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**EXPOSITIONS OF AL-SHATIBI AND IBN ASHUR ON
METHODIC WAYS OF IDENTIFYING MAQASID AL-SHARI'AH
(OBJECTIVES OF ISLAMIC LAW)**

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Abstract

The theory of *Maqasid al-Shari'ah* is based on a very sound proposition, namely that the divine Law i.e. *Shari'ah* is purpose-oriented. It seeks to achieve certain objectives which are conducive for human welfare. Though the divine Law has such human-centered objectives, the challenge is how to identify them. This article seeks to explore the methodic ways of knowing the objectives of Islamic law. This shall be done through the lenses of Al-Shatibi and Ibn Ashur, the two great jurists whose inputs were greatly instrumental to the evolution and standardization of the theory of objectives of Islamic law in the eighth and the fifteenth centuries of *hijrah* calendar respectively. While it is important to know the objectives of Islamic law, it is more important to understand how these objectives can be identified. This difficult task was undertaken and explained by the two most important jurists of *Maqasid-al-Shari'ah* in their respective works, namely, *Al-Muwafaqat* and *Maqasid-al-Shari'ah-al-Islamiyyah*. The methodic ways propounded by these scholars shall be analyzed together in a complementary manner. Hence analytical method shall be employed.

Introduction

Islamic law (*Shari'ah*) is a divine legal system which regulates spiritual and mundane affairs of Muslims. Its primary sources are Qur'an and *Sunnah* from which laws are derived explicitly or implicitly with the aid of *qiyas* and other tools of legal extrapolation such as *maslahah mursalah*, *istihsan*, *istishab*, *'urf*, *sadd zari'ah* etc. A comprehensive study of the entire corpus of Islamic law would reveal that it is objective-based, its main objective being advancement of human

interests at three hierarchical levels, namely *daruriyah* (necessity), *hajiyah* (need), and *tahsiniyah* (embellishment). The first level is at the apex as it is concerned with the protection of five necessary human interests, which include religion, life, intellect, progeny, and property. The need to protect these human interests is the main rationale behind the sanctioning of different stiff penalties by the Lawgiver. As such, the theory of *Maqasid-al-Shari'ah* which studies goals and objectives of Islamic law is an important theme in the science of *Usul-al-Fiqh* (Principles of Islamic Jurisprudence). The knowledge of objectives and purposes of law is significant for the adherent or subscriber to such a law. Among other benefits, knowing the objectives of the law would motivate him to comply with its rules and regulations having been aware that protection of his interests is the ultimate goal of the divine law (*Shari'ah*). More importantly, its understanding is equally necessary for the scholar as it guides him in the process of legal extrapolation, to deduce laws which shall be in tune with the divine will.

While general objectives of the law are, by and large, made explicit in the primary and secondary sources, specific objectives of many branches of law are largely implicit. These latter objectives can only be known with extra-ordinary efforts by a jurist who shall have to critically study the text, its linguistic properties, and the context. For him, this onerous task starts from a solid conviction that all legislations have been promulgated by the Lawgiver with the sole objective of guaranteeing *maslahah*, i.e. human benefit in its three categories mentioned above. What is much more important is for him to know how those objectives can be identified. He should endeavor to find out ways or methods by which to establish those objectives with certainty or higher level of probability. This aspect of the theory is extremely critical because of its far reaching impact. This is because once a particular objective is identified, it will serve as a basis for determining a number of rulings derived in line with the identified objectives of the Lawgiver. As such, any mistake in the process of identifying the Lawgiver's objectives shall ultimately have negative impacts on the derived rulings. This is why Ibn Ashur has advised the jurist searching for the Lawgiver's objectives to be extremely careful in the process.¹ He must be meticulous so that he can be able to separate a true objective from the false one, just as he should be able to know *where a nivan dhikratiya balance in the hierarchy of maqasid al-shari'ah*.

However, despite the significance of this aspect, only few jurists took some interest in studying different ways by which the Lawgiver's objectives may be identified and established. Perhaps, Al-Shāṭibī² and Ibn Ashur³ could be regarded as the most concerned jurists with this aspect of the theory of *maqāṣid*.⁴ In their respective works on *maqāṣid*, they devoted some considerable space to explaining different ways and methods by which the Lawgiver's objectives may be identified.

Against this backdrop, this article seeks to expound on the methodic ways by which to identify objectives of Islamic law as exposed and detailed by both scholars in their respective works on *Maqasid-al-Shari'ah*, namely *Al-Muwafaqat* by Al-Shatibi and *Maqasid-al-Shari'iah* by Ibn Ashur.

The Theory of Maqasid al-Shari'ah

Maqasid-al-Shari'ah is an important theory in the field of *Usul-al-Fiqh*. It is firmly premised on a valid assumption that every legal rule of Islamic law is purpose-oriented, the main end of which is advancement of human interest or welfare in two aspects; on one hand, it promotes his benefits (*jalb-al-maslahah*), while it protects him against harm (*dar'-al-mafsadah*) on the other hand. This fact can be supported by reference to many instances and rules in the legal system of Islamic law.

As a theory, *maqasid al-shari'ah* has been defined by scholars in different ways. According to Al-Fasi, it is "the ultimate purposes (of *shari'ah*) and secrets put by the Lawgiver behind every rule of Islamic law".⁵ On his part, Al-Raysuni explained the theory as "the ultimate purposes laid down by the Lawgiver for the benefit of mankind".⁶ Still, Muhammad Al-Yubi has defined it as "meanings and wisdoms considered by the Lawgiver in the legislation generally and particularly with the purpose of realizing human benefits".⁷ Last but not the least, Noureddine-al-Khadimi has conceived *Maqāṣid al-Sharī'ah* as:

Meanings observed in the *shari'ah* rules...whether the meanings have to do with particular wisdoms, general benefits

or general features. All these converge on a particular goal, namely, to assert worthiness of the Almighty Creator of worshiping and to realize benefit of the creature (mankind) in this world and the next.⁸

It should be obvious that, regardless of the difference in expressions, all the above definitions explain the theory of *maqāṣid-al-sharī'ah* in terms of objectives, purposes, secrets or goals that lie behind every command and prohibition in Islamic law. These objectives are characterized with *maṣlaḥah* which presupposes the realization of human interest by way of drawing benefits to him and protecting him against harms.

Human interest varies in accordance with its importance and urgency. This informs why *maqsid-al-shari'ah* has been classified into three different categories as follows:

- | | |
|-------------------------|----------------|
| i. <i>Daruriyyah</i> | Necessary |
| ii. <i>Hajiyyah</i> | Need |
| iii. <i>Tahsiniyyah</i> | Embellishment. |

The category of *daruriyyah* is the most important category of *maqasid al-shari'ah*, mainly because it concerns the protection of five necessary human interests which include religion, life, intellect, family, and property. Though, the limitation of human interests to five has been hotly debated by scholars in the past and the present time. This is why *'ird* (dignity/honour) has been purportedly added as the sixth human interest. But a critical study of the rationale behind the limitation of those human values to five shall reveal that it is exhaustive and comprehensive as *'ird* and all other new additions have been well incorporated in the five existing human interests that were articulated by the classical scholars after thorough and exhaustive studies.⁹

How to Identify *Maqasid-al-Shari'ah*.

It has been established above that the divine law, i.e. *Shari'ah*, has objectives which are about human welfare and interest. Now, a genuine question is: how to know or identify those objectives. In other words, what are the techniques or methods by which to uncover the objectives of Islamic law? In the following paragraphs, the answer shall be provided through the expositions of Al-Shatibi and Ibn Ashur on the matter which shall be discussed in a complementary manner. The rationale behind this is to avoid repetition because their expositions on the issue overlap. As such, the approach to the ensuing discussion shall not be a comparative one. Expectedly, Al-Shatibi shall be mentioned before Ibn Ashur in consideration of historical sequence.

To start with, Al-Shāṭibī mentioned three different popular approaches to knowing the Lawgiver's objectives. Intimately identified with the *ẓāhirīs*, the first approach suggests that the Lawgiver's objective remains a secret to the human mind until the Lawgiver Himself makes it known. Therefore His objective can only be known by sticking to outwardly obvious meaning of the texts. The second approach which is the opposite of the first one is further divided by Al-Shāṭibī into two subdivisions: one of the subdivisions is mainly representative of the *Bāṭinīs*, who claim that the Lawgiver's objective does not lie in the outer but in the inner meaning of the texts. As for the second subdivision, it consists of those who believe that the Lawgiver's objective can only be known by looking beyond the texts by considering the rational meaning (*al-ma'nā al-naẓarī*) of words. According to Al-Shatibi, this latter approach tends to give preference to *maṣlaḥah* (human interest or welfare) over the text or make the rational meaning of words the criterion by which the *sharī'ah* must be determined in a total disregard of its (*sharī'ah*) words. The third approach which is considered as the proper one combines the two previous approaches in such a way that neither the meaning nor the words of the texts are compromised. Al-Shāṭibī maintained that this approach is adopted by majority of jurists. One important merit of this approach is that it ensures that the *sharī'ah* "operates as one system without contradiction or variance in it".¹⁰

It is on the third approach that Al-Shāṭibī and subsequently Ibn Ashur

based their expositions on ways by which to know the Lawgiver's objectives. This shall be discussed in the following paragraphs.

Accordingly, the very first way to know and establish the Lawgiver's objective is by explicit primary command and prohibition (*al-amr wa al-nahy al-ibtidā' al-taṣrī* ٦). By default, a command by the Lawgiver demands an action from the *mukallaf* i.e. legally accountable individual, while prohibition primarily means that he must refrain from a given act. Consequently, the action resulting from the divine command is what the Lawgiver requires of His servants, hence His primary objective behind the command. In the same vein, abstention or refraining from an action is the primary objective of the Lawgiver behind His prohibitions. So, to refrain from a commanded act is against the objective of a divine command to act, while to carry out a prohibited act is contrary to the divine prohibition.¹¹

Furthermore, *Imām* Al-Shāṭibī explained that for such command and prohibition to result in action and abstention respectively, it must be ascertained that each is actually intended by the Lawgiver to result in a particular outcome primarily and directly, and not by proxy. By qualifying the command and prohibition as being primary, Al-Shāṭibī only wanted to make a distinction between it and the secondary command and prohibition which is not primarily intended by the Lawgiver. To illustrate this, Al-Shatibi referred to the following verse:

O ye who believe! When the call is proclaimed to prayer on Friday (the Day of Assembly), hasten earnestly to the Remembrance of Allah, and leave off business (and traffic): That is best for you if ye but knew! (Q.62:9).

In the above verse, Allah commands that the believers should answer the call to congregational prayer on Friday. Yet, the divine sanction against trading in the verse is not primarily or directly intended to affect trading as such. When we are aware that trading has been permitted by the Lawgiver, it further becomes clearer that the prohibition in this context is only meant to emphasize the necessity of abandoning any worldly affairs, especially trading which can hinder one from

attending the congregational prayer on Friday. This prohibition against trading, al-Shāṭibī maintained, is not intended primarily but only affects it by proxy. In other words, the sanction against trading during the time of the congregational prayer on Friday is but a temporary prohibition, the ultimate purpose being to ensure that nothing distracts the worshipper from establishing the important act of worship on Friday. This prohibition is unlike the one against usury and fornication which is made primarily to affect both.¹²

Also, Al-Shāṭibī qualified both command and prohibition with the term 'explicit' in order to preclude implicit meanings that may be derived from the command and prohibition, and which are actually not intended by the Lawgiver. According to Al-Shāṭibī when a command is made with respect to certain things it could logically be assumed that the opposite of such things is prohibited by default. Yet, the fact remains that the prohibition of the opposite is not explicitly intended by the Lawgiver. It will however require some supporting components such as context or circumstances to establish that the Lawgiver also intends the opposite.¹³ Although Al-Shāṭibī did not provide any example to make this aspect clearer, it is sufficient to understand that even if established such prohibition will only assume the secondary status as it is not primarily intended in explicit terms by the Lawgiver.¹⁴

It should be observed that, this first way only provides the jurist that is searching for the objectives of the Lawgiver with a general and basic knowledge of the objectives of the Lawgiver. Having come this far, it is now incumbent upon him to continue his search so that he can identify the specific category of the objectives which he has discovered. But basically he should be aware that every primary and explicit command and prohibition of the Lawgiver has specific objectives, based on the conviction that divine legislations are always purpose-oriented and wisdom-based.¹⁵

The second way to know the objectives of the Lawgiver is by considering *ratio decidendi* (i.e. 'illah) of both the command and prohibition. Every command and prohibition by the Lawgiver is based on a fundamental legal ratio or reason which is *maṣlaḥah* i.e., realization of human benefit. Such a legal ratio may either be obvious or obscure. In the former case, it becomes imperative for the jurist to know that the Lawgiver really intends that certain action be done or be ignored as required by the ruling in question. For instance, it is evident from the relevant texts

in the Qur'ān and the Prophetic Traditions that procreation is one of the objectives behind the institution of marriage, that transaction has been sanctioned in order to make use of commodities, and that penalties have been prescribed as a punitive measure against the culprits and those who may intend to commit similar crimes. Accordingly, once a legal ratio of a given command or prohibition has been established, it follows therefore that the corresponding objective be acknowledged. Methods of ascertaining the legal ratio are well explained in Islamic legal theory (*uṣūl al-fiqh*). Nevertheless, when the *ratio decidendi* of a command or a prohibition is obscure, the jurist is expected to exercise a form of restraint and should not assume that such and such is a divine objective until it becomes obvious and proven to him.¹⁶

The third way by which to know the objectives of the Lawgiver is by considering both the primary and secondary objectives of legal rulings relating to worship and customs. This is in view of cordial relation that exists between both, the secondary objective serving as a parameter for the confirmation of the primary objective. According to this way, any secondary objective that contravenes the primary objective of the Lawgiver should be known to be unintended by the Lawgiver, and thus it should be discarded. Al-Shāṭibī makes this clear in the following two examples, each for worship and customs respectively. First, the primary objective regarding the various acts of worship is for the believer to submit himself in entirety to his Lord by worshipping Him sincerely. However, the worshipper's achievement or attainment of the spiritual companionship of Allah (*walīyy Allah*) is a secondary objective. But the moment the worshipper pursues worldly benefits through the acts of worship, his objective therefore runs contrary to the Lawgiver's objectives, and is thus disregarded.¹⁷

Second, the primary objective, customarily, of the Lawgiver for sanctioning marriage is the need for procreation. Following this primary objective are a host of secondary objectives which include mutual solidarity and sexual enjoyment, and other material benefits that couples enjoy as a result of their conjugal relationship. Some of these secondary objectives are supported by explicit textual evidences while others are only alluded to. All of these secondary objectives serve to strengthen the primary objective of the institution of marriage which is procreation. Therefore, any secondary objective that undermines the primary objective shall be considered contradictory to the objective of the

Lawgiver. One important example in this regard is what is technically referred to as *nikāḥ taḥlīl*. This is a disapproved kind of marriage whereby a special arrangement is made for a man to marry a woman who had earlier been divorced three times by her former husband. According to this arrangement, the woman would again be divorced by her new "husband" so that she could be remarried afresh to her former husband. This legal stratagem i.e. *ḥiyal* is usually employed in order to escape from the Qur'anic injunction which stipulates that a woman divorced three times shall not be married to her former husband again unless she marries another man who shall willingly divorce her, due to cogent reason(s), after such a marriage must have been consummated.¹⁸ This kind of marriage is invalid because it is contrary to the objective of the Lawgiver in sanctioning marriage. For the person who plays husband in this regard is interested neither in the primary nor in the secondary objectives of marriage.¹⁹ Thus, it is clear from al-Shāṭibī's submission that anything that goes against the primary objective of the Lawgiver is ultimately outside the realm of divine objectives, and shall accordingly be rejected.

The fourth way to know the Lawgiver's objective is the Divine silence on a particular issue despite the existence of a cause for its legislation. This is of two types; first, issues over which the Lawgiver is silent because they were non-existent at the time of revelation. Issues falling under this type occurred after the death of the Prophet (SAW). To address such unprecedented issues, the companions and qualified jurists had to derive appropriate legal rules based on the fundamental principles of Islamic law. A typical example, in this regard, is the compilation of the Qur'ān during the administration of Caliph Abubakr on the advice of 'Umar.²⁰ Second, issues over which the Lawgiver is silent, despite the fact that they existed at the time of revelation. In this instance, it can be understood that the Lawgiver intended that no rule should be legislated regarding the issue. Therefore, any legislation afterwards shall be regarded as an innovative act which must be considered null and void. For example, according to the Mālikī School of law, it is an act of innovation to observe appreciation prostration (*sujūd al-shukr*) because it was neither traceable to the practices of the Prophet (SAW) nor to those of his rightly guided companions. In the same vein, *nikāḥ taḥlīl* is an act of innovation because the Prophet (SAW) never approved it.²¹

The fifth way to know the Lawgiver's objective is inductive method or thematic inference (*istiqrā'*). This method was employed by al-Shāṭibī in an unprecedented manner as a tool to ground methodological and epistemological principles of *maqāṣid al-sharī'ah*. This inductive method is all about the survey of legal dispositions of the *sharī'ah* through which principles and universals of the Lawgiver are discovered and established. By surveying all relevant particulars (*juz'īyyāt*), a universal principle (*kullī*) is formed and acquires the status of certainty and conclusiveness. Though, if considered individually, each particular that forms the universal would be probable and inconclusive.

The application of this inductive method was articulated by Ibn Ashur in two different ways. First, he said that the jurist needs to survey legal provisions and commands whose ratio legis are known to have a common wisdom (i.e. *ḥikmah*) identified to be intended by the Lawgiver. And because all the rulings share the same quality, namely the common wisdom, it would thus be safe for the concerned jurist to conclude that such provisions have been sanctioned in order to actualize that common objective. For example, the Lawgiver has prohibited a number of transactions such as *muzābana*²² and *bay' al-juzāf bi al-makīl*²³ purposely because of the fact that one of the two items involved in the transaction is unknown. On this basis, it may be rightly concluded that the abolition of ambiguity (*gharar*) and substantial risk (*khaṭar*) is the objective of the Lawgiver in all financial transactions.²⁴

The second way by which Ibn Ashur explained the application of the inductive method is that the jurist needs to examine many textual proofs of legal rulings which have unmistakably an identical ratio legis. If the ratio legis is established to be relevant in all proofs of the related legal rulings, it becomes certain that that very ratio legis is the Lawgiver's objective. For example, the purchase of foodstuffs before their receipt, their sale on credit in exchange for another kind, and the act of hording them are all prohibited by the *sharī'ah* in order to ensure and encourage smooth circulation and availability of foodstuffs in the market. It thus can be concluded that the circulation and availability of foodstuffs in the market is another important objective of the Lawgiver in financial transactions.²⁵

The sixth way to know the Lawgiver's objective is through recurrent Prophetic Tradition (*al-sunnah al-mutawātirah*). According to Ibn Ashur, this

method falls into two types: the first is the recurrent action by the Prophet (SAW) witnessed by a large number of the companions. They had neither doubt nor disagreement among themselves that such action has been sanctioned by the Lawgiver with a view to realizing a specific goal. Falling under this type are various basic issues in Islam which every Muslim knows and is familiar with as a matter of necessity which scholars technically refer to as *al-ma'lum min al-din bi al-darurah*. An example given in this regard is *ṣadaqah jāriyah*, the perpetual alms giving (endowment). Every companion understood that the Prophet (SAW) had approved this kind of charity with the objective of taking care of the needy and poor people in the society. This explains why Imām Mālik was shocked when Shurayḥ, a famous judge, expressed his reservation against the practice of endowment in Kufah, despite the fact that it was a very common practice among the people of Madinah who had become familiar with it based on the recurrent Prophetic Traditions.

The second type is the recurrent action of the Prophet (SAW) witnessed only by a few companions. By virtue of their familiarity with certain actions of the Prophet (SAW) such companions had become aware that leniency (*yusr*) is a fundamental principle in Islamic law. Ibn Aṣḥur gave an example about a man whose horse was bolting away while he was observing the prayer. This incidence prompted the man to exit the prayer in order to quickly pursue his horse which was running away. When he was challenged by people who witnessed the scene, the man defended himself by arguing that should he allow the horse to run away he would not be able to reach his house until the late hour. Apparently, there was a long distance between his house and the scene of the incident. The man even expressed his surprise at people's reaction as he had never been so challenged by anyone since the demise of the Prophet (SAW). Understandably, his action was based on his understanding of the principle of leniency which he came to know to be a fundamental objective of Islamic law as a result of his long companionship with the Prophet (SAW).²⁶ As such through the routine practices of the Prophet (SAW), the companions became well aware of the fact that leniency occupies a lofty position in the Islamic law.

The seventh way by which the Lawgiver's objectives can also be identified and established is by considering the circumstances or context of the text (*al-siyāq*). This is of two types: linguistic and social. The former is purely

concerned with the consideration of the preceding and succeeding linguistic structures within a particular text. Inter-textual consideration is also necessary in order to understand a given text in the light of other relevant texts. As for the latter type i.e. social, it has to do with contextual position of the text. Included in this type are the reasons behind revelation of the text of the Qur'ān and the Tradition of the Prophet (i.e. *asbāb al-nuzūi* and *asbāb wurūd al-ḥadīth*) respectively, the prevailing psychological and social milieus, and the period of revelation of the legal text. Understanding of all these contextual instances will provide the jurist with insights into the actual objectives of the Lawgiver.²⁷ For example, in a gradual manner, the Lawgiver has legislated three different rulings concerning the consumption of alcohol; the first one only exposes its evils, the second one warns that the person that just consumed alcohol should not go near the prayer, while the third and the final one prohibits it categorically. The contextual understanding of reasons behind the revelation of each of these three different ordinances on the legal status of alcohol will make it clear to the jurist that the Lawgiver only intended to make the prohibition gradual to ensure the smooth and easy compliance of the believers with the new ruling.²⁸

These foregoing are methodic ways by which to know the objectives of the Lawgiver as detailed by al-Shāṭibī and Ibn Ashur. In addition to those things mentioned above, Gamal Eldin Attia, a contemporary scholar of *maqāṣid al-sharī'ah* has also highlighted the role of reason, innate understanding, and experience in identifying and verifying the objectives of the Lawgiver.²⁹ According to him, reason can determine human benefits and harms, because of its divine nature. This submission is in line with the consensus of major classical scholars as regards the ability of human reason to determine what is good and bad. But this position is with some caution. They emphasized the fact that by default revelation is a primary source through which good and bad things may be determined with certainty. According to this line of argument, human reason is to play a supplementary role in a situation where revelation seems to be ambiguous or implicit, or where scholars in the Muslim community could not arrive at a unanimous opinion as regards a given legal issue. To a certain degree, reason and hence innate understanding i.e. *fiṭrah*, which is pure and divine have the ability to know human benefits that are connected with worldly affairs, while they are incapable of grasping otherworldly benefits in an absolute manner. In support

of this position, Gamal Eldin Attia quoted statements of many notable scholars, including Ibn Taymiyyah who remarks:

God, the Almighty has created His servants with an inborn nature (*fiṭrah*) by virtue of which they recognize and believe in the truth, and by means of which they recognize the untruth and reject it. It is by virtue of this God-given, inborn nature that human beings recognize that which is beneficial and appropriate and accordingly incline thereto, just as they also recognize that which is harmful and incompatible [with their best interests] and respond to it with an instinctive aversion. Hence, whatever is truly beneficial, they will recognize it as such by nature, cherish it, and find reassurance therein. This is known. As for that which is false and nonexistent, people will disbelieve in it by nature, feel antipathy toward it and spur it. As God Almighty had declared, [the Prophet] "will enjoin upon them the doing of what is right and forbid them the doing of what is wrong (Q7:157)"³⁰

Conclusion

The above things are ways of identifying or discovering the objectives of Islamic law as explained by scholars of the theory of *maqāṣid al-sharī'ah*. The paper focuses attention on both Al-Shāṭibī and Ibn Ashur because of their unique expositions in that regard. It has been explained that both of them rightly considered the Qur'ān and the Prophetic Traditions as the only authoritative sources from which to derive the objectives of the *sharī'ah*. But one needs to

observe that the term *ṭuruq* (ways) used especially by Ibn Ashur to articulate this appears to be inappropriate. This is because the impeccable sources (i.e. Qur'an and Sunnah) are better considered as fountains or catchment areas where the objectives of the *sharī'ah* could be well fetched and discovered. What may be rightly regarded as the way or method is the inductive method (*istiqrā'*) which both scholars have properly employed to study the texts of the Qur'ān and the Prophetic Tradition in a comprehensive manner with the end of determining the ultimate objectives behind commands and prohibitions of the *sharī'ah*. Nevertheless, there is no doubt that this aspect of *maqasid al-shari'ah* is of great importance. As such, jurists are expected to study the various ways of identifying the objectives of Islamic law before making any legal pronouncement. This is imperative given the fact that failure to correctly assert an objective of the Shari'ah shall lead to misapplication and indeed abuse of the divine law. By implication, the wrong application of the law would further worsen the bad name already ascribed to the Islamic law as witnessed in the contemporary world. Due to wrong application, the word Shari'ah is now seen as a negative legal system that has no regard or provision for human welfare and right, despite the fact that it is all about mercy and kindness according to Ibn al-Qayyim in the following quote:

The Islamic law is all about wisdom and achieving people's welfare in this life and the afterlife. It is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Islamic law, even if it is claimed to be so according to some interpretation.³¹

Notes and References

1. Abdel Majid Al-Najjar, *Maqāṣid al-Sharī'ah bi Ab 'ād Jadīdah*, Beirut: Dār-al-Garb Al-Islāmī, 2006, pp. 24-26.

2. His full name is Ibrahim Ibn Musa Ibn Muhammad Al-Lakhmi Al-Gharnati, Abu Ishaq Al-Shatibi. His date and place of birth are vague. However it is most likely that he was born in Granada and grew up there. He is the author of *Al-Muwafaqat fi Usul- al-Fiqh* which is the ground work in the field of Usul- al-Fiqh and *Maqasid-al-Shari'ah* especially. He also authored *Al-I'tisam*, *Al-Ifadat wa Al-Inshadat* among other works. See Ahmad Al-Raysuni, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*, Herndon: International Institute of Islamic Thought, 1427./2006, pp. 74 & 78.
3. Shaikh Muhammad Al-Tahir Ibn Ashur is the most renowned Zaytuna Imam and one of the great Islamic scholars of the 20th century. Born in Tunis in 1879 and died in 1973, he was of an affluent family of high social standing. Among his works are *Tafsir- al-Tahrir wa Al-Tanwir*, *Alaysa Al-Subh bi Qarib*, *Maqasid Al-Shari'ah*, etc. Ibn Ashur's work on *Maqsid al-Shari'ah* is a pioneering study of the *Shari'ah*'s higher objectives and it is not known whether any modern jurist prior to Ibn Ashur has made any attempt to develop a comprehensive and systematic study of its different aspects as he did. Ibn Ashur, Muhammad Al-Tahir, *Ibn Ashur Treatise on Maqāṣid- al-Shāri'ah*, Mohamed El-Tahir El-Mesawi (trans.), Herndon: International Institute of Islamic Thought, 1427 /2006, pp xiv & xv.
4. For detailed and comprehensive study of their expositions see Neemane Djeghim, *Ṭuruq al-Kashf 'an Maqasid- al-Shari'ah*, 1st edn, Jordan: Dar- al-Nafa'is, 1422 AH/2002.
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7. 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.

8. Nuoureddine Mukhtar Al-Khadimi, *Al-Ijtihād Al-Maqāṣidī*, Riyadh: Maktabat Al-Rushd, 1426/2005, p. 38.
9. For details on arguments over limitation of human interests to five things (religion, life, intellect, progeny, and property) see: AbdulHameed Badmas Yusuf, "On the Limitation and Open-endedness of the *Shari'ah's* Necessary Universals: A Perspective". *American Journal of Islamic Social Sciences (AJISS)*, Herndon: International Institute of Islamic Thought, 2016, (33) 2, pp. 50-68.
10. Opwis, Felicitas, *Maṣlaḥa and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century*, Leiden-Boston: Brill, 2010, pp. 279-281.
11. Abu Ishaq Al-Shāṭibī, *Al-Muwāfaqāt*, Abdullah Draz ed., Cairo, Al-Maktabat Al-Tijāriyyah Al-Kubrā, (n.d), vol. 2, p. 393 and Neemane Djeghim, *Turuq Al-Kashf' AnMaqāṣid Al-Shār'*, Jordan: Dar al-Nafai's, 1422/2002, p. 67.
12. Ibid., vol. 2, p. 393.
13. Ibid., vol. 2, p. 394 and Djeghim, *Turuq- al-Kashf*, p. 13.
14. Al-Shāṭibī, *Al-Muwāfaqāt*, vol. 2, p. 394 and Al-Najjār, *Maqāṣid- al-Sharī'ah biAb'ād Jadīdah*, pp. 27-28.
15. Al-Najjar, *opcit*, pp. 28-29.
16. Al-Shāṭibī, *Al-Muwāfaqāt*, *opcit*, vol. 2, p. 394.
17. Ibid., pp. 396-398.
18. See Q2:230. So if a husband divorces His wife (irrevocably), He cannot, after that, re-marry her until after she has married another husband and He has Divorced her. In that case there is no blame on either of them if They re-unite, provided They feel that They can keep the limits ordained by Allah. such are the limits ordained by Allah, which He makes plain to

those who understand.

19. Al-Shatibi, *opcit*, vol. 2 pp. 396-397 and Opwis, *Maṣlaḥa and the Purpose of the Law*, pp. 282-283.
20. Al-Shātībī, *Al-Muwāfaqāt*, *opcit*, vol. 2, pp. 409-410.
21. *Ibid.*, pp. 110-114.
22. *Muzābanah* means buying something whose number, weight, or measure is unknown with something whose number, weight or measure is known, e.g. the sale of dried dates in exchange for fresh dates. This is based on the sound Prophetic Tradition where in reply to an inquiry he (SAW) asked the person: "Do ripe dates diminish in size when they become dry? When the person replied in affirmative, the Prophet forbade the transaction". Ibn Ashur, *Ibn Ashur Treatise on Maqāṣid al-Shārī'ah*, p. 15.
23. *Bay ' al-juzāf bi al-makīl* means buying or selling something whose number, weight, or measure is unknown with something whose number, weight, or measure is known. .
24. *Ibid*, pp. 15-16.
25. *Ibid*. p. 16.
26. Ibn Ashur, *Treatise on Maqāṣid al-Shārī'ah*, *opcit*, p. 195.
27. Djeghim, *Ṭuruq- al-Kashf*, *opcit*, p. 97.
28. *Ibid.*, p. 113.
29. Attia, *Towards Realization of the Higher Intents of Islamic Law: Maqasid- al-Shari'ah as a Functional Approach*, Nancy Robert, (trans.), Kuala Lumpur: Islamic Book Trust and Herndon: International Institute of Islamic Thought, 1431/2010), pp. 1- 16.
30. *Ibid.*, p. 7.

31. Shamsuddin Ibn al-Qayyim, *I'lam al-Muwaqqi'in*, ed. Taha AbdulRauf Saad, (Beirut: Dar al-Jil, 1973), vol. 1, p.333

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