

An Analysis of Maslahah's Development Through al-Ghazali Pre and Post al-Ghazali Periods

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Abstract: The purpose of this study is to trace and analyze the development of maslahah as a dynamic principle of the Islamic jurisprudence of a high methodological significance. To achieve this objective, the researchers undertake an in depth study of jurists discourse on the subject, tracing various stages of its development. Both historical and analytical methods are adopted in this study. The researchers by referring to Muslim jurists' discourse on maslahah in the context of the development of legal theory, derive the conclusion that maslahah initially was perceived as a notion of consideration of public welfare. However, its use in this sense was on ad hoc basis and lacked consistency. Its elaborate discussion and hence, recognition as a mature technical term materialised during the 5th century of hijrah. This can be observed clearly from the writings of Muslims jurists of pre-al-Ghazali during al-Ghazali and post-al-Ghazali periods including those of al-Ghazali's writings, himself. However, Al-Shatibi discussion of maslahah within the framework of the theory of the purposes of the law made it of remarkable and profound importance to methodological reconstruction and renewal of Islamic law.

Key words: Maslahah, Islamic law, purposes of the law, jurisprudence methodology, public welfare, Malaysia

INTRODUCTION

Maslahah, as an extra textual basis of reasoning, presents a tool of methodological significance. As a dynamic method and principle of Islamic jurisprudence, its operationalization can generate practical solutions of extreme importance to the changing needs and demands of the society. It is therefore, an all-pervasive value and objective of the shari'ah hence to all intents and purposes synonymous with rahmah (compassion). Qiyas and istihsan, the derivative sources of law, draw their validity and support on the basis of its consideration. In addition, many of the fatwa (verdicts) of the companion are based on it.

Therefore, its notion is not the later innovation or development it rather dominated the development of legal theory throughout the history. It embodies the notion of the preservation of the purposes of the law hence can play an instrumental role in getting a deeper insight into the spirit of the law and the manner of its application. Therefore, in the light of dynamism of maslahah and its significance in legal framework, this research attempts to investigate its historical development specifically within the timeframe of pre-al-Ghazali during al-Ghazali and

post-al-Ghazali periods. It also attempts to highlight its significance for the enhancement of contemporary legal thought and practice.

PRE-AL-GHAZALI PERIOD

Malik bin Anas (d. 179/795) is the first jurist who took decisions directly on the basis of maslahah, prior to al-Ghazali by means of istislah or masalih mursalah. However, it is quite difficult to find a reference to maslahah or istislah in his written works but his disciples cited some cases in which maslahah as a source of law had been used. Al-Shafii's mention of ariyah sale, the sale of fresh dates for dried ones, contrary to the rule that fresh fruit can not be sold for dried ones is a case in which maslahah is used as the basis of Malik's ruling (Al-Shafii and Bin Idris, 1938). However, there is no clear evidence to the effect of which this claim could be substantiated.

Imam al-Haramain Abu al-Ma'ali Abd al-Malik bin Abdallah known as Al-Juwayni *et al.* (1992) is claimed to be the early pioneer who introduced the concept of maslahah before its appearance as a mature concept in the writing of al-Ghazali. He perceived maslahah as an extra

textual basis of reasoning and proved its validity as the basis of reasoning (Al-Juwayni *et al.*, 1992). He did so by dividing *maslahah* into the five following categories:

- *Maslahah*, belonging to the scope of certain necessities which are rationally understandable
- *Maslahah*, consisting of what is general need but below the level of *dharuri* (necessity)
- *Maslahah* relating to something which is noble
- *Maslahah*, similar to the third type but in priority it comes first
- *Maslahah* which cannot be subjected to rational interpretation and its meaning is not obvious

He devised this classification as an instrument for synthesising the different views concerning the validity of *maslahah* as the basis of legal reasoning. Abu al-Husayn Muhammad bin. 'Ali known as Al-Basri (d. 478/1085) of Mu'tazilite school also discussed the concept of *maslahah*. He used it both in singular and plural forms and in general and technical senses in his book, *al-Mu'tamad fi Usul al-Fiqh*. *Maslahah* according to him, means goodness and *masalih* (plural of *maslahah*) as things which are good.

He explained *maslahah* in this sense together with the discussion of *istidlal* (reasoning) in the part where he indulged in an argument with his opponents regarding the notion of *maslahah*, whether it is known by reasoning prior to divine instruction or not? He held that *al-masalih al-shar'iyyah* (legal public interest) consist of the acts which are obligatory and specifically established by textual evidences, e.g., *ibadat*. Related to these acts are the means which leads to achieving *shar'i* (legal) commands, hence they too are connected with *masalih*. These means according to him are *dalil* (evidence), *imarah* (signs) *sabab* or 'illah (cause) and *shart* (condition). They are illustrated respectively, as validity of the consensus, analogy, measurability for *riba* (interest) and the condition in contract of sale. These means are connected with *maslahah*. To clarify the connection between *illah* (cause) and 'imarah (sign) for instance, he says:

When a correct *imarah* (sign) *dallat* (indicates) a *wasf* (quality) being 'illah (reason) researcher decide that it is the basis of *maslahah*, hence it indicates that the basis of *maslahah* is to be found wherever an 'illah is found (Al-Basri and Ali, 1983).

Consequently, from Al-Basri view it can be concluded that *maslahah* is an end achievable through 'illah and other related terms. However, he did not provide full detail for the explanation of the general *masalih* in their relation to that of particular ones.

DURING AL-GHAZALI AND POST-GHAZALI PERIODS

Jurists during al-Ghazali and post al-Ghazali period like their predecessors, continued their discourse on *maslahah*, hence gained momentum leading to significant development in this respect.

This development materialized through two main stages, coinciding with early 12th and early 13th centuries, pioneered by Al-Ghazali (d. 505/1111) and al-Razi (d. 634/1149), respectively. However, al-Ghazali in *al-Mustasfa* discussed the concept with more detail than Abu al-Husayn Al-Basri.

Unlike, his predecessor, al-Juwayni who divided *maslahah* into five categories, al-Ghazali divided *maslahah* into three categories as regards to its basis from among which only the third category, *maslahah mursalah* (unregulated public interest) seems to be a controversial ones. Controversy regarding the validity of this kind of *maslahah* prompted him to analyse it systematically and set a criterion through which its validity can be verified and established. As part of his criterion, he stipulated certain conditions for its validity and justification. The conditions he set forth comprised:

- The *maslahah* should be *dharuri* (necessary)
- It should be *kulli* (general)
- It should also be *qat'i* (definite) (Al-Ghazali and Muhammad, 1937)

Not fulfilling these conditions, he labels it *usul-al-mawhumah* (imaginary principles), hence not acceptable. A cursory look at his work can reveals that the term *maslahah* and its counterpart *mafsadah* pervade throughout his book along with some other related terms which are explained and their connection with *maslahah* is implied. This underscores the fact that his treatment of *maslahah* is significantly thorough and systematic than that of Al-Basri. Therefore, it could be of great importance for structuring an effective methodology for derivation of ruling from the revealed texts in a dynamic manner that suits to the ever changing needs of society. The second stage of the development of *maslahah* is highlighted by Fakh al-Din Muhammad bin 'Umar known as al-Razi (d. 634/1149). His monumental work *al-Mahsul* combines Al-Basri's and al-Ghazali's works and reformulates a number of concepts in a systematic manner. Due to this systematic arrangement, it influenced the latter work on *usul*. Its structure is drawn more on the pattern of Al-Basri's book *al-Mu'tamad* than on al-Ghazali's book *al-Mustasfa*. Structurally, *al-Mustasfa* is divided into six parts. The first two parts deal with introductory

matters such as definition of *usul* and introduction of logic. The remaining four parts discuss the subject matter of *usul* namely; *hukm* (command), *adillah arba'ah* (four evidences), *Istidlal* (method of reasoning) and *taqlid* (imitation) and *ijtihad* (independent legal reasoning).

A detailed treatment of *maslahah* appears as an annex to the discussion of the four evidences where it is considered not as one of the four reliable evidences (Al-Ghazali and Muhammad, 1937). Reference to *maslahah* is made in other parts too, i.e., in the part on *hukm* where it is mentioned occasionally in the course of discussion on goodness and badness of acts. At one point *hasan* (good) is described in the same manner as *maslahah*. *Maslahah* also appears in the part relating to the discussion of *munasabah* (suitability) which is seen as the main element of affinity to *shar'* (law) (Al-Ghazali and Muhammad, 1937). Whereas *al-Mu'tamad's* structure unlike that of *al-Mustasfa*, gives no specific place for a detailed discussion of *maslahah*. It is referred to in the discussion of *istidlal* (reasoning), '*illah* (reason) and in the parts which contains polemics on the question of whether *masalih* can be known through reason or revelation exclusively.

However, *al-Mu'tamad* uses *maslahah* both in general and technical senses. In general sense, it is defined as goodness. And *al-masalih al-shar'iyyah* as obligatory acts which are required by the *shar'* (law) such as '*ibadat* (Al-Basri and Ali, 1983). Terms like; *dalil*, '*illah*, *amarah*, *sabab* and *shart* are envisaged as the means to realization of *shar'i* commands, thus of close connection to *maslahah* (Al-Basri and Ali, 1983). On the other hand, *al-Mahsul* of *al-Razi* despite the fact that it combines both *al-Mustasfa'* of *al-Ghazali* and *al-Mu'tamad* of *Al-Basri*, it is more on the pattern of *al-Mu'tamad*. Definitions of the basic terms are dealt with in the introduction. More than half of the introductory chapter is related to the question of goodness of act. The rest of the chapter is exactly the same as that of *al-Mu'tamad*. *Maslahah* appears in the introduction where the question of goodness of acts is dealt with. It is also mentioned in the chapter pertaining to *qiyas* where *munasabah* as the method of ascertaining '*illah* is discussed. It is also discussed in the last chapter as one of the way of knowing the commands of *shari'ah* (Al-Razi *et al.*, 1992).

Al-Razi however, does not define *maslahah* specifically but from his work it is clear that he used *maslahah* and *munasabah* as synonymous terms. Therefore, it would be right to assign the definition which he provided for *munasabah* to *maslahah*. He presented two definitions for *munasib*. *Munasib* is what leads man to what is agreeable to him in acquisition and preservation. This definition is held by those who

attribute *hikmah* (wisdom) and *masalih* as causes or motives to God's commands. *Munasib* is that which is usually suited to the action of the wise (Al-Razi *et al.*, 1992). Those who oppose the notion of causality to the commands of God uphold this definition. The resemblance of the first definition of *munasabah* to that of *maslahah* as provided by other jurists is more obvious for the two terms *tahsil* (acquisition) and *hifz* (preservation) which constitutes the key words in the definition of *maslahah*. The key word acquisition can be interpreted as the attainment of benefit and preservation as the removal of harm being interpreted in this way there seems to be no difficulty in perceiving *munasabah* in the same sense as that of *maslahah*.

Discussing the problem of goodness or badness of things whether they are established through reason or *sharui'ah* exclusively, he confirmed that good as something that suits to the nature of the man or being a quality of perfection can be understood by reason. But good and bad in reference to praise and blame can only be defined through *shari'ah*. He held that no motive or cause can be attributed to God's commands, although they are for the *masalih* of the people. According to him, *maslahah* or *munasib* can be considered '*illah* for that command and not as a necessary correlation between cause and effect. He explained this by saying: *Masalih* are coincidental with God command not in terms of cause and effect but it happened in such way due to the grace of God for God is not obliged to act in such way. Like *al-Ghazali*, *al-Razi* too classified *maslahah* into three categories from aspect of its strength and weakness. They are *dharuri* (necessary) *haji* (needed) and *tahsini* (complementary). However, he seems to agree with *al-Ghazali* in general with the exception of certain difference in details (Al-Razi *et al.*, 1992).

JURISTICAL TRENDS BETWEEN AL-RAZI AND AL-SHATIBI'S PERIODS

Consequently, during the period between *al-Razi* and *al-Shatibi* five dominant juristic trends can be observed. The first trend conceived the *masalih* in a manner either similar to that of *al-Razi* or have simply juxtaposed *al-Ghazali's* and *al-Razi's* definition of *munasib* and *maslahah*. This trend is represented by *Shihab al-Din al-Qurafi* (684/1285) from *Maliki* School who discussed the views of his predecessors on *maslahah* in a considerable length without contributing something new. He raised serious doubt as regards to the definition and justification of the concept in the realm of *ibadat* (worship). He emphatically rejected consideration of *maslahah* as the basis of *ibadat* as contrary to the claim of some jurists. The reason, he contended lays in the fact that *maslahah*

neither can be realised nor can be defined in absolute sense. For example, to gain *maslahah* without *alam* (pain) and *mafasid* is impossible. Thus, the claim that every *mabah* (permissible) must be based on the *maslahah*, necessitates a complete negation of *mabah* (Al-Qurafi and Al-Din, 1961). In fact, his discussion did not go beyond that of al-Ghazali and al-Razi in substance. He only added some detail to their views with some degree of systematisation and different cases of *maslahah*.

Consequently, a complete systematisation of the concept was achieved in the later works on *usul* by Ubaydallah bin Mas'ud al-Mahbubi known as Sadr al-Shari'ah (d. 747/1346) from Hanafi school and Sa'd al-Din Mas'ud bin 'Abdallah known as al-Taftazani (d. 792/1390) from Shafi'i school and others.

Sadr al-Shari'ah in his analysis of *qiyas*, refers to *munasib* as an element through which the existing relationship between 'illah and the *hukm* (ruling) can be ascertained. He classifies *munasib* into three categories:

- Mu'tabar, the *munasib* or *maslahah* which is given a legal consideration in the text
- Mulghat, a *munasib* or *maslahah* which is not given legal consideration in the text
- Mursal, a *munasib* or *maslahah* which is neither given a legal consideration nor is rejected by the law

He held the first category as a valid ground for legal reasoning according to all jurists. The second category is rejected with the consensus of jurists. The third category is subjected to difference of view as far as its validity as the basis of legal reasoning is concerned. Sadr al-Shari'ah, in his attempt to explain how a *munasib* or *maslahah* can be used as a basis of legal reasoning, assessed the case of ritual purity of cat which is derived from the saying of the Prophet PBUH (Al-Nasai *et al.*, 1964). He maintained the continual presence of cat around the people to be the main reason for its purity. This case being based on the tradition of the Prophet, he contended; the rationale of the hadith is that *dharurah* (necessity) dictates that cat be deemed pure. Therefore, the 'illah for the rule of purity of cat is the cat's continual presence and the *munasib* is necessity. According to him, all cases that can be subsumed under necessity are types of *munasib* and its type of ruling is the lessening of legal responsibility.

Necessity, as can be noticed in the above example is given legal consideration and therefore can be used as the justification for undecided cases. From his explanation of the case of cat's purity based on necessity, it is understood that *maslahah* constitutes the basic consideration in the ruling mentioned above. Although, he does not mention *maslahah* *per se*, he refers to it as

munasib mula'im which he used as a synonym to *maslahah*. However, his labelling of necessity as a *munasib* is criticised by al-Taftazani, for being too general. The ultimate criterion for validity of 'illah is that it should be more specific and non-relative. Since, necessity in this case lacks this criterion, he labelled it as a distant type of *munasib*, hence refused it to be called as *mula'im* (Al-Taftazani and Al-Din, 1979). Defending his position, Sadr al-Shari'ah argued that necessity is an example of close types of *mula'im* in the case. Therefore, it can be considered as the basis for legal reasoning in cases of the same nature.

From Sadr al-Shari'ah's views, it can be concluded that even a distant *maslahah* or *munasib* which jins (general category) is used in established case can be generalised to cover all its relevant cases. Hence forth if a *maslahah*'s use, as a *munasib* is inferable from a previously established case in authoritative sources, it can be used as the basis of *qiyas*, provided that the cases to which it is extended involves a type of that *maslahah*. Sadr al-Shari'ah rejected *maslahah mursalah* based on his perception of its similarity with 'ikhalah. For, he contended, if the only ground for determining an 'illah is the feeling that it is compatible with the law then it is called 'ikhalah. He equated *maslahah mursalah* with 'ikhalah which is a mere feeling and lacks a concrete characteristic of non-relativeness. Therefore, it does not fulfil the required conditions for being considered as an 'illah.

For, 'illah has to possess concrete characteristics of non-relativeness and being more specific. So that it can lead to more predictable and verifiable result and the system of law based on it is stable and firm. Sa'd al-Din Al-Taftazani, from Shafi'i school represents another jurist whose works contains the discussion of *maslahah* with a high degree of systematisation. In his book on jurisprudence; *Sharh al-Talwih 'Ala al-Tauidh*, he treated *maslahah* in the part which deals with legal reasoning and the method of ascertaining 'illah.

Basically, he accepted the fact that *maslahah* or *munasib* constitutes an aspect of the *qiyas*. However, its consideration as the basis of legal reasoning, according to him, requires its being more specific and non relative. Its suitability and utility is not sufficient for such a purpose (Al-Taftazani and Al-Din, 1979). It is due to this reason that he criticised Sadr al-Shari'ah as stated earlier for labelling necessity as *munasib* for it is too general and relative. He contended; *maslahah* has to be more specific than being simply a *maslahah* and necessity is simply a *maslahah* (Al-Taftazani and Al-Din, 1979). From his treatment of *maslahah*, it can be concluded that *maslahah* can not be used as 'illah unless it is more specific and

non-relative. Nevertheless, he agreed that *maslahah* is the purpose or rational of the legal rulings. He disqualified the *maslahah* of necessity or the *maslahah* of preserving life to be an appropriate basis of *qiyas* due to their generality and relativity. For, this would result in improper decisions. For example, the strict interpretation of preservation of life would put it in conflict with justification for *jihād*. To avoid such a contradiction he stipulated that the *Jins* (general category) of *munasib* must be *qarib* (close) or intermediate to the specific characteristic of original *munasib* in the authoritative sources (Al-Taftazani and Al-Din, 1979). Upon fulfilling these conditions a *maslahah* or *munasib mula'im* can be used as the basis of *qiyas*. Jamal al-Din Muhammad bin 'Abd al-Rahim known as al-Isnawi (d. 771/1390) and 'Abd al-Wahāb bin 'Ali known as Taj al-Din al-Subki (d. 771/1369) combined and synthesized al-Ghazali and al-Razi approaches while Sa'dal-Din Taftazani (d. 792/1290) reiterated the Hanafi position, mainly the stand taken by Fakhr al-Islam 'Ali bin. Muhammad known as al-Bazdawi (d. 482/1089) with regard to al-Razi (Masud, 1984).

Those who rejected *maslahah mursalah* as a valid basis of reasoning represent the second trend. This category comprised of Shafi'i jurist Sayf al-Din al-'Amidi (d. 631/1234) and Ibn Hajib (d. 646/1249) of Maliki school. From their argument, it is quite clear that they followed al-Ghazali's stand rather than al-Razi's one.

Like al-Ghazali, they rejected *maslahah* unless it was based on textual evidence (Masud, 1984). The third trend is represented by Izz al-Din Ibn Abd al-Salam of Shafi'i school who was inclined towards *tasawwuf* (mysticism). This is clear from his treatment of the concept of *maslahah* where sufi (mystic) interpretation of law is noticeable. He added elements of *tasawwuf* (mysticism) in interpretation of the law in his work on *usul*, e.g., *Qawa'id al-Ahkam Fi Masalih al-Anam*. Under the influence of strong sufi tendency, he maintained that *maslahah* means *ladhdhah* (pleasure) and *farah* (happiness) and the means leading to them. Perceiving *maslahah*, as such he divided it into two kinds, the one related to this world and that related to the hereafter. The former is conceivable with the reason whereas the later can only be known through *naql* (revelation).

In his further discussion, he asserted that *masalih* differ according to the level of the approach of the people. Thus, the lowest level of *masalih* is that which is common to all men. *Azkiya'* (wise people) possess the higher level on which they conceive *maslahah*. While the highest level is said to be, peculiar to the *awliya Allah* (Sufis). He advocated that *awliya'* and *asfiya'* prefer the *masalih* of the hereafter to those of this world. To justify this he argued that the *awliya* are anxious to know His command

and law in their reality, hence their investigation and *ijtihad* (reasoning) is the most complete one (Masud, 1984). From the preceding discussion, it can be concluded that Izz al-Din's legal thinking was deeply influenced by mysticism. In fact, he represented the stage where the sufi conception of *masalih* come to pervade *usul al-fiqh* (principles of jurisprudence). The fourth trend is represented by Taqi al-Din known as Ibn Taymiyyah (d. 728/1328) and Shams al-Din Muhammad bin Abi Bakr known as Ibn Qayyim al-Jawziyyah (d. 751/1350). Ibn Taymiyyah tried to chalk out a moderate path between two extremes of total rejection or total acceptance of *maslahah*. Considering *maslahah mursalah* similar to the methods of *ra'y*, *istihsan* (opinion), *kashf* (mystical revelation) and *dhawq* (mystical taste) of whose validity he was suspicious and hence, rejected them. He also refuted the moral implications of the denial of *maslahah* to the commands of God (Masud, 1984).

It is also clear from his writing that *maslahah* is considered as one of the several ways through which the commands of God can be understood. He defined *maslahah mursalah*. It is a decision taken by *mujtahid* based on the presumption that a particular act seeks a utility which is preferable and there is nothing *inshar'* (law) that opposes this presumption (Masud, 1984). He observed that arguing on the basis of *maslahah mursalah* is equivalent to legislation in religious matters which is not permitted by God.

He considers this to be similar to *istihsan* and *tahsin 'aqli* which he opposed (Taymiyyah and Al-Din, 1349). However, he did not reject the notion that *shari'ah* is for the *maslahah* of mankind. Elaborating this, he maintained: When human reason finds in certain case, what seems to him to be *maslahah* and there is no clear evidence in *shari'ah* to support it, two presumptions arise; either there is definitely a text which is not properly understood by observer or it is not dealing with *maslahah* at all. In both cases, the error is on the observer side. Therefore, his incapability in comprehending the text properly should not be the cause of misconception.

For, *shari'ah* contains all *masalih* in its text and all commands of God are based on *maslahah*. He stressed on moral responsibility of man and condemns vehemently *Mu'tazalites* view that it is obligatory for God to command only what is good for man. For they perceive God's actions to be analogous to man's actions assuming that whatever is morally obligatory for man must be obligatory for God too (Taymiyyah and Al-Din, 1349). This notion has been rejected by Ibn al-Taymiyyah. Meanwhile, he also refuted *Jabariyah's* (fatalist) view that God's commands are not based on *maslahah* assuming that the intention of *maslahah* implies a limitation upon God's acts

which is not in consonance with infinite power of God. Seeing a theological advantage in Jabariyah view which was morally harmful, Ibn Taymiyyah sets out to analyse this by clarifying that in reference to God there exist two kinds of wills, al-iradah al-shar‘iyyah al-diniyyah (the legal and the religious will and al-iradah al-qadriyyah al-kawmiyyah (the potential creative will). When God commands, He means both the legal and religious wills (Taymiyyah and Al-Din, 1349). This clarification provided by Ibn Taymiyyah in fact furnishes a satisfactory answer to the misconception relating to the limitation of God’s command.

Ibn Qayyim al-Jawziyyah is of the view that *maslahah* or *siyasah* as he often calls it, plays an important role in explaining legal obligation, legal reasoning and changes concerning legislation. In his book; *I‘lam al-Muwaqqi‘in*, he explained the source of Hanbali fiqh to be mainly consisting of five principles: *Nusus* (texts), *fatwa* the (verdicts or opinions of companions), selection from the opinion of the companions, *al-hadith al-mursal*, the saying of the Prophet which narrator is not mentioned and *qiyas li al-dharurah* (analogy based on necessity). He is not against the opinion that ‘illah can be attributed to God’s commands. He rather justified such proposition by referring to the Quran and Sunnah of the Prophet which he supposed to contain examples where reasons are given to explain the commands. He explains this issue in *I‘lam al-Muwaqqi‘in* where a major emphasis is put on the discussion of the *hikmah* or *maslahah* and how various commands are based on it (Ibn-Qayyim, 1972).

Najm al-Din al-Tufi (d. 716/1316) represents the fifth trend that held *maslahah* to play a major role in legislation. He took an extreme position toward *maslahah* to the extent of putting aside the texts when they happen to be in conflict with each other. Thus, he considered it as the source of law even superior to revealed text in some cases. He based his justification of it on the saying of the Prophet.) (do not inflict injury, nor repay one injury with another) (Majah and Al-Qazwini, 1975).

In his view, this hadith constituted the first principle of shari‘ah. He stressed that *maslahah* is a basic and overriding principle of shari‘ah. So, it can override other principles such as (consensus) *ijma*. His preference of *maslahah* over other sources was due to their diversity and assumption of inconsistency. On the contrary, *maslahah*, according to him, provides a consistent method of reaching a decision. However, he failed to provide a concrete criterion for deciding what can be considered as *maslahah*. He observed that when the question of choosing between varieties of *masalih* arises it should be decided through drawing lots. Al-Tufi’s final analysis of the concept in which he suggests that recourse to

maslahah was necessary after the traditional sources, weakened his position with regard to his struggle for developing *maslahah* as a fundamental principle of reasoning (Al-Tufi, 1978). Abu Ishaq, Ibrahim bin Musa’ known as al-Shatibi (d. 790/1388) developed *maslahah* further to a full-fledged branch of knowledge which according to him is indispensable for *mujtahid*, hence made a great contribution to the field of Islamic law. His exposition of the philosophy of Islamic law under the title of *Maqasid al-Shari‘ah* (the Objectives of Islamic Law) in his book, *al-Muwafaqat* in fact is the continuation of the development of the concept of *maslahah* as expounded before him (Masud, 984). He viewed the objective of law to be one and that is *maslahah*. He argued that the premise of *masalih* can be established in shari‘ah using inductive method. His analysis of the *maqasid* appears in five aspects; four, in relation to the lawgiver and one in relation to the *mukallaf* (subject of legal obligation).

The doctrine of *maqasid al-shari‘ah*, depicts *maslahah* as an essential element of the objectives of shari‘ah. He treated the problem of relativity of *maslahah*, the relation between *maslahah* and *taklif* (legal obligation) and *huzuz* (happiness) in sufficient detail. The first aspect deals with *maslahah*, its meaning, grades, characteristics and its relativity or absoluteness. The second aspect concerns the linguistic dimension of the problem of *taklif* which he claimed to be over looked by other jurists.

A command constituting *taklif* as he suggested must be understandable by all of its subjects, not only in the light of its words and sentences but also in the light of its cultural understanding. He discusses the problem by explaining two terms: *al-dalalah al-asliyyah* (essential meaning) and ‘*amiyyah* (intelligible to community). What is meant here by *dalalah ‘amiyyah* is the meaning of a word which is understandable by all people, regardless of their different level of intellectual capability.

The third aspect, analyses the notion of *huzuz* in reference to *qudrah* (power), *mashaqqah* (hardship) etcetera. The fourth exposes the aspect of *huzuz* to *hawa* (desire) and *ta‘abbud* (worship). Generally, *al-Muwafaqat* exposes al-Shatibi’s legal philosophy in a comprehensive manner, particularly in the part where he discussed *al-maqasid*. He made distinction between two kinds of obligations:

- Those which are absolute and not subject to change
This type consists of ‘*ibadat*
- Those which are relative and subject to change

The latter consists mainly of ‘*adat* (habit and custom) and *mu‘amalat* (transactions). He classified the former as *ta‘abbudi* (related to worship) and the latter as

maslahi (related to public interest). He goes further and says; the masalih belong either to this world or to the hereafter.

He also classified masalih in general to dharuri, haji and tahsini. He viewed the division of masalih as a structure consisting of three grades closely connected to one and another.

CONCLUSION

Maturity and refinement of maslahah as a technical term underwent various stages. In its inception, it was perceived as a notion of consideration for securing greater public welfare, traceable to the era of ‘Umar, the second Caliph.

However, after greater scrutiny and elaboration by jurists, towards the early 5th century of hijrah, it attained recognition as a mature technical term in the writings of jurists of al-Ghazali Pre-Ghazali and Post-al-Ghazali periods, thus achieving status of a juristic principle of profound methodological significance.

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