

Adjudication by Purpose: The Operational Role of *Maqāṣid Al-Sharī'ah* in Islamic Judicial Procedure

By

Muhammad Shettima, PhD*

Ashigar Abubakar, PhD *

Musa Alkali Lawan, PhD**

ABSTRACT

The purpose of this paper is to analyse the application and relevance of the Objectives of Sharī'ah (*Maqāṣid al-Sharī'ah*) in Islamic adjudication and its procedures. The Objectives of Sharī'ah elucidate the purposes and meanings behind its injunctions. Allah created mankind for the purpose of worshipping Him and following His directives. Adjudication is also an act of worshipping Allah Ta'āla. The commands of Allah are intended for easy application by mankind, a principle that extends to both the substantive and procedural provisions of Islamic adjudication. The entirety of the law demonstrates Allah's justice and goodness towards mankind. These are demonstrated in all injunctions especially adjudication and its procedure. *Maqāṣid al-Sharī'ah* is classified into three grades: *ḍarūriyyāt* (necessities), *hājiyyāt* (complementaries), and *taḥsīniyyāt* (embellishments). The Islamic judiciary is central to the protection and promotion of the five necessities: religion, life, mind, progeny, and wealth. This protection is provided through both affirmative and punitive measures. *Hājiyyāt* are intended to prevent hardship and difficulty, and to facilitate the protection of the necessities. Several injunctions related to adjudication are aimed at preventing hardship for litigants and facilitating the protection of the five necessities. *Taḥsīniyyāt* refer to the adoption of good customs and etiquette, as well as the avoidance of that which a sound conscience deems foul. As the nucleus of the Islamic judicial system, a judge is expected to occupy the high moral ground in his appearance, conduct, and behaviour towards litigants. A judge is expected to take cognisance of all these purposes of the Sharī'ah while administering Islamic justice and resolving conflicts. This paper fills a critical gap in *maqāṣid* scholarship by moving beyond substantive law to examine the operational role of these objectives in judicial procedure. It demonstrates that the Islamic judiciary serves not merely as an enforcer of rules but as the primary institutional guardian of the Sharī'ah's higher purposes, providing judges with a practical framework for balancing competing interests, exercising discretion, and ensuring that procedural justice aligns with the law's ultimate aims.

Keywords: Objectives of Sharī'ah (*Maqāṣid al-Sharī'ah*), Islamic Adjudication (*al-Qaḍā'*), Protection of People's Interests, Mercy and Justice

* Department of Sharia, Faculty of Law, University of Maiduguri, Maiduguri, Borno State, Nigeria; E-mail: baakaka1400@unimaid.edu.ng

* Department of Islamic Law, Faculty of Law, Yobe State University, Damaturu, Yobe State.

1.0 INTRODUCTION:

In the Name of Allah, the Beneficent, the Merciful. All rulings of the Sharī'ah have specific objectives behind their enactment. They are not merely imitative but are aimed at achieving specific purposes. Its main objectives, according to Muslim jurists, are the protection of religion, life, progeny, mind, and wealth. While Muslims are obliged to act in accordance with this protective framework, the role of the Islamic judiciary (*al-Qadā' al-Islāmī*) is central to maintaining these objectives within the community. This paper seeks to investigate the application of the objectives of Sharī'ah to adjudication under Islamic law.

The significance of this inquiry extends beyond academic interest. Contemporary Islamic judiciaries face unprecedented challenges—from complex commercial disputes to evolving family dynamics to questions of constitutional governance. In this context, a judge's mere technical knowledge of legal rules proves insufficient; understanding the objectives behind those rules is essential for rendering decisions that are both legally sound and socially beneficial. This paper contributes to this pressing need by providing a systematic analysis of how *maqāṣid* function within judicial procedure, offering both theoretical grounding and practical guidance for judges, lawyers, and policymakers. It addresses a notable lacuna in the literature: while much has been written on *maqāṣid* in substantive law, their procedural applications remain underexplored.

The first section examines the concept of *maqāṣid* and compares it to other related terms. The second section examines the textual basis for the objectives of Sharī'ah. Authorities from the Qur'an and Hadith will be cited, and their relevance to Islamic adjudication will be discussed. The third section discusses the grades of *maqāṣid*. These grades are *darūriyyāt*, *hājiyyāt*, and *taḥsīniyyāt*, and their application in judicial processes and decisions. This section is central to the paper's theme, as it discusses in detail the essential role of the judge in maintaining the objectives of Sharī'ah. The final section examines the importance of the Objectives of Sharī'ah for judges and other judicial officers in carrying out their official functions. The work concludes with observations and recommendations.

2.0 DEFINITIONS OF MAQĀṢID AL-SHARĪ'AH AND OTHER RELATED TERMS

The word *maqṣad* carries meanings such as determination, aiming at something, or rising towards it, whether in moderation or transgression. It also carries the meanings of moderation (*tawassuṭ*) and following the straight path (*istiḳāmah*). These meanings are easily observable from the nature of the Sharī'ah's injunctions.¹

There are several definitions of *maqāṣid al-Sharī'ah*. Walī Allāh al-Dahlawī defined it as the science of the secrets of the religion, which investigates the wisdom behind injunctions and their essence, as well as the specifics of particular conduct.² Sheikh Ṭāhir ibn 'Āshūr has defined the general objectives of Sharī'ah as "the meanings and

¹ Ziyād Muḥammad Aḥmīdān, *Maqāṣid al-Sharī'ah: Dirāsah Uṣūliyyah wa Taṭbīqātuhā Fiqhiyyah* (Mu'assasat al-Risālah 2004) 16.

² Shah Walī Allāh Aḥmad ibn 'Abd al-Raḥīm al-Dahlawī, *Hujjat Allāh al-Bālighah*, vol 1 (3rd edn, Dār Ihya' al-Turāth 1420/1999) 21.

wisdoms observed in all or most of the Sharī'ah's rulings, such that they are not exclusive to a particular injunction.³ Discussing the specific objectives of Sharī'ah in the third part of his book, he said: "Understanding the specific objectives of Sharī'ah within particular chapters of transactions (*mu'āmalāt*) involves recognising the ways the Sharī'ah confirms people's beneficial aims. It also involves protecting their general interests within specific situations. This ensures that particular actions do not invalidate what has been established for them to attain their general interest, whether through forgetfulness, following desire, or lust.

A term related to *maqāṣid* is *ḥikmah* (wisdom). It is defined as the benefit intended by the effective cause ('*illah*'), the presence of which necessitates the injunction.⁴ It has also been defined as the acquisition or fulfilment of benefit, or the prevention or reduction of detriment.⁵ In other words, it is the intended objective behind legislating an injunction (*ḥukm*): namely, the benefit to be realised or the detriment to be averted by the Lawgiver. Examples include reducing hardship while traveling through reduction of prayer (*qasr*) and breaking of fasting as well as the goal of protection of life as the basis for the obligation of retribution (*qisās*), etc.⁶

Another term frequently mentioned in discussions of *maqāṣid* is *al-ma'nā*, usually translated as meaning, sense, or signification. The term *ma'nā* is used to describe the underlying reasons for the Sharī'ah's provisions and injunctions, relating to benefit and goals. Thus, the jurists say, this injunction is provided for this meaning, i.e. for this objective and goal.⁷

Another related term is *munāsabah*. Jurists treat *munāsabah* when discussing the effective cause ('*illah*') of injunctions, including its conditions and methods.⁸ *Munāsabah* has been described as a clearly defined attribute whose presence leads to the acquisition of a benefit or the prevention of a detriment.⁹ It has also been defined as a well-defined attribute whose presence provides a logical connection to the injunction, intended as the basis for acquiring benefit or preventing detriment.¹⁰

Al-Raisūnī has also mentioned terms used to describe *maqāṣid*, including purpose (*gharaḍ*), that which is intended (*murād*), and the sense or gist (*maghzā*).¹¹ For instance, one contemporary writer has defined it as the purposes and goals for which Allah, the

³ Muḥammad al-Ṭāhir ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Dār al-Baṣā'ir li al-Intāj al-'Ilmī 1418/1988) 171.

⁴ Fakhr al-Dīn al-Rāzī, *Al-Kāshif 'an Uṣūl al-Dalā'il wa Fuṣūl al-'Ilal* (Dār al-Jalīl 1413/1992) 45.

⁵ 'Abd al-Raḥmān ibn Jadallāh al-Maghribī al-Banānī, *Hāshiyat al-Banānī 'alā Jam' al-Jawāmi'*, vol 2 (Dār Iḥyā' al-Kutub al-'Arabiyyah n.d.) 236.

⁶ Yūsuf Aḥmad Muḥammad al-Badawī, *Maqāṣid al-Sharī'ah 'inda Ibn Taymiyyah* (Dār al-Nafā'is n.d.) 55.

⁷ Aḥmad al-Raysūnī, *Nazarīyyat al-Maqāṣid 'inda al-Imām al-Shāṭibī* (IIIT 1415/1995) 26.

⁸ Aḥmīdān, *Maqāṣid al-Sharī'ah* (n 1) 25.

⁹ Abū 'Alī Muḥammad ibn Nizām al-Dīn al-Laknawī al-Anṣārī, *Fawātiḥ al-Raḥmūt Sharḥ Musallam al-Thabūt*, vol 2 (Dār al-Kutub al-'Ilmiyyah 1322) 301.

¹⁰ 'Alī ibn Muḥammad al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, vol 3 (2nd edn, A Afīfī ed, Al-Maktab al-Islāmī 1402) 248.

¹¹ Al-Raysūnī, *Nazarīyyat al-Maqāṣid* (n 7) 28

Most High has legislated injunctions of His religion and obliges upon us to work with it on earth.¹²

Islamic adjudication covers all the means through which the Sharī'ah resolves disputes between people. This is done by protecting the weak from the aggressor and restoring rights from those who are not entitled to them to those who have a right over them. Its objective is the promotion of justice and protection of people's interest as well as safeguarding the religion of Allah among His servants. The paper shall investigate the relationship between the objectives of Sharī'ah and their prominent presence in the Islamic administration of justice.

3.0 TEXTUAL BASIS OF *MAQĀSID AL-SHARĪ'AH*:

3.1 Objective of Sharī'ah from the Qur'an and Its Relevance to Adjudication:

The Qur'an, as the source of all injunctions of the Sharī'ah, is the natural place for anyone seeking to know its objectives. Texts of the Lawgiver give an individual the ability to understand His objectives. The Qur'an has, in several instances, given the objective of its revelation to the Ummah. Some of these instances can be quoted as examples here:

Allah the Most High has said:

*"He it is Who created the heavens and the earth in six Days - and His Throne was over the waters - that He might try you, which of you is best in conduct."*¹³

In his commentary on this verse, Fakhr al-Rāzī says, it is clear that Allah Ta'ālā has created this world for the benefit (*maṣlahah*) of the *mukallafīn* (legally responsible adults).¹⁴ Ibn Kathīr has also confirmed this by saying that, it means He created the heavens and the earth for the benefit of His servants whom He created to worship Him and not associate partners with Him; and He did not create any of these things for joke.¹⁵ This suggests that the purpose of creation is to test humankind, to see whether they will be obedient to the directives of their Creator. As Allah, the Most High has said in a different verse:

*" And I (Allah) created not the jinns and humans except they should worship Me (Alone). "*¹⁶

Applying Allah's law to human conduct and resolving disputes based on His directives is itself an act of worship. This is because it is part of the religious duty carried out by the Messengers and Prophets of Allah. Allah has further said:

"O Dāwud (David)! Verily! We have placed you as a successor on earth, so judge you between men in truth (and justice) and

¹²Maḥmūd al-Taṭṭāwī, *Uṣūl al-Fiqh al-Islāmī* (Kulliyat Shurtat Dubay 1410/1990) 450.

¹³Qur'an 11:7

¹⁴Fakhr al-Dīn al-Rāzī, *Mafātīḥ al-Ghayb*, vol 17 (Dār al-Fikr 1981) 320.

¹⁵Ismā'īl ibn 'Umar Abū al-Fidā' ibn Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm*, vol 2 (Dār al-Fikr 1982) 575.

¹⁶Qur'an 51:56

follow not your desire for it will mislead you from the Path of Allah. Verily! Those who wander astray from the Path of Allah (shall) have a severe torment, because they forgot the Day of Reckoning."¹⁷

And His Saying:

"And so judge (you O Muhammad) between them by what Allah has revealed" Qur'an 5:49.

Therefore, adjudication and resolving disputes should be seen as a religious duty and an act of worship to seek the pleasure of Allah the Most High. This, however, is qualified by the servant's sincere intention to worship his Creator. The Prophet, peace be upon him, was reported to have said: "Actions are (judged) on intention and everyone gets that which he intended."¹⁸

Saying of Allah Ta'āla

" Verily, Allah enjoins *Al-Adl* (i.e. justice and worshipping none but Allah Alone -- Islāmic Monotheism) and *Al-Ihsān* [i.e. to be patient in performing your duties to Allah, totally for Allah's sake and in accordance with the *Sunnah* (legal ways) of the Prophet in a perfect manner], and giving (help) to kith and kin (i.e. all that Allah has ordered you to give them e.g., wealth, visiting, looking after them, or any other kind of help, etc.): and forbids *Al-Fahshā'* (i.e. all evil deeds, e.g. illegal sexual acts, disobedience of parents, polytheism, to tell lies, to give false witness, to kill a life without right, etc.), and *al-Munkar* (i.e. all that is prohibited by Islamic law: polytheism of every kind, disbelief and every kind of evil deeds, etc.), and *al-Baghy* (i.e. all kinds of oppression), He admonishes you, that you may take heed."¹⁹

According to al-'Izz ibn 'Abd al-Salām, this verse is one of the most comprehensive. It enjoins all forms of beneficial things (maṣāliḥ) and serves as a warning and deterrence against all evils. The definite article (*al*) in *al-Adl* (justice) and *al-Ihsān* (goodness) indicates universality and general nature of all injunctions. There is no form of justice, whether minor or major, that is not encompassed by the command to uphold 'adl (justice) and ihsān (beneficence). *Al-Adl* means equality and justice; while *Ihsān* refers to either acquisition of benefit or prevention of detriment or evil. The same should also be said regarding the definite article in *al-fahshā'* (obscenity), *al-munkar* (abominable)

¹⁷Qur'an 38:26

¹⁸ Transmitted by al-Bukhārī, Ḥadīth No 1; Muslim, Ḥadīth No 1907; Abū Dāwūd, Ḥadīth No 2203; al-Tirmidhī, al-Nasā'ī, and Ibn Mājah. Also transmitted by Ibn Khuzaymah in his *Ṣaḥīḥ*, Aḥmad in *Musnad*, al-Ḥumaydī in *Musnad*, and al-Dāraqutnī in *Sunan*. See Muḥammad Ṣidqī ibn Aḥmad ibn Muḥammad al-Barnū, *Mawsū'at al-Qawā'id al-Fiqhiyyah* vol 1 (Al-Tawbah 1997) 130.

¹⁹Qur'an 16:90.

and *al-bagh'y* (injustice) is universally inclusive of all forms of wrongs and obscene behaviours and that which is detestable of statements and conducts."²⁰

Justice is at the core of the objective of Islamic judicial process. As Sayyiduna Umar has said it in his famous letter to Abu Musa al-Ash'arī, "Treat people equally in your bearing, your court, and your judgments, so that the noble will not covet your bias, nor the weak despair of your justice."²¹ The principle of equality has always been followed by Muslim judges and Islamic history books have recorded amazing stories of judges' equality even when the other party is the Khalīfah. There was a time when some people in Medina instituted a claim against the Khalīfah, Abu Ja'far al-Mansūr in the court of the Medinan Judge, Muhammad bin Amrān. When Abu Ja'far arrived at Medina as a pilgrim, the judge summoned him to appear before him along with the litigants. The suit was heard and a judgement was delivered against the Khalīfah. The caliph subsequently said to the judge, "May Allah reward you with the best reward for your piety".²² This is the reason why a judge is mandated to listen to the other party before making a ruling.

In a Hadith narrated by Ali bin Abī Tālib where he said, the Messenger of Allah, peace be upon him, sent me to Yemen as a Judge whereupon he also said: "...when two disputing parties are seated before you, do not rule until you have heard from the second just as you have heard from the first."²³

"And has the news of the litigants reached you? When they climbed over the wall into (his) *Mihrah* (a praying place or a private room). When they entered in upon Dāwūd (David), he was terrified of them, they said: "Fear not! (We are) two litigants, one of whom has wronged the other, therefore judge between us with truth, and treat us not with injustice, and guide us to the Right Way. Verily, this my brother (in religion) has ninety nine ewes, while I have (only) one ewe, and he says: "Hand it over to me, and he overpowered me in speech". "²⁴

According to jurists, the appropriate course for Sayyidunā Dāwūd was to turn to the other disputant and enquire whether the complaint against him was true.²⁵ Instead, Sayyiduna Dāwud, may Allah's peace be upon him ruled:

²⁰ 'Abd al-'Azīz ibn 'Abd al-Salām ibn 'Izz al-Dīn, *Qawā'id al-Aḥkām fī Iṣlāḥ al-Anām*, vol 1 (Dār al-Qalam 1421/2000) 642.

²¹ Muḥammad ibn Abī Bakr ibn al-Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, vol 1 (Dār al-Jīl 1973) 85; Abū Bakr ibn Mas'ūd ibn Aḥmad al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, vol 7 (Al-Maṭbū'āt al-'Ilmiyyah 1327) 9; Burhān al-Dīn Ibrāhīm ibn 'Alī al-Madanī ibn Farḥūn al-Mālikī, *Tabṣirat al-Hukkām*, vol 1 (Al-Ḥalabī n.d.) 28; Abū Bakr Muḥammad ibn Aḥmad al-Sarakhsī, *Al-Mabsūt fī al-Fiqh al-Ḥanafī*, vol 6 (Dār al-Ma'rifah 1406) 63.

²² Shihāb al-Dīn Ibrāhīm 'Abd Allāh ibn Abī al-Dam al-Ḥamawī al-Shāfi'ī, *Adab al-Qadā'*, vol 1 (Maktabat al-Ḥaram al-Makkī n.d.) 55-56.

²³ Abū al-Ḥasan 'Alī ibn Muḥammad ibn Ḥabīb al-Māwardī, *Al-Aḥkām al-Sulṭāniyyah*, vol 2 (Al-Ḥalabī n.d.) 254-258.

²⁴ Qur'an 38: 21-23.

²⁵ Abū Bakr Muḥammad ibn 'Abd Allāh ibn al-'Arabī, *Aḥkām al-Qur'ān*, vol 4 (Dār al-Kutub al-'Ilmiyyah 1424/2003) 55.

" [Dāwūd (David)] said (immediately without listening to the opponent): "He has wronged you in demanding your ewe in addition to his ewes. And, verily, many partners oppress one another, except those who believe and do righteous good deeds, and they are few."²⁶

Sayyidunā Dāwūd soon realised that he had erred, and he quickly turned to his Lord in repentance and sought forgiveness:

" And Dāwūd (David) guessed that We have tried him and he sought Forgiveness of his Lord, and he fell down prostrate and turned (to Allah) in repentance."²⁷

All these authorities prove the importance Islam has attached to the procedure that guarantees application of justice among litigants.

Saying of Allah Ta'āla

"And We have sent you (O Muhammad) not but as a mercy for the 'Alamīn (mankind, jinns and all that exists)."²⁸

According to al-'Aḍd, the literal meaning of the verse points to the universal scope of the revelation. In other words, it can be understood from the revelation that interests of Allah's creation has been taken into consideration while legislating His injunctions upon them. The reason is that if He has sent to them an injunction in which they have no interest or benefit it could have been a message without mercy."²⁹

The theme of mercy can also be observed in the procedure of adjudication in Islam. The Sharī'ah did not put stringent conditions for the proof of one's right in Court. Instead, there is always an alternative if the aṣl (basic rule) for proof is not available to a litigant. For instance, in the absence of two witnesses for pecuniary claims, the testimony of one witness along with the oath of the plaintiff is sufficient to prove a claim. Majority of scholars are of the opinion that pecuniary rights can be proved in favour of a plaintiff with the testimony of one witness and the plaintiff's oath. This opinion has been narrated from the four rightly guided caliphs as well as Umar bin Abdul-Azīz, Shuraih, Malik, Ibn Abu Lailā, Abu Al-Zinād, Shafī'ī and Ahmad bin Hanbal.³⁰ Likewise, a claim can

²⁶Qur'an 38: 24

²⁷Qur'an 38:24.

²⁸Qur'an 21:107.

²⁹Muḥammad Sa'īd Ramaḍān al-Būṭī, *Ḍawābiṭ al-Maṣlahah* (Maṭba'at al-'Ilm 1967) 70

³⁰Muwaffaq al-Dīn ibn Qudāmāh al-Ḥanbalī, *Al-Mughnī fī al-Fiqh Sharḥ Mukhtaṣar al-Kharqī*, vol 12 ('Ālam al-Kutub n.d.) 10; Muḥammad ibn Idrīs al-Shāfi'ī, *Al-Umm*, vol 6 (Dār al-Fikr 1403) 275; Muḥammad ibn Aḥmad ibn Ḥamzah al-Ramlī, *Nihāyat al-Muhtāj ilā Sharḥ al-Muhtāj*, vol 8 (Muṣṭafā al-Ḥalabī n.d.) 313; Abū Zakariyyā Yaḥyā ibn Sharaf al-Nawawī, *Rawḍat al-Tālibīn wa 'Umdat al-Muṣṭafīn*, vol 11 (Al-Maktab al-Islāmī 1405) 278; Abū 'Umar Yūsuf ibn 'Abd Allāh al-Namrī ibn 'Abd al-Barr, *Al-Kāfī fī Fiqh Ahl al-Madīnah al-Mālikī* (Dār al-Kutub al-'Ilmiyyah 1407) 471; Bilāl Fayṣal al-Baḥr al-Baghdādī, *Ilal al-Uṣūliyyīn fī Radd Matn al-Ḥadīth wa al-I'tidhār 'an al-'Amal bihī* (Dār al-Kutub al-Maṣriyyah 1431/2010) 110.

be proved by custom and habit, as these relate to the *zāhir* (the evident). An example is that possession of a property can be a proof of ownership based on that implication.³¹

Allah Subhānahu wa Ta'āla has also informed us on numerous occasions in His Book that He is the *Hakīm* (the Wise). This implies that all His injunctions are obliged for certain objectives and purposes. They are not meant for a joke as it is the Wise that revealed those obligations. Thus, injunctions of Allah are all found to be in conformity with the interest of the people in this world and in the Hereafter.³² According to Ibn al-Qayyim, a statement cannot be described as wise unless it leads to cherished goal and beneficial pursuits and as a result it guides to useful knowledge, righteous deeds and from which the pursuit goal can be attained."³³

There are also textual provisions that imply maxims of fiqh that are closely connected to *Maqāsid al-Sharī'ah*. These include the Saying of Allah:

*"Allah intends every facility for you; He does not want to put to difficulties."*³⁴

This verse is one of the bases of the maxim *al-mashaqqah tajlib al-taysīr*³⁵ (hardship begets facility). The objective of facilitating ease is among the major objectives of the *Sharī'ah*. The applications of this maxim can be found across the Islamic law. In adjudication for instance, a situation where a an original witness due necessity of sickness, travelling, death or any other legal excuse, is unable to testify before the Court, can be delegate his testimony to another person in order to testify on his behalf. This is known as *Al-Shahādah 'alā Al-Shahādah* which literally means testimony over a testimony. An original witness can testify to two credible witnesses who have fulfilled all legal requirements of a witness and to request them to bear his testimony and deliver it before a Judge. In a nutshell, the original witness delegates two secondary witnesses to testify on his behalf. Jurists are in agreement over the validity of this sort of testimony in the event of the original witness's inability to testify.³⁶ This facilitation is based on the fact that Islam does not intend to create hardship or difficulty for the people, as implied by the above verse.

2.2 Objectives of Sharī'ah from the Sunnah and Its Relevance to Adjudication:

As the second source of Islamic law, the Sunnah of the Prophet (peace be upon him) is rich with expressions that elucidate the objectives of the *Sharī'ah*. These objectives have been understood and practised by the Companions of the Prophet, peace be upon him. Ibn al-Qayyim stated that the *Ṣaḥābah* were the most discerning of the Prophet's goals in his statements and the most obedient to them. Even if one of them may deviate

³¹ Abū Ḥamid Muḥammad ibn Muḥammad al-Ghazālī, *Ihyā' 'Ulūm al-Dīn*, vol 2 (Dār al-Ma'rifah n.d.) 100.

³² Aḥmīdān, *Maqāsid al-Sharī'ah* (n 1) 31.

³³ Muḥammad ibn Abī Bakr ibn Ayyūb ibn al-Qayyim al-Jawziyyah, *Shifā' al-'Alīl fī Masā'il al-Qadr wa al-Hikmatī wa al-Ta'līl* (Dār al-Turāth n.d.) 400.

³⁴ Qur'an 2:185

³⁵ Muḥammad ibn Musallam ibn Mājid al-Dawsarī, *Al-Mumti' fī al-Qawā'id al-Fiqhiyyah* (Dār Zidnī 1424) 191; Muḥammad Ṣidqī ibn Aḥmad al-Barnū, *Al-Wajīz fī Idāh al-Qawā'id al-Fiqhiyyah al-Kulliyyah* (Mu'assasat al-Risālah 1996) 234.

³⁶ Al-Borno, *Al-Wajīz* (n 35) 238.

from these goals, they quickly resort back to them whenever they have such understanding.³⁷ Examples of these practices embodying objectives of the Shari'ah are too numerous to mention here. However, we can cite some examples here:

Bukhari has narrated from Ibn Umar, may Allah be pleased with them, that when the Prophet, peace be upon him, returned from the Battle of Ahzāb he said, none of you should pray the *Aṣr* prayer but in Banu Quraizah. So as they return, the time of the *Aṣr* prayer reached some of them while they were on the way. Then some of them said, "we will not pray until we reach Banu Quraizah"; and others have reasoned that the intention of the Prophet was not to delay prayer but move to Banu Quraizah in haste said, "we will pray on the road." When the Prophet was informed about the incident, he criticized neither of the two groups."³⁸

In his commentary of the Hadith, Imam al-Nawawī says the disagreement between the companions to pray when the time of the prayer came was because the available legal authorities appeared to be contradictory to them. They were generally commanded to pray in time; but on that day, the Prophet has asked them not to pray but in Banu Quraizah. The meaning of the Prophet's statement is that they should hasten to go to Banu Quraizah and that nothing should delay does not mean to delay the prayer itself. As a result those who perform the prayers on the way have observed the meaning and objective and decided to pray along the way and did not consider the literal meaning of his statement."³⁹ Confirming this meaning, Ibn al-Qayyim has also said that the companions have practiced *ijtihād* during the time of the Prophet, peace be upon him in several injunctions; but he did not criticize them. As it has happened during the Battle of Ahzāb when he directed them not to pray but in Banu Quraizah; some exercised their *ijtihād* and prayed on the way, saying that he did not intend them to delay the prayer, but rather to hasten. They looked at the meaning. On the other hand, the *ijtihād* of the others led them not to pray *Aṣr* but in Banu Quraizah at night by looking at the actual wording. These are the predecessors of Zahirīyyah while the first ones are predecessors of those who look at the meaning and analogy among other schools of thought.⁴⁰ The Prophet has criticized neither of the two groups nonetheless. The companions who prayed on the way analysed the reason behind the Prophet's directive. They concluded he wanted them to hasten their journey. This implies that the companions have recognized that injunctions of the lawgiver have certain purposes behind them. It is therefore appropriate for a judge to look at the purpose of injunction so that his rulings will not be contradictory in nature.

The significance of this hierarchical classification for judicial practice cannot be overstated. By understanding that the protection of the five necessities constitutes the highest objective of the Shari'ah, a judge gains a principled basis for resolving apparent conflicts between legal rules. For instance, when evidentiary rules appear to conflict with the protection of life or property, the judge has authority, indeed, an obligation, to prioritise the higher objective. Similarly, understanding that *ḥājiyyāt* complement rather than contradict *ḍarūriyyāt* enables judges to grant procedural accommodations

³⁷Ibn al-Qayyim, *I'lām al-Muwaqqi'īn* (n 21) 1:219.

³⁸Muḥammad ibn Ismā'īl ibn Ibrāhīm ibn al-Mughīrah al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Dār al-Salām 1997) Ḥadīth No 946.

³⁹Abū Zakariyyā Yahyā ibn Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, vol 12 (Dār al-Khayr 1414) 318.

⁴⁰Ibn al-Qayyim, *I'lām al-Muwaqqi'īn* (n 21) 203.

without compromising essential protections. This framework transforms judicial discretion from a potential source of arbitrariness into a principled exercise of purposeful reasoning.

An example is when the Prophet, peace be upon him directed Hind, the wife of Abu Sufyan to take that which is sufficient for her and her children as accustomed.⁴¹ The Prophet made this directive after Hind complained that Abu Sufyan was tight-fisted by not providing appropriate to her and her children. The Prophet ruled in her favour without summoning Abū Sufyān to hear his side of the story. Thus, a judge would not take the literal implication of this Hadith and rule in favour of a wife without summoning the husband to hear his side. The reason is that the objective of the Prophet's directive in this ḥadīth was the issuance of a fatwā (legal opinion), not a judicial ruling.⁴²

The Prophet, peace be upon him, was also reported to have said: "Get married so you produce progeny." This Hadith indicates that the purpose of marriage in Sharī'ah is the continuation of the human race in order to safeguard their interests.⁴³ Thus, if either of the spouses stipulate that they are not willing to have a child, such stipulation shall be void as it is in contradiction with the Sharī'ah objective of marriage.

Malik bin Anas, may Allah have mercy upon him has narrated in his Muwatta that Umar used to say whenever a woman is divorced and she experienced one or two menstruation and lost it afterwards, she shall wait for nine months. If a pregnancy appears then be it; else she shall wait after the nine months for three months after which she becomes lawful to be married.

This narration indicates the companions regard to the objective of protection progeny in stipulating the waiting period; and that precaution is required to protect it from being mixed up.

3.0 GRADES OF *MAQĀṢID* AND THEIR APPLICATIONS IN ISLAMIC ADJUDICATION:

There are several classifications of *maqāṣid* with each having particular perspective. The most popular classification looks at the gravity of interests and benefits attached to these objectives. The reason is that not all objectives of Sharī'ah are on the same level. Some are recognized to be more important than others. Due to the variation of its effects, objectives of Sharī'ah have been graded into three according to jurists that have investigated its subject matter.

The highest grade of objectives is the *Ḍarūriyyāt* (necessities), followed by *Ḥājiyyāt* (complementaries) and then *Taḥsīniyyāt* (embellishments). In the following paragraph, the researcher will attempt to discuss these grades based on the relevance and application to the Islamic judicial system and procedure.

⁴¹ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (n 38) Ḥadīth No 5370 and 7180; Abū al-Ḥusayn Muslim ibn al-Ḥajjāj al-Naysābūrī, *Ṣaḥīḥ Muslim* (Dār Iḥyā' al-Turāth al-‘Arabī n.d.) Ḥadīth No 1714.

⁴² Shihāb al-Dīn Abū al-‘Abbās Aḥmad ibn Idrīs al-Qarāfī, *Al-Iḥkām fī Tamayiz al-Fatāwā ‘an al-Aḥkām wa Taṣarrufāt al-Qāḍī wa al-Imām* (Dār al-Bashā'ir al-Islāmiyyah 1416/1995) 112.

⁴³ Alī Muḥammad Muḥammad Wanīs, *Baḥth Mukhtaṣar ḥawla ‘Ilm Maqāṣid al-Sharī‘ah* 32.

3.1 Al-Darūriyyāt (Necessities)

Al-darūriyyāt (necessities) are those essential elements whose presence is required to safeguard interests in this world and the Hereafter. In other words, the absence of *darūriyyāt* means the loss of one's interests in this world, and it will also lead to the loss of any reward and benefit in the Hereafter.⁴⁴ The protection of *darūriyyāt* can be in both affirmative and punitive ways. Affirmative measures establish their foundations and pillars, while punitive measures prevent, or guard against the expectation of, any detriment that may afflict them. According to al-Mahallī, The need for *darūriyyāt* is something that has reached the level of necessity.⁴⁵ To Ibn 'Ashūr, it is that whose acquisition is a necessity both collectively and individually."⁴⁶

Jurists have enumerated these *darūriyyāt* into five comprehensive or general essentials (*al-kulliyāt al-khams*). These are: protection of the religion, life, mind, progeny as well as wealth. Shihābuddīn al-Qarāfī has narrated that some have also added a sixth necessity, namely dignity⁴⁷ which Al-Subkī agrees with.⁴⁸ However, this addition is not without its critics.⁴⁹

In order to protect this essential *darūriyyāt*, the Lawgiver has provided the following *hadd*⁵⁰ punishments.

- The *ḥadd* of *ridda* (apostasy) is provided in order to protect the religion.
- *Qīṣāṣ* or retribution is provided in order to protect the human life.
- The *ḥadd* of adultery is provided in order to protect progeny.
- The *ḥadd* of drinking alcohol is provided in order to protect the mind.
- The *ḥadd* of theft is provided in order to protect properties.

The legal basis for protecting the *darūriyyāt* is confirmed through a full inductive investigation of the agreed-upon sources of the Sharī'ah, coupled with rational consideration. According to Imam al-Shāṭibī, the entire Ummah and even revealed other religions are in agreement over the protection of these five necessities; which are, the religion, life, progeny, wealth and the mind; and the recognition of that is unquestionable. This is not known through a single piece of evidence, a specific

⁴⁴Wanīs (n 43) 35.

⁴⁵Ḥasan al-'Aṭṭār, *Hāshiyat al-'Aṭṭār 'alā Sharḥ al-Jalāl al-Maḥallī 'alā Jam' al-Jawāmi'*, vol 2 (Dār al-Kutub al-'Ilmiyyah n.d.) 222.

⁴⁶Ibn 'Āshūr, *Maqāṣid al-Sharī'ah* (n 3) 210.

⁴⁷Shihāb al-Dīn Abū al-'Abbās Aḥmad ibn Idrīs al-Qarāfī, *Sharḥ Tanqīḥ al-Fuṣūl fī Ikhtisār al-Maḥṣūl fī al-Uṣūl* (Dār al-Fikr 1424/2004) 391.

⁴⁸Al-Banānī, *Hāshiyat al-Banānī* (n 5) 280.

⁴⁹Ibn 'Āshūr, *Maqāṣid al-Sharī'ah* (n 3) 81-82.

⁵⁰*Hadd* is a prescribed punishment for the violation of right of Allah, the Most High. These are punishments prescribed for adultery and fornication, accusation against committing adultery (*qadhf*), consumption of alcohol, theft (*sariqah*) and highway robbery or brigandage. (Al-Mawsū'ah al-Fiqhiyyah 17:131).

authority, or a solitary principle. Rather, it is recognised through the entirety of the textual sources, which are not limited to one theme."⁵¹

By protection of the religion, it is a reference to the religion of Islam as it is the last revealed religion of Allah. Allah Ta'āla has said:

"The Religion before Allah is Islam (submission to His will)."⁵²

The protection of religion is established in both affirmative and punitive ways. In the affirmative way, it is protected by establishing its pillars and rules; as well as working by the implication of its provisions.⁵³ This will be done by resolving disputes and ruling among people based on its provisions. This objective is central to the role of the Islamic judiciary. The function of applying the provisions of the Sharī'ah to specific cases ensures the state continues to act as a guardian in protecting Allah's religion among His servants.

On the punitive side, religion is protected by preventing anything that contradicts its provisions or dents it.⁵⁴ This is the work of scholars and rulers. While the scholars are the guardians and protectors of the Sharī'ah, the rulers are supposed to implement the commands of Allah among His creation. The ultimate form of such implementation is executing those who commit apostasy (riddah), as Sayyidunā Abū Bakr did with the Arab apostates after the death of the Messenger of Allah. The role of punishing an apostate is the exclusive function of the state through its various arms such as judiciary and *hisbah*. The judiciary's responsibility of establishing the law of Allah is ensuring that people are abiding by its dictates. According to al-Māwardī, one of the functions of a judge is the implementation of *Hudūd* punishments: If there is an infringement on the Rights of Allah, he initiates judicial action even without complaints through *hisbah* testimony, and where it is proved through confession or evidence.⁵⁵

The judiciary should also stand as a buffer where there is a likelihood of violation the religion of Allah by referencing to the objective of protection of the religion. An example of applying this objective in a particular decision is as follows: if a husband whose wife is a new Muslim seeks *khul'* payment to end the marriage, the judge should consider the possible consequences of a judgement granting the husband's wish. If there is a likelihood that the wife shall return to her previous religion, the judge is under obligation to give attention to that outcome. The reason is that although *khulu'* is legal and lawful in Islam, in this particular case it will clash with even more important issue of the protection of the religion. It is known that Allah has prohibited an otherwise lawful act due its possible consequence of leading to something graver. For instance, Allah, the Most High has said:

⁵¹Ibrāhīm ibn Mūsā ibn Muḥammad al-Lakhmī al-Shāṭibī, *Al-Muwāfaqāt fī al-Sharī'ah*, vol 1 (Maktabat al-Riyād 1420) 31.

⁵²Qur'an 3:19

⁵³Al-Shāṭibī, *Al-Muwāfaqāt* (n 51) 2:8.

⁵⁴Ibid.

⁵⁵Al-Māwardī, *Al-Aḥkām al-Sulṭāniyyah* (n 23) 68.

"And insult not those whom they (disbelievers) worship besides Allah, lest they insult Allah wrongfully without knowledge." ⁵⁶

In this verse reviling things worshipped by non-believers is forbidden by Allah, even though it is humiliation of false gods because it will make those non-believers to revile Allah out of ignorance. Therefore, for a Muslim, avoiding insulting them should take priority over insulting them, as the latter may lead to a greater sin. This verse is one of the evidence of prohibition of a permissible action so it will not lead to a prohibited action.⁵⁷ Therefore, if an objective of Islamic law is to prevent graver harm by prohibiting what is otherwise lawful, a judge must consider the likely consequences of his decision and ensure it does not lead to greater harm.

On the protection of life, this is a reference to a protected soul that the Sharī'ah prevented from being wasted. These are of three types: a soul protected by Islam (i.e., a Muslim), a soul protected by the *jizyah* (a non-Muslim citizen of the Islamic state), and a soul protected by a guarantee of security (*amān*) from the state—a right granted to a non-Muslim seeking to enter Islamic territory for civil activities.

The protection of soul can be carried out through the following means:

- i. prohibition of transgression against a person;
- ii. blocking all the means to killing;
- iii. retribution;
- iv. requirement of proof as evidence of killing;
- v. guaranteeing the life either through *diyyah* (blood money) or *qīṣāṣ* (retribution) so that life is not wasted.
- vi. delaying retribution if it is fear that the life of a foetus may be affected;
- vii. Pardoning a killing to protect the life of the accused and accepting *diyyah* as an alternative; and
- viii. Legalisation of otherwise prohibited things due to necessity protecting life.

An example of this objective's relevance to Islamic adjudication is a verdict requiring retribution (*qīṣāṣ*). The guardian of the slain will be allowed to execute it under judicial supervision; or can delegate a competent authorised person to carry it out. Other retributions that do not amount to death as well as *hudūd* punishments should be executed by duly authorised persons. Hanbalis on their part have opined that all punishments of *qīṣāṣ* should be carried out by persons delegated by the Imam (the Ruler) employed for such purpose. They justified this position by saying that execution of this sort of punishments especially those requiring cutting of hand or leg, for

⁵⁶Qur'an 6:108.

⁵⁷Ṣāliḥ ibn 'Abd al-Raḥmān al-Nafisah, 'Qā'idat Sadd al-Dharā'i' bayna al-I'māl wa al-Ihmāl' in *Al-Adl* 16 (1423) 4.

instance, needs accuracy, competence and ability. It is for this reason that if *qisās* applies to an organ, the victim is not authorised to carry it out, as there is no guarantee he would limit himself to the injury he suffered.⁵⁸ In both opinions above, the role of the Islamic judiciary in the implementation of the law of Allah regarding *qisās* is undisputed. An individual has no authority, even if he has witnessed such offence, to execute by his hand rather it is exclusive duty of the State.

On the protection of the mind (*al-aql*) or mental health which is described as the root of conduct and statements as well as the key for the validity of obligations.

The Sharī'ah also provides for the protection of the mind through numerous provisions that form the basis for legal obligations. It has also prohibited anything that can physically harm such as alcohols, drugs and anything that can spiritually damaged the mind such as perverted thoughts as well as innovations in the religion that is directly contradictory with the directives of Allah.⁵⁹

The punishment for consuming of alcohol is a *hadd* punishment of eighty lashes according to majority of jurists.⁶⁰ Hadd punishments are under the exclusive power of the Ruler of the State, power which is usually delegated to the judiciary as previously discussed. Muslim jurists are also unanimous regarding the prohibition of drugs due to their intoxicating effect on the mind. According to Ibn Taymiyyah, their consumer should be caned, just like the consumer of alcohol.⁶¹

The Sharī'ah has also obliged full *diyyah* (one hundred camels or 1000 gold coins) as compensation for an injury to the head that causes the victim to go mad. There is no disagreement between jurists that because it is the greatest ability of the human being through which one can distinguish between things and be guided to that which is beneficial to him and it is conduit for all religious obligations. This is contained in the Hadith narrated by Amru bin Hazm: "And there shall be *diyyah* for the mind."⁶² According to Ibn Qudama, if the injury causes the victim to lose his mind completely the compensation shall be full *diyyah*. However, if his mind is only partly affected, manifesting in certain behaviours, then the judge shall, upon consulting experts, have the discretion to determine compensation based on *ḥukūmat al-'adl* (the ruling of equitable estimation).⁶³

On the protection of the progeny, it is one of the basis for the continuation of human life on earth. It is also one of the means through people stand for each other as well as help one another based kinship and other relationships that the Sharī'ah has established. Progeny is also protected in both affirmative and the punitive aspects. On the

⁵⁸ 'Abd al-Karīm Zaydān, *Niẓām al-Qaḍā' fī al-Sharī'ah al-Islāmiyyah* (Mu'assasat al-Risālah 1409/1989) 284.

⁵⁹ Wanīs (n 43) 43 43.

⁶⁰ 'Abd al-Ghanī al-Maydānī al-Hanafī, *Al-Lubāb fī Sharḥ al-Kitāb*, vol 3 (Al-Maktabah al-'Ilmiyyah n.d.) 194; Abū 'Umar Yūsuf ibn 'Abd Allāh al-Namrī ibn 'Abd al-Barr, *Al-Istidhkār al-Jāmi' li Madhāhib Fuqahā' al-Amṣār wa 'Ulamā' al-Aqtār*, vol 9 (Mu'assasat al-Nidā' 1422/2002) 185; Ibn Qudāmāh, *Al-Mughnī* (n 30) 304.

⁶¹ Abū al-'Abbās Aḥmad ibn Taymiyyah, *Al-Siyāsah al-Shar'iyyah fī Iṣlāḥ al-Rā'ī wa al-Ra'iyyah* (Dār al-Sha'b n.d.) 128.

⁶² Part of a very long ḥadīth narrated by al-Nasā'ī, *Sunan al-Nasā'ī*, vol 8 (Al-Maktabah al-Tijāriyyah n.d.) 58-59; Ibn Hajar also transmitted it in *Al-Talkhīṣ* 4:17-18.

⁶³ Ibn Qudāmāh, *Al-Mughnī* (n 30) 8:37.

affirmative aspect, it encourages marriage, considers marrying a fertile woman desirable, and permits polygamy. Likewise, it has made it obligatory upon parents to give their daughter to a person who wants to marry their daughter if they trust their religion, else, great trial shall befall. On the punitive aspect of protecting progeny is by prohibiting anything that deters marriage or minimizes it or ends it after it comes into existence. This is also achieved by prohibiting acts that prevent pregnancy or induce abortion. It also includes prohibition of any illicit or unnatural sexual activities as it hampers nobility of people's progeny.

Like all *ḥadd* punishments, the Islamic judiciary has exclusive power over the proof and implementation of the punitive measures to protect progeny. For example, *li'ān* (mutual imprecation) between a husband who accuses his wife of committing adultery which she denies can only occur before a judge.⁶⁴ This is due to the importance Islam has attached to people's dignity and their progeny. Likewise, the *ḥadd* of adultery can only be proved before a judge after four credible witnesses have come and testified that they have seen the accused committing the act.⁶⁵

On the protection of wealth or property, because it is the mainstay of life, Allah the Most High has said:

"And give not unto those of weak understanding your property which Allah has made a means of support for you."⁶⁶

In another verse, Allah has said:

"O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you."⁶⁷

The verse means, eating people's property without any legal basis is prohibited in Islam.⁶⁸ The Prophet, peace be upon him was reported to have said: "The property of a Muslim is not lawful [for another] except with its owner's consent".⁶⁹

There also authorities from the Sunnah of the Prophet, peace be upon him confirming protection of properties in Islam. The Prophet, peace be upon him has said, "Prohibited upon every Muslim concerning another Muslim: his property, his blood and dignity."⁷⁰ The Prophet, peace be upon him was also reported to have said: "Whoever that transgresses in a land (that does not belong to him), even that which reaches the length

⁶⁴ *Al-Mawsū'ah al-Fiqhiyyah* 7:249.

⁶⁵ Zaydān, *Nizām al-Qaḍā'* (n 58) 187.

⁶⁶ Qur'an 4:5

⁶⁷ Qur'an 4:29

⁶⁸ Ibid.

⁶⁹ Aḥmad ibn Muḥammad ibn Hanbal al-Shaybānī, *Musnad al-Imām Aḥmad ibn Hanbal*, vol 5 (Mu'assasat al-Qurṭubah n.d.) 72; 'Alī ibn 'Umar ibn Aḥmad ibn Maḥdī al-Dāraqutnī, *Al-Sunan*, vol 3 (Dār al-Ma'rifah 1386/1966) 26; Abū Bakr Aḥmad ibn Ḥusayn ibn 'Alī ibn Mūsā al-Bayhaqī, *Sunan al-Bayhaqī al-Kubrā*, vol 6 (Dār al-Bāz 1414/1994) 100. Al-Albānī declared it authentic in Muḥammad Nāṣir al-Dīn al-Albānī, *Irwā' al-Ghalīl fī Takhrīj Aḥādīth Manār al-Sabīl*, vol 5 (Al-Maktab al-Islāmī 1405) 279.

⁷⁰ Muslim, Ṣaḥīḥ Muslim (n 41) Ḥadīth No 6706.

of the span of the hand, he shall be encircled up to the seven earth layers of such length."⁷¹

The need for *māl* (wealth) is acute for both individuals and groups, as it is the means through which people conduct their affairs, whether in the form of currency or otherwise. *Māl* is also necessity for one to meet his life's needs as well as the needs of his family. Likewise, the protection of Allah's religion is only possible if the Ummah is not financially subservient to its enemies. The objective of property therefore is to carryout both the interests of the religion as well as the need of this world and not as a means of pride or extravagant life. Its protection is possible through two means: the affirmative and the punitive.

On the affirmative aspect of protection of property, Islam has encouraged pursuit of livelihood in a manner that is lawful. It has made it a form of alms for one to feed his family and those that under his custody. On the punitive aspect of property protection, Islam has prohibited extravagant spending, prohibited transgressing on people's properties, usury and bribery. It has established punishments of *hadd* for theft, *hirābah*, as well as *ta'zīr* (discretionary punishment) for misappropriate and bridge of trust. It also imposes liability for torts against property, secures loans through testimony and documentation, regulates lost-and-found articles, and obliges the careful custodianship of entrusted property.

Examples of protection of property through adjudication are too numerous to be mentioned. Legal authorities that contain prohibition of theft and usurpation; as well as the obligation to return a property to its rightful owner, punishment of thief with *hadd*, usurper with *ta'zīr* are all indicators of the full judicial protection of ownership with all its forms in Islam. Such legal authorities include the Saying of Allah, the Most High:

*"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."*⁷²

The above verse applies where a property is taken from a secured place without legal permission. Such a punishment, however, can only be executed following a judicial decision.

On the other hand, where force is used to rub a person from his property, the following verse applies:

*"The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off on the opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter."*⁷³

⁷¹ Al-Bukhārī, Ṣaḥīḥ al-Bukhārī (n 38) Ḥadīth No 2453.

⁷² Qur'an 5:38.

⁷³ Qur'an 5:33.

Likewise, where there is a usurpation of property without entitlement, the Sharī'ah obliges the return of the same to the real owner. Allah Ta'āla has said:

"And if you punish then punish them with the like of that with which you were afflicted."⁷⁴

The Prophet, peace and blessing of Allah be upon him was also reported to have said:

*"A hand is liable for that which it took until it restores it."*⁷⁵

Another form of judicial protection of properties can be seen from the following: According to Imams Malik, Shafi'ī and Ahmad bin Hanbal as well as Abu Yusuf and Muhammad both of the Hanafī school have maintained that In order to protect the interest of his creditors, it is permissible for a judge to restrict insolvent's power to dispose in his property. Following judicial restriction, an insolvent person's status becomes akin to that of a minor who has reached the age of discretion. All his dispositions that may harm his creditors' interests are subject to their ratification.⁷⁶

Another example of this form of judicial protection is the restriction of dispositions of a prodigal (*al-safīh*). Jurists are in agreement that a person who reaches the age of majority without attaining reason will be barred from disposing of his property and remains under the authority of his guardian. This is base on the saying of Allah, the Most High:

"And give not unto those of weak understanding your property which Allah has made a means of support for you , but feed and clothe them therewith, and speak to them words of kindness and justice.." ⁷⁷

This restriction continues indefinitely until the person attains the level of reason, according to the majority of jurists and Abū Yūsuf of the Ḥanafī school.⁷⁸ They relied on the saying of Allah, the Most High:

"...if then you find sound judgement in them, release their property to them,.." ⁷⁹

Imam Abu Hanifa is however of the opinion that the period of restriction ends by reaching the age of twenty years.⁸⁰ The dispositions of a prodigal are therefore invalid unless they are in his absolute benefits or their dispositions that cannot be repudiated

⁷⁴Qur'an 17:126.

⁷⁵ Abū 'Īsā Muḥammad ibn 'Īsā al-Salamī al-Tirmidhī, *Sunan al-Tirmidhī* (Dār Ihya' al-Turāth al-'Arabī n.d.) Ḥadīth No 1266. However, al-Albānī declared it weak. See Muḥammad Nāṣir al-Dīn al-Albānī, *Irwā' al-Ghalīl fī Takhrīj Ahādīth Manār al-Sabīl* (Al-Maktab al-Islāmī 1399/1979) Ḥadīth No 1516.

⁷⁶ Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuhu*, vol 4 (Dār al-Fikr 1428/2007) 2976.

⁷⁷Qur'an 4:5

⁷⁸Al-Sarakhsī, *Al-Mabsūṭ* (n 21) 24:299.

⁷⁹Qur'an 4:6

⁸⁰Al-Sarakhsī, *Al-Mabsūṭ* (n 21) 24:299

like divorce, marriage, revocation of divorce. Any dispositions besides these, however, are restricted.⁸¹

However, according to Abū Ḥanīfah, an individual who reached puberty with sound reason but subsequently became prodigal (*safīh*) is not to be restricted. His reason was that as a man is free to dispose in his own property and such restriction is against the principles of human freedom and dignity. But majority of jurists as well as Abu Yusuf and Muhammad of the Hanafī School maintained that it is permissible to restrict such a person from disposing in his property in order to protect his interests so he does not subsequently become a burden upon others. His legal status will be similar to minors who have reached the age of discretion. They supported this position with the following saying of Allah, the Most High:

*“To those weak of understanding Make not over your property.”*⁸²

The knowledge of these essentials or *ḍarūriyyāt* as well as their place in establishing and proof of people's right will make a judge give a serious consultation of relevant authorities as well as those that are more knowledgeable than him before issuing a verdict.

The following verses of Sūrat al-An‘ām contain all five of the above-mentioned objectives, according to some authors.⁸³

" Say (O Muhammad): "Come, I will recite what your Lord has prohibited you from: Join not anything in worship with Him; be good and dutiful to your parents; kill not your children because of poverty -- We provide sustenance for you and for them; come not near to *Al-Fawāhish* (shameful sins, illegal sexual intercourse, etc.) whether committed openly or secretly, and kill not anyone whom Allah has forbidden, except for a just cause (according to Islamic law). This He has commanded you that you may understand. "And come not near to the orphan's property, except to improve it, until he (or she) attains the age of full strength; and give full measure and full weight with justice. We burden not any person, but that which he can bear. And whenever you give your word (i.e. judge between men or give evidence, etc.), say the truth even if a near relative is concerned, and fulfill the Covenant of Allah, This He commands you, that you may remember. "And verily, this is my Straight Path, so follow it, and follow not (other) paths, for they will separate you away from His Path. This He has ordained for you that you may become *Al-Muttaqūn* (the pious)."⁸⁴

⁸¹Qur'an 4:6

⁸²Qur'an 4:5

⁸³Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah* (n 3) 80; Muḥammad Sa‘d ibn Aḥmad ibn Mas‘ūd al-Yūbī, *Maqāṣid al-Sharī‘ah wa ‘Alāqatuhā bi al-Adillah al-Shar‘iyyah* (Dār al-Hijrah 1418/1998) 187.

⁸⁴Qur'an 6:151-153.

This verse contains the protection of all five *ḍarūriyyāt*. For instance, the command, "join not anything as equal with Him" points towards the protection of the religion. Likewise, His Saying: "Verily, this is My way, leading straight: follow it: follow not (other) paths: they will scatter you about from His (great) path" is in line with the protection of the religion. The reason is that the religion shall not be straight if it is tainted with joining Him with partners. Thus, Allah, commanded His servants to unify Him and follow His straight path to which no falsehood can approach it from before or behind. He also prohibited them from following the ways of satans as its a deviation and an aberration and following their ways is turning away from the truth and it is vain desire and the devils whispers.⁸⁵

Protection of soul is also contained from His Saying: "kill not your children on a plea of want" and His Saying: "take not life, which Allah hath made sacred, except by way of justice and law." The inference for the protection of life can be noted from two aspects here. The first aspect is prohibition of killing a sacred soul except on a reasonable legal ground; and the second aspect, it can be understood that

3.2 The Grade of *Hājiyyāt* (Complementariness) and Its Relevance in Qaḍā

According to Imam al-Shāṭibī, al-*hājiyyāt* are those things needed for convenience and to avoid hardship—a hardship so severe that it could lead to the loss of a necessity (*ḍarūriyyāt*). If *hājiyyāt* are not recognised, the mukallaf (the legally responsible adult) will face difficulty, although not to the degree of harming the general public interest.⁸⁶

The wisdom behind *hājiyyāt* is of two folds. First is the prevention of hardship and difficulty from inflicting the mukallaf. The second fold is to complement the *ḍarūriyyāt* by fulfilling it and protecting it. Thus, contracts such as *ijāra* (leasing), *istiṣnā'* (commissioned manufacturing), *muzāra'ah* (partnership farming) as well as divorce and *khulu'* are legalized in order to lift the harm upon either of the spouses. Another example is that contracts of sales are generally lawful. This has however been complemented with provisions that prohibits cheating, breach of trust, and lying.

An example of *hājiyyāt* in judicial procedure can be noted in the following: where the judge is of the opinion that justice shall be served in adjournment of proceedings such as where he needs to inspect the locus in quo,⁸⁷ ascertain credibility of witnesses. Parties to proceedings can also apply for adjournments, whether to produce evidence or to rebut evidence presented against them. The judge can grant such request if it has Sharī'ah justification. Such grant is known as *i'zār*. The proceedings will then be adjourned to an appropriate time. After the lapse of this period, if the party that sought the adjournment is unable to produce the promised evidence, the judge may still grant more time if he believes the party has a legally acceptable excuse. This is subject to judge's estimation and discretion as he deems it fit.⁸⁸ All these injunctions are confirmation of recognition of *hājiyyāt* in order to protect rights and interests.

⁸⁵ Al-Yūbī, *Maqāsid al-Sharī'ah* (n 83) 188.

⁸⁶ Al-Shāṭibī, *Al-Muwāfaqāt* (n 51) 2:21.

⁸⁷ The basis for inspection of locus in quo can be seen from the Prophet's saying: 'The informed shall not be the same as with one who saw it.' Narrated by Aḥmad, *Al-Musnad* 1:271.

⁸⁸ Ibn Farḥūn, *Tabṣirat al-Hukām* (n 21) 1:166.

Another example of *hājiyyāt* is that it is prohibited for a Judge to receive gifts from litigants or anyone who has not been accustomed of giving him any gift before his assumption of the Judgeship. However, some jurists are of the opinion that he may accept a gift from a non-litigant, provided he gives something of equivalent value in return.⁸⁹ This would exonerate him from any suspicion of bribery, or from the giver using it as leverage to gain favour and influence his decisions.

3.3 *Tahsīniyyāt* (Embellishments) and Its Applications in Qaḍā:

According to Imam al-Shāṭibī, *al-tahsīniyyāt* refer to the adoption of good customs and the avoidance of that which is repugnant to sound moral character.⁹⁰ Their purpose is the acquisition of noble traits or the avoidance of their opposites, encompassing that which is recommended or encouraged, according to Imām al-Ḥaramayn.⁹¹ Imam Shāṭibī has inferred from induction (*istiqrāʾ*) that the Sharīʿah has recognized embellishments as its objectives. He stated that the evidence from inductive reasoning (*istiqrāʾ*), the investigation of general and specific provisions, and a holistic reading of the texts in their varying contexts all point towards the recognition of *al-tahsīniyyāt*.⁹²

*"Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition."*⁹³

Ibn Mas'ūd, may Allah be pleased with him has said this verse is the most collective of verses regarding any good to be observed or evil to be avoided.⁹⁴ The reason is that the verse contains all forms of defining rule (*al-hukm al-taklīfī*) whether it is obligatory, supererogatory or that which is related to etiquettes, both generally and specifically.⁹⁵

Another authority is the saying of the Prophet, peace be upon him, "faith consists of seventy and odd branches; the highest of which is the declaration, there is no god but Allah and its bottom is removing harm from the street. Shyness is also a branch of faith."⁹⁶

In this ḥadīth, the Prophet collectively described the entire scope of the religion, from the highest—the creed of monotheism (*tawḥīd*)—to the most basic, which is removing harm from the road. Removal of harm from the street represents any duty that seeks to protect the public from any harm that may be fall it before it happens. This indicates

⁸⁹ *Al-Mawsūʿah al-Fiqhiyyah* 33:306.

⁹⁰ Al-Shāṭibī, *Al-Muwāfaqāt* (n 51) 2:20.

⁹¹ Hishām ibn Saʿīd Azhar, *Maqāṣid al-Sharīʿah ʿinda Imām al-Ḥaramayn wa Atharuhā fī al-Muʿāmalāt al-Māliyyah* (Maktabat al-Rushd 1429) 244.

⁹² Al-Shāṭibī, *Al-Muwāfaqāt* (n 51) 2:39.

⁹³ Qur'an 16:90.

⁹⁴ Abū ʿAbd Allāh Aḥmad ibn Muḥammad ibn Abī Bakr al-Qurṭubī, *Al-Jāmiʿ li Ahkām al-Qurʾān*, vol 6 (Muʿassasat al-Risālah 1427/2006) 158.

⁹⁵ Fakhr al-Dīn Muḥammad ibn ʿUmar ibn al-Ḥusayn al-Rāzī, *Maḥāṣin al-Ghayb*, vol 20 (Dār al-Fikr 1426/2005) 20.

⁹⁶ Muslim, Ṣaḥīḥ Muslim (n 41) Ḥadīth No 152.

that the objectives of the Sharī'ah encompass all forms of human interest, whether major or minor.⁹⁷

In another Hadith narrated by Abdullah ibn Mas'ūd, the Prophet, peace be upon him, has said: "whoever that has an atom's weight of arrogance in his heart shall not enter paradise. A man said (to the Prophet), a man loves his clothes to be good and his shoes to be good. The Prophet said, Allah is graceful (*jamīl*) and He loves the graceful thing (*jamīl*). Arrogance is disregarding the truth and scorning people."⁹⁸

Imam al-Shātibī listed some examples of al-tahsīniyyāt, including personal grooming, performing supererogatory prayers to seek Allah's pleasure, the etiquette of eating and drinking, and the prohibition of selling impure goods.

Relevance of *tahsīniyyāt* in Qādā' is that a judge is also advised to appear in handsome and modest attire. He should walk with dignity, not with pride. He should be good in his speech and silence and should only speak when the need arises. His laughter should not be more than a smile, his vision and inspections should be for getting insight into matters, and his listening is to acquire understanding.⁹⁹

These grades of objectives of Sharī'ah are not separate rather they complete each other. The necessities are completed by observation of complementariness and embellishments while complementaries are fulfilled by the observation of embellishments. However, the necessities being the basis of all the objectives, it is the root of both the complementaries and embellishments. Therefore, violation of *ḍarūriyyāt* means violation of its branches; as it is like obligatories while complementaries are like supererogatories and embellishments are below the supererogatory prayers.

4.0 IMPORTANCE OF THE KNOWLEDGE OF MAQĀṢID TO JUDGES AND OTHER JUDICIAL OFFICERS

The preceding discussion has established that *maqāṣid* are not merely theoretical constructs but practical tools that permeate the entire judicial process. This section addresses why this knowledge is indispensable for judges and other judicial officers. Its significance lies in five key areas: (1) ensuring decisions align with the law's higher purposes rather than mere literalism; (2) providing a principled basis for exercising discretion; (3) enabling judges to resolve conflicts between competing legal values; (4) enhancing litigants' confidence in the judicial process; and (5) demonstrating the comprehensiveness and coherence of Islamic law. Each of these dimensions will be examined in turn, with particular attention to their practical implications.

⁹⁷Yūsuf Hāmid al-Ālim, *Al-Maqāṣid al-Āmmah li al-Sharī'ah al-Islāmiyyah* (Dār al-Ḥadīth n.d.) 88.

⁹⁸Muslim, *Ṣaḥīḥ Muslim* (n 41) Ḥadīth No 261.

⁹⁹Al-Kāsānī, *Badā'ī' al-Ṣanā'i'* (n 21) 7:9; Ibn Farḥūn, *Tabṣirat al-Ḥukkām* (n 21) 1:29.

The researchers will conclude by citing some importance of the knowledge of *maqāṣid* to a judge whose role is central in the adjudication process.

1. Knowledge of the *maqāṣid* demonstrates the completeness and comprehensiveness of Islamic legislation. According to Ibn al-Qayyim, Allah Ta'ālā is a Wise Lord who does not do anything for a joke or without purpose. The actions of Allah *ta'ālā* are all aimed at absolute wisdoms just as it has its causes. This is indicated by His Sayings and the sayings of the Messenger of Allah.¹⁰⁰ He also said: There is absolute wisdom in all that Allah has created and commanded, and there are clear indications of the purpose behind creation and His commands.¹⁰¹

2. The knowledge of *maqāṣid* enables one to understand the grades of benefits and detriments, as well as the grades of actions within the Sharī'ah and in reality. The importance becomes especially important when one compares injunctions with each other.¹⁰² Ibn Qayyim says, a believer should know the evils that has occurred and its status from the Qur'an and Sunnah and should base on that distinguish the injunctions based on such facts. This will make it possible bring forth that which is good deed and confirm it and avoid or cancel the evil deed; and from that preference shall be given to the lesser of two evils as well as the greater good in case of conflict between two goods. For example, the purpose of a father's power of *ijbār* (compulsory guardianship in marriage) over his virgin daughter is to protect her interests. Therefore, the judge has the power to intervene if the father is not acting in her best interest. This is because all rulings of the Sharī'ah fall under the realisation of benefit (*jalb al-maṣlahah*) or the prevention of detriment (*dar' al-maṣṣadah*).¹⁰³ If the exercise of power of *ijbār* can lead to certain detriment like injury, death or even an unstable marriage, a judge can intervene to protect the Objective of Sharī'ah in legislating power of *ijbār*.

As a result, knowledge of the *maqāṣid* is a very important tool for judges and lawyers when investigating which provisions of the Sharī'ah apply to the facts presented before them. It is also important to note that the application of the provisions of the Sharī'ah should accord with the protection of these objectives, taking their hierarchical grades into account. Thus, protection of the religion is more important than protection of property.

3. The knowledge of *maqāṣid* is important in the transcending of injunctions from principles (*uṣūl*) to auxiliary injunctions (*furū'*) and from general provisions to particular provisions and from maxims (*roots*) to branches. According to Imam al-Ghazālī, the established injunctions of the Sharī'ah are of two types. The first is establishing causes of injunctions such as making adultery attract the punishment of *hadd*, intercourse during the day in Ramadan to oblige expiation (*kaffarah*) as well as making theft as a cause of cutting the hand which are all understood from the Sharia as the basis or rationale of the injunctions. The second is to confirm existence of injunction initially without being linked to a cause. Both types can be understood through

¹⁰⁰ Ibn al-Qayyim, *Shifā' al-'Alīl* (n 33) 190.

¹⁰¹ Muḥammad ibn Abī Bakr ibn al-Qayyim al-Jawziyyah, *Miftāḥ Dār al-Sa'ādah wa Manshūr Irādat al-'Ilm wa al-Irādah*, vol 2 (Dār al-Kutub al-'Ilmiyyah n.d.) 115.

¹⁰² Wanīs (n 43) 12.

¹⁰³ 'Alā' al-Dīn Abū al-Ḥasan 'Alī ibn Sulaymān al-Mardāwī al-Dimashqī al-Ṣāliḥī al-Ḥanbalī, *Al-Taḥbīr Sharḥ al-Taḥrīr fī Uṣūl al-Fiqh*, vol 8 (Maktabat al-Rushd 1421/2000) 3846.

reasoning and extended to new cases when their underlying purpose is known.¹⁰⁴ This will ensure that the judge can clearly identify causes of rulings have met their conditions before invoking the actual ruling. Absence of the causes or relevant conditions will make a judge who has knowledge of *maqāṣid* to pursue alternative ruling that fits the fact.

4. Knowledge of the *maqāṣid* increases serenity and conviction regarding the Sharī'ah. The human souls are created to accept that whose reasons and basis are known to them. The injunctions of Sharī'ah are mostly ratiocinated with their purposes and reasons being confirmed according to the position of majority of jurists.¹⁰⁵ With the exception of some acts of worship (*'ibādāt*) whose purposes are elusive, the injunctions of the Sharī'ah generally have clear objectives, goals, and purposes. Regarding the *'ibādāt* (acts of worship), Ibn Taymiyyah states that the Lawgiver has embedded certain wisdom within them which the human mind may not grasp in detail, even if their general objectives are discernible.¹⁰⁶

For the reason stated above, knowledge of *maqāṣid* affords the judge to eloquently express the objectives behind his ruling especially by providing the causation (*tasbīb*) of the decision. This enables litigants to appreciate the wisdom of Allah's ruling regarding their dispute. It will also make them accept that the judge has adequately understood their case and he has ruled based on the provisions of the Sharī'ah and not just his wishes.¹⁰⁷

5. Imam Shāṭibī was of the view that *maqāṣid* represent spirit of conducts. He considers it a condition for reaching the rank of *ijtihād* (independent legal reasoning), stating that the Sharī'ah is founded upon the consideration of benefits and interests. However, these benefits and interests are only recognised if they align with the dictates of the Sharī'ah, not with the desires of the mukallaf. It has also been confirmed through full inductive investigation that the objectives of the Sharī'ah are of three stages. If one has reached these stages, he has reached a level of understanding of the Sharī'ah that qualifies him to be the Prophet's vicegerent in teaching, issuing fatwā, and passing rulings based on what Allah has guided him to.¹⁰⁸ Here too, a judge who has knowledge of *maqāṣid* will make an attempt to explain the benefit that his ruling has confirmed as well as the detriment it has negated based on the principles of Sharī'ah. Litigants will, as a result, realize the ratiocination of both the injunction of the Sharī'ah on that particular matter and the basis of the decision and thus will appreciate the ruling of the Sharī'ah and accept it wholeheartedly.

5.0 CONCLUSION

¹⁰⁴ Abū Hāmid Muḥammad ibn Muḥammad al-Ghazālī, *Al-Mustasfā min 'Ilm al-Uṣūl* (Sharikat al-Madīnah n.d.) 75.

¹⁰⁵ Al-Shāṭibī, *Al-Muwāfaqāt* (n 51) 6.

¹⁰⁶ Ibn al-Qayyim, *I'lām al-Muwaqqi'īn* (n 21) 2:67.

¹⁰⁷ Ḥusayn ibn 'Abd al-'Azīz Āl al-Shaykh, *Al-Mabādi' al-Qadā'iyyah fī al-Sharī'ah al-Islāmiyyah* 39 <www.saaaid.net/book/8/1627.doc> accessed 1 July 2026

¹⁰⁸ Al-Shāṭibī, *Al-Muwāfaqāt* (n 51) 2:244

In conclusion, although the Objectives of Sharī'ah have increasingly attracted scholarly attention in recent years, few works have discussed their effect and role in the judge's function of protecting people's rights and interests. The objective of this work was to make an attempt to open that gap for discussion. The work started with definition of *maqāsid* and other related terms as well as the definition of Islamic adjudication. It looked at textual basis of *maqāsid al-sharī'ah* and concluded that the Qur'an and Hadith are filled with hints signifying purposes behind specific injunctions. Some of these hints happen to cover functions of a judge as one whose duty is the application of Allah's laws on His servants. For instance, Allah's command to uphold justice is central to the judge's role in determining the rights and duties of people. Therefore, status of an individual in a society should not compromise this principle which is among the objectives of the Lawgiver. The work also discussed the grades of *maqāsid* (Objectives of Sharī'ah) in relation to their application in Islamic adjudication. Not all objectives of Sharī'ah are on the same grade. Those of highest grades are known as *darūriyyāt* (necessities) followed by *hājiyyāt* (complementary purposes) and finally *tahsīniyyāt* (embellishments). The *darūriyyāt* cover protection of the religion, life, mind, progeny as well as property. The judge's role in protecting these elements is vital for safeguarding them in accordance with the Lawgiver's purpose. For instance, hadd punishments related to these *darūriyyāt* are under exclusive purview of judge's function to safeguard the right of Allah and servants in the society. Thus, an individual alone cannot implement the hadd of *ridḍa* (apostasy), *qiṣāṣ* (retribution), *hadd* of consumption of alcohol, adultery as well as theft. Only a judge can rule on and oversee the execution of these punishments. The second grade of objectives is *hājiyyāt* whose function is to prevent hardship from inflicting an individual and to complement the *darūriyyāt*. Here too, the Sharī'ah does not make it difficult for a plaintiff or defendant to prove or disprove claims made against them. There are always alternative means of proof in the absence of the primary means. Likewise, a judge is allowed to give more time to a litigant to produce his witness if he is unable to provide it in the appointed time. The judge has discretion to determine if the litigant is unable to produce the evidence due recognized excuse and offer him more time in order to protect his interest. The third grade, which is *tahsīniyyāt*, also has relevant applications in Islamic adjudication. A judge is expected to dress modestly yet presentably. His behaviour should reflect his high standing in society, and he should treat all litigants with equanimity during proceedings. All these suggest the importance of objectives of Sharī'ah to a judge throughout the time he holds such an office. The work has also examined the importance of *maqāsid* to a judge in general. It makes it possible for him to determine facts presented before him and their legal applications. The *maqāsid* also provide a bridge between the abstract provisions of the Sharī'ah and their practical application. This helps to avoid the danger of error or of applying provisions to the wrong set of facts. Knowledge of the *maqāsid* enables the judge to instill in litigants a sense of serenity and assurance that the provisions of the Sharī'ah are aimed at safeguarding their interests and ensuring obedience to the directives of Allah Ta'ālā. Therefore, it is recommended that judges and other judicial officers should have a deep understanding of the Objectives of Sharī'ah so that this understanding is reflected in their decision-making process. The findings of this paper have implications that extend well beyond the courtroom. First, they suggest that Islamic legal education must place greater emphasis on *maqāsid* training for aspiring judges, integrating it into both theoretical and clinical components of legal pedagogy. Second, they provide a framework for judicial reform that remains faithful to Islamic principles while

addressing contemporary needs a balance that many modern legal systems struggle to achieve. Third, they offer a model for how religious law can maintain its relevance and legitimacy in changing social contexts by emphasizing purposive interpretation over rigid formalism. Finally, they contribute to ongoing scholarly debates about the relationship between Islamic law and broader principles of justice, human rights, and good governance, demonstrating that *maqāṣid* provide a robust foundation for these discussions.