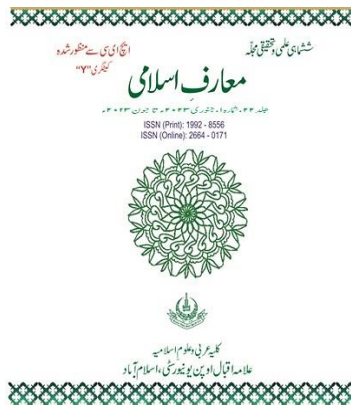|	
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Maqāṣid al-Sharīʿah Between Classical and Postmodern Periods: an Advanced Islamic Juridical Context

Abstract
The study of *Maqāṣid al-Sharīʿah* or the higher objectives of Islamic law and *maṣlaḥah* has attracted the attention of eminent scholars since the second-century *hijrī*. This work discusses what is *Maqāṣid* and *maṣlaḥah*? Who were the premodern as well as the postmodern scholars who focused on the *Maqāṣid* cum *maṣlaḥah*? Why the premodern jurists did not give a definition of the term, *Maqāṣid al-sharīʿah*? What is the nature and structure of the *Maqāṣid*? What are the types of the *Maqāṣid*? Are there priorities within the *Maqāṣid*? Why are the *Maqāṣid* confined to five only? Can the scope of the *Maqāṣid* be broadened? What is the reason for expanding the essential five to include many others? The most noticeable works on *Maqāṣid* cum *maṣlaḥah* in premodern times is by Imam al-Ḥaramayn al-Juwaynī, Muḥammad al-Ghazālī and Ibrāhīm b. Mūsā al-Shāṭibī. There are many scholars in the 20ᵗʰ and 21ˢᵗ centuries who focused on the *maqāṣid*. The most important work is by Ṭāhir b. ʿĀshūr. Scholars have focused on *maqāṣid* cum *maṣlaḥah* because these are considered as vehicles for change in the legal, social, political, and economic issues. Postmodern scholars have expanded the scope of the *Maqāṣid* to include, inter alia, justice, freedom, equality, and rights etc.

Introduction
Scholars who specialize in the area of *maqāṣid* believe that Islamic law is made to serve special purposes. Thus, the performer is benefited because this law encourages the welfare and benefit of the people and shields them from suffering. That these purposes are either categorically stated in the Qurʾan and the Sunnah or can be easily deduced from them. *Maṣlaḥah* was evolved to make sure that the higher objectives of *sharīʿah* are safeguarded while judging cases. *Maṣlaḥah* and *maqāṣid* are based on the purposive character of *sharīʿah*. Both are eventually aimed at serving the cardinal goal of safeguarding social interest of human beings. This is why the *maṣlaḥah* cum *maqāṣid* discourse has attracted the attention of great scholars. This work discusses the above issues, especially what is *maṣlaḥah*? What are the main objectives of *sharīʿah*? What is beyond the purposes? What is the nature and structure of the *maqāṣid*? Why has *maqāṣid* become the focus of attention lately? What are the primary and secondary purposes of the *maqāṣid*? Are there priorities within the *maqāṣid*? How can the scope of the *maqāṣid* be broadened?

***Maqāṣid* and *Maṣlaḥah*?**
The rules of *sharīʿah* have purposes (*Maqāṣid*) behind them. Some of these are explicit and are known to us whereas the philosophy of what is the purpose behind each rule may not be easily known to us, but it does not mean that there is no purpose behind it. It is pertinent to mention that *Maqāṣid al-Sharīʿah* [1] is an umbrella term and while writing on this subject scholars have explored several related ideas that have been closely related to *maqāṣid* in the premodern *sharīʿah* heritage. These related concepts are *al-maṣāliḥ al-mursala* (unrestricted interests) and *al-maṣāliḥ al-ʿāmmah*[2] (public interests). Other notable concepts that are linked to *maqāṣid* are: *istiḥsān* (juridical preference)[3] and *istiṣḥāb* (presumption of continuity). Ibn al-Muqaffa (d. 139/757) has used the technical word *istiṣlāḥ* when

he advised Caliph al-Mansur and mentioned how judges should adjudicate disputes in the absence of textual authority.[4] *Al-Maqāṣid* is the plural of *maqṣid* and its root is the verb *qaṣada* which has many literal meanings, among them, "to have in view, contemplate, consider, purpose (s.th.)."[5] *Maqṣad* (singular) means "destination; intention; intent; design, purpose, resolution; object, goal, aim, end; sense, meaning, import, purport, significance."[6] Al-Shāṭibī (d. 790/1388) has used the word *al-Mqāṣid* in the preface of his treatise on *Maqāṣid* to mean to cover many contexts, such as, *Maqāṣid al-khiṭāb al-sharī'i'* (purposes of the intention of the rules), and *Maqāṣid al-ahkām al-sharī'yah* (purposes of the rules of Law), and *Maqāṣid al-Shārī' fi manhaj al-tashrī'* (purposes of the Lawgiver in His methodology of legislation).[7] Shāṭibī also used the Arabic word, "*al-maqṣad*" to mean legal text.[8] It is intriguing to observe that Shāṭibī does not provide a precise definition of the term *Maqāṣid* rather, he is critical of this idea.[9] Instead, he has expounded the concept of this term in two essential notions: the Intention of the Lawgiver (*qaṣd al-Shārī'*) and the intention of the individual (*qaṣd al-mukallaf*). Similarly, Ṭāhir ibn 'AĀshoor has also avoided a concise definition of the term and has instead expanded it to new realms of Islamic law.[10] 'Allāl al-Fāsī has argued that *Maqāṣid al-sharī'ah* means the underlying reasons laid down by the Lawgiver for every rule of the *sharī'ah*.[11] According to No'man Djaim, the term *al-Maqāṣid,* has two basic components: *maqāṣid al-khalq* and *maqāṣid al-tashrī'* (*al-sharī'ah*). The first is about the purposes behind the creation of human being which is explained by Allah the Exalted in so many verses of the Qur'an. The second one is related to the revealed Law.[12] He argues that the technical meaning of the term *maqāṣid al-sharī'ah* is inclusive of three components: the purposes of the intention behind the rules, purposes of the rules of Law, and purposes of the Lawgiver in His methodology of legislation. It is evident that Djaim has followed Shāṭibī's scheme rather than offering a new one.

Maṣlaḥah and *manfa'ah* can be used interchangeably as both have the same meaning. Literally it means utility or benefit, welfare. Technically *maṣlaḥah* may be defined as 'the seeking of benefit and the repelling of harm' (*jalb al-manf'a wa daf' al-maḍarrah*). The most systematic study of *maṣlaḥah* was undertaken by Muḥammad al-Ghazālī (d. 505/1111) whose understanding of this concept set the scales for the future interpretation. The ambit of *maqāṣid* was limited by classical Muslim jurists to the realms of the *sharī'ah* outside the area of rituals (*'ibādāt*) and the explicit injunctions available in the Qur'ān and the Sunnah or what are called *muqadarāt*. Examples are *ḥudūd* punishments for and the shares fixed for sharers under the law of inheritance. In Ghazālī's view "*maṣlaḥah* was God's purpose in revealing the divine law, and, more concretely, that this intention was to preserve for humankind the five essential elements of their well-being, namely their religion, life, intellect, offspring, and property."[13] These five fundamentals were identified as *al-ḍarūrāt al-khamsa* or the five fundamental objectives or higher objectives of *sharī'ah*. In Ghazālī's scheme *maṣlaḥah* safeguards these fundamental objectives and prevents suffering from them. In his view *mafsada* does the exact opposite of *maṣlaḥah*.[14] Thus, in Ghazālī's, view *maṣlaḥah* is basically the protection and preservation of the ends of the *shar'*. The implementation of *sharī'ah* is driven by *maṣāliḥ* (sing. *maṣlaḥah*). Islamic Law revolves around the interest of human being in this world and in the hereafter. All the rules of Islamic law also revolve around the interest of human being. Opwis argues that there are several reasons why the concept of *maṣlaḥah* got so much attention in the modern legal discussion. She mentions that the main reason is that Muslim jurists considered *maṣlaḥah* as the fruition of *maqāṣid al-sharī'ah* since the 5th/11th century.[15] Moreover, "the concept

of *maṣlaḥah* can serve as a vehicle for legal change. It presents jurists with a framework to tackle the problem, inherent in a legal system that is based on a finite text, of bringing to bear the limited material foundation of the law (i.e., Qur'ān and *ḥadīth*) on everyday life in an ever-changing environment. It thus bestows legitimacy to new rulings and enables jurists to address situations that are not mentioned in the scriptural sources of the law. How much legal change may be achieved through applying considerations of *maṣlaḥah* depends primarily on the purpose *maṣlaḥah* serves within a jurist's overall conception of the law."[16]

However, *Maqāṣid* are neither discovered by classical Muslim jurists nor are these innovated by the post-modern scholars because these, i.e., *Maqāṣid*, are the core of religion from day one. The Qur'an and the Sunnah have given many examples of the purposive nature of rules of Islamic law. According to Ibn al-Qayyim, the Qur'ān and the Sunnah are full of examples where the reasons and *maṣlaḥah* behind the rules are given. He argues that such reasons and *maṣlaḥah* behind rules are available in the Qur'ān and the Sunnah in over a thousand places in different styles.[17] For example, when Allah the Exalted says in the Qur'an, "[A]nd We placed firm mountains on earth lest it should stay with them, and We made wide paths in them that they may find their way."[18] Similarly, when the Qur'an states, "[W]hatever (from the possessions of the towns people) Allah has bestowed on His Messenger belongs to Allah, and to the Messenger, and to his kinsfolk, and to the orphans, and to the needy, and to the wayfarer so that it may not merely circulate between the rich among you"[19], Allah has given the reason behind the rule in this verse. In addition, Allah says, "[A]nd to those who had Judaized We have forbidden all beasts with claws, and the fat of oxen and sheep except the fat which is either on their backs or their entrails, or that which sticks to the bones. Thus did We requite them for their rebellion."[20] Allah has given the reason for the rule. There are many other examples in the Qur'an which cannot be produced here. Similarly, when the Prophet Muhammad (peace be upon him) said, "[T]his rule of asking permission has been ordained so that one may not look unlawfully (into people's houses)"[21], he was giving the reason why it is prohibited to look into houses of other people. According to Shāh Wali Allāh Dehlavi, the rules of Islamic law are not without *maṣāliḥ* (benefits). He argues that anyone thinking otherwise is wrong as per the Sunnah and *ijmā'* (consensus).[22]

Maṣlaḥah is divided into *ḍarūrāt* (necessary interests), *ḥājāt* (supporting interests), and *taḥsīnāt* (complimentary interests). Auda has documented works that employed or referred to *Maqāṣid* since the third century *hijri*.[23] The first scholar in premodern times who used the word '*Maqāṣid*' is Muhammad b. 'Ali Al-Tirmidhī (d. 296/908) in his book, *Al-Ṣalāh wa Maqāṣiduhā*.[24] Another treatise on *maqāṣid* worth mentioning is *Maḥāsin al-sharī'ah* by Abū Bakr Qafāl al-Shāshī (d. 365/976) where he has discussed *maqāṣid* and *maṣlaḥah* of the rules of *sharī'ah*.[25] Other books on *maqāṣid* cum *maṣlaḥah* from the premodern times are: *Al-Ibānah 'an 'ilal al-Diyānah/Maṣāliḥ al-Abdān wa al-Anfus* by Abū Zayd Al-Balkhī (d. 322/930); *'Ilal al-Sharī'ah* by Ibn Babawayh al-Qummī (d. 381/991), and *al-I'lām bi-Manāqib al-Islām* by Al-'Āmirī al-Faylasūf. The last two are shī'a scholars from premodern times. However, the books that have systematically focused on *maqāṣid* are: *Al-Burhān fī 'Uṣūl al-Fiqh* by Juwayni (d. 478/1085), *Qawā'id al-Aḥkām fī maṣāliḥ al-Anām* of 'Izz al-Dīn Ibn Abd Al-Salām (d. 660/1209), *al-Furūq* of Shihāb al-Dīn Al-Qarāfī (d. 684/1258), *I'lām al-Muwaqqi'īn* of Ibn Al-Qayyim (d. 748/1347), and *Al-Muwāfaqāt fī 'Uṣūl al-Sharī'ah* of Al-Shāṭibī. The most noteworthy postmodern works on *Maqāṣid* are: Muḥammad Ṭāhir b. 'Āshūr's *Maqāṣid al-Sharī'ah al-Islāmiyyah*, Al-Qaraḍāwī's (b. 1926/1344) *Kayf*

Nataʿāmal Maʿa al-Qurʾān al-ʿAẓīm, T. Al-ʿAlwānī's (b. 1935/1353) *Maqāṣid al-Sharīʿah*; *Maṣādir al-tashrīʿ al-Islāmī fī mā lā naṣṣa fīhi* of ʿAbd al-Wahhāb Khallāf̄s (d.1956); *Ḍawābiṭ al-maṣlaḥa fī l-sharīʿah al-Islāmiyya* of Muḥammad Saʿīd Ramaḍān al-Būṭī (d. 2013) is his doctoral dissertation; *Maqāṣid al-sharīʿah al-Islāmiyya wa-makārimuhā* is by ʿAllāl al-Fāsī ̄(1910-74) which was published in 1963. Other authors who have written on the subject in the recent past are: Jamal al-Din Atiyya,[26] Ismaʿiil al-Hasani,[27] Ahmad al-Khamlishi,[28] Ahmad Al-Raysūnī,[29] and Noʿman Djaim.[30] It is worth noting that postmodern scholars have paid their attention to *maqāṣid* and have not focused that much on *maṣlaḥah*.

Types of *Maqāṣid*

Ghazālī has divided *Maqāṣid* into *Dunyāwī* and *Dīnī* or objectives belonging to this world and objectives of life after death. Each of one of these is separable into keeping up the interest and *tahṣīl* or se of the interest and *ibqāʾ* or safeguarding of the interest (*tahṣīl* and *ibqā*). If the most fundamental interests (*Ḍarūrāt*) are not existing it will cause disorder, chaos and anarchy in society. If these fundamental objectives are not preserved it will lead to the loss of all that we consider extremely important. There are five higher objectives in Ghazālī's scheme, namely: "*Ḥifẓ al-dīn* (protection and preservation of faith), *Ḥifẓ al-nafs* (protection and preservation of life), *Ḥifẓ al-nasl* (protection and preservation of progeny), *Ḥifẓ al-ʿaql* (protection and preservation of intellect), *Ḥifẓ al-māl* (protection and preservation of wealth)"[31]

The five essential interests are viewed as the roots or foundations of all other interests. The second category of interests is known as *Ḥājāt* (supporting needs/interests). These are required for the smooth operation/implementation of the *ḍarūrāt*. If *ḥājāt* are not protected it will cause sever difficulty in doing our social affairs. *Ḥājāt* or *ḥājiyāt* are complimentary interests and are not independent interests. These seek to safeguard, promote and protect the higher objectives in a special way. These are utilities that attempt to remove hardships and difficulties. There are many examples of concessions (*rukhaṣ*) given in the *sharīʿah* aimed at removing hardship, such as the opening of the fast and shortening of prayers or fasting when one reaches his destination or is recovered for sickness but these are considered fundamental because many people would fast while traveling or not open fast when sick or would do full prayers etc. Thus, people could live without them if they choose to. The *sharīʿah* has made these concessions available in all areas of compulsory rituals. In legal transactions, Islamic law has validated many transactions, such as the sale of *salam* (future goods for advance payment), lease agreement and the agreement of hiring. The reason is that people need these agreements and therefore some exceptions are made for them.

The third category of interests are called *taḥsīnāt*. These are in the nature of embellishments as these provide extra layers that lead to the ethical and immaterial advancement of the society as well as individuals. Examples include, charity, the prohibition of cutting of trees or killing animals during war. Similarly, it is preferred to clean one's body and wear clean and nice clothing for Friday's congregational prayers. In addition, the use of perfume is recommended for attending the same prayers. On the other hand, the consumption of anything that gives bad smell is prohibited. These seek to attain refinement and perfection in the people's conduct. Similarly, the *sharīʿah* recommends supererogatory prayers (*nafl*). In social relations with other persons, we are required by *sharīʿah* to be kind and gentle, be fair in dealing, and polite in speaking. The idea behind all these is the accomplishment in

human behaviour. It shows that there is a moral layer around the most essential interests. Thus, morality is inseparable from law in Islam.

How are the Necessary Interests Protected?

Ḥifẓ al-dīn or the protection of religion is two-fold: internal and external. For internal protection God has prescribed *'Ibādāt* (prayer, fasting, *ḥajj*, and *zakāt*) for Muslims. For external protection *jihad* becomes obligatory when there is an attack on faith/religion from outside. It is the duty of the *Imām* (head of Muslim state) to ensure proper conditions for both. *Ḥifẓ al-nafs* or the protection and preservation of life is safeguarded through the nourishment of food and the preservation of healthy life. For external protection penalties are imposed on those who destroys it without legal justification. This is why retribution (*qiṣāṣ*) is imposed to protect life. Progeny (*Ḥifẓ al-nasl*) is secured through the institution of marriage and the preservation of healthy family life. External protection is safeguarded by punishing those who commit adultery or fornication thereby corrupting progeny. The *Ḥadd* of *zinā* and *ḥadd* of *qadhaf* are meant to protect progeny. Intellect or *'aql* is safeguarded through learning and attaining quality education and continuously learning knowledge. Substances that hamper intellect such as drinking alcohol and consuming other intoxicants are punishable to safeguard intellect. The protection and preservation of wealth (*Ḥifẓ al-māl*) is achieved by encouraging its growth and providing rules for its smooth conduct. Penalties are provided for those who commits crimes against property such as theft, robbery, burglary, blackmail, etc.

Widening the Scope of *Maqāṣid*

Premodern jurists, such as Ghazālī[32], Al-Rāzī[33], Al-Aāmidī[34], and many other legists have confined higher objectives (*darutāt*) to five only, that is, faith, life, intellect, progeny, and wealth but what is the main reason for this. Aāmidī argues that these five cover all other aspects of human life.[35] Thus, these five bring together all the essentials on which human life is based. The protection of life symbolizes material protection for mankind; the protection of progeny means continuation of human life on earth; the protection of intellect means that a man knows what he is doing and how is he acting and the reasons for his responsibilities; whereas the protection of wealth means the protection of his possessions and earnings. All other acts in human life are corelated to one of these five. Ghazālī has tied these five to *ḥudūd* punishments. He argues that the punishment for blasphemy and the punishment of an innovator in religion is to protect faith itself; the punishment of retribution is to protect life; the punishment for drinking is to protect intellect so that an individual remains of sound mind for carrying out his actions; the punishment of the *ḥadd* for adultery and fornication is to protect progeny; and the punishment for theft is protect wealth.[36] Based on Ghazālī's formulation, Al-Mardāvī argues that four (of the five) essentials are mentioned in the Qur'an.[37] Allah says, "…that they will not associate aught with Allah in His Divinity, that they will not steal, that they will not commit illicit sexual intercourse, that they will not kill their children, that they will not bring forth a calumny between their hands and feet, and that they will not disobey you in anything known to be good".[38] Based on the link between the five essential purposes with the punishments mentioned above, some scholars have added the protection of dignity through the punishment of *qazaf*. Mardāwī stated that Al-Tūfī has added "a sixth (essential): it is dignity; it is also stated in *Jam' Al-Jawāmi'*."[39] He has produced many *aḥādith* on this point. Ibn Taymiyyah was one of the first to raise objection over the scope of

maqāsid to five when he counted many other things to be *masṣālih* of Islamic law. He has mentioned other *maṣālih* in *'ibādāt* (worship rites) through which an individual knows "Allah the Exalted, Angels, revealed books, Prophets, the inner hearts, and the acts such as the love of Allah, His fear, and purifying religion for Him, trust in Allah, awaiting His Blessings".[40] He further argues that keeping up promises, maintaining relations with the next of kins, honouring the rights of servants and neighbours, rights of Muslims over each other and many other things that Allah has either ordered us to do or abstained us from doing are also parts of the *maṣālih* ordained by *shari'ah*.[41] *Dīn* or faith is necessary for spirituality of human being. He has to be on the right track to justify the reason for his coming to this world. In order to strengthen his relation with his Creator and individual may have to carry out many acts that would make him more spiritual. Ibn Taymiyyah seems to be suggesting that acts towards spirituality should also be counted in the essential objectives but these would come under the protection of faith or *Dīn*.

Some postmodern researchers have expanded the scope of *maqāṣid* further because they think that the five essentials are confined to aspects an individual faces in his life, therefore, it is unavoidable to add to the *darūrāt* what is related to social life. This is why Al-Nabhānī added the protection of state, peace, and human dignity, thereby making the higher objectives eight.[42] Yusuf al-Qaraḍāwī has extended the list of higher objectives to include freedom, equality, brotherhood, joint responsibility, and human rights.[43] 'Alāl al-Fāsī's theory of *maqāṣid* includes the unity of Muslim *ummah* and averting segregation between its members, the right of dignity, rights of women, freedoms of all types, and independence of judiciary from politics.[44] Muhammad Al Ghazālī (d. 1996) has suggested the inclusion of freedom, justice, and equality.[45] Adis Duderija[46] has mentioned that Rashīd Riḍā (d. 1935) has added rights of women and reforms to the five essentials;[47] that Ibn 'Āshūr's list is inclusive of values such as orderliness, freedom, and equality in his work *Maqāṣid al-Sharī'ah al-Islamiyyah*;[48] that Ṭāha al-'Alwānī has added the concept of developing civilization (*'imrān*) on earth;[49] and that Gamal Eddin 'Attia has listed 24 higher objectives under four different areas, i.e., *ummah*, individual, family and all humanity.[50] But what is the reason for expanding the essential five to include many others? Ghazālī describes the five essentials as "*Uṣūl al-Maqāṣid*" (elements of the *Maqāṣid*) that the *sharī'ah* wants to be protected. He argues that all concepts that comes under these five elements are *maṣlaha* (public interest) and that anything that harms these five elements is considered '*mafsada*' (mischief) (evil) and repelling it is a *maṣlahah*.[51] He states that the protection of these elements comes under *darurat* and that these have the highest rank within the *maṣālih*.[52] It is pertinent to note that Ghazālī has described them as '*Uṣūl*'[53] which means that other concepts could be brought under them thereby a lot of details could come under these five fundamentals some of which would be essential, others supportive and others as embellishments. '*Uṣūl*' could also mean that these are the core of the benefits that a human being must have and whatever extra are added would be considered as supplementary and subservient to the essentials.

Similarly, Shatibi on some occasions uses the term "*al-ḍarūriāt*" and in other places uses the term "*al-uṣūl al-kulliyah*". For example, he states that "*al-uṣūl al-kulliyah* that the *sharī'ah* wants to protect are five."[54] These five essentials are foundations and the most basic principles of human existence, or the bare minimum for human existence, thus could be a lot of details under each

one of these. As a matter of fact, human dignity comes under the second *Maqṣad* and should not be considered as a separate one. The life of an individual cannot be said to be protected and preserved both internally and externally if there is no human dignity available to him. Secondly, once it is said that life must be protected and preserved it should be understood that human life does not mean human body only. The protection and preservation of life would necessarily entail all those things on which life depends. A human being cannot live without many basic things, such as water, food, clothes, shows, transport, electricity, clean environment etc. On the other hand, for living within a society he needs many other social and legal things, such as, that he shall not be discriminated on the basis of his race, colour, appearance etc. This is only possible if the society is based on the rule of law and the due process of law is followed by the legal system. That he must enjoy freedom of speech subject to any restriction under the law; that he must be considered as equal to others under the principle of equality, fairness and justice. That the society must respect the rights of women, children and minorities and other vulnerable groups. That the state in which he is living must be at peace and people must live in tranquility so that they could experience and enjoy all other protections. That if the state is not protected from external aggression, it means that even the basic five objectives cannot be enjoyed. Thus, all the expanded objectives by many postmodern researchers do come under one of the five basics described above.

Are There Priorities within the *Maqāṣid*?
Some classical scholars seem to have presumed priorities within the *maqāṣid* while describing these. Ghazālī has mentioned them in the order under which faith is the most important followed by life, intellect, progeny, and wealth.[55] Despite the fact that Ghazālī does not explicitly argue that *maqāṣid* must be in this order, but it seems that he wants them in this order. However, Al-Aāmidī has placed progeny before intellect.[56] He was followed by Ibn al-Ḥājib in his *Mukhtaṣar* and Al-Aṣfahānī in his commentary of it gave similar analysis as given by Al-Āmidī by arguing that progeny takes precedence over intellect because the protection of progeny is closer to the preservation of life than to the protection of intellect.[57] Although some scholars did not care about the order and put even faith at the bottom but perhaps this has only happened because they were only counting the five fundamentals rather than focusing on priorities within the *maqāṣid*. Should we stick to the order set by Ghazālī, then faith takes precedence over life, life is more important than progeny which takes precedence over intellect which is more important than wealth. Thus, faith is the inner most shell, followed by life, *nasl* (progeny), *'aql*, *māl*. Each primary purpose has its own supporting needs, like shells, one inside the other. For example, prayer has *farā'iḍ*, inner shell; *sunnah* is the middle shell and *nafl* is the outer shell. If a person crossed the outer layer, he might cross the inner layer too.

Conclusion
The main points may be summed up here. The rules of Islamic law are purposive in character. The Qur'an and the Sunnah have provided the purposes behind many rules but on other occasions these are not mentioned but are like implied conditions (to use the language of commercial law) and are always read into the rules. Early scholars used different terms such as *istiṣlāḥ* or *istiḥsān* to discuss *Maqāṣid* and *maṣlaḥah*. Although there are many scholars who wrote on *Maqāṣid* cum *maṣlaḥah* or what is derived from them since the second

century *hijrī* but it was Juwaynī and his student Al-Ghazālī who focused more on *Maqāṣid*. However, these classical jurists did not provide a definition of the term, *Maqāṣid al-sharī'ah*. Ghazālī divided *Maqāṣid* into *ḍarūrāt* (essential interests), *ḥājāt* (complementary interests) and *taḥsīnāt* (embellishments). Ghazālī argued that the *maqṣad* of God's law is *maṣlaḥah*. That the most fundamental objectives of Islamic law are the protection and preservation of faith, life, intellect, progeny, and property. All things that attain and preserve these elements on the level of necessity (*ḍarūra*), need (*ḥāja*), and improvement (*taḥsīn*) constitute *maṣlaḥah* and is intended by the Lawgiver, and whatever forfeits and harms them is a *mafsada*, a cause of corruption that needs to be averted.[58] *Ḍarūrāt* are the most fundamental interests that must be protected and preserved. Muslim jurists have considered *maṣlaḥah* as the realization of *Maqāṣid al-Sharī'ah* or *maqṣūd al-shar'* since the 5th/11th century.[59] Moreover, the concept of *maṣlaḥah* can serve as a vehicle for legal change. The second category of interests is known as *Ḥājāt* (supporting needs/interests). These are required for the smooth operation/implementation of the *ḍarūrāt*. If *ḥājāt* are not protected there would be hardship and loss in the performance of social functions. The third type of interests, *taḥsīnāt* are in the nature of embellishments as these provide additional rules that lead to the moral and spiritual progress of the individual and society. Postmodern scholars have widened the scope of *Maqāṣid* and have included, *inter alia*, reform and women's rights, justice, freedom, human dignity, rights, values such as equality, freedom, and orderliness, among others, the concept of developing civilization (*'imrān*) on earth.[60] Gamal Eddin Attia, has identified 24 essential *maqāṣid* under four-level realms, that is, individual, family, ummah, and all humanity. All other concepts added by postmodern scholars could added to one or more of the five essentials, and therefore, there is no need to add more concepts to the old list of the essentials. There are priorities within the *Maqāṣid*. Faith has precedence over life. Life has precedence over progeny; progeny has precedence over intellect; intellect has precedence over wealth. However, Al-Āmidī has placed progeny before intellect. For other premodern jurists, faith would be the inner most shell, followed by life, intellect, progeny, and wealth.

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[1] Also known as *maqāṣid al-shāri'*.

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[3] For example, Saḥnūn b. Sa'īd, *al-Mudawwana al- kubrā* (Egypt: Maṭba'at al-Sa'ādah, 1323/1904-05), mentions *Istiḥsān* instead of *maṣlahah*, see, Parts 1, 14, 134, 16, 217.

[4] See, 'Abd Allah b. al-Muqaffa', "Risālah fī l-ṣaḥābah," in *Athār Ibn al-Muqaffa'*, ed. 'Umar Abu l-Nasr (Beirut: Dār Maktabat al-Ḥayāt: 1966), 345-61, at 360.

[5] Hans Wehr, *A Dictionary of Modern Written Arabic*, ed. J. Milton Cowan (Beirut: Librairie Du Liban, 3rd rep. 1980), 766.

[6] *Ibid*., p. 767.

[7] Ibrāhim b. Mūsa Al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, ed. Abdullah Daraz (Beirut: Dar al-kutub al-Ilmiyah), 2:5, 196, 224.

[8] *Ibid*.

[9] *Ibid*., 1:59.

[10] Muḥammad Ṭāhir b. 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah* (Cairo: Dār al-Kitāb al-Maṣri, 2011), 189-302.

[11] ʿAllāl al-Fāsī, *Maqāṣid al-sharīʿah al-Islāmiyya wa-makārimuhā* (Beirut: Dar al-garb al-Islami, 5th edn. 1993), 3.

[12] Noʿman Djaim, *Al-Muḥarar fī Maqāṣid al-sharīʿa al-Islāmiyah* (Amman: Dār al-Nafāʾis, 2018), 20-21.

[13] Felicitas Opwis, "*Maṣlahah* in Contemporary Islamic Legal Theory", *Islamic Law and Society*, 12:2 (2005), 182-223 at 188.

[14] Muhammad al-Ghazālī, *al-Mustaṣfā min ʿIlm al-ʾUṣūl* 4, vols. (Jidda: Sharikat al-Madīna al-Munawwara n.d. 1993), 2:481-2, 502-3.

[15] Felicitas Opwis, "Maslaha in Contemporary Islamic Legal Theory", *Islamic Law and Society*, 12:2 (2005), 182-223 at 183.

[16] *Ibid*.

[17] Ibn al-Qayyim al-Jawziyah, *ʿIlām al-Muqaʿīn*, ed. Muhammad Abdusalam (Beirut: Dar al-kutub al-Ilmiyah), 1:169-200 and his *Shifāʾ al-ʿAlīl* (Beirut: maktaba al-Assryah, 2012), 2:537-575.

[18] Qurʾān, 21:31.

[19] Qurʾān, 59:7.

[20] Qurʾn, 6:146.

[21] Abū Abd al-Raḥmān Aḥmad b. Shuʿayb Nasāʾī, *al-Sunan al-Ṣughrā*, ḥadith no. 4859. See, https://sunnah.com/nasai:4859 (last visited 25 December 2021).

[22] Shāh Wali Allāh Dehlavi, *Ḥujjat Allah al-Bāligha*, 1:27. Also see, Shaykh Muhammad Muṣṭafā Shalabī, *Taʿlīl al-Aḥkām fī Sharīʿah al-Islāmiyah* (Beirut: Dar al-Nahdah al-ʿArabiyah, 1981), 96.

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[24] Ahmed Al-Raysuni, *Naẓariyyat al-Maqāṣid ʿind al-imām al-Shāṭibī*, 1st ed. (Herndon: IIIT, 1992). The book is edited and annotated by Hasni Nasr Zaydan and is published by Dār al-kutub al-Arabi, Egypt.

[25] See, Abū Bakr Qafāl al-Shāshī, *Kitāb Maḥāsin al-Sharīʿah* (Beirut: Dar al-kutub al-Ilmiyah, 2007).

[26] Jamāl al-Dīn ʿAṭiyya, *Naḥwa tafʿil maqāṣid al-sharīʿah* (Damascus: Dār al-Fikr, 2001).

[27] Ismāʿīl al-Ḥasanī, *Naẓariyyat al-maqāṣid ʿinda al-imām Muḥammad al-Ṭāhir Ibn ʿĀshūr* (Herndon, Virginia: International Institute of Islamic Thought, 1415/1995).

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[30] Noʿman Djaim, *Turuq al-Kashf ʿan Maqāṣid al-Shariʿah* (Amman, Dār al-Nafāʾis, 2001), his commentary on Shāṭibī's treatise, titled, *Taysīr al-Muwāfaqāt li al-Imām Al-Shāṭibī* (Beirut: Dār ibn Ḥazm, 2009), and his *Al-Muḥarar fī Maqāṣid al-sharīʿa al-Islāmiyah* (Amman: Dār al-Nafāʾis, 2018).

[31] See, Abū Ḥāmid Muḥammad Al-Ghazālī, *Al-Mustaṣfā fī ʿilm ul ʿUṣūl* (Cairo: Makbat Dār al-kutub al-Miṣriyya, 1997).

[32] Ghazālī, *Al-Mustaṣfā*, 1:217.

[33] Fakhruddin Al-Rāzī, *Al-maḥṣūl fī ʿilm Uṣūl al-fiqh* (Beirut: Dar al-kutub al-ʿIlmiyah, 2004), 5:160.

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[35] *Ibid*. 343.

[36] Ghazālī, *Al-Mustaṣfā*, 1:217.

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[38] Qurʾan, 60:12.

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[51] Ghazālī, *Al-mustaṣfa min 'ilm al-uṣūl* (Beirut: Dar Iḥyā al-Arabi, n.d.), 1:217.

[52] *Ibid.*

[53] The word '*Usul*' could be translated as principles or elements or fundamentals or foundations.

[54] Shāṭibī, *Al-Mawāfaqāt*, 3:46-47.

[55] Ghazālī, *Al-mustaṣfa*, 1:217.

[56] Al-Aāmidī, *Al-Iḥkām*, 4:338, 340.

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