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# THE FRAMEWORK OF *MAQĀSĪD AL-SHARĪ'AH* (OBJECTIVES OF THE SHARĪ'AH) AND ITS IMPLICATIONS FOR ISLAMIC FINANCE

ASSOC. PROF. DR. ASYRAF WAJDI DUSUKI  
Head of Research Affairs Department

ASSOC. PROF. DR. SAID BOUHERAOUA  
Senior Researcher



**THE FRAMEWORK OF MAQĀṢID AL-SHARĪ'AH  
(OBJECTIVES OF THE SHARĪ'AH)  
AND ITS IMPLICATIONS FOR ISLAMIC FINANCE<sup>#</sup>**

*Assoc. Prof. Dr. Asyraf Wajdi Dusuki\**

*Assoc. Prof. Dr. Said Bouheraoua\*\**

**ABSTRACT**

*This article examines the concept of maqāṣid al-Sharī'ah in Islamic jurisprudence in order to highlight its contribution to more comprehensive, rational and realistic answers to contemporary financial issues and to thereby increase awareness of the maqāṣidī approach in structuring and developing Islamic finance products. For this purpose, the authors examine the literal and technical meanings of maqāṣid al-Sharī'ah and scrutinise the position of the concept in Islamic law. They also present the essential elements of maqāṣid al-Sharī'ah and explain how this approach may contribute to better solutions for various Islamic finance issues and challenges. Islamic finance has experienced phenomenal growth and success in the last three decades. It has expanded beyond its traditional markets to become a global phenomenon. Despite this encouraging development, skeptics continuously allege that Islamic finance is failing to fulfill its objectives as defined by the maqāṣid al-Sharī'ah. These objectives, which prevail within the ambit of the Sharī'ah, are to be expressed not only in the minutiae of Islamic finance operations but in the breadth of Islamic finance's role to the Ummah as a whole. Indeed maqāṣid al-Sharī'ah reflects the holistic view of Islam, which has to be looked at as a whole, not in parts, for Islam is a complete and integrated code of life, and its goals encompass all of life, including the individual and society, in this world and the hereafter.*

**Key Terms:** *maqāṣid al-Sharī'ah, maṣlaḥah, Islamic finance, wealth, bank*

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<sup>\*</sup> Assoc. Prof. Dr. Asyraf Wajdi Dusuki is the Head of Research Affairs, International Sharī'ah Research Academy for Islamic Finance (ISRA).

<sup>\*\*</sup> Assoc. Prof. Said Bouheraoua is a Senior Researcher at ISRA.

## 1. INTRODUCTION

Islamic finance made its first appearance in the 1970s. Since its first inception, Islamic finance has made phenomenal progress and expanded beyond its traditional markets to become a global phenomenon. The recent global financial crisis has brought Islamic finance further into the limelight. Despite its alleged minimal impact on Islamic finance, the crisis offered it an opportunity to undertake introspection and self-evaluation. This will be necessary to determine whether it can become a significant alternative to the conventional system within the global financial market.

Accordingly, Islamic financial institutions must ensure that all of their transactions are Sharī'ah compliant, not only in their forms and legal technicalities but, more importantly, in their economic substance, which should be premised on the objectives outlined by the Sharī'ah, also known as *maqāṣid al-Sharī'ah*. Indeed, the Islamic banking system has the potential to become one of the promising sectors for realising the noble objectives of the Sharī'ah, as it resides within a financial trajectory underpinned by the forces of Sharī'ah injunctions. These Sharī'ah injunctions interweave Islamic financial transactions with genuine concern for a just, fair, and transparent society and prohibit involvement in illegal activities that are detrimental to social and environmental wellbeing.

This article examines the concept of *maqāṣid al-Sharī'ah* to highlight its contribution to more comprehensive, rational and realistic answers to various contemporary financial issues. In particular, the article suggests a framework based on *maqāṣid al-Sharī'ah* to assist Islamic financial institutions (hereafter, IFIs) in making decisions on which courses to pursue and how much to commit to them. The framework may also assist IFIs in managing more effectively and efficiently the ever-emerging conflict of expectations on the part of diverse stakeholders.

The structure of the article is as follows. After delineating the fundamentals of *maqāṣid al-Sharī'ah* and the concepts underpinning it, we focus on the implications of *maqāṣid al-Sharī'ah* for contemporary Islamic finance. This is followed by a more detailed discussion of the 'pyramid of *maṣlaḥah*' as a framework for managing diverse stakeholder expectations in terms of priorities and responsibilities in Islamic banking operation. A brief conclusion is offered in the final section.

## 2. THE FUNDAMENTALS OF *MAQĀSID AL-SHARĪ'AH*

Prior to any elaboration on the role of *maqāsid al-Sharī'ah* in addressing various Islamic finance challenges, it is pertinent to define *maqāsid al-Sharī'ah* and introduce their characteristics and categories. The following sections shall focus specifically on delineating the concept.

### 2.1 Definition of *Maqāsid al-Sharī'ah*

Although Muslim scholars have agreed that the ultimate objective of *maqāsid al-Sharī'ah* is to serve the interests (*jalb al-maṣāliḥ/جلب المصالح*) of all human beings and to save them from harm (*daf' al-mafāsīd/دفع المفساد*),<sup>1</sup> they choose to define *maqāsid al-Sharī'ah* from a different perspective.

Abū Ḥāmid al-Ghazālī (d. 1111 CE) defined *maqāsid*<sup>2</sup> by stressing the Sharī'ah concern with safeguarding five objectives:

مَقْصُودُ الشَّرْعِ مِنَ الْخَلْقِ خَمْسَةٌ، وَهُوَ أَنْ يُحْفَظَ عَلَيْهِمْ دِينُهُمْ وَنَفْسُهُمْ وَعَقْلُهُمْ  
وَنَسْلُهُمْ وَمَالُهُمْ، فَكُلُّ مَا يَتَضَمَّنُ حِفْظَ هَذِهِ الْأَصُولِ الْخَمْسِ فَهُوَ مَصْلِحَةٌ،  
وَكُلُّ مَا يُفَوِّتُ هَذِهِ الْأَصُولَ فَهُوَ مَفْسَدَةٌ، وَدَفْعُهَا مَصْلِحَةٌ.

*The very objective of the Sharī'ah is to promote the well-being of the people, which lies in safeguarding their faith (dīn), their lives (nafs), their intellect ('aql), their posterity (nasl), and their wealth (māl). Whatever ensures the safeguarding of these five serves public interest and is desirable, and whatever hurts them is against public interest and its removal is desirable.*<sup>3</sup>

<sup>1</sup> This has been stated in the Qur'ān and the Sunnah and endorsed by Muslim scholars. See, for example, 'Izz al-Dīn 'Abd al-Salām, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, ed. 'Abd al-Laṭīf 'Abd al-Raḥmān (Beirut: Dār al-Kutub al-'Ilmiyyah, 1999), 1:3-8; Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn* 'an Rabb al-'Ālamīn, ed. Ṭāhā 'Abd al-Ra'ūf Sa'd (Beirut: Dār al-Jīl, 1973), 3:3; Muḥammad al-Ṭāhir Ibn 'Āshūr, *Maqāsid al-Sharī'ah al-Islāmiyyah* (Amman: Dār al-Nafā'is, 2001), 274 and 299; 'Abd al-Majīd al-Najjār, *Maqāsid al-Sharī'ah bi Ab'ād Jadīdah* (Beirut: Dār al-Gharb al-Islāmī, 2006).

<sup>2</sup> The word *maqāsid* is the plural of *maqṣid*, meaning: destination, intent, purpose, object, goal, aim, end.

<sup>3</sup> Abū Ḥāmid al-Ghazālī, *al-Mustasfā min 'Ilm al-Uṣūl* (Cairo: al-Maktabah al-Tijāriyyah, 1973), 1: 139-40; see also Abū Ishāq Ibrāhīm b. Mūsā al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, ed. 'Abd Allāh Darrāz, 4 vols. (Beirut: Dār al-Ma'rifah, 1975, 2nd ed.), 1:38 and 3:46-47).

Imām al-Shāṭibī (d. 1388 CE), in defining *maqāṣid al-Sharī‘ah* emphasises the epistemological (‘*aqīdah*) dimension. According to him:

المَقْصِدُ الشَّرْعِيُّ مِنْ وَضْعِ الشَّرِيعَةِ إِخْرَاجِ الْمِكْلَفِ مِنْ دَاعِيَةِ هَوَاهُ حَتَّى يَكُونَ  
 عَبْدًا لِلَّهِ اخْتِيَارًا كَمَا هُوَ عَبْدٌ لِلَّهِ اضْطِرَارًا.

*The primary goal of the Sharī‘ah is to free man from the grip of his own whims, so that he may be the servant of Allah by choice, just as he is His slave [in matters about which he has] no choice.*<sup>4</sup>

Ibn ‘Āshūr (1973), on the other hand, defines *maqāṣid* from a broader angle:

المَقْصِدُ الْعَامُّ مِنَ التَّشْرِيعِ هُوَ حِفْظُ نِظَامِ الْأُمَّةِ وَاسْتِدَامَةُ صَلَاحِهِ بِصَلَاحِ  
 الْمُهَيِّمِينَ عَلَيْهِ، وَهُوَ تَوْعُّغُ الْإِنْسَانِ. وَيَشْمَلُ صَلَاحُهُ صَلَاحَ عَقْلِهِ وَصَلَاحَ عَمَلِهِ  
 وَصَلَاحَ مَا بَيْنَ يَدَيْهِ مِنْ مَوْجُودَاتِ الْعَالَمِ الَّذِي يَعْيشُ فِيهِ.

*The overall objective (maqṣad ‘āmm) of Islamic legislation is to preserve the social order of the community and insure its healthy progress by promoting the well-being and virtue (ṣalāḥ) of the human being. The ṣalāḥ of human beings consists of the soundness of their intellects and the righteousness of their deeds, as well as the goodness of the things of the world in which they live that are put at their disposal.*<sup>5</sup>

The uppermost objectives of Sharī‘ah rest within the concepts of compassion and guidance<sup>6</sup> that seek to establish justice, eliminate prejudice and alleviate hardship.

‘Allāl al-Fāssi (d.1974) stresses these elements in his definition, which states:

<sup>4</sup> Imran Ahsan Khan Nyazee, *Theories of the Islamic Law: The Methodology of Ijtihad*, (Kuala Lumpur: The Other Press, 2002), 235.

<sup>5</sup> Muḥammad Ṭāhir Ibn ‘Āshūr, *Treatise on Maqāṣid al-Sharī‘ah*, trans. and annotated by Muḥammad El-Ṭāhir El-Misawi. (London and Washington: International Institute of Islamic Thought, 2006), 87.

<sup>6</sup> These attributes are referred to in the Qur’ān: 21:107 and 10:57.

المَقْصِدُ العَامُّ للشرِعةِ الإسلاميَّةِ هو عِمَارَةُ الأَرْضِ، وَحِفْظُ نِظَامِ التَّعَايُشِ فِيهَا، وَاسْتِمْرَارِ صِلَاحِهَا بِصِلَاحِ المِسْتَحْلِفِينَ فِيهَا، وَقِيَامِهِمْ بِمَا كُفِّلُوا بِهِ مِنْ عَدْلِ وَاسْتِقَامَةٍ، وَمِنْ صِلَاحِ فِي العَقْلِ وَفِي العَمَلِ، وَإِصْلَاحِ فِي الأَرْضِ وَاسْتِنْبَاطِ لِحَيْرَاتِهَا وَتَدْبِيرِ مَنَافِعِ الجَمِيعِ.

*The overall objective of Islamic Law is to populate and civilize the earth and preserve the order of peaceful coexistence therein; to ensure the earth's ongoing well-being and usefulness through the piety of those who have been placed there as God's vicegerents; to ensure that people conduct themselves justly, with moral probity and with integrity in thought and action, and that they reform that which needs reform on earth, that they tap its resources and plan for the good of all.<sup>7</sup>*

Understanding these definitions promotes cooperation and mutual support within the family and society at large. This is manifested in the realisation of *maṣlaḥah* (public interest), which Islamic scholars have generally considered to be the all-pervasive value and objective of the Sharī'ah and which is to all intents and purposes synonymous with compassion. *Maṣlaḥah* sometimes connotes the same meaning as *maqāsid*, and scholars have used the two terms almost interchangeably.<sup>8</sup> To further shed light on the objectives of the Sharī'ah, especially with regard to their application in the preservation of public interest, the following section elaborates on the principles of *maṣlaḥah*, serving as an important tool to uphold the Sharī'ah.

<sup>7</sup> Aḥmad al-Raysūnī, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law*, (London and Washington: International Institute of Islamic Thought, 2005).

<sup>8</sup> Many Islamic legal scholars advocated the principle of public welfare (*maṣlaḥah*) and the objectives of the Sharī'ah (*maqāsid*) in Islamic jurisprudence (*fiqh*): among them al-Juwaynī (d. 1085), al-Ghazālī (d. 1111), al-Rāzī (d. 1209), al-Āmidī (d. 1233), al-Salmī (d. 1261), al-Qarāfī (d. 1285), Ibn Taymiyyah (d. 1327), al-Shāṭibī (d. 1388), Ibn al-Qayyim al-Jawziyyah. See D. Abdel Kader, "Modernity, the Principles of Public Welfare (Maslaha), and the End Goals of Shari'a (*Maqāsid*) in Muslim Legal Thought," *Islam and Christian-Muslim Relations*, 14, no. 2 (2003), 163-74.

## 2.2 Principles of *Maṣlahah* (Consideration of Public Interest)

*Maṣlahah*<sup>9</sup> is a juristic device that has always been used in Islamic legal theory to promote public benefit and prevent social evils or corruption. Al-Ghazālī defines *maṣlahah* as follows:

أَمَّا الْمَصْلَحَةُ فَهِيَ عِبَارَةٌ فِي الْأَصْلِ عَنْ جَلْبِ مَنْفَعَةٍ أَوْ دَفْعِ مَضَرَّةٍ وَلَسْنَا نَعْنِي  
 بِهِ ذَلِكَ فَإِنَّ جَلْبَ الْمَنْفَعَةِ وَدَفْعَ الْمَضَرَّةِ مَقَاصِدُ الْخَلْقِ، وَصَلَاحُ الْخَلْقِ فِي  
 تَحْصِيلِ مَقَاصِدِهِمْ لَكِنَّا نَعْنِي بِالْمَصْلَحَةِ الْمِحَافِظَةَ عَلَى مَقْصُودِ الشَّرْعِ.

*As for maṣlahah, it is essentially an expression referring to the acquisition of benefit or the repulsion of injury or harm, but that is not what we mean by it because acquisition of benefits and the repulsion of harm represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by maṣlahah, however, is the preservation of the ends of the Sharī‘ah.”*<sup>10</sup>

Here al-Ghazālī reinforces the importance of ‘preservation of the ends of the Sharī‘ah or the objectives of the Sharī‘ah (including the protection of faith, life, posterity, intellect and wealth) as the fundamental meaning of *maṣlahah*. Following al-Ghazālī’s taxonomy very closely, al-Shāṭibī, in his book *al-Muwāfaqāt*, defines *maṣlahah* as a principle which concerns the subsistence of human life, the completion of man’s livelihood and the acquisition of what his emotional and intellectual qualities require of him, in an absolute sense. Al-Shāṭibī has in fact singled out *maṣlahah* as being the only overriding objective of the Sharī‘ah that is broad enough to comprise all measures that are deemed beneficial to people, including administration of justice and ‘ibādah.<sup>11</sup>

<sup>9</sup> *Maṣlahah* means welfare, interest or benefit. The plural is *maṣāliḥ*. Literally, *maṣlahah* is defined as seeking benefit and repelling harm. The words *maṣlahah* and *manfa‘ah* are treated as synonyms. *Manfa‘ah* (benefit or utility), however, is not a technical meaning of *maṣlahah*. Muslim jurists qualify the literal meaning of *maṣlahah* within a Sharī‘ah context as: the seeking of benefit and the repelling of harm as directed by the Lawgiver. Refer to Nyazee, *Islamic Jurisprudence (Uṣūl al-Fiqh)* (Islamabad: Islamic Research Institute Press, 2000).

<sup>10</sup> Ibid.

<sup>11</sup> Mohammad Hashim Kamali, “Maqāṣid al-Sharī‘ah: The Objectives of Islamic Law.” *Islamic Studies Occasional Papers* 33 (Islamabad: Islamic Research Institute, International Islamic University, 1999).

### 2.3 Characteristics of Maqāsid al-Sharī'ah

*Maqāsid al-Sharī'ah* have four main characteristics:

The first is that they are the basis of legislation, as legislation has to serve the interests of all human beings (*jalb al-maṣāliḥ*/المصلحة) and save them from harm (*daf' al-mafāsīd* (دفع المفسدة)). Scholars argued that identification of this characteristic is based on an inductive reading (*istiqrā'*) of the texts of the Qur'ān and the Sunnah. Ibn al-Qayyim (d. 1350 CE) says:

إِنَّ الشَّرِيعَةَ مَبْنَاهَا وَأَسَاسُهَا عَلَى الْحِكْمِ وَمَصَالِحِ الْعِبَادِ فِي الْمَعَاشِ وَالْمَعَادِ وَهِيَ  
عَدْلٌ كُلُّهَا وَرَحْمَةٌ كُلُّهَا وَمَصَالِحٌ كُلُّهَا وَحِكْمَةٌ كُلُّهَا ، فَكُلُّ مَسْأَلَةٍ خَرَجَتْ  
عَنِ الْعَدْلِ إِلَى الْجَوْرِ وَعَنِ الرَّحْمَةِ إِلَى ضِدِّهَا وَعَنِ الْمَصْلَحَةِ إِلَى الْمَفْسَدَةِ وَعَنِ  
الْحِكْمَةِ إِلَى الْعَبَثِ فَلَيْسَتْ مِنَ الشَّرِيعَةِ وَإِنْ أُذْخِلَتْ فِيهَا بِالتَّأْوِيلِ .

*The Sharī'ah is based on wisdom and achieving people's welfare in this life and in the hereafter. The Sharī'ah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with harm, or wisdom with nonsense, is a ruling that does not belong to the Sharī'ah even if it is claimed to be so according to some interpretations.*<sup>12</sup>

The second characteristic is that *maqāsid al-Sharī'ah* are universal, aiming to serve the interests of mankind and requiring the adherence of all human beings. This is because the Qur'ān is the last revelation, applicable to the whole of mankind everywhere on earth until the end of this world. The supporting evidence is so abundant in the Qur'ān and the Sunnah that it amounts to a thematic recurrence (*tawātur ma' nawī*). For example, Allah says,

وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِّلنَّاسِ

“We have not sent you, [O Muhammad,] except to mankind as a whole”

(34:28),

<sup>12</sup> Ibn Qayyim al-Jawziyyah, *I'lām*.

And:

قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا

“Say [O Muhammad]: ‘O mankind, verily, I am an apostle to all of you’”  
(7:158).<sup>13</sup>

The third characteristic is that *maqāṣid al-Sharī‘ah* are inclusive (absolute). They encompass all human acts whether they are related to *‘ibādah* (responsibilities to God) or *mu‘āmalah* (responsibilities towards other human beings). Imām al-Shāfi‘ī (d. 820) stated in his *al-Risālah* that:

فَلَيْسَتْ تَنْزِلُ فِي أَحَدٍ مِنْ أَهْلِ دِينِ اللَّهِ نَازِلَةٌ إِلَّا وَفِي كِتَابِ اللَّهِ الدَّلِيلُ عَلَى سَبِيلِ الْهُدَى فِيهَا. قَالَ اللَّهُ تَبَارَكَ وَتَعَالَى: “ كِتَابٌ أَنْزَلْنَاهُ إِلَيْكَ لِتُخْرِجَ النَّاسَ مِنَ الظُّلُمَاتِ إِلَى النُّورِ بِإِذْنِ رَبِّهِمْ إِلَى صِرَاطٍ الْعَزِيزِ الْحَمِيدِ ” وَقَالَ أَيْضًا: “ وَنَزَلْنَا عَلَيْكَ الْكِتَابَ تَبْيَانًا لِكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَى لِلْمُسْلِمِينَ .

*No misfortune will ever descend upon any of the followers of God’s religion for which there is no guidance in the book of God to indicate the right way, for God, Blessed and Most High, said: “A Book We have sent down to you that you may bring forth mankind from darkness to light, by the permission of their Lord, to the path of the Almighty, the Praiseworthy” [15:1-2]. And He said: “And we sent down to you the Book as a clarification for everything and as a guidance and a mercy and good tidings to the Muslims” [16:89].*<sup>14</sup>

The fourth characteristic of *maqāṣid al-Sharī‘ah* is that they are definitive, i.e. they have not been derived from a single text or item of evidence, but from a multiplicity of texts and different aspects of evidence. Clear indications of this characteristic can be found in *uṣūl al-fiqh* maxims such as: “*Acts are judged by intentions*” (الأُمُورُ بِمَقْصَدِهَا) and “*Where there is a definitive text, there is no room for interpretation*”

<sup>13</sup> Cited by Ibn ‘Āshūr, *Treatise*, 130.

<sup>14</sup> Muḥammad b. Idrīs al-Shāfi‘ī, *al-Shāfi‘ī’s Risālah*, trans. by Majid Khadduri, (Cambridge: Islamic Texts Society 2003, reprint), 66.

(لا مَسَاعَ للاحْتِهَادِ فِي مَوْرِدِ النَّصِّ), as well as in *fiqhī* maxims such as “[The right to] gain comes with responsibility [for loss]” (الخِراج بِالضَّمَانِ) and “Necessity renders prohibited things permissible” (الضَّرُورَاتُ تُبَيِّحُ الْمَحْظُورَاتِ).

## 2.4 Categories of *Maqāsid*

Islamic scholars have divided *maqāsid al-Sharī'ah* into two main categories: general objectives (*maqāsid ʿāmmah*) and specific objectives (*maqāsid khāṣṣah*).

Ibn ʿĀshūr, in defining general objectives, stated that they

*consist of the deeper meanings (maʿānī) and inner aspects of wisdom (ʾīkam) considered by the Lawgiver (al-Shārīʿ) in all or most of the areas and circumstances of legislation (aḥwāl al-tashrīʿ); they are not confined to a particular type of Sharīʿah command. Thus, they include the general characteristics of the Sharīʿah, its all-purpose principles, and any aim contemplated by the legislation. They also include certain meanings and notions that are not present in every Sharīʿah command but in many of them.*<sup>15</sup>

مَقَاصِدُ التَّشْرِيعِ الْعَامَّةِ هِيَ الْمَعَانِي وَالْحِكْمِ الْمَلْحُوظَةِ لِلشَّارِعِ فِي جَمِيعِ أَحْوَالِ التَّشْرِيعِ أَوْ مُعْظِمِهَا، بِحَيْثُ لَا تَخْتَصُّ مَلَاخِظَتُهَا بِالكَوْنِ فِي تَوْعٍ خَاصٍّ مِنْ أَحْكَامِ الشَّرِيعَةِ، فَيَدْخُلُ فِي هَذَا أَوْصَافُ الشَّرِيعَةِ وَغَايَاتُهَا الْعَامَّةُ، وَالْمَعَانِي الَّتِي لَا يَخْلُو التَّشْرِيعُ عَنْ مَلَاخِظَتِهَا وَيَدْخُلُ فِي هَذَا أَيْضًا مَعَانٍ مِنَ الْحِكْمِ لَيْسَتْ مَلْحُوظَةً فِي سَائِرِ أَنْوَاعِ الْأَحْكَامِ وَلَكِنَّهَا مَلْحُوظَةٌ فِي أَنْوَاعٍ كَثِيرَةٍ مِنْهَا.

In *uṣūl al-fiqh*, on which Islamic jurisprudence is based, scholars such as al-Shāṭibī further divide the general objectives—sometimes denoted as *maṣlahah*—into three sub-categories. Al-Shāṭibī calls these the essentials (*darūriyyah*), the complementary (*ḥājiyyah*) and the embellishments (*taḥsīniyyah*).<sup>16</sup> The categories are briefly discussed below:

<sup>15</sup> Ibn ʿĀshūr, *Treatise*, 67.

<sup>16</sup> Mohammad Hashim Kamali, “Sources, Nature and Objectives of Shari’ah.” *Islamic Quarterly* 33 (1989), 215-35.

First: *Ḍaruriyyah* (essential) is defined as interests of life which people essentially depend upon, comprising the five aforementioned objectives of Sharī‘ah: religion (*dīn*); life (*nafs*), intellect (*‘aql*), posterity (*nasl*) and wealth (*māl*). These are essentials serving as bases for the establishment of welfare in this world and the hereafter. If they are ignored then coherence and order cannot be established, *fasād* (chaos and disorder) shall prevail in this world, and there will be obvious loss in the hereafter. Some scholars argued that though the five *ḍarūriyāt* are essential for human welfare, necessities are not confined to these five *maqāṣid*; hence, they proposed additional *ḍarūriyāt* such as equality, freedom and protection of the environment.<sup>17</sup>

Second: *Ḥājiyyah* (need or complimentary) refers to interests that supplement the essential interests. The term refers to interests, the neglect of which will lead to hardship but not to total disruption of the normal order of life. In other words, these interests, which are a level below the five essentials, are needed in order to alleviate hardship, so that life may be free from distress and predicament. They are also reflected in provisions that aim to remove hardships and/or facilitate life. An example is seen in the sphere of economic transactions; the Sharī‘ah has validated certain contracts such as the salam sale and lease and hire contracts (*ijārah*) because of people’s need for them, notwithstanding a certain anomaly that is attendant in both.<sup>18</sup>

Third: *Tahsīniyyah* (embellishments). The embellishments refer to interests whose realisation leads to refinement and perfection in the customs and conduct of people at all levels of achievement. For example, the Sharī‘ah encourages charity to those in need, beyond the level of the obligatory *zakāh*. In customary matters and relations among people, the Sharī‘ah encourages gentleness, pleasant speech and manner, and fair dealing. Other examples include permission to use beautiful, comfortable things; to eat delicious food; to wear fine clothing and so on.<sup>19</sup>

With regard to the relationship between *ḍarūriyyah*, *ḥājiyyah* and *tahsīniyyah*, al-Shāṭibī and other scholars stressed the following:

<sup>17</sup> See al-Shāṭibī, *al-Muwāfaqāt*, 2:266, Ibn ‘Āshūr, *Treatise*, 142-150, and al-Najjār, *Maqāṣid al-Sharī‘ah*, 207.

<sup>18</sup> For further discussion of the given examples, refer to Nyazee, *Theories of Islamic Jurisprudence*, and furthermore to Mumisa. *Islamic Law: Theory and Interpretation* (Beltsville MD: Amana Publications, 2002), M. A. Zuhrah, *Uṣūl al-Fiqh*, (Beirut: Dār al-Fikr al-‘Arabī, 1958).

<sup>19</sup> Al-Shāṭibī, *al-Muwāfaqāt*, 2:267; Ibn ‘Āshūr, *Treatise*, 120-1.

- *Ḍarūriyyah* are fundamental to *ḥājiyyah* and *taḥsīniyyah*.
- Deficiency in *ḍarūriyyah* inevitably causes deficiency in *ḥājiyyah* and *taḥsīniyyah*.
- Deficiency in *ḥājiyyah* and *taḥsīniyyah* does not necessarily affect *ḍarūriyyah*.
- An absolute deficiency in *ḥājiyyah* and *taḥsīniyyah* may bring deficiency to some extent in *ḍarūriyyah*.
- It is desirable to keep up *ḥājiyyah* and *taḥsīniyyah* for the proper maintenance of *ḍarūriyyah*.

The second category of *maqāsid* consists of the specific objectives of Islamic legislation (*al-maqāsid al-khāṣṣah*), where the area of concern is a specific discipline, such as financial transactions or family law or private conduct. Ibn 'Āshūr states that the specific objectives:

*consist of the methods (kayfiyyāt) intended by the Lawgiver for realising the useful purposes of human beings or preserving their public interests related to their private conduct. The aim here is to prevent people's pursuit of their personal interests from leading to the undermining of their established public interests, owing to carelessness, whimsical errors, and vain desires.*<sup>20</sup>

وهي الكَيْفِيَّاتُ الْمَقْصُودَةُ لِلشَّارِعِ لِتَحْقِيقِ مَقَاصِدِ النَّاسِ النَّافِعَةِ أَوْ لِحِفْظِ  
مَصَالِحِهِمُ الْعَامَّةِ فِي تَصَرُّفَاتِهِمُ الْخَاصَّةِ كَيْ لَا يَعُودَ سَعِيَّتُهُمْ فِي مَصَالِحِهِمُ  
الْخَاصَّةِ بِإِبْطَالِ مَا أُسِّسَ لَهُمْ مِنْ تَحْصِيلِ مَصَالِحِهِمُ الْعَامَّةِ إِبْطَالاً عَنْ غَفْلَةٍ أَوْ  
عَنْ اسْتِزْلَالِ هَوَىٰ وَبَاطِلِ شَهْوَةٍ.

Notwithstanding the demarcation made by the scholars between general and specific objectives, the two remain interrelated. In fact there is much overlapping and integration between general and specific objectives of the Shari'ah. Hence, to treat any of the objectives as discrete would be rather naïve. Both categories together serve as the main framework governing human lives in this world to achieve ultimate happiness in the hereafter.

<sup>20</sup> Ibn 'Āshūr, *Treatise*, 225.

### 3. MAQĀṢID AL-SHARĪ'AH AND ISLAMIC FINANCE

The preceding sections have briefly explained the fundamentals and concepts underpinning *maqāṣid al-Sharī'ah*. The next focus is to evaluate the implications of *maqāṣid al-Sharī'ah* for contemporary Islamic finance. As a Sharī'ah-oriented business entity, the Islamic bank is vigorously expected to be guided by the objectives of the Sharī'ah. There are at least two reasons for establishing the right objectives for any IFI. First, the objectives will be used by the management or policy makers of the IFI in the process of formulating corporate objectives and policies. Secondly, these objectives serve as an indicator as to whether the particular IFI is upholding true Islamic principles. Indeed, one of the biggest challenges to IFIs today is to come up with products and services that are Sharī'ah compliant or legitimate from an Islamic viewpoint without undermining the business concerns of being competitive, profitable and viable in the long run.<sup>21</sup>

*Maqāṣid al-Sharī'ah* in Islamic finance generally fall under the second category of *maqāṣid*, namely: specific objectives (*al-maqāṣid al-khāṣṣah*), which relate to specific disciplines. However the general objectives are also relevant and directly related, as Islamic finance aims to preserve one of the five *ḍarūriyyāt* (necessities) namely: the preservation of wealth (*ḥifẓ al-māl*), which is interrelated with other *ḍarūriyyāt*, especially the preservation of religion (*dīn*). Therefore, it is necessary to examine the objective of wealth preservation as well as the general objectives of Islamic finance.

#### 3.1 Preservation of Wealth (*Ḥifẓ al-Māl*)

It is an established fact among Islamic scholars that the preservation of wealth is one of the fundamental and universal principles of the Sharī'ah, falling under the *ḍarūriyyah* category. Naturally, the Sharī'ah, whose aim is to preserve and promote the human social order, gives considerable attention to wealth. There are many Qur'ānic verses and Prophetic traditions which bear witness that property and wealth have an important status in the Sharī'ah. In fact, Islamic law introduces many rulings aimed at realising the preservation of wealth in both material and socio-psychological dimensions. Muslim jurists have asserted that preservation of wealth is to be achieved in at least five main dimensions:<sup>22</sup>

<sup>21</sup> A. W. Dusuki, and A. Abozaid, "A Critical Appraisal on the Challenges of Realising Maqāṣid al-Sharī'ah in Islamic Banking and Finance." *IIUM Journal of Economics and Management*, 15 no. 2 (2007), 143-65.

<sup>22</sup> See al-Najjār, *Maqāṣid al-Sharī'ah*, 83.

1. preservation of wealth through the protection of ownership;
2. preservation of wealth through its acquisition and development;
3. preservation of wealth from damage;
4. protection of wealth through its circulation;
5. preservation of wealth through protection of its value.

Since the above dimensions are integral to Islamic finance as enshrined by Sharī‘ah, their further elaboration is called for.

### ***1. The Preservation of Wealth through the Protection of Ownership***

The first important dimension for wealth preservation is protection of ownership. Indeed, ownership through exclusive possession has been one of the basic principles of human civilization. Humans have always striven to obtain their material needs in order to secure sustenance and safety. Islam therefore recognises the natural desire of mankind to own good things by providing clear parameters on how to own, use and protect wealth. Allah affirms this in the Qur’ān:

رُيِّنَ لِلنَّاسِ حُبُّ الشَّهَوَاتِ مِنَ النِّسَاءِ وَالْبَنِينَ وَالْقَنَاطِيرِ الْمُقَنْطَرَةِ مِنَ الذَّهَبِ  
وَالْفِضَّةِ

“Fair in the eyes of men is the love of things they covet: women and sons; heaped-up hoards of gold and silver...” [3:14].

Ownership means the recognition by the Sharī‘ah of people’s ability to utilise a thing (*‘ayn*) or a benefit (*manfa‘ah*) by making use of it directly, by exchanging it, or by giving it freely to someone else, thus excluding all encumbered disposition. According to Ibn ‘Āshūr, the Sharī‘ah has identified the following factors as the only means to acquire ownership (*tamalluk*):

- a) exclusive possession of something to which no one else has the right, such as cultivating barren land;
- b) working on a piece of land with its proprietor, such as *mughārasah*;<sup>23</sup>

<sup>23</sup> *Mughārasah* is a kind of land tenure or contract in which the landlord gives his barren land to someone to plant fruit trees, with the land and trees to be shared between them. See Ibn ‘Āshūr, *Treatise*.

- c) receiving it by a transfer from its owner, either in exchange for a counter-value (*ʿiwad*) in a sale or without a counter-value by legally recognised means such as donation and inheritance.

Since ownership is recognised in Islam, its protection is inevitable. Allah said:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ

*“And do not consume one another’s property by illegitimate means.”*  
 [2:188].

In order to achieve the purpose of protecting ownership, contracts relating to the various kinds of dealings have been instituted to regulate the transfer of financial rights (*ḥuqūq māliyyah*), whether in exchange for something else or gratis. These contracts have been considered binding because of their formulae, that is, the statements indicating the mutual consent of contracting parties. Certain conditions are required in them for the benefits of both parties. Once a contract has satisfied those conditions, it is valid and produces its legal effect, for the rule is that a contract is binding owing to the existence of its formula. The relevant *ḥadīth* affirming this principle is:

المسلمون على شروطهم إلا شرطاً أحل حراماً أو حرّم حلالاً

*“Muslims are bound by their conditions, except a condition that makes the lawful unlawful or the unlawful lawful.”*<sup>24</sup>

It is equally the duty of everyone to respect ownership of one’s property, for which reason the Sharī‘ah has prescribed compensation for damage to property simply by assessing the damage, regardless whether or not it was intended, for intention has no effect in such a situation.<sup>25</sup> In other words, no property should be taken from its owner without his consent, and fair compensation should be given for any utilisation of another’s property.

<sup>24</sup> Al-Bayhaqī, *al-Sunan al-Kubrā*, 7:249 and 6:79; al-Ṭabarānī, *al-Muʿjam al-Kabīr*, 17:22, *ḥadīth* no. 13718; al-Dāraquṭnī, *al-Sunan*, 3:27, *ḥadīth* no. 98. See also *Sunan Abū Dāwūd*, 3:332, *ḥadīth* no. 3596, for a similar meaning by a different wording.

<sup>25</sup> Ibn ʿĀshūr, *Treatise*.

## 2. Preservation of Wealth through Acquisition and Development

Another dimension connected to protection of ownership is preservation of wealth through its acquisition and development. In fact acquisition and development of wealth have been considered the basis of ownership and property rights in Islam, and human beings see that their efforts give them exclusive right to whatever they may possess as a result. Thus, the Prophet is reported to have said:

مَنْ أَحْيَا أَرْضًا مَيْتَةً فَهِيَ لَهُ، وَلَيْسَ لِعَرِيقٍ ظَالِمٍ حَقٌّ.

“If anyone revives a dead land, it belongs to him, but what is unjustly planted has no rights.”<sup>26</sup>

Furthermore, the scholars argued that if preservation of wealth is a higher objective of Islamic law, then its acquisition should take precedence over its preservation. There are many *Qur’ānic* verses and *ḥadīths* which affirm this, such as:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ

“And when the prayer is finished, then you may disperse through the land and seek of the bounty of Allah...” [62:10].

The Prophet, with regard to the essence of this meaning, said:

نِعَمَ الْمَالُ الصَّالِحِ مَعَ الرَّجُلِ الصَّالِحِ.

“How fine is rightly acquired wealth in the possession of an upright man.”<sup>27</sup>

He also said:

مَا مِنْ مُسْلِمٍ يَغْرِسُ غَرْسًا أَوْ يَزْرَعُ زَرْعًا فَيَأْكُلُ مِنْهُ طَيْرٌ وَلَا إِنْسَانٌ إِلَّا كَانَ لَهُ بِهِ صَدَقَةٌ.

<sup>26</sup> Mālik, *al-Muwatta’*, 2:743, *ḥadīth* no. 1424; *Sunan Abū Dāwūd*, 3:142, *ḥadīth* no. 3075; *Sunan al-Tirmidhī*, 3:662, *ḥadīth* no. 1378. See also *Ṣaḥīḥ al-Bukhārī*, 2:822. (All references are from *al-Maktabah al-Shāmilah*, version 3.28.)

<sup>27</sup> *Musnad Aḥmad*, 29:299, *ḥadīth* no. 17763 (in *al-Maktabah al-Shāmilah*).

*“There is no Muslim who plants a seedling or sows a crop, and then an animal or person eats from it, except that it is (recorded) for him as a charity.”<sup>28</sup>*

Another related aspect of acquisition is development. In fact development and augmentation are connected to asset acquisition. This is particularly true especially if one understands the philosophy behind the imposition of *zakāh*, the third pillar of Islam, on economic property. The requirement for a Muslim to pay *zakāh* implies the need to develop wealth, for example through investment, in order for the asset to continuously grow and not be depleted.

A *ḥadīth* articulates this concept:

اجْرُوا فِي أَمْوَالِ الْيَتَامَى لَا تَأْكُلْهَا الزَّكَاةُ.

*“Verily, whoever has charge over an orphan with wealth, let him invest it. He should not leave it to be consumed by zakāh.”<sup>29</sup>*

### 3. Preservation of Wealth from Damage

Just as the Sharī‘ah takes full account of people’s right to acquire, use and enjoy their property and its corresponding benefits, it also emphasises the need to preserve the property from being damaged and exposed to any form of harm. The preservation of wealth from damage can be looked at from two dimensions: protecting wealth from risk that can harm it; and preventing wealth from damage through its use for harmful purposes. That is why rules governing the validity and validation of contracts and the fulfilment of stipulations have been firmly instituted in Islamic law.<sup>30</sup>

The concept of protection of wealth and property from risk can be seen in the Qur’ān; for instance, the longest verse in the Qur’ān, 2:282:

<sup>28</sup> *Ṣaḥīḥ al-Bukhārī*, 2:817, *ḥadīth* no. 2195 (in *al-Maktabah al-Shāmilah*).

<sup>29</sup> Al-Ṭabarānī, *al-Mu‘jam al-Awsaṭ*, 4:264. See also Mālik, *al-Muwaṭṭa’*, 1:251, no. 588; al-Bayhaqī, *al-Sunan al-Kubrā*, 4:107; and Muṣannaḥ ‘Abd al-Razzāq, 4:68, no. 6990, except that the statement is attributed to ‘Umar ibn al-Khaṭṭāb, not the Prophet (peace be upon him). (All references are from *al-Maktabah al-Shāmilah*).

<sup>30</sup> Ibn ‘Āshūr, *Treatise*.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَآكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ  
كَاتِبٌ بِالْعَدْلِ وَلَا يَأْب كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ  
الَّذِي عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا يَبْخَسْ مِنْهُ شَيْئًا فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ  
سَفِيهًا أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمْلَئَ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ وَاسْتَشْهِدُوا  
شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّن تَرْضَوْنَ مِنَ  
الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكَّرَ إِحْدَاهُمَا الْأُخْرَىٰ وَلَا يَأْب الشُّهَدَاءُ إِذَا مَا  
دُعُوا وَلَا تَسَاءَمُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ  
وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا إِلَّا أَنْ تَكُونَ بِجَارَةٍ حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ  
فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا وَأَشْهِدُوا إِذَا تَبَايَعْتُمْ وَلَا يُضَارَّ كَاتِبٌ وَلَا  
شَهِيدٌ وَإِنْ تَفَعَّلُوا فَإِنَّهُ فُسُوقٌ بِكُمْ وَاتَّقُوا اللَّهَ وَيُعَلِّمُكُمُ اللَّهُ وَاللَّهُ بِكُلِّ شَيْءٍ  
عَلِيمٌ

*O you who believe! When you contract a debt for a stated term, put it down in writing. Have a scribe write it down justly between you. No scribe should refuse to write; let him write as Allah has taught him, let the debtor dictate, and let him fear Allah, his Lord, and not diminish what he owes. If the debtor is feebleminded, weak, or unable himself to dictate, let his guardian dictate justly. Call in two men as witnesses. If two men are not available, then call a man and two women out of those you approve as witnesses, so that if one of the two women errs, the other can remind her. The witnesses should not refuse when they are called on for evidence. Do not disdain to write the debt down, be it large or small, along with the time it falls due. This way is more equitable in the sight of Allah, more reliable as evidence, and more likely to prevent doubts arising between you. But if the merchandise is there and you hand it over, there is no blame on you if you do not write it down. Have witnesses present whenever you make a commercial contract; and let no harm be done to either scribe or witness, for if you did cause them harm, it would be a crime on your part. Be mindful of Allah, and He will teach you. Allah has full knowledge of everything.*

The verse clearly directs Muslims to record debts and business dealings and to take witnesses. This prevents the possibility of a party denying what took place, which could lead to a loss of capital. If the dealing takes place during a journey, Allah allows collateral to be taken for the debt, if no record is taken. Such actions are suggested by Allah so that debtors and business persons will become aware and responsible in fulfilling their respective obligations. It is therefore understood that trust of the other party is not sufficient, but steps must be taken to avoid fraudulence and unreasonable losses.

This concept is further strengthened by another clear command of Allah:

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ  
الْمُحْسِنِينَ

*“Spend in the cause of Allah; do not contribute to your destruction with your own hands, but do good, for Allah loves those who do good” (2:195).*

In all the above verses, Allah directed humans not to expose their wealth to the danger of destruction. Such a situation can also occur in business and investment matters, whereby a major risk, if not managed properly, can bring about catastrophic damages that may paralyze a nation’s economy and disrupt the lives of the general public. Therefore, handling a danger or risk efficiently is important for avoiding harm and for the sake of the society. The Qur’anic verses above make it clear that risk management is important and that strategic actions must be taken to handle risk efficiently and promptly.

#### **4. The Preservation of Wealth through its Circulation (Rawāj)**

Facilitating the circulation of wealth constitutes an important objective of the Sharī‘ah. In the Sharī‘ah, circulation here means the transfer of wealth in the community among as many hands as possible without causing any harm to those who have acquired it lawfully.<sup>31</sup> The Qur’ān has clearly indicated the need to prevent wealth from remaining in the hands of one person or just moving from one specific person to another.

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<sup>31</sup> Ibid.

مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَى فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ  
وَالْمَسَاكِينِ وَأَبْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

“Whatever [spoils taken] from the people of those villages God has turned over to His Apostle – [all of it] belongs to God and the Apostle, the near of kin [of deceased believers], the orphans, the needy, and the wayfarer, so that it may not be [a benefit] going round and round among such of you as may [already] be rich” [59:7].

This is also found in a *ḥadīth* of the Prophet (peace be upon him):

مَنْ احْتَكَرَ حَكْرَةً يَرِيدُ أَنْ يُعَالِي بِهَا عَلَى الْمُسْلِمِينَ فَهُوَ خَاطِئٌ.

“Whoever monopolises a commodity with the intention of overcharging Muslims is a wrongdoer.”<sup>32</sup>

Indeed, circulation of wealth is a very important element of wealth preservation in Islamic law. It guarantees a balanced and harmonious society and sustainable economic development. In order to achieve this, the Shari‘ah establishes a formula that balances between personal natural desire for ownership and fair access of the whole society to a reasonable portion of wealth. This formula can be looked at on two levels: during the life of its owner and after the owner’s death.<sup>33</sup> The measures include:

- Prescribing financial measures, such as *zakāh*, *zakāt al-fitr*, *kaffārah*, to maintain a balanced society and provide a continuous source of income for its lower class.
- Promoting and rewarding charitable acts such as *waqf*, *hibah*, *hadiyyah*, *waṣīyyah*, etc. to ensure a healthy circulation of wealth.
- Shifting lending to voluntary sectors, as an act of charity rather than for business.

<sup>32</sup> *Musnad Ahmad*, 2:351, no. 8602, (in *al-Maktabah al-Shāmilah*).

<sup>33</sup> Ibn ‘Āshūr, *Treatise*.

- Promoting investments and prohibiting hoarding of wealth.
- Prohibiting all types of manipulation or monopolisation that channel wealth to a small segment of wealthy people at the expense of the majority.

Another important means of circulation of wealth is facilitating transactions as much as possible by highlighting their benefits over the minor harm that they might entail. For this reason, the Sharī‘ah does not require for the validity of sale contracts that the two counter-values (*‘iwadāyn*) be delivered at the same time, for it recognises deferred payment sales in which payment of the price as a counter-value to the goods may be postponed until a certain point in future.

##### ***5. The Preservation of Wealth through its Value Protection***

The emphasis on wealth circulation entails the requirement to protect and preserve its value. Indeed Islamic law places high concern on the preservation of wealth by protecting its value and natural movement of commodity pricing. Allah affirms this in the Qur’ān:

وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ

“*And do not withhold from the people the things that are their due*” [7:85].

In the verse, the word *bakhs* (بَخْسٌ) has a literal meaning of undervaluing or deceiving or trickery in adding to or reducing from the measurement. As a case in point, Islam considers money as a medium of measurement rather than a commodity. Hence money transactions have their own specific ruling, as widely discussed by Muslim jurists under *kitāb al-ṣarf*, which denotes exchange of gold and silver (currency exchange). On the other hand, the exchange of commodities in general is governed by different rules and regulation, as discussed in Islamic jurisprudence under the topic of *kitāb al-buyū‘* (sales).

The following *ḥadīth* perhaps explains best the importance of preservation of wealth through its value protection:

أَنَّ رَسُولَ اللَّهِ اسْتَعْمَلَ رَجُلًا عَلَى خَيْبَرَ ، فَجَاءَهُمْ بِتَمْرٍ جَنِيْبٍ . فَقَالَ : أَكُلُّ  
تَمْرٍ خَيْبَرَ هَكَذَا؟ قَالَ : إِنَّا لَنَأْخُذُ الصَّاعَ مِنْ هَذَا بِالصَّاعَيْنِ ، وَالصَّاعَيْنِ  
بِالثَّلَاثَةِ . فَقَالَ : لَا تَفْعَلْ ؛ بَعْ الْجَمْعَ بِالذَّرَاهِمِ ، ثُمَّ ابْتَغِ بِالذَّرَاهِمِ جَنِيْبًا .

“The Prophet appointed a man as governor of Khaybar, who [later] presented him with an excellent type of dates (*janīb*). The Prophet asked, “Are all the dates of Khaybar like this?” He replied, “[No, but] we barter one *ṣā*<sup>34</sup> of this (excellent type) for two *ṣā* of ours, or two *ṣā* of it for three of ours.” Allah’s Apostle said, “Do not do that [as it is a kind of usury]; rather, sell the mixed dates (of inferior quality) for money, and then buy the excellent dates with that money.”<sup>35</sup>

In the above *ḥadīth*, the Prophet implicitly indicated the need to allow market forces to determine the actual value of the dates. This would ensure fair determination of the commodity’s price, which might otherwise be a subject of manipulation and deception due to information asymmetry.

Moreover, the issue of value protection also entails the prohibition of any form of devaluing or overpricing of commodities. Thus, the Prophet prohibited people from buying goods from caravans before they reach the market (*talaqqi ar-rukbān*) and also prohibited *najash*, which means bidding without real intent of purchase, simply to increase the price.

### 3.2 Application of *Maqāsid al-Sharī'ah* in Islamic Finance

Given the prime importance of *Sharī'ah* in Islamic finance, the Islamic financial institution assumes a more vital role than its conventional counterpart. The understanding of the *maqāsid al-Sharī'ah* requires IFIs to submit to the *Sharī'ah* by committing themselves to every contractual obligation and conducting their operations in accordance with high virtue and moral consciousness as stipulated by the *Sharī'ah*. For example, while an individuals’ rights in acquiring property are protected, these

<sup>34</sup> According to Wahbah al-Zuhayli, *al-Fiqh al-Islami wa adillatuh*, (Beirut: Dār al-Fikr, 2004), 1:142, one *ṣā'* (a measure of capacity) is equal to about 2.75 litres.

<sup>35</sup> Muḥammad b. Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Beirut: Dār al-Ma'rifah, 1961), *ḥadīth* no. 2089.

rights are governed by rules and ethical codes designed to protect the rights of society.<sup>36</sup> As such, an Islamic financial institution is not expected to conduct its economic, social and other worldly activities as a self-centred, utility-maximiser economic agent, as idealised in neoclassical economics; rather, the firm is expected to balance between the rights and responsibilities of the individual and those of society.<sup>37</sup> Essentially, the philosophy of Islamic financial institutions can be fully understood in the context of the overall objectives of Islamic economic system as enshrined in *maqāṣid al-Sharīʿah*.<sup>38</sup> Many prominent Islamic economists, like Chapra, Ahmad, Siddiqui and Naqvi have asserted that Islamic banking is a subset of the overall Islamic economic system, which strives for a just, fair and balanced society as envisioned and deeply inscribed in *maqāṣid al-Sharīʿah*. Accordingly, the many prohibitions (e.g. interest, gambling, excessive risks, etc.) are to provide a level playing field to protect the interests and benefits of all parties involved in market transactions and to promote social harmony.<sup>39</sup>

It is now commonly acknowledged that the consequences of lack of ethics and low morality are not only financial; they also damage society, the environment and, ultimately, humanity as a whole. The recent financial crisis attested to the fact that deceit and infectious greed corrupted the financial markets. Consequently, the crisis has brought the IFI into limelight as a possible and viable alternative. The crisis had a limited impact on Islamic finance, although it did not emerge totally unscathed. Nevertheless IFI faces considerable challenges in responding to the various expectations, which will determine whether it becomes a significant alternative to its conventional counterpart. IFI should therefore leverage on its robust foundation and underlying principles, deeply rooted in the teachings of the Sharīʿah and enshrined in its higher objectives or *maqāṣid al-Sharīʿah*.

Essentially, the principles of *maqāṣid al-Sharīʿah* and *maṣlaḥah* (protection of public interests) reflect the importance Islam places upon taking into account public interests rather than merely individual interests. It also provides a framework for decision making and a mechanism for adapting to change, especially for Islamic financial institutions,

<sup>36</sup> Z. Iqbal and A. Mirakhor, "Stakeholders Model of Governance in Islamic Economic System." Paper presented at the "Fifth International Conference on Islamic Economics and Finance: Sustainable Development and Islamic Finance in Muslim Countries," Manama, Bahrain, 2003.

<sup>37</sup> M. U. Chapra, *Islam and the Economic Challenge* (Leicester UK: The Islamic Foundation), 1992.

<sup>38</sup> A. W. Dusuki, "Understanding the Objectives of Islamic Banking: A Survey of Stakeholders' Perspectives" *International Journal of Islamic and Middle Eastern Finance and Management*, 1, no. 2 (2008), 132-48.

<sup>39</sup> Ibid.

which are supposed to commit to Sharī'ah principles. Perhaps the principles of *maqāṣid* and *maṣāliḥ* can further contribute in delineating the role of IFI in terms of their responsibilities. They offer guidelines for moral judgement on the part of managers and other stakeholders, particularly in solving conflicts that may arise when pursuing various financial and operational issues.

#### 4. THE 'PYRAMID OF MAŞLAḤAH'

To shed light on our discussion of the application of the principles of *maqāṣid* and *maṣlaḥah*, this article depicts the principles of *maṣlaḥah* in a pyramid form, illustrated in Figure 1.

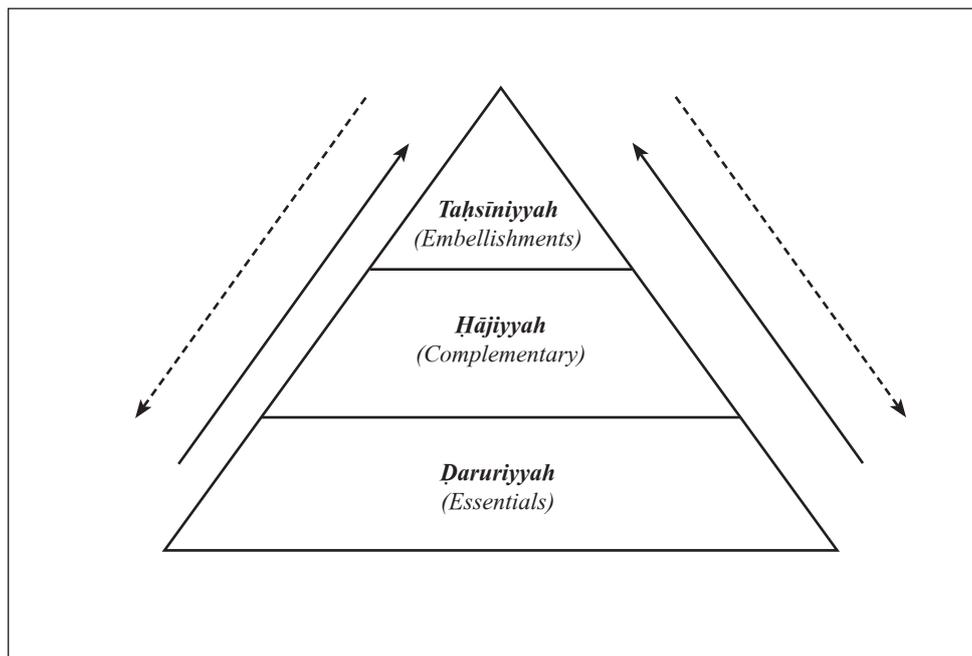


Figure 1: The Pyramid of Maṣlaḥah

The pyramid of *maṣlaḥah* functions as a framework and general guideline to an ethical filter mechanism by providing three levels of judgement to be used by managers to resolve ethical conflicts that inadvertently emerge while engaging in various financial

programmes and initiatives.<sup>40</sup> The three levels also reflect the different degrees of importance in terms of fulfilment of responsibility. The bottom level, which is represented by the essentials (*ḍarūriyyah*), constitutes the most fundamental responsibility to be fulfilled as compared to the other two categories, namely the complementary (*ḥājiyyah*) and the embellishments (*taḥsīniyyah*).

Therefore, as the pyramid moves upwards, the degree of decision making will be less fundamental, albeit more virtuous, so as to attain the perfection and well-being of society.<sup>41</sup> According to Islamic scholars, the existence of the complementary (*ḥājiyyah*) and the embellishments (*taḥsīniyyah*) depends upon the primary purposes underlying the essentials (protecting and preserving the five objectives of the Sharī‘ah – faith, life, intellect, posterity, and wealth). The two categories are structurally subservient and substantively complementary to the *ḍarūriyyah*, to the extent that any violation affecting the latter produces far-reaching consequences. On the other hand, any damage affecting *taḥsīniyyah* or *ḥājiyyah* will result in only minor disturbance in the *ḍarūriyyah*. Hence, it is essential to preserve the three categories in their order of importance; that is to say, beginning with the *ḍarūriyyah* and ending with the *taḥsīniyyah*.

The three levels of the pyramid of *maṣlahah* are not mutually exclusive; all levels are interrelated and mutually dependent. The arrows pointing upwards and downwards along the pyramid of *maṣlahah* reveal the flexibility and mechanism of change in the

<sup>40</sup> The pyramid of *maṣlahah* looks similar to but is not necessarily the same as Abraham Maslow’s hierarchy of needs (*Toward a Psychology of Being* 1968). He established the theory based on human psychological needs for safety, love, esteem and self-actualisation. While the latter is based on naturalistic and materialistic perspectives to life, the former reaffirms the integralistic spiritual view of the universe to provide a better philosophical framework as an alternative for contemporary man’s interaction with nature and his fellow men. S. H. Azmi (“Traditional Islamic Social Welfare: Its Meaning, History and Contemporary Relevance”, *Islamic Quarterly* 35, no. 3-4 (1991), 165-80) asserts that Maslow’s hierarchy of needs could not be applied totally in the “Islamic need-set”, as his hierarchy does not really deal with the “spiritual” needs. Instead he talks of “self-actualisation” and puts that at a higher (and hence less basic) level of needs. K. Ahmad (“Islamic Ethics in a Changing Environment for Managers,” in: K. Ahmad and A. M. Sadeq (eds.), *Ethics in Business and Management: Islamic and Mainstream Approaches* (London: ASEAN Academic Press, 2002), 97-109) further reaffirms that Islamic understanding of upward mobility in an organisation is more comprehensive than the simple fulfilment as described by Abraham Maslow’s hierarchy of needs.

<sup>41</sup> For a detailed discussion, see the following works: Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Petaling Jaya, Selangor [Malaysia]: Pelanduk Publications; Kamali, “Sources, Nature and Objectives of Shari‘ah,” *Islamic Quarterly* 33 (1989) 215-36; Kamali, “Fundamental Rights of the Individual: An Analysis of *Haqq* (Right) in Islamic Law,” *The Islamic Journal of Social Sciences*, 10 no. 3 (1993), 340-66; Kamali, *Maqāṣid al-Sharī‘ah*; Abū Zuhrah, *Uṣūl al-Fiqh*; M. Mumisa, *Islamic Law: Theory and Interpretation*, (Maryland: Amana Publications); Imran Ahsan Khan Nyazee, *Theories of Islamic Law* (1994); Nyazee, *Islamic Jurisprudence (Uṣūl al-Fiqh)* (Islamabad: Islamic Research Institute Press, 2000).

decision making in the sense that any element which comprises one level of *maṣlahah* may be elevated upward or pushed downward depending on the different circumstances concerning the public at large. However, it should be noted that the flexibility posed by the principles of *maṣlahah* is confined within the framework of Sharī'ah but not vice versa.<sup>42</sup>

This reflects the dynamism of the pyramid of *maṣlahah* in assisting decision making processes within different contexts, time and space.<sup>43</sup> If, for instance the circumstances change, inviting firms to respond and consequently reconsider their roles within society, this will necessitate them to realign all their business institutions (such as mission, vision, policy deployment, decision-making, reporting, corporate affairs, etc.) to the new *maṣlahah* so long as it does not contradict the principles outlined by the Sharī'ah.

To further enlighten our argument on the pyramid of *maṣlahah*, particularly on how it can be applied to Islamic financial endeavours, we shall analyse the different levels of decision-making processes based on each principle of *maṣlahah*.

At the first level, within the scope of the essentials, managers are expected to strive for the preservation and protection of the essential needs (religion, life, intellect, posterity and property) of their stakeholders and public interests in general. For example, banks must always confine their business operations to those that safeguard the aforementioned five values. Accordingly, Islamic banks have a religious, moral and social responsibility to avoid engaging themselves to any business activities—although there may be higher profits—which may cause disruption and chaos to society.<sup>44</sup> Examples include business activities which can endanger the lives and disruption of people's intellect as a result of environmental degradation, and the manufacturing of illicit drugs for public consumption.

As soon as the scope within the essentials has been fulfilled, corporations may strive for the second level, the complementary (*hājīyyah*), which is deemed beneficial to

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<sup>42</sup> Mumisa, *Islamic Law*.

<sup>43</sup> Contemporary Islamic jurists like Ḥusayn Ḥāmid Ḥassān, Muḥammad Sa'īd Ramaḍān al-Būṭī and Muṣṭafā Zayd (as quoted in Mumisa, *Islamic Law*) all affirm the dynamism of *maṣlahah* or public interest in Islamic *fiqh*, but it has to be carefully used in shaping the contemporary challenges in the modern world today. The touchstone to judge the validity of *maṣlahah* is the Quran and the Sunnah. Al-Būṭī in his book, *Dawābiṭ al-Maṣlahah fī al-Sharī'ah al-Islāmiyyah*, (Cairo: Mu'assasat al-Risālah 1982), cautions that *maṣlahah* must not be used at random. He maintains that the effective way to preserve the Sharī'ah in its ideal form is to determine *maṣlahah* by the needs recognised in the Sharī'ah, otherwise it will be exposed to extraneous factors which are against the spirit of the Qur'ān and the Sunnah.

<sup>44</sup> The corresponding Qur'ānic verse to support this is 28:77.

remove difficulties, even though its absence may not pose a threat to the very survival of normal order.<sup>45</sup> For example, Islamic banks that have fulfilled their essentials level should further extend their responsibilities. In this instance, the essential needs of employees such as fair pay and a safe workplace can be further extended to include continuous training and enhancing human quality programmes. The latter is not really essential in the sense that if managers neglect this kind of commitment, it will not pose harm to the employees. However, if the managers assume such a responsibility it is a fulfilment of the complementary interest that will advance the intellectual well-being (knowledge and skills) of the workers. In certain cases, such effort may be considered as essential (*maṣlahah ḍarūriyyah*). For example, Islamic banking institutions need to provide adequate Sharī'ah training to their employees concerning the Islamic financial instruments offered so as to protect the interest of faith.

The top level in the pyramid of *maṣlahah* is the principle of embellishments (*taḥsīniyyah*). Within the ambit of the embellishments, the Islamic firms are expected to discharge their social responsibilities by engaging in activities or programmes that may lead to improvements and attainments of perfections of public life conditions. Involving in charity or giving donations to the poor and needy; offering interest-free loans, providing scholarships to less fortunate students, and providing sufficient, correct and clear information or advertisement regarding products offered to customers are some examples of Islamic banking commitment with respect to achieving the embellishments for society.

On the whole, the pyramid of *maṣlahah* implies the need for Islamic financial institutions to engage and manage their businesses and activities according to priorities. These priorities evolved from a deep understanding of the objectives of the Sharī'ah such that preservation of interests (*maṣlahah*) is dealt with according to the different levels of importance and severity of consequences. For example, one must not focus on attaining embellishments while jeopardising the essentials. Similarly, one must not be obsessed with the attainment of benefits to the extent of creating harm or inflicting injury to others. The discussion of the principle of harm prevention, which is pertinent to our discussion of implications of *maṣlahah* to Islamic finance, is further elaborated in the following section.

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<sup>45</sup> Kamali, *Maqāṣid al-Sharī'ah*.

#### 4.1 The Principle of Harm Prevention in Islam

The concept of *maṣlaḥah* entails the understanding of the Islamic principle of harm prevention. Essentially, the principle states that while engaging in economic and business activities, a firm is prohibited from inflicting injury or causing grief to others.<sup>46</sup> There are two major Sharī'ah axioms that address the principle of harm prevention. One is the removal of hardship (*raf' al-ḥaraj*) and the other is prevention of harm (*daf' al-ḍarar*). This concept occupies a central position in the framework of protection of social interest as enshrined in the principles of *maṣlaḥah*, particularly in averting social harm. As such, a discussion of application of *maqāṣid* to Islamic finance will be futile if such an important framework is undermined.<sup>47</sup>

This principle is based on an authentic *ḥadīth* narrated by Ibn Mājah, al-Dāruquṭnī and others on the authority of Sa'd bin Mālik al-Khudrī, who mentioned that the Messenger of Allah said:

لَا ضَرَرَ وَلَا ضِرَارَ

“There should be neither harming nor reciprocating harm.”<sup>48</sup>

Islamic scholars classify harm or damage into two broad types: the first type is the harm or damage which occurs as a result of a deliberate action by a person upon parties or entities (e.g. environment). The second type is an action permissible in the Sharī'ah and performed by a person with an honourable intention which, despite that, may directly or indirectly cause harm to other parties. While the former is strictly prohibited or *ḥarām*, the latter has to be examined in light of differing contexts and degrees of harm to determine whether the action is permissible or not.<sup>49</sup>

<sup>46</sup> M. A. A. Sarker, “Islamic Business Contracts, Agency Problem and the Theory of the Islamic Firm,” *International Journal of Islamic Financial Services* 1, no. 2, (September 1999), 12-28, also available online at <http://eco.isu.ac.ir/edu/dlc/2rd/02/instructor/art2.pdf> (accessed on 5 October 2010); M. A. Zuhrah, *Uṣūl al-Fiqh*, (Beirut: Dār al-Fikr al-‘Arabī, 1958).

<sup>47</sup> M. al-Bughā and M. Misto (*A Discussion on An-Nawawi’s 40 Hadith* (Kuala Lumpur: Prospecta Printers, 1998) quoted al-Suyūṭī’s view (d. 1505), expressed in *al-Ashbāh wa al-Naẓā’ir*, that this *ḥadīth* is very significant as it embodies the fundamental principles and maxims of Islamic jurisprudence. Among the fiqh arguments derived from this *ḥadīth* is: If someone has caused damage to another party’s property, it is not permissible for the affected party to retaliate by damaging the property of the original perpetrator. This is because such action is deemed to increase the overall damage without any benefit in return, hence it is purely harmful. The alternative is paying compensation to the same value of the damaged property so as to avoid further harm to the property of the owner. See also Zuhrah, *Uṣūl al-fiqh*.

<sup>48</sup> *Musnad Aḥmad*, 1:313, no. 2867; and *Sunan Ibn Mājah*, 2:784, no. 2340 (*in al-Maktabah al-Shāmilah*).

<sup>49</sup> Al-Bughā and Mistro, *A Discussion*; Zuhrah, *Uṣūl al-Fiqh*.

Study of the principle of harm prevention, together with the concept of *maṣlahah*, has been a widely discussed topic in the field of Islamic jurisprudence. A number of Islamic legal maxims were derived from this. Table 1 summarises some of the most important Islamic legal maxims derived from the concept of harm prevention that are relevant to our discussion of Islamic financial operations. Examples of their application to various issues related to Islamic finance operations are also provided in the corresponding column to further illuminate our understanding of the maxims.

**Table 1: The Parameters of Preventing Harm in Islam**

Islamic Maxim	Description	Examples of Application
Harm is to be repelled as far as possible. الصَّرْرُ يُدْفَعُ بِقَدْرِ الإِمْكَانِ	Any potential harm to the society has to be prevented as much as possible. This resembles the proverb ‘an ounce of prevention is worth a pound of cure’. It is easier to prevent something from happening rather than treating it once it has already happened.	Islamic banks must not become involved in any activities that may in the long-run cause harm to society. For example, becoming involved in speculative trading activities that are not linked to real economic activities, such as the derivatives market.
Harm is to be removed. الصَّرْرُ يُزَالُ	Any harm must be stopped or abolished. It is obligatory to remove the harm and try to rectify the damage.	If an Islamic bank identifies any Sharī‘ah violation in its activities, immediate action must be taken to rectify the transaction. Corrective measures must be put in place to ensure such an event does not recur in future.

<p>Harm is not to be removed by the like of it.</p> <p>الضرر لا يُزال بمثله</p>	<p>An attempt to remove harm or damage must not entail another type of harm of the same calibre or worse.</p>	<p>In managing risk, banks must not use conventional risk management tools, which can invoke higher risk such as using derivatives or securitization techniques like Credit-Default Swaps (CDS) and Mortgage-Backed Securities (MBS), which are proven to have detrimental effects on society in the long-run.</p>
<p>Greater harm is to be avoided by a lesser harm</p> <p>الضرر الأشد يُزال بالضرر الأخف</p>	<p>If harm or damage is unavoidable, the strategy is to choose the lighter damage. Another similar maxim is that the lesser of two harms is to be chosen.</p>	<p>In the event that an Islamic bank has no other option except to use a controversial contract like <i>tawarruq</i> in managing its liquidity, it may do so because the damage of a collapsed bank due to a liquidity crisis is more severe and can be disastrous to the whole financial system.</p>
<p>To repel public harm, private harm is to be tolerated</p> <p>يُحتمل الضرر الخاص لدفع ضرر عام</p>	<p>An individual has to bear the damage which is private in nature in order to prevent social harm. In other words, a firm's operation should be biased in favour of society if two harmful acts have conflicting consequences.</p>	<p>The financing companies that manufacture illicit drugs or engage in activities detrimental to the public must be avoided even at the expense of undermining individual profits.</p>

<p>Repelling harm is preferred to the attainments of benefits.</p> <p>دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ</p>	<p>If there is a conflict between harm and benefit, it is obligatory to repeal or prevent the harm first, even if by so doing a benefit is lost. This is because harm can easily spread and cause severe damage, and hence priority ought to be given to the aversion of harm over attaining benefits.</p>	<p>Although a debt-based instrument like <i>murābahah</i> is a legal and valid contract from a Sharī'ah viewpoint, extensive use of it accentuates inequality and exposes society to a wide array of risks, as it redistributes wealth in favour of suppliers of capital, irrespective of the actual productivity of the finance supplied. Hence, it should be minimised and eventually averted.</p>
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## 5. CONCLUSIONS AND RECOMMENDATIONS

This article offers instructive discussion of the framework of *maqāṣid al-Sharī'ah* and its implication for the contemporary discourse on the Sharī'ah-based finance. It has been made explicit in our discussion that

- Islamic finance, as an institution grounded in the ethical and moral framework of Islamic law, has a distinctive role to play in the society.

Furthermore, the framework of *maqāṣid al-Sharī'ah* also implies that

- an Islamic financial institution's characteristics are shaped by the higher objectives of Islamic law, which emphasise overall social and economic good and not infectious greed and individualism.

Thus Islamic finance is much more than just refraining from charging interest and conforming to the legal technicalities and requirements on offering Islamic financial products. It is a holistic system which aims at contributing to the fulfilment of the socio-economic objectives and the creation of a just society. In the process of conducting

business, Islamic financial institutions seek to bring about a lasting balance between earning and spending in order to achieve betterment for the whole community. This has been manifested as the higher objectives of Islamic finance, which are deeply rooted in *maqāṣid al-Sharī'ah*. The message of Islamic finance is therefore very clear that

- earning profits is commendable as long as it conforms to the principles of fairness and justice, as deeply inscribed in the Sharī'ah;
- furthermore, Islamic guidance, enshrining its principle of justice, brings about a balance between the rights of individuals and their duties and responsibilities towards others, and between self-interest and altruistic values.

With respect to managing diverse expectations and interests, the Sharī'ah provides a framework for managers to resolve problems arising from the potential conflicting responsibilities towards the various stakeholders. In particular, the pyramid of *maṣlaḥah*, together with the concept of harm prevention, which we have previously described, serve as a viable and effective model to devise a decision framework for making any trade-offs between the interests of various stakeholders. Therefore, both the pyramid of *maṣlaḥah* and the harm prevention principle can contribute to the establishment of guidelines for decision making in managing Islamic financial institutions. They also serve as viable models to devise principles for making trade-offs between the interests of diverse stakeholders. The framework also allows the managers to weigh and balance the interests at stake so that the various business objectives can be realised without causing harm or inflicting injury to any party.

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International Shari'ah Research Academy for Islamic Finance

International Shari'ah Reseach Academy for Islamic Finance  
ISRA @ INCEIF (718736-K)  
2<sup>nd</sup> Floor, Annexe Block, Menara Tun Razak,  
Jalan Raja Laut, 50350 Kuala Lumpur

Tel : + 603 2781 4000  
Fax : + 603 2692 4092  
Email : [info@isra.my](mailto:info@isra.my)