of the Law, p. 99.

14. AbūIs□āq, l-Shā□ibī, al-Muwāfaqātfī U□ūl al-Sharī'ah, ed. □Abdullah Draz, (Cairo: al-Maktabah al-Tijāriyyah al-Kubrā, n.d.), vol. 2, p. 5.

15. Ibid., vol. 2, p. 13.

16. Ibid., vol. 2, p. 69.

17. Al-Shā□ibī, al-Muwāfaqāt, vol. 2, pp. 26-27, 107; Opwis, Ma□la□a and the Purpose of the Law, pp. 265-267.

18. Al-Shā□ibī, al-Muwāfaqā, vol. 2, p. 168; al-Raysuni, Nazariyyat al-Maqā□id □inda al-Imām al-Shā□ibī, pp. 107-134; Opwis, Ma□la□a and the Purpose of the Law, p.269; NeemaneDjeghim, "Al-□alāqahbayna maqā□id al-Sharī'ah wa U□ūl al-Fiqh", Journal of Islam in Asia, vol. 4, no. 2, (Dec. 2007), pp. 48-49.

19. Al-Shā□ibī, al-Muwāfaqāt, pp. 246-296.

20. Muhammad El-TahirIbn Ashur, Maqā□id al-Sharī'ah al-Islāmiyyah, ed. Mohamad El-Tahir El-Mesawi, (Amman: Dār al-Nafāi□s, 2nd edn., 1421/2001), pp. 313-314; Muhammad El-Tahir Ibn Ashur, Treatise Maqā□id al-Sharī'ah, trans. Mohamed El-Tahir El-Mesawi, (Herndon: International Institute of Islamic Thought, 1427/2006), pp. 126-127.

21. Ibid., pp. 314-315; Ibid., pp. 127-128.

22. Q.3:97 "In it are Signs Manifest; (for example), the station of Abraham; Whoever enters it attains security; Pilgrimage thereto is a duty men owe to Allah,- those who can afford the journey; but if any denies Faith, Allah stands not In need of any of His creatures"

23. Ibn Ashur, Maqā□id al-Sharī'ah al-Islāmiyyah, p. 314; Ibn Ashur, Traetise onMaqā□id al-Sharī'ah, p. 127. Falling under the type of categorical ma□la□ah are the principles of lenience (taysīr) and elimination of hardship (raf□u al-□araj) which feature repeatedly in many verses of the Qur□ān and Prophetic Traditions. For details see Nuoureddine Mukhtar al-Khadimi, □Ilm Maqā□id al-Sharī'ah, (Riyadh: Maktabat al-'Ubaykan, 1st edn., 1421/2001), p. 130.

24. Ibn Ashur, Maqā□id al-Sharī'ah al-Islāmiyyah, pp. 314-315; Ibn Ashur, Treatise onMaqā□id al-Sharī'ah, pp. 127-128, where Ibn Ashur mentioned that Sheikh Abū Mu□ammad ibn AbīZayd kept a watchdog in his house. When he was told that MālikibnAnas disliked keeping watchdogs in urban areas, he answered: "Had Mālik lived in our time, he would even put lion at the gate of his house".

25. Q.2:219 "They will ask you about intoxicants and gambling. Say: In both there is great evil as well as some benefit for man; but the evil that they cause is greater than the benefit that they bring". Ibn Ashur Maqā□id al-Sharī'ah al-Islāmiyyah, p. 315; Ibn Ashur, Traetise onMaqā□id al-Sharī'ah, p. 128,

26. Ibn Ashur, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, pp. 413-416; Ibn Ashur, *Traetise onMaqāṣid al-Sharī'ah*, pp. 223-231.

27. Abdul Majid al-Najjar, *Maqāṣid al-Sharī'ah bi AbāᵈdJadīdah*, (Beirut: Dār al-Garb al-Islāmī, 2006), p. 45.

28. Ibid.

# CHAPTER ELEVEN

## CLOSING THE GATE OF *IJTIHĀD*: A CONTROVERSY AMONG THE ISLAMIC SCHOLARS

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### Introduction

Islam as a complete and perfect religion remains immutable in its fundamental principles. Its immutability is traced to the word of Allah which reads:

> So set you (O Muhammad-Peace be upon him) your face toward the religion (of pure Islamic Monotheism)Hanif (worship none but Allah Alone ). Allah's fitrah (i.e. Allah's Islamic Monotheism) with which He has created mankind. No change let there be in khalqillah (i.e. the religion of Allah-Islamic Monotheism):that is the straight religion, but most of men know not.[1] (Qur'an 30:30)

Change is a natural phenomenon of human life and of the world at large. Everything is liable to change except Allah and His word. Any discovery or development emanated from human intellect must trace its origin and historical background to Islam; the natural disposition of human life. The Muslims now found themselves in a complex and unstable world in which they can not proffer direct evidence or solution to a particular problem from the *Qur'ān* or *Hadīth*. And even not in the consensus of the companions of the Prophet. Today, Muslims are living a very highly technologically advanced world, thus, facing very complex tasking and challenging problems that need immediate solutions, some of these challenging issues are:

- Surrogacy
- In vitro fertilization
- Organ transplants
- Forex trading,
- Genetic engineering
- Gene therapy
- Eating of genetically altered cattle or vegetables/fruit[2] and many others.

It has been narrated that the Prophet said: