

# MAQASID ASH-SHAREE'AH

<b>Maqsad</b>	Notes on <b>Maqaasid ash-Shareeah</b>
<b>Illaah (The Effective Cause)</b>	Taught by <b>Shaykh Jamal ad-Din Zarabozo</b> (Hafidhahullah) Notes taken from <a href="#">Knowledge International University</a> Total number of Sessions: 30 Version: 2.0 / Last updated Date: 12-June-2013

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## Chapter 1: Introduction to Maqaasid ash-Sharee'ah

### Course Overview

- Maqaasid ash Sharee'ah means Objectives/Goals of the Sharee'ah
- This study will give appreciation of Sharee'ah. By delving into Fiqh, we are very much concerned about the details and we forget the whole objective of Islaam/Sharee'ah as a whole

### Caution

- Some people are talking about this concept these days claiming every solution lies in Maqaasid ash-Sharee'ah
- In conference happened in 2006 on this topic, some of the papers presented were Maqaasid approach – Rethinking Modern science and modernity, Maqaasid ash Sharee'ah- as a approach for intellectual reform and civilization renew and so on. It indicates how people misuse this science
- Maqaasid ash Sharee'ah is one principle and not the complete solution. People are giving lot of weight and making it a overriding principle
- It is true principles are valid. If they are abused, it will lead to dangerous consequences.
- Eg.: Back in History, the concept of Ta'weel was abused. It is a very important concept in Usool al Fiqh. At times Daahir meaning may not be applicable due to other evidences like in the verse "If you stand to pray, clean your faces.." We do not do it every time rather only when we are not pure. People used Ta'weel for concepts where it should not be used. They used it to negate verses related to attributes of Allaah

### Why do we study Maqaasid ash Sharee'ah?

1. To appreciate why Allaah sent his prophet with this Sharee'ah
2. To understand Allaah's blessing upon us
3. To increase our love for Allaah
4. To increase our submission to Islam as we do not carry blind opinions in submitting just because we were told to do it
5. To study the bigger picture of Islaam
6. To understand Sharee'ah brings all sorts of good and prevents all sorts of harm. It is not to bring hardship upon people
7. There are Muslims who says, "We do not want Sharee'aah" They say it because of lack of understanding what Sharee'ah is for. If they understand Maqaasid, they would love to have Sharee'ah for their community
8. Maqaasid ash Sharee'ah teaches us how to apply the Fiqh in specific cases
9. To educate the two extreme groups in terms of Maqaasid ash Sharee'ah: Putting Maqaasid ash Sharee'ah over everything else and on the other hand, those who are ignorant about Sharee'ah and its goals

10. When you make Ijtihad, Maqasid ash Sharee'ah will work as guiding principle in coming to the conclusion
11. It is important for a Da'ee to have this knowledge because its understanding will help him know how Sharee'ah works and the miraculous nature
  - Ibn al Qayyim said: *"The greatness of the Sharee'ah is an indicator to veracity of Prophet Muhammad"*
  - Only right now Economists understand the consequence of Speculation, economy based on Riba and so on. However, Sharee'ah took care of it already
12. This will give right picture about Sharee'ah to common Muslims who were earlier presented with different picture by their communities and culture

## Important Terminologies

### Maqaasid

- It is plural of Maqasid that comes from the word Qa-sa-da (Aim/goal/purpose)
- Maqasid can be defined as Destination/Goal/Intent/Purpose
- Some translated it as "The Higher Objectives" which is not a proper translation and it is more of biased translation. They allude there is something higher than Sharee'ah

### Sharee'ah

- **Linguistic Meaning:**
  - It comes from the root word Sha-ra-'a (taking your camel to water place/coming down of water)
  - It means path that leads to water/water source. Water is key thing to sustain life. Like that Sharee'ah is source of guidance for life. Sharee'ah is our lifeline
  - Sharee'ah also means something open/clear
- **Technical Meaning**
  - Everything that was revealed to Prophet
  - Sharee'ah consists of all the matters of Aqeedah, Ibadah, Mau'amalat

### Maqaasid ash-Sharee'ah

- This is idaafah of above two terms
- Ibn Ashoor said: "General objectives of the Islamic law" (Maqaasid ash Sharee'ah)
- Another definition is the law that is established for the purpose of Mankind
- Imam Hathimee: *"Objectives discerned in Sharee'ah laws upon which those laws are found and all related to one goal ie., servitude of Allaah and well being of humans in both this life and the hereafter"*
- Shaykh Saad ash Shitree says: *"The general goals based on which law giver has laid down the laws"*
- Major universal comprehensive goals discerned in the Sharee'ah laws upon which laws are founded approved and beloved to Allaah and his servant related to servitude of the servant

### Maslahah

- Derived from Salaah i.e, Something correct
- Opposite of Mafsadah (fasaad)

### Illah

- The effective cause/legal cause behind the ruling
- It is not necessarily desired by the Sharee'ah
- Eg.: Requirement of Wudoo for Salah and Wudoo is Illah

### Hikmah

- Wisdom or benefit of something
- Individual rulings are based upon Illah and not on Hikmah
- Eg.: Travelling is the cause for shortening the prayer. As for Hikmah, there is no clear text. However most of the Scholars say "it is to make things easier for the people – Removing difficulty" Individual ruling should be based upon Illah
- Can we say "Removing hardship" as one of the goals of the Sharee'ah? Just to take one particular case is wrong rather it should be based upon number of evidences
- One of the common mistakes people make is to take particular goal to make it is an universal goal

### Difference between Sharee'ah and Fiqh

S.No	Sharee'ah	Fiqh
1	Sharee'ah is restricted to nusoos of Qur'aan and Sunnah	Fiqh contains Sharee'ah and all the we derive based on the rulings of the Qur'aan and Sunnah
2	Sharee'ah is divine so it cannot be wrong	Whereas fiqh Includes both divine + what is derived by humans. It can be wrong in the second part
3	Sharee'ah is valid all the times	In Fiqh, what was valid for Andalus 1000 years ago may not be valid for California now because Fiqh takes circumstance/situation in consideration  It is said Fatwaa changes with time and place. However this should not be abused

### Goal behind the Sharee'ah

- Ibn al Qayyim said: *"Base and foundation of the Sharee'ah is the Wisdom and well being for humans in this world and in the hereafter; it is Justice all of it, mercy all of it, welfare all of it, wisdom all of it. Any issue that deviates from justice to injustice or mercy to non Mercy, welfare to harm, wisdom to non wisdom is not from Sharee'ah even people have entered it into Sharee'ah"*
- Imam ash Shatibee said: *"It is known from the Sharee'ah that is legislated for the benefit of human beings; all of legal responsibility are for good, repel evil or both"*

## Difference of Opinion regarding goal behind the Sharee'ah

### Daahirees

- Ibn Hazm believes there is no causation behind the law like goal we discussed. This is the reason they deny Qiyaas

### Ashaaris

- They reject the idea that there is any goal/reason behind Allaah legislating in the rules of the Sharee'ah. Many of their views are in response to Mu'atazillah. They say if there is goal behind these laws, then that goal should be met. Individuals cannot meet it. So there is no goal as such and Allaah fulfills it. We ask if Allaah did not will it, how it happened?
- Still they have written a book on Maqasid ash Sharee'ah
- Why this contradictory approach? We do not know

### Ahlus Sunnah Wal Jam'ah and Mu'atazillah

- They affirm that Allah revealed this Sharee'ah is for the benefit of humankind i.e., with purpose & wisdom
- Mu'atazilah says it is obligatory upon Allaah to reveal Sharee'ah with Wisdom. This goes back to their incorrect understanding of Aqeedah
- Ahlus Sunnah differs and says that is from the will of Allaah.
  - Qur'aan 6:12, 54 → *"Say, "To whom belongs whatever is in the heavens and earth?" Say, "To Allah." He has decreed upon Himself mercy. He will surely assemble you for the Day of Resurrection, about which there is no doubt. Those who will lose themselves [that Day] do not believe."*
  - In another hadeeth Prophet told after creating this world Allaah wrote *"My Mercy prevails over my Anger"*
  - Qur'aan 4:40 → *"Indeed, Allah does not do injustice, [even] as much as an atom's weight; while if there is a good deed, He multiplies it and gives from Himself a great reward."*
  - Ibn Taymeah says If Allaah wants to commit Dulm, He can. However he prescribed Mercy and justice for himself
- **From Aqeedah point of view:**
  - One of the names of Allaah is Al-Hakim that occurs more than 90 times in the Qur'aan. Al-Hakim is referred as All-Wise with respect to what He created and what He commanded
  - Ibn al Qayyim says: *"It is from the necessary implications of the name Al-Hakeem is that Allaah has noble goal and purpose behind actions. If you reject this concept, then you are rejecting the name Al-Hakim"*
  - Allah combined the name Al-Hakim and Al-Aziz around 29 times in the Qur'aan. When such construction is made, it has its own implications. It means Allah is wise and has ability (izza) to implement His wisdom
- We can conclude that Allaah created everything with purpose and not in random



## Evidence for the Goals of Sharee'ah

- Ibn al Qayyim says: There are 18 different ways we can prove goal behind Sharee'ah from Qur'aan

### The particle 'Li'

- It is to demonstrate for the purpose

إِنَّا جَعَلْنَا مَا عَلَى الْأَرْضِ زِينَةً لِّهَا لِنَبْلُوهُمْ أَيُّهُمْ أَحْسَنُ  
عَمَلًا ﴿٧﴾

- "Indeed, We have made that which is on the earth adornment for it **that We may** test them [as to] which of them is best in deed." (Qur'aan18:7)

### The compound expression (kai-laa)

- Al-Fa'y

مَا آفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَى فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ  
وَالْيَتَامَىٰ وَالْمَسْكِينِ وَأَبْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ  
مِنْكُمْ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا  
اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ﴿٧﴾

- "And what Allah restored to His Messenger from the people of the towns - it is for Allah and for the Messenger and for [his] near relatives and orphans and the [stranded] traveler - **so that it will not be a** perpetual distribution among the rich from among you. And whatever the Messenger has given you - take; and what he has forbidden you - refrain from. And fear Allah ; indeed, Allah is severe in penalty." (Qur'aan 59:7)

### The expression (la'alla)

- It means perhaps

يَأْتِيهَا الَّذِينَ ءَامَنُوا كُنِبَ عَلَيْكُمْ الصِّيَامُ كَمَا كُنِبَ عَلَى  
الَّذِينَ مِنْ قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ ﴿١٨٣﴾

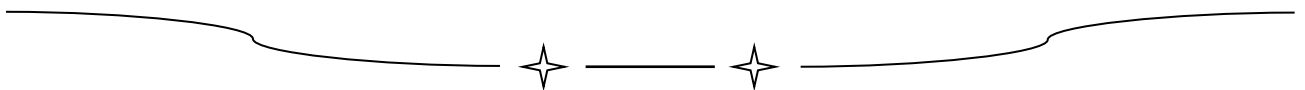
- "O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous" (Qur'aan 2:183)

### Important Points:

- It doesn't mean we will know the purpose behind all these laws. If we don't see the purpose or recognize the purpose, still we are going to submit to the laws
- People sometime get into situation where if they don't understand, they will not submit to it. It means I am accepting what I like to accept. This is not unconditional submitting to Allaah
- For example, Why Maghrib is 3 rakat and Fajr is 2 rakat? Allaah alone knows the wisdom behind all of these things
- When it comes to ritual worship, people are ready to accept it but they differ outside of Ibaadat
- How many Terabytes of Info we have today? How much we are able to understand it? After all of this, there are so much of knowledge we do not even have any access like Ruh and so on. If such is the case, why people are questioning the purpose in every matters of Deen

### What is the ultimate goal/purpose of all of Sharee'ah?

- It is servitude to Allah (Qur'aan 51:56)
- Preparing for hereafter
- Purification (Qur'aan 62:2)
  - Allaah will not call us/sanction something that is Kufr/Shirk/Fusooq. Any of these things will not be consistent with Sharee'ah. If something is Kufr, that is not part of the Sharee'ah
- Imam ash Shaatibee<sup>1</sup> says: "Goal of Allaah (law giver) in proclaiming the law is to take humans from calls of desire (Hawaa) to obedience of Allaah"
  - How many people are smoking, drinking?
  - All different kinds of freedom people are talking about are nothing but freedom from worshipping Allaah
- In now a days, Maqasid ash-Sharee'ah is a tool in Usool al fiqh



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<sup>1</sup> Imam Shatibee was described as someone standing on a very high mountain looking at the Sharee'ah.

## Chapter 2: History of Maqasid ash-Sharee'ah

### Books on Maqasid ash Sharee'ah

#### When was the first time someone wrote a book dedicated on the concept of Maqasid ash Sharee'ah?

- It was Maqasid ash Sharee'ah Islamiyah published in 1946 by Ibn Ashur, Student of Muhammad Abduh
- It is a descriptive work rather than analytical
- As Mad-hab were differing, he wrote this book to reduce the difference of opinion among Scholar
- In 1966, Imam Hallal al Fasi wrote a book
- In recent years, there are plethora of books on Maqasid ash Sharee'ah
  - One reason is this is the time of Specialization so we have books on this topic
  - Another reason is to attack the Sharee'ah

#### Is Maqasid ash Sharee'ah a new science that can be used?

- Concept was there but people later studied it, codified it and then compile it as a book
- It is like Physics which existed before Physicist came up with a book on Physics
- We have to check whether this concept was present during the time of Sahabah, and the following generations

### Time of Khulafaa

#### Time of Abu Bakr

- Combining together Qur'aan as one Mushaf was the Ijtihad based on an objective that the Deen has to be preserved
- Abu Bakr choosing Umar as Khalifah is part of preservation of deen, ummah and so on
- Dealing with Apostates in order to protect the deen

#### Time of Umar ibn al Khattab

- If people conspire and work together to kill someone, all of them have to face the law of retribution in order to preserve life
- In the year of drought, Umar made very specific rulings and taken very specific steps by that laid down certain principles
  - Umar was very strict with himself by not eating certain type of food
  - He asked his governors to send portion of their food to Madeenah
  - He delayed the collecting of Zakah as he has seen it as debt to Allaah
  - He suspended the punishment of amputating the hand of the thieves if they were forced by dire need for food
- There are several examples during the time of Uthmaan

### Time of Ali

- Ali said Manufacturer is responsible for all the materials he was given
- For example, if you give a fabric to tailor, he is responsible for fabric
- Ali held the Doctors responsible for their mistakes

### Time of Tabi'ee

- Bilal ibn Abdullah ibn Umar al Khattab refused to allow his women folk to enter the Masjid and His father was upset with it
- Ayeshaa said "If Prophet saw what women of these times are doing, he would have prevented them from going to Mosque"

### Time of Scholars

#### Imam ash-Shafiee (d.205 H)

- He was one of those who emphasized the fact that there are causes behind the Ahkam which can be identified at times and cannot be identified at times
- He spoke about Qiyas, laws of necessity, goals of Sharee'ah though he never spoke about Maqasid ash-Sharee'ah
- He had nascent thought about it

#### Hakim at-Tirimidhee

- From 3<sup>rd</sup> Century
- He was not Imam Tirimidhee
- He was known to be from Ahlul Hadeeth but had inclination towards Sufism
- He has written a book called Nawadhir al usool and major part of this book is not authentic
- He was the first one to come up with an idea of finality of Awliyah
- In one of his books, Salat al Maqasidiha, he talks about ilal (causes) behind Sharee'ah and in particular the objectives of the Prayer

#### Ashahsi

- d.365
- Wrote a book called Mahisni ash-Sharee'ah (Beauty of Sharee'ah)

#### Imam al Haramayn Juwaynee

- d.478
- Shaykh of Abu Muhammad al Ghazaali
- He was a Shafi'ee
- He used terms like Maqasid, Maqsood, Qasd in his books
- He says you have to understand the objectives to understand the laws of Sharee'ah
- He breaks down the actions of human beings into different categories like
  - Essentials

- Needs
- Ritual Acts
- Neither essential nor needed
- Outside the four categories
- Later, it was divided into three by other Scholars:
  - Necessity
  - Needs
  - Amenities

### **Imam Ghazaali**

- He has a book called Asaasil Qiyaas
- He spoke about role of the law giver and understanding of Sahaabah in identifying the laws
- He mentioned the role of the religion is to protect the
  - Religion
  - Life
  - Intellect
  - Family ties
  - Wealth
- He was the first one to mention the goals of the Sharee'ah

### **Hanafi Scholars**

- In Study of Maqaasid ash-Sharee'ah, very few hanafi scholars are mentioned because of their approach towards deriving Usool al Fiqh i.e., the Approach of the Fuqaha as it is based on fiqh of Abu Haneefa, Abu Yusuf, Muhammad ibn ash Shaybanee
- Other Scholars are known as Mutakallaimun (Theoretical approach) rather Hanafis focus on issues of Fiqh

### **Ibn Izz adus-Salam**

- Shafi'ee Scholar
- His book called Qawaid al Ahkam fee Masaalih al Anaam
- This is considered to be book on Qawaid al Fiqh. However, this book demonstrates the objectives of the Sharee'ah
- He said entire law consists of interest (maslaha) either prevents the brings harm and bringing something which is beneficial

### **Al-Qaraafi**

- d.684
- He was a Maliki Scholar
- Student of Izz ibn Abdus-Salam
- He written a book called "Al-Furooq" which speaks about difference between laws. For Eg.: why we use moon for Ramadaan and Sun for Salah?

### **Najmudeen at-Tufi**

- d.716
- He highlights the fact how people can go in extremes
- He commented on 40 hadeeth an-Nawawi in bringing up his work
- In commenting the hadeeth in which Prophet said “Harm should not be received nor reciprocated<sup>2</sup>”, he wrote about Maslaha in Sharee’ah
  - In human relationship, ultimate objective of Sharee’ah is human welfare so anything goes against it can be ignored including Qur’aan and Sunnah
  - He is strange as He talks about the Qur’aan and Sunnah and claims Qur’aan and Sunnah are contradictory to one another.
  - He also says lot of Ahadeeth were forged by Madhab in order to support their position
- He was a hanbali Scholar and wrote a book on Usool al Fiqh

### **Ibn Tayme’ah**

- Contemporary of Tufi
- He speaks about the laws of Sharee’ah and Allah revealed it for purpose
- He contributed a great deal on this topic
- There is a complete dissertation on Ibn Taymeah’s contribution is available

### **Ibn al Qayyim**

- d. 751
- He is a student of Ibn Taymeah
- He too contributed a great deal like we mentioned earlier
- He written a book on guidelines in giving Fatawa where he discusses the goals of the Sharee’ah
- He speaks lot about Asrar ash-Sharee’ah i.e., Secrets of the Sharee’ah

### **Al Makaree**

- Possibly a student of Ibn al Qayyim and also of Al-Qarafi
- Maalikee Scholar lived most of his life in Andalus
- He written a book on Qawaid al Fiqh
- He spoke about Sadd-Dariyah (blocking something that leads to harm)
  - Allaah forbade cursing other idols as it will lead to cursing Allaah though the action of cursing itself is not haram
  - Ibn al Qayyim presented 90 pieces of evidence in proving this concept
- He started his own sufi silsilah (tareekah)
- Abu Ishaq Ibrahim ash-Shatibee was his student and had great deal of influence on his teacher

### **Imam ash-Shaatibee**

- d. 790 H
- He is from Maliki background from Grenada

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<sup>2</sup> La Dharr wa la Dhiraar

- He is not the founder of Maqasid ash-Sharee'ah but contributed a great deal

### His Trials

- At a certain point in his life, he made a life changing decisions i.e., to follow true Islam
- As a result of that, he faced lot of trials and tribulations. In his another book, Al-I'tisaam mentions about this event
  - *I was an Imam in Masjid giving Khutbah. I decided to straighten my path. I found myself stranger among majority of my contemporaries. Stains of Bid'ah covered the religion. I wavered between two options: to follow sunnah and other is to follow the opinion of people. If I decide to follow the sunnah, I may face great deal of difficulty... I decided to perish following the sunnah finding salvation than following the deviation (Bid'ah)"*
  - *I was accused of saying "Du'aa serves no purpose" because I did not adhere to practice of Du'aa in congregation*
  - *I was accused of extreme Shiaa hating Sahabah because I did not adhere to mentioning the name of Khulafa rashideen in conclusion of my Khutbah*
  - *I was accused of disrespecting the Ulema because I did not adhere to mentioning the name of them in my Khutbah*
  - *I was accused of affirming hardship in the religion because I adhere to well established sunnah in my fatwaa*
  - *I was accused of enmity towards Awliyah of Allaah because I corrected many of the belief of the Sufis*

### His approach

- He wrote "God made this blessed righteous sharee'ah accommodating and convenient thus won the heart of the human being increasing their love for Allaah.."
- Imam Shatibee balanced this science properly as apposed to others who abuse it
- Mashhoor as Salman mentions that many people attribute their own opinion to Imam Shatibee
  - Like One person said Imam Shatibee should be considered as Aqalaani (modernist)
  - Gunoozhi of Tunisia claims his ideas are same as Shaatibee

### Reform vs Tajdeed

- Prophet said "Allaah will send someone after every century who will revive this Ummah" It is not changing things rather it is revive something which was lost. This is Tajdeed
- To come up with something new and changing islam is not Tajdeed rather it is reform which is not acceptable. He was for Tajdeed

### Writings of Imam ash Shaatibee

- Al I'tisaam
  - It is a book deals with Bid'ah and importance of following the sunnah
  - He discussed different kinds of Bid'aah, rules and regulations, scope of Bid'aah. How Bid'aah causes deviations and sects?
- His collections of Fatawaa

- 250 pages collection
- One of the PhD Scholars analyzed his fatawaa from the perspective of Maqaasid ash Sharee'ah. He picked up 40 cases where social change is involved. He accepted 14, rejected 23 and rest of kind of border line
- Al Muwaffaqat
  - He wrote Al Muwaffaqat which is on Maqasid ash-Sharee'ah. However it did not take off well in the beginning as it is book dealt mostly with Usool al Fiqh
  - This book was abridged by one of his students and another wrote Nadhm (poetry) on this. Still, this book did not become popular
  - This book become popular only in 20<sup>th</sup> century after revived by Abdullah Darras by publishing it in 1894
  - The year 1900 was the time most of the muslim ummah were colonized. What is the way to adapt to colonizing nations? How ummah can live upto demands of the time?
  - Musa al Jarullaah published it again in 1909 in Russia. He wrote the introduction in Turkish (having Arabic script) as Ottomons were speaking Turkish
  - Muhammad Rashid Ridaa praised this book
  - Muhammad Abduh, Mufti of Egypt of that time advised this book should be read
  - Maududi recommended that this book should be translated in urdu so that Fiqh experts can have deeper understanding
  - More recently, Shaykh Mashhoor as Salmaan published this book in 6 volumes having comments of all previous commentators and his own comments
  - It was translated in Turkish in 1990, in urdu in 1992, and in English in 2011
  - English is having volume 1 out of 4 alone right now

### *Five basic goals of the Sharee'ah*

- Imam Shaatibee mentions that all the previous Sharee'ah had these five essentials
- Law was established to preserve them. They are
  - Religion
  - Human life
  - Progeny
  - Wealth
  - Human faculty of reasoning

### *Summary of Shaatibee's teachings*

- He was for Ittiba al Haqq than Taqleedh
- He emphasized we have to follow the way of the Salaf
- He emphasized that laying down the law belongs to Allaah alone
- He discussed about Aql and it should be submitted to Naql (revelations)
- There is a book named Imam Ash Shatibee's theory on Higher objectives by Ahmad Raysooni which summarizes teachings for most part



### Shah Waleeullaah ad Dehlawi

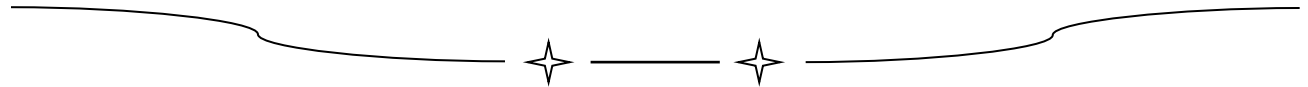
- d. 1176H
- He was an individual who had lot of different influences on him
  - Like his father Shah Abdur Rahman known to be a knowledgeable person belong to Naqshabandi, Chisti, Qadariyyah sufi orders
  - His father worked for Fatawa Aalam giri commissioned by Aurangazeb. Later he discontinued it because of dispute
  - His father ensured his son studied different books from hadeeth, Science, Astronomy to Sufism
- He was married by the age of 14 because his father insisted
- Shah Waleeullah wrote Hujjatullahi Baaligah (conclusive argument from God)
  - It speaks about harmful effects of sin, reason ulema differs, inner dimensions of wudu, Salah, Zakah and so on
  - Secrets of Ruling
  - Masaalih
  - Many times content were conjecture like why 3 rakat for witr and so on

### Ibn Ashoor

- Treatise of Maqaasid ash-Sharee'ah came on 1970

### English Literature

- International Institute of Islamic Thought (IIIT) published many books on topics where they abused some of the concepts of Maqaasid ash-Sharee'ah. IIIT is also known for modernist views



## Chapter 3: How to discover what are Maqaasid of the Sharee'ah?

### Importance of identifying Maqaasid

- To declare something to be one of the maqaasid when it is not is one of the serious mistakes
- Is equality one of the maqaasid of the Sharee'ah?
  - No. For example, Sharee'ah doesn't treat Men and the women same
  - However, Sharee'ah stands for equity and justice

### Ways of discovering the Maqaasid

#### Al Istiqraa (Induction)

- Induction is similar to increase as you take a small sample to arrive at a conclusion
- Deduction is similar to decrease as you eliminate possibilities

#### Istiqraa Taam (Complete Induction)

- You consider entire sample to arrive at the conclusion. Results of this would be considered definitive
- Eg.: You meet all the people at particular city to find whether they are friendly or not

#### Istiqraa Naaqis (Induction based on partial sample)

- Imam ash Shaatibee says this method is also fine
- Even the Qur'aan points out induction like "Travel in the earth to see result of those who deny" (6:11, 27:69, 30:42)
- Imam ash Shaatibee says we cannot give one text as evidence for the maqaasid as it may be critiqued from different angles like authenticity, conflicting evidence and so on. Maqaasid are basically from number of evidences

#### Common illaa (legal cause)

- Gharar is prohibited in onus transaction but it is not the case with investments and so on. Hence, this cannot be considered as Maqaasid

#### Sometimes rulings may be different but wisdom will be the same

- Prophet forbade people going and meeting traders before they come to market place. Prophet forbade hoarding to let the increase in price. There is not one illa common in these too but Wisdom is same i.e., Market sources should be free

#### Group of text of Sharee'ah giving same meaning

- There are some many text indicate religion is easy
- Concept of Rukhshaa in many chapters in the Qur'aan

## Imam Shaatibee's four Ways of discovering the Maqaasid

- Though this was discussed in Al Muwaffaqat, but he did not use this method in general maqsad
- Actually, this helps in identifying Maqsad al Juzi (partial Maqaasid)

## Consideration of primary explicit commands and prohibitions

- In the ayah commanding people to goto Jum'ah (62:9), leaving off business transaction is a secondary command that supports the primary command

## Recognizing the illa behind the law which leads to identifying Hikmah

- Traveling is illa for breaking the fast
- Gharar is illa for forbidden transaction
- Identifying illa is not an easy task, which is a topic in Usool al Fiqh. There are 8 different techniques to identify the illa like explicit Nass, indication and so on

## Silence of the Law giver in a given situation

- If we are not asked to do certain thing, then Allaah do not intend us to do anything there i.e., goal of the Sharee'ah
- Most of the Bid'ah comes from not understanding this principle

## Three different levels of Masaalih

### Al Masaalih ad Darooriyaah (Necessity)

- Life becomes chaos without this i.e., this world or hereafter or both

### Five Necessities

1. Ad-Deen (Religion) – Person loses both the worlds
  2. An-Nafs (Life) – Function stops without it
  3. An-Nasl (Family ties) – Next generation will not come without it
  4. Al-Aql (Mental capacity) – You lose your ability to function
  5. Al-Maal (Wealth) - Person cannot function properly
- Al Ard (Honor) is the 6<sup>th</sup> category stated by some Ulemaa
  - Qur'aan 6:151-153 touches upon these five
  - Anything that aids these five is Maslaha and opposite of it is Mafsadah

### Conflict Management

- Religious purpose (Preservation of Deen)
  - Qur'aan 51:56 → We are created to worship Allaah alone
  - Jihad is to sacrifice for Allaah azza wajal
  - Qur'aan 2:270 → Fitnah is greater than killing
- Worldly Purpose (Other four)
- Majority view

- During conflict, religious category takes precedence over the worldly category.
- Minority View
  - During conflict, worldly category takes precedence over the religious category
  - They argue we can lie about our religion to safeguard yourself
- If person says “I will shoot you if you are not going to drink wine” You have chance to loose your life permanently or loose Aql (Reason behind prohibition of Alcohol) temporarily. Latter should be opted. So Life takes precedence over remaining three
- If the benefit of giving up your life is going to benefit the deen, like the boy who told the king how to kill him, then you have an option (not obligatory) to sacrifice your life
- When it comes to Aql, Nasl and Maal, first come Nasl (family ties) which is 3<sup>rd</sup> in rank in all
  - Punishment for adultery is death which gives clear indication that how Sharee’ah looks at preserving family ties
- Wealth comes last in all of the five

#### *How these Maqasid were derived?*

- People try to derive Maqasid from individual ruling that is not the way ulema derived Maqasid. However, individual maqasid will go along with major maqasid
- Mu’atazilah said “Our Aql can determine what is maslaha and what is mafsadah” Ahlus sunnah say “Though Aql can determine, it cannot be certain until it comes through Deen”
- Our Ulema derived these Maqasid through all rulings together and then through Niyaa Istiqaa (What this Sharee’ah wants to establish?)

#### *Ways Allaah preserves the Darooriyaah*

- Hifdhu Darooriyah means instituting them/establishing them/ supporting/ strengthening/ preserving and protecting

#### *Hifdhu-Deen (Protecting the Deen)*

- Allaah obliged us to implement the Deen
  - Actual implementation of Deen helps in preserving the deen. For eg. Practice of Salah supposed to have an effect on the individual. It should bring us back to Eemaan
- Calling others to Deen
- Al Jihaad
- Differ with people of Bid’ah and fight the Bid’ah
  - All of the Bid’ah started as something small like who comes first: Ali or Uthmaan and it ends up in harming in true Deen
  - Unity with Ahlul Bid’ah is not the real unity
- Rule by the law of Allaah
  - If you do not follow this, it opens the door for all harm for the society

- Pornography will not be allowed if rule of Allaah is implemented. Without Islamic law, they will call it as freedom of speech

#### *Hifdhun Nafs (Protecting Lives)*

- Laws in law books and moral guidelines
  - Qur'aan 5:32 → Saving one life is like saving life of the humanity
- Law of Qisaas (Retribution)
- Hadd (Capital Punishment)
  - European Union has abolished capital punishment completely and they will not send criminals back to their own country if capital punishment is awaiting on them
  - Implementation of Hudood to come from State/Ruler/Sultan or authority
  - To declare someone as Kafir requires Knowledge and they should be qualified people
  - Four Madhab and Dahiris agree that Hadd punishment can be implemented by Imam/Sultan/State
  - The only way in which non Hanafis differ is Slave master can implement Hadd on the Slave
  - Story of Umar
    - They use the hadeeth of Umar killing a Muslim who goes to him after going to Muhammad because he was not satisfied with judgment given to him in a dispute between him and a jew. Umar went inside and came back to kill him. Allaah revealed an ayah in Surah Nisa
    - This story is not authentic
  - In the name of ordering good, what you do will lead to much of harm and it is not actually ordering good
- Things lead to Death are prohibited in Sharee'ah
  - Alcohol is haram. In US, large number of people get killed as a result of drunk driving
- Suicide is haram

#### *Hifdhun Nasl (Protecting Family ties)*

- Encouragement to get marriage
- Increasing the progeny
- Rights of husband and wife
- Prohibition of killing the children
- Strong punishment for Zinaa
- Law of slandering

#### *Hifdhul Aql (Protecting Intellect)*

- So many ayah encourages using Aql like "so that they will think"
- Prohibition of Intoxicants
- Mufsadath harming Al Aql
  - Mufsadath al Hissiyah (Physical thing)
    - Like Alcohol, drugs
  - Mufsadath al Manawiyyah (Non physical thing)

- What affects the mind?
- Environment, Pornography, Evil Thoughts, Evil ideas like freedom of speech leading to so much sex, violence and so on

#### **Hifdhul Maal (Protecting Wealth)**

- Qur'aan 4:5 → *"And do not give the weak-minded your property, which Allah has made a means of sustenance for you, but provide for them with it and clothe them and speak to them words of appropriate kindness."*
- Seeking of Wealth should be pleasing to Allaah
- Obligation of taking care of your family
- Hadeeth of Prophet is numerous on protecting wealth. There is an entire chapter in books of Fiqh like Kitaab al Buyoo
- Prohibition of Ribaa
- Prohibition of Gharar (overly risky transaction)
- Punishment for stealing

#### **Al Masaalih Al Haajiyah (Needs)**

- It is meant to remove hardship from people and make things easier for them
- These are things you can run your life without them but not having it will bring in hardship to your life
- Salam is a forward transaction where buyer makes payment in advance for item he is going to take latter. If you analyze, time factor is introduced which may affect some of the basic tenets of Fiqh of Buy'i. So, these are made as an exemption for the society
- Shortening of prayer, combining of salah, tayammum, delaying the fasting during sickness, are something Sharee'ah made easy for people to meet their needs

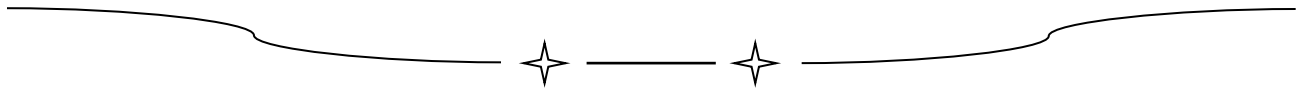
#### **Al Masaalih Al Tahseeniyah (Improvement)**

- If conflict between any of two, lowest one will take precedence. For eg.: If there is a conflict between Necessity and Needs, Necessity takes precedence
- These are amenities and not having it will make life difficult for us but having it will make the life more beautiful and increase the quality of life
- Etiquettes of speech, drinking, eating, keeping things clean, charity, helping one another
- In general, things which are obligatory in Sharee'ah will meet necessities or the needs
- These are complementary supporting basic necessities
- Some of the laws are related to necessities, needs, and Amenities respectively

#### **Important Principles related to dealing with Maqaasid**

- If there is no conflict between one principle with another, no issues
- We have to handle when there is a conflict
- There are certain laws to protect the needs like permissibility of haram food when life is in threat

- In all Madhab, beard is obligatory. Question is how much of a beard you should have? Some ulema said beard could never be trimmed anyway. The obligation of having the beard is not same as trimming the beard
- One brother was having a long beard and he believes trimming is not allowed at all. He lost three jobs because of that. He is not protecting his life by working but protecting what is secondary
- Covering is the Awrah is not a goal in and of itself. It is more of beautification than anything else. If a lady is having soryasis, she has to uncover her awrah that is not compromising her deen rather she is doing what her deen commanded you to do. Necessity takes over everything.
- We have to analyze:
  - From the perspective of 5 necessities and relative rank
  - Whether it is necessity or need or amenity
  - Whether it is Temporary/permanent/partial/complete
  - Whether it is Transitive or intransitive – It affects yourself or affect others
    - The case of you being forced to drink the alcohol is intransitive.
    - The case of being you are forced to kill so and so, if not I will kill you is transitive. It is case of your nafs vs other's nafs. Certain damage like theft can be undone but not rape/killing



## Chapter 4: Issues related to Maqaasid ash-Sharee'ah

### Maslaha or Masaalih

- Maqaasid is the fulfillment of welfare of human beings in this life and the hereafter
- Masalaha is something good/proper/right condition i.e., opposite of mafsadah
- It is the noun of place
- It emphasize this is the place or source of benefit
- It is used for both thing that is of benefit itself or means to the benefit
- It is to produce benefit and repel harm
- When we talk about Maslaha, we are not talking about individual Maslaha
- When Allaah orders us to do something good or call it is as good, it is a Maslaha.
- When Allaah points out something as evil, i.e., Mafsadah
- Our Nafs is not something to judge Maslaha. If nafs can judge, people would be right to call Ribaa as Maslaha but Allaah called it to be Mafsadah
- We have to know that these knowledge comes from Al-Aleem
- Alcohol/gambling may have some good but has more harm so it is mafsadah and not masalah
- In certain cases honesty is not the best thing where Sharee'ah allowed lies like battle. This is from maslaha
- Allah distinguishes between Al Haqq and Hawaa. Not everything that we see as Maslaha is Maslaha. We have to analyze things in the light of Qur'aan and Sunnah
- The only way we can identify Maslaha and Mafsadah is by going through Qur'aan and Sunnah. It is not through Hawaa of Masses

### Maslaha as Legal Tool

- This concept is also related to Usool al Fiqh
- Imam ash-Shatibee discussed this in great detail

### Maslaha Mu'tabara (Acceptable Maslaha)

- Evidence from Qur'aan and Sunnah pointing to this kind of Maslaha either directly or indirectly

### Maslaha Mulgha (Discarded Maslaha)

- Sharee'ah rejects this Maslaha because it may have some good but it's harm outweigh good
- Like Alcohol

### Maslaha Mulda (Disguised Maslaha)

- Conceived Maslaha but in reality it is not Maslaha
- Like Homo sexuality
- This category is not mentioned by Imam Shaatibee

### Al Maslaha Al Mursalah

- Sharee'ah is silent about this Maslaha
- There is no specific rule regarding this Maslaha



- New kind of birth control
- People like Tufee accepted this Maslaha. He accepts all Maslaha over every thing
- Most of Malikis accept this Maslaha
- Imam Shaatibee accepted this Maslaha. This given advantage for Modernists to popularize the teachings of Imam Shaatibee
- Imam Shaatibee accepted it with some conditions
  1. It must be compatible with goals of Islamic law and it should not contradict any recognized law of Islam
  2. Supposed Maslaha must be rationale and understandable (How can you call going to grave and asking Awliyaa as Maslaha? These are actually harmful than beneficial)
  3. There must be some need for this thing being invoked under Maslaha Mursalah
- No one accepted this Maslaha in an absolute sense.
- Imam Shaatibee gave 10 examples of Masalih Mursalah dating back to time of the Companions
  - Ali ibn Abi Taalib gave the ruling: if you go to the tailor and give some material for stitching, Tailor is responsible for the material as long as it is in his possession. This deals with preservation of Wealth
  - Umar ruled if group of people murder one person, all of them gets punished. This deals with preservation of life

## Causes behind mistaken conclusion while invoking Maqasid

### Identify something as Maqasid while it is not Maqasid at all

- Qur'aan 6:160
- Qur'aan 49:7 → *“And know that among you is the Messenger of Allah . If he were to obey you in much of the matter, you would be in difficulty, but Allah has endeared to you the faith and has made it pleasing in your hearts and has made hateful to you disbelief, defiance and disobedience. Those are the [rightly] guided.”*
- People consider “Equality” as the goal of Sharee’ah. In Islam, it is equity
- In 1960’s Muslims were jumping on the bandwagon of Socialism. They identified Socialism as Maqasid of Sharee’ah

### Applying Maqasid in such a way that contradicts the text of the Sharee’ah

- For example, Take the Jum’ah prayer, what distinguishes Jum’ah prayer is not the congregation rather we come together as a whole.
- An opinion was expressed in US and UK was that we could have Jum’ah on Sunday instead of Friday as coming together easily happens on Sunday in West. This is complete misapplication of Maqasid
- If we were to go on Sunday, it is following Jews and Christians who went on to Saturday and Sunday respectively as they went away from Friday

### Analyzing the point from one of the necessities when it has to be analyzed from other necessities

- For example, Terrorism. People think they are fighting for the Deen but the reality is it is more to do with Preservation of life than doing with Preservation of the religion

- It is more like praying without Wudoo. Instead of benefiting the religion, you are more harming the religion

#### **Not considering all of the conflict opinions**

- In a certain place, In order to catch the prayer, people parked their car illegally. People had emergency and they were not able to get out. Later landowner banner Muslims thereafter from parking.
- This individual has considered his personal benefit over the all Maqasid of Sharee'ah

#### **Not realizing Maqasid is related to this life and the hereafter**

- We cannot do something in the interest of this world ruining the hereafter

#### **Giving wrong emphasis to concept of Maqasid**

- The way Progressives approach is any way humans approach god is acceptable and that is social justice. For them way is not important.

#### **Not fulfilling the conditions of Maqasid**

- Conditions to be fulfilled are:
  - Ascertain correctness of Maqasid you are dealing with
  - What is the level of the Maqasid?
  - Is it related to one topic or other topic?
  - What is the relationship with 5 necessities?
  - What is the end result of applying this action?
  - How to make sure you are neglecting any particular text of Qur'aan and Sunnah

#### **Where Maqasid ash-Sharee'ah will be useful?**

- You have new issue that is not having direct answer from Qur'aan and Sunnah. Mujtahid will invoke Maqasid ash-Sharee'ah

#### **Organ transplants**

- It boils down to number of issues like "Does the human body belongs to humans or belongs to Allah?" You have no right to do damage to your body.
- There are four different type of transplants
  - Replantation – Like attaching cut off finger from accident
  - Auto transplant – Like taking skin from leg to fix burn skin of the face
  - Homo transplant – Like taking it from one person, living or dead, and implant into another
  - Hetrotransplant – Implanting from animals into humans
- What are all the limits of altruism in Islam? If you give one of two kidneys, and you survive with one kidney. If that kidney is affected, you are taking lot of risk on yourselves
- There are 5 opinions about organ transplants
  - Completely forbidden in all circumstances
  - Permissible given certain conditions
  - Permissible from Live donors

- Not permissible from live donors but from cadaver
- Permissible from live or cadaver as long as donor is an unbeliever
- Prophet said: *"Breaking a bone of deceased is like breaking his bone when he is alive"*

### Birth control

- We have evidence both favoring it and against it
- Sharee'ah permits certain type of birth control
- We want ummah made of strong men not weak men, so birth control between children is advisable

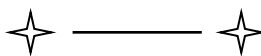
### Honor killings

- Killing a family member who committed an illegal sexual intercourse
- They take honor of family (Hifdh an Nasl) over the honor of the life (Hifdh an Nafs)
- They are overdoing when Sharee'ah did not permit

### Bigger Picture of Maqasid ash-Sharee'ah

- To appreciate the Sharee'ah as a whole
- To realize the veracity of the Prophet (s)
  - Even humans who are living now cannot come up with something like this
- To understand behind every law in Sharee'ah, there is beauty, wisdom and purpose
  - Ashaaris will not be able to appreciate this point
- To increase your love towards Allah azza wajal for giving such a Sharee'ah
  - Remind yourself when you are implementing the Sharee'ah, you are helping yourselves, others and increase your love towards Allaah
- To aid Da'wah as people these days question the appropriateness, applicability of Sharee'ah.
  - In the time of Prophet, they have attacked Sharee'ah by saying he is soothsayer and so on
  - Today, attack on Sharee'ah has affected the heart of Muslims let alone non Muslims
  - Many Muslims have negative approach towards Sharee'ah
  - It comes due to ignorance

Ibn al Qayyim said something to the extent: *"If you examine the laws of Allah's religion, it is nothing other than achieving Maslaha. When there is conflict, it gives preference to higher ones over the lesser ones. The most of just judges laid down the law for His servant. This generality is not doubted by anyone who has slightest taste of the Sharee'ah. The one who become experienced of the Sharee'ah, more he witness the beauty of the Sharee'ah... Qur'aan is filled with wisdom of His creations. It points to greatness and existence of Allaah. Had the Prophet given no miracle other than Sharee'ah, it would be sufficient and satisfying. It contains wisdom, masalih, praise worthy ends and sound results all witness to the fact that one who legislated and revealed this law is best of all judges and Most Merciful"*



Sahcefa  
Umar Shariff