

procreation and a lasting conjugal bond. Type 3 includes secondary aims that neither reinforce a primary aim nor cancel it out as in the case of Type 2. This type of secondary aim would include the case of marrying someone with the express intention of harming her/him, usurping her/his wealth, or some other motive, which, although it might threaten the marriage's continuance, does not guarantee its discontinuance.

Finally, the third approach to categorizing *maqāṣid al-sharī'ah* is based on the extent to which items encompass the various rulings of Islamic Law. This categorization yields three divisions: 1) general aims (*al-maqāṣid al-āmmah*), 2) specific aims (*al-maqāṣid al-khāṣṣah*), and 3) partial aims (*al-maqāṣid al-juz'iyyah*). General aims are the goals and objectives, which are reflected in all or most areas of religious legislation. Preservation of the five essentials – religion (*al-dīn*), life (*al-nafs*), reason (*al-aql*), progeny (*al-nasl*) and property (*al-māl*), are included among the general objectives of the Shari'ah.

Specific aims are goals and objectives that are peculiar to a particular type of ruling or a set of closely related rulings, such as the objectives of acts of worship (*maqāṣid al-ibādāt*), the objectives of social or financial transactions (*maqāṣid al-mu'āmalāt*), or the objectives of criminal laws (*maqāṣid al-jināyāt*). Similarly, they may be the objectives of a certain area of religious law, such as ritual purity (*al-ṭahārah*), sales (*al-buyū'*), etc.

Partial aims are objectives that relate to a particular question or issue. The categories of general aims and specific aims apply either to the Shari'ah, in its entirety, or to all cases relating to a particular area (such as ritual impurity, penal law, etc.), whereas what we are terming partial aims (*al-maqāṣid al-juz'iyyah*) pertain exclusively to a particular question or issue, or to a particular proof from which the larger purpose of Islamic Law can be deduced.

## Chapter One

### **Awareness of *Maqāṣid al-Sharī'ah* and Its Importance for Contemporary Methods of Deriving Legal Rulings (*Al-Iftā'*)**

In view of the constantly changing circumstances facing the Muslim

community, there is an ongoing need for muftis, that is, individuals qualified to issue fatwas, or legal rulings. However, we see growing numbers of unqualified individuals issuing fatwas, and there is much ease with which such so-called muftis are accessed. Therefore, I offer here some clarifications with respect to *maqāṣid al-sharī'ah* as relates to the issuance of fatwas especially in connection with contemporary issues.

The purpose of Islamic Law is neither to impose hardship and undue restrictions on people, nor to leave them free to satisfy their every desire, subservient to their every whim. Hence, my purpose in what follows is to explain the ways in which this law promotes ease for Muslims and the principles that guide this noble aim with finally, an explanation given of how rulings should be derived. In this way, I hope to maximize the benefits the law offers to God's servants, both in this life and the next.

As such, the following discussion offers clarifications with respect to *maqāṣid* as they relate to the issuance of fatwas on newly emerging events and situations on the individual and communal levels. A balanced approach is called for, avoiding extremism and excessive laxity.

The process of issuing fatwas plays a significant role. Given the impact fatwas are bound to have on the lives of Muslims and the guidance they provide on both the material and spiritual levels, whoever wishes to issue fatwas on newly emerging situations must be properly qualified for the task. People seek out muftis and scholars to address unfamiliar or frightening events, unresolved disputes, or difficult problems, especially in this contemporary age of ours with its peculiar confusions, complications, and rapid changes. Given the critical nature of the functions performed by muftis, it is essential that the work they do be subject to strict regulation and that such work not be entrusted to people who would take it lightly and who fail to fulfill the conditions for carrying it out.

The Prophet would refrain from performing certain actions should they become burdens to the Muslim community. However, there has emerged an approach to contemporary issues in the school of *iftā'* (the process of issuing Islamic legal rulings), which places undue stress on lenience and facilitation. In view of this reality, many jurists call for the greatest lenience possible in legal rulings in the hope of making Islam more attractive. We have begun to witness certain excesses in the

emphasis on facilitation (*taysīr*) and the allowance of concessions (*al-akhḍh bi al-tarakḥkhuṣ*), which have led some jurists of this school to reject certain Islamic texts, or to interpret them in ways that are not linguistically and legally sound. Indeed, the Prophet (ṢAAS)\* warned of the danger of allowing ignorant individuals to rule on new cases or to offer their own interpretations of the Qur'an, due to the grave harm this might inflict on both the religion and its adherents.

In the area of contemporary *iftā'* one finds two contrasting approaches – one of extremism in rigor and caution and the other of excessive laxity. Excessiveness in rigor and caution is characterized by 1) uncompromising bias in favor of a particular theological school of thought, or in favor of specific views or individual scholars, 2) sole adherence to the superficial, literal meanings of religious texts, and 3) excessive insistence on the principle of *sadd al-dharā'i'*, that is, prohibiting anything that has the potential of leading to a forbidden act.

A product of uncompromising behavior is religious fanaticism. Religious fanaticism grows out of the erroneous belief that one possesses the one and only incontrovertible truth in matters of religious interpretation. In turn, this belief engenders closed-mindedness, an unrealistically high opinion of oneself, and hostility towards anyone who holds opposing or competing views. A jurist or mufti who holds such a belief will adopt an extremist methodology and seek to impose his views on others while banning views or schools of thought other than his own, even if they have good evidence in their favor.

If jurists were more lenient in their rulings that were made permissible, this would be far better than burdening people with untenable blanket prohibitions. An example where this has been achieved can be seen in the case of the pilgrimage. There have been steadily increasing numbers of pilgrims to Makkah, resulting in overcrowding, discomfort and occasionally deadly stampedes. This situation has led some scholars to modify their views on numerous issues and, in fact, go against prevailing teachings in order to spare people hardship and inconvenience.

In the case of the pebble throwing ritual during the three days following the Feast of Sacrifice (ʿId al-Adha), which corresponds to the 11th, 12th and 13th of Dhu al-Hijjah, beginning at high noon and extending

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\* (ṢAAS) – *Ṣallā Allāhu ʿalayhi wa sallam*: May the peace and blessings of God be upon him. Said whenever the name of the Prophet Muhammed is mentioned.

until sunset, the majority of jurists hold that throwing the pebbles after sunset is not valid. Nevertheless, a number of perceptive jurists and fatwa authorities are of the view that it is permissible to throw them after nightfall, which spares pilgrims discomfort from the overcrowding that occurs during the daylight hours. In view of the hardship, strain and inconvenience caused in recent years by the requirement that the pebble throwing only be performed after high noon, there may also be good reason to consider the possibility of allowing this rite to be completed before noon, especially for pilgrims with time constraints who need to leave Mina on 12th of Dhu al-Hijjah. It should be borne in mind that the rituals of the pilgrimage, while based on emulation of the Prophet, are also intended to provide to the extent possible for pilgrims' ease and comfort. In fact, some leading scholars from among the Successors to the Prophets' Companions ruled in support of allowing pebble throwing before noon, and this is the ruling adopted by the Ḥanafī school of juristic thought. Contemporary jurists needed to issue fatwas with regard for changing circumstances for the benefit and well-being of people.

Similarly, when one clings to the superficial, literal meanings of religious texts without a deeper understanding of the message and underlying aims, the result will also be error and distortion. This method of handling religious legal texts has caused many lawful actions to be forbidden, several means of attaining knowledge to be blocked, and many individuals to be forced out of Islam on the pretext that they had violated clear-cut texts. The result is inconvenience and hardship. Such is analogous to the Kharijite movement, which made things difficult both for its followers and for others, and that of the *Zahīrīs*.

Insistence on the principle of *sadd al-dharā'ī* is often confused to be in accordance with *maqāṣid al-sharī'ah* since it is consistent with the general principle of "bringing about benefit and preventing harm" upon which the Shari'ah is founded. However, a similar problem arises when excessive use of the principle leads to an imaginary source of harm being considered at the expense of preponderant benefits. As a result, a jurist may close the door to a benefit and inadvertently violate the aims of the Shari'ah. Examples of this phenomenon would include prohibiting the cultivation of grapes for fear that they might be used to produce alcohol, or forbidding neighbors to live close to each other for fear of people entering into illicit sexual relationships. Further examples are forbidding women to work outside the home or declaring all banking unlawful for fear that it might involve usury.

At the other end of the spectrum, we witness excessive focus on facilitation and ease among rulings. Such approach is distinguished by the following features: 1) unwarranted reliance on the notion of human interest (*maṣlaḥah*), even when this means going against established Islamic legal texts; 2) overuse of concessions (*rukhaṣ*) and combining one juristic school of thought with another; and 3) juristic evasion of the injunctions of Islamic Law.

When there is a contradiction between *maṣlaḥah* and textual proofs and consensus, greater weight should be given to *maṣlaḥah*. However, some contemporary jurists and muftis tend towards excessive reliance on *maṣlaḥah* even if this results in fatwas that conflict with recognized textual evidence. One example is the fatwa issued by a former mufti of Egypt on the permissibility of receiving interest from a bank even though such interest is known to be usurious and even though such a fatwa flies in the face of clear textual proofs.

Furthermore, there is nothing wrong with availing oneself of the legal concessions provided for in the Qur'an and the Sunnah. Indeed, it was the Prophet who said, "It pleases God for us to avail ourselves of His concessions, just as it pleases Him for us to obey His commands."<sup>2</sup> However, some scholars pursue concessions based on particular interpretations or adopt an eclectic approach that involves borrowing from one or the other juristic school of thought or scholar, depending on which of them offers the most lenient ruling.

There are differing positions on the issue of adopting rulings. If a position taken by one *mujtahid* is shown to be better attested than that taken by others, then the layperson should adopt this position. It is not permissible for people to adopt other scholars' concessions without clear justification and regulation. Furthermore, while a layperson may be entitled to adopt concessions declared permissible by a mufti or *mujtahid* of his or her choice, the *mujtahid* or mufti himself must issue his own fatwa based on his own research and *ijtihad*.<sup>3</sup>

Some scholars have ruled that one may adopt the opinion of any scholar one chooses, but only when one is under duress, and only if one is not driven by selfish whims or desires. Some scholars forbid the pursuit of concessions even on the part of laypeople. In sum, however, a methodology of lenience based on seeking out concessions leads to a tendency to submit to one's desires, and violates the order, which the Shari'ah was intended to preserve.

As mentioned above, juristic evasion of the injunctions of Islamic Law comprises yet another feature of the school of laxity and excessive facilitation. Many contemporary muftis have fallen into the error of approving actions that are prohibited under the Law. Such actions include modern forms of sale on credit (*bay' al-ʿinah*), banking transactions that involve usury, deceptive means of exempting people from the payment of zakah or justifying failure to repay debts, etc. All these are examples of legal artifices and are condemned by the Shariʿah.

There are, nonetheless, ways in which the Law promotes ease for morally accountable Muslims and the principles that guide this noble aim. These methods include making certain that the ruling is based on knowledge and fairness. This requires scholars consulting together on the matter at hand and looking into it with care. Scholars should undertake a precise, thorough investigation of the case before issuing a legal ruling in which the principle of *taysīr* is to be applied. In this vein, it is important to realize the challenges of the modern world and therefore the new situations that arise reflecting the nature of the times in which we live and which are marked by the free exchange of ideas and the development of scientific and technological solutions designed to address a variety of problems.

Scholars must cite all relevant textual evidence and applicable rules when ruling in favor of a weakly attested lenient view. Scholars must provide a permissible alternative when judging a given action to be forbidden. The mufti should also be prepared to explain the wise purpose behind whatever prohibitions he issues while showing the way toward appropriate lawful alternatives.

Juristic scholars must follow specified guidelines for ensuring that one realizes legitimate, Islamically recognized human interests when engaged in *ijtihād* and issuing legal rulings. These guidelines dictate that a mufti should:

- (a) include human interests among the aims of Islamic Law;
- (b) ensure that the interest in question does not conflict with any Islamic legal text;
- (c) verify that the interest in question is indisputable or, at the very least, that there is convincing evidence of its validity;
- (d) ascertain that the interest in question is universal in nature; and
- (e) ensure that consideration of the interest in question will not threaten some other interest of greater or equal importance.

Jurists are also obliged to observe the principle of relief from hardship/harm (*rafʿ al-ḥaraj*) “sparing morally accountable persons hardship in relation to the Islamic Law’s requirements of them”<sup>4</sup> by not issuing any fatwa whose implementation would impose undue hardship on the person concerned. Jurists and muftis must consider the question of whether a given application of a text will realize the desired aim or not and thus give due consideration to the anticipated consequences of issuing a lenient ruling.

Scholars must also investigate the commonly accepted customs of relevance to the application of a more lenient ruling. The word “customs” here means “the understandings that have become ingrained in people’s minds, and what has been deemed acceptable by sound minds and dispositions.”<sup>5</sup> Lastly, when a scholar says he does not know something, such utterance should not be seen to detract from his standing in any way.

## Chapter Two

### **Understanding *Maqāṣid al-Sharīʿah* Through Cultural Development**

The juristic study of human civilization and development (*fiqh al-ʿumrān*) has long been neglected. It is essential that scholars return to the goals of the Islamic legal system and reread the precepts of Islam in light of these goals in order to improve Muslims’ juristic understanding of culture and civilization and restore their confidence in their religion. To increase civilizational awareness, we should always keep in mind that as human beings we have been assigned the dual tasks of worshipping God alone, and populating and developing the earth.

However, we are in crisis in these areas and our crisis is rooted in our failure to understand our religion and what true religiosity means. We also fail to discern the rights and obligations entailed by membership in a society. Awareness (*waʿy*) is a clear realization, both logical and intuitive, of what something requires for realization on the practical level.

God condemns nations [i.e. the ʿĀd and the Thamūd civilizations mentioned in the Qur’an] that made great strides in construction, utilization of resources, and production of tools and equipment while