

# **Objectives of Shariah Introduction and Application**

(Selected Papers of the Workshop organized by the Islamic Fiqh Academy of India in collaboration with the International Institute of Islamic Thought U.S.A. on December 21-25, 2003 in New Delhi)

Edited and Translated

by

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## TRANSLATOR'S NOTE

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The terms *maqāsid al-Shariah* (Shariah objectives), *maqāsid al-Shāri* (the objectives of the Law giver) and *al-maqāsid al-shar'iyyah* (the legal objectives) are all the interchangeable terms and communicate a single meaning. We find no precise definition in the writings of Imam al-Shatibi though he is treated as the pioneering scholar in the field, because he addressed in his book the scholars well-versed in the sciences of Islamic law. To define the concept we may draw upon the Tunisian scholar Muhammad al-Tahir Ibn Ashur (1296-1393/1879-1973) and the Moroccan writer Muhammad Allal al-Fasi (1906-1973).

Ibn Ashur defines the general objectives of Islamic law as:

The general objectives of Islamic law are the meanings and wise purposes on the part of the lawgiver which can be discerned in most or all of the situations to which the law applies such that they can be seen not to apply exclusively to a particular type of ruling. Included here are the occasions for the law's establishment, its overall aim, and the meanings can be discerned throughout the law. It likewise includes objectives which are not observable in all types of rulings, although they are observable in many of them.<sup>1</sup>

The general objectives of law as maintained by Ibn Ashur are: preservation of order, achievement of benefit and prevention of harm or corruption, establishment of equality among people, causing the law to be revered, obeyed, and effective, and enabling the Ummah to become powerful, respected and confident.

In another section of his book he deals with the specific objectives, by which he means,

The way in which the Lawgiver achieves beneficiary human objectives or preserves people's general interests through their private conduct, that is, through the specific acts they engage in. Such specific objectives include every wise purpose reflected in rulings governing people's behaviour, such as ensuring trustworthy conduct through contracts having to do with pledges or security, consolidating

domestic and family order through marriage contracts, and preventing long-term harm by allowing for the legitimacy of divorce.<sup>2</sup>

Muhammad Allal al-Fasi has combined both the general and specific objectives of Islamic law into a clear definition. He says that “what is meant by *maqāsid al-Shariah* is its purpose or goal, and the underlying reasons which the lawgiver has placed within each of its rulings”.<sup>3</sup> The author clearly asserts:

The general 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, tap its resources, and plan for the good of all.<sup>4</sup>

After examining a number of Quranic verses relating to the objectives of Shariah, al-Fasi concludes:

These verses in their totality make it quite clear that the purpose for which the prophets and messengers were sent and for which the divine laws were revealed is to guide human beings into that which will ensure their well-being and righteousness, and to enable them to carry out the responsibility which He has laid upon them.<sup>5</sup>

Based on these definitions it may be said that *al-maqasid* are the purposes which the Shariah has established to fulfil for the benefit of mankind. The holy Quran, while elaborating the purposeful ‘*ibadat*, has categorically described *salah* (the regular prayers) as a check on and restraint from all sinful acts. The Quranic chapter *al-Ankaboot* verse No. 45 mentions *fahsha* (shameful act) and *munkar* (unjust deed) as the wrongs to be checked by the prayers. The prayer purges Muslims of anything (act, plan, thought, motive, words) of which they should be ashamed or which amount to work injustice to others.

The Quranic chapter *al-Baqarah*, verse No. 183, has described the self-denial and self-restraint (*taqwa*) as the factors behind fasting (*siyam*). Obviously the instincts for food, drink and sex are strong in the animal nature and temporary restraint from all these enables attention to be directed to higher objectives. These two examples suffice to prove the rationale behind all Shariah ordinances. The present work deals with the same as a full-fledged discipline of Islamic jurisprudence to be carried out by the researchers and Muslim jurists.

To render the most complicated juristic issues like the Shariah objectives (*maqasid al-shariah*) into English was a pleasant task to me as well as challenging one. It was pleasant because it dealt with the Islamic subject which is needed most in our times and is inspiring for Islamic Scholars, especially for those engaged in the Islamic revival and reformation. It is challenging because it compelled me to go through the principles of jurisprudence thoroughly, especially those terms of *fiqh* that were used in the research papers of the workshop, and consult the experts of Islamic fiqh. While translating the book I too was enlightened and was inspired to do and supervise the research studies in the area of *fiqh al-maqasid*. For that I should thank from the core of my heart Ml Amin Usmani, the General Secretary, Islamic Fiqh Academy, New Delhi who assigned me this job.

While translating the Urdu original into English I was to edit the book also, keeping in view the present readers. Though I tried my best to retain the spirit of the speakers I made the following arrangements to make the material easily understandable and communicative:

- (i) Some necessary replacements were made and explanatory words were added to convey true meanings.
- (ii) The Urdu version *Maqasid-e-shariat* was published some six years back in 2004. To update the material some necessary changes were made.
- (iii) Most of the material was presented orally in the workshop

and was included as such in the Urdu version. This is now presented into writing style.

- (iv) Some questions and observations on behalf of the participants in the workshop were found incomplete or confusing. These are made now comprehensible.
- (v) The references were incomplete, especially the ahadith were quoted without any proper reference. Now these ahadith have full references.
- (vi) Some end-notes are added to remove the misunderstanding that might arise from the text; or to correct some factual mistakes in the original Urdu text.

I must express my gratitude to the friends and respectable personalities who provided me with moral support when the translation was in the process and my services in the Department of Islamic Studies, A.M.U. Aligarh, India were suspended temporarily owing to politics in the University. I must mention especially the following:

Prof. Muhammad Salahuddin Umari, Dr. Faizan Ahmad, Dr. Abu Sufyan Islahi (all from the Department of Arabic, A.M.U.); Prof. Zafarul Islam, Dr. Abdul Hameed Fazli, Dr. Abdul Majeed Khan, Mohammad Hafeez, research scholar (all from the Department of Islamic Studies, A.M.U.); Prof. Rafi Ahmad Alavi Department of History, A.M.U.; Maulana Sultan Ahmad Islahi editor quarterly *Ilm-o-Adab* Aligarh; and Br. Amanullah Khan, Chairman, U.P. Rabita Committee. May Allah bestow His Mercy upon all these friends.

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**Notes**

1. Ibn Ashur, Muhammad al-Tahir, *Maqasid al-Shariah al-Islamiyyah*, Tunis, 1946, p. 50.
2. Ibid., p. 154.
3. Al-Fasi, Muhammad Allal, *Maqasid al-Shariah al-Islamiyyah wa Makarimuha*, Casablanca, Maktabat al-Wahdah al-Arabiyyah, n.d., p. 3.
4. Ibid., pp. 41-42.
5. Ibid., p. 43.

## INTRODUCTION

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Islamic Shariah is a God-revealed code of life. Of course, no one may be aware of the needs and capabilities of the human beings more than the Creator Himself. Even man himself does not know what is good or bad for him or his, interests and harm more than Allah does. Islamic Shariah, therefore, does not only safeguard the success in the Hereafter but ensures the worldly comfort and satisfaction and guarantees betterment in this world too.

All the divine ordinances described in the Quran and the Sunnah is based on human interest; no Islamic law may be devoid of humane objectives and improving conditions. Some objectives are general in nature, qualifying the foundation for entire Islamic law. These objectives are inclusive of all the human needs and interests: protection of life, race (global), property and intellect as well as defending the religion and faith whatever a man performs worldly or mentally he does so within the ambit of these objectives. The experts of Islamic law have, therefore, categorized these “five objectives” as the basis of the Shariah ordinances.

Every ordinance in Islam, if considered seriously, is accompanied with some particular objectives and betterments also. The *salah* reminds man of Allah and refreshes the man His Existence; Islamic fasting creates self-control in the soul; the *zakah* provides the needy people with the necessary provisions of life; the marriage purifies the mind and soul from sexual lust; Islamic trade provides the means and needs of life; prohibition of usury checks the exploitation of the poor; forbidding adultery ensures the society a string safeguard from sexual anarchy and chronic diseases. The same objectives are accompanied with other ordinances. Muslim jurists in their noble efforts of inferring and deriving the legal positions through *ijtihad* and *istinbat* have maintained these essential and particular objectives of Shariah.

The ordinances, coming under these objectives, may not be placed on equal status in terms of human needs and requirements. Some ordinances are essential and unavoidable to achieve these objectives; some are of less importance but if these are not allowed, it may cause the problem for human beings. Some are of lesser importance in degree and provide some allowance or convenience. The first category of ordinances is known in jurisprudential literature as the *dharurah*; the second category as the *hajah* and the third as the *tahsin*. Defending the religion and protecting the life, property, affinity and intellect are the objectives of Islamic Shariah and *dharurah*, *hajah* and *tahsin* are different stages of these ordinances.

To understand these objectives and their stages is the essence and foundation of *tafaquh fi al-din* (understanding truly the religion). Without maintaining them accordingly an opinion would be based either on any neglect or exaggeration; that would be coloured either with liberality or narrowness and both would contradict the nature, taste and goal of Islamic law. In order to derive the Shariah guidance for all the new issues, and to deduct an opinion inconformity with the Islamic law, a deep insight into Shariah objectives and their different stages is essential. The particulars of jurisprudence possibly may be confined into some specific requirements of an age, but the objectives and interests of Shariah are eternal and everlasting.

Needless to add the jurists and the Islamic scholars applying *ijtihad* have always kept in mind these noble objectives while deducting their opinion in the law but have paid comparatively less attention to theorizing them and codifying some principles. The hanafids in their principle of *istihsan* and the malikids in the application of *masalih mursalah* have highlighted these objectives to some extent. But as a fully fledged discussion on the principles of Islamic law, the objectives of Shariah could not be developed as it deserved.

In the succeeding period confronted with the new issues that emerged rapidly, the Islamic scholars paid more attention to this discipline. Abu Ishaque al-Shatibi and Tahir bin 'Ashur are those prominent jurists who offered the objectives of Shariah as an established theme of the principles of jurisprudence and tried their best to codify the rules and regulations of this emerging discipline. In the modern period the Islamic scholars, because of rapid changes in life, have diverted the direction of their intellectual and academic works to this discipline. The noble efforts made in this direction by the writers and intellectuals associated with the International Institute of Islamic Thought U.S.A. must be recognized and appreciated.

This theme is interesting especially for the Islamic scholars, the *Ulema* and the *Muftis*. The Islamic Fiqh Academy India since its inception has tried to study deeply and deliberate among the scholars over the core issues of jurisprudence directly linked to the emerging situations. In this perspective the Academy thoroughly discussed the issues of *hajah* and *dharurah* as well as of '*urf* and '*adat* in the two seminars. The ulama presented their thought-provoking papers on all these deeply rooted issues.

Some months back, International Institute of Islamic Thought, U.S.A collaborated with the Islamic Fiqh Academy India to organize a workshop for the young scholars and teachers of fiqh on the central theme of the objectives of Shariah. This important workshop was held in the seminar hall of Jamia Hamdard, New Delhi on 21-25 December 2003. This created in the participants a new zeal for study and research and provided a new direction for thinking. The Academy thought it proper to convey this volume for those who could not attend the workshop, and thus to broaden the circle of its utility by publishing it.

At the behest of the Academy, the associates of its research division have edited this collection with hard work. Some useful lectures were delivered in Arabic and Urdu in the workshop; these were transcribed from the tape recorder by Safdar Zubayr Nadwi and Muhammad Imtiaz Qasmi respectively; and translated into

Urdu by Muhammad Fahim Akhtar Nadwi and Hisham ul Haq Nadwi. The rhetorical style also was changed to the written one. The associates of the research division of the Academy in the entire process consulted Atiq Ahmad Bastavi, the Secretary for the research and analysis wing, and also this humble writer whenever they needed. This collection in the book form is now at your disposal. This collection highlights the significance of the objectives of Shariah, and analyses the rich contributions to this theme also, as well as discusses various aspects and dimensions of the subject. It also sheds light on the emerging discipline of *fiqh al-aqalliyat* (understanding Islamic law relating to Muslim minorities or those living in a plural society). It also contains an introduction of the important works done so far on the theme. I hope this collection of the writings and lectures presented in the workshop would be welcomed enthusiastically and would prove useful and effective in highlighting the significance of the objectives of Shariah. Allah is certainly the only force behind all the intentions and He alone is the Reconciler and the One from whom assistance is sought.

Rabi al-Awwal 6, 1425 A.H.  
April 27, 2004

Khalid Saifullah Rahmani

## PREFACE

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The Islamic *Fiqh* Academy, India since its inception declared it as one of its objectives the creation of research interest in the students and young graduates of Madrasas, the improvement of the understanding of religion and the imbibing of deep juristic insight into their minds. The Academy explicitly mentions in its Constitution the following articles:

“To provide newly graduated scholars and *Ulema* the academic orientation; to create an intellectual environment by encouraging them; and to assemble the scholars of sound knowledge and intellectuals around a centre.”

“To offer necessary services for the sake of creating competence in the modern sciences in the intelligent and capable graduates of the *Madrasas* and providing proficiency in the religious and jurisprudential sciences in the graduates of the universities so that from amongst the new generations such *Ulema* and jurists might be trained who would have command on the original sources and are fully aware of the needs and challenges of their age”.

Following the Constitution, the Academy invited to all its seminars the young *Ulema* and the scholars associated with the *ifta* (issuance of legal verdict). It provided them with the opportunity to study the varying modern themes; to deliberate on them seriously and write on them accordingly. The result in the short period was surprising. A nucleus of young scholars and *Muftis* is now trained and is actively engaged in different fields of studies and research, writing and analyzing, teaching and issuing verdicts. The gap seriously felt before the foundation of the Academy has been bridged. The silence was broken. The research and analysis, the deep understanding of the religion and masterly applying it through reasoning and deduction were initiated. The weighty writings of capable *Ulema* and enthusiastic *Muftis* in the light of the Quran,

*Hadith* and Islamic *Fiqh* on the contemporary issues into light, refuting the allegation that the *Ulema* and the *Muftis* were not aware of the ever-changing situation and the too-complicated new issues.

In order to train the students of higher classes in the religious seminaries and *Madrasas* and for the sake of refreshing them, the Academy held the training camps and refresher courses in which the extensive lectures on the modern subjects and some social sciences such as economics, political science, civics and sociology were delivered. These proved very enlightening and useful for the young generation.

Maulana Mujahidul Islam Qasmi, the late founder of the Academy had urged from the very beginning to organize the workshops and training camps separately on the varying themes in order to refine and strengthen the capabilities of young enthusiastic and dynamic graduates associated with the teaching, research and issuing legal verdicts, in which insightful and thought provoking lectures should be delivered; the young graduates should be consequently provided the chance for raising questions and deliberations so that other aspects of the topic would be discussed and some new dimensions for research and study would emerge.

After the sad demise of the learned founder, his dream was actualized in such a way that on December 21-25, 2003 on the beautiful campus of Jamia Hamdard, New Delhi a workshop on the objectives of Shariah was organized by the Academy with the collaboration of IIIT, U.S.A. Consequently the selected young graduates of Islamic seminaries inclined heavily towards *Fiqh* and *Ifta* and practically involved in the teaching, writing and the issuance of legal verdicts were invited to participate and share views. Some important works on the theme were despatched to them in advance so that they attend it with the full preparation, benefit properly from the lectures to be delivered and share the discussions and deliberations well.

By the Grace of Allah, the workshop was held successfully. The participants attended all the sessions with full interest and preparation. This collection of the papers, lectures and deliberations in the workshop is now in the hands of the readers. The associates and workers of the Academy have worked day and night eagerly to edit the collection, transcribe the lectures from the tape recorder to paper, record in writing all the questions and answers and translate the Arabic version into Urdu language. All this was the painstaking but it was overcome graciously by the associates and the workers of the Academy. May Allah reward them all the best!

I hope this collection will be welcomed wholeheartedly; the students of higher classes in Islamic seminaries, young graduates, academicians and scholars having interest in Islamic studies would especially benefit from it. May Allah accept this humble effort of Islamic *Fiqh* Academy of India and provide it with further chance to undertake such noble jobs!

May 15, 2004

Atiq Ahmad Bastavi  
Secretary, Research Wing  
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## REPORT

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### **Workshop on the Objectives of Shariah in the Contemporary Perspective**

- Muhammad Fahim Akhtar Nadwi

While organizing a unique workshop in India, Islamic Fiqh Academy started a new series of jurisprudential training. This jurisprudential workshop was held, in the peaceful and dignified campus of Jamia Hamdard on Shawwal 26 – Dhi Q’ada 01, 1424 AH./ December 21-25, 2003. It was well attended by more than 40 graduates associated with the different religious seminaries and research institutes of different regions of the country. They had studied in advance different books on the theme provided by the Academy. The workshop was represented by the delegates from Darul Uloom Deoband (Waqf), Nadwatul Ulama Lucknow, Al-Ma’had al-‘Aali Imarat Sharyiah Patna, Madrasa Sabilus Salam and Darul Uloom both in Hyderabad, Jameatul Hidayah Jaipur, Al-Ma’had al-Aali al-Islami also from Hyderabad, Mazharul Uloom Varanasi, Darul Uloom al-Islamiyah Basti, Mahad Millat Malegaon, Jamia Sayyid Ahmad Shaheed, Madrasa Isha’atul Uloom Kanpur, Madrasa Ziyaul Uloom Bareilly, Darul Uloom Imdadiyah Mumbai, Aligarh Muslim University and other educational institutions from Andhra Pradesh, Bihar, Uttar Pradesh, Maharashtra and Rajasthan.

In this 5 days well-attended and enthusiastically participated academic programme, besides the learned countrymen, Dr. Salahuddin Abdul Halim Sultan, the specialized scholar of the themes like the objectives of Shariah and the law of the minorities (*fiqh al-aqalliyat*) shared his views with the audience. Among the national dignitaries who enriched the discussions in the workshop by their lectures, writings and thought provoking utterances were Bhurhanuddin Sambhali, the Vice President of the Academy, Khalid Saifullah Rahmani, the General Secretary of the Academy, Atiq Ahmad Bastawi Qasmi, Secretary, Research Wing of the Academy, Sayyid Muhammad Rabey Hasani Nadwi, President of

All India Muslim Personal Law Board, Wazeh Rasheed Nadwi, Muhammad Ijtiba Nadwi, Aneesur Rahman Qasmi, Nazim Imarat Sharyiah Patna, Sayyid Jalaluddin Umri, Asrarul Haq Qasmi, Abdur Rahim Quraishi and Dr. Mushin Usmani Nadwi.

The special feature of the workshop was the central theme of the objectives of Shariah maintained as the spirit in all the ordinances which were first observed strictly and adhered to completely by the distinguished vanguards of Islam, the holy companions, the *tabi'yun* and their immediate followers, the imams of independent reasoning and *mujtahids*, especially by the hanafid jurists who maintained it largely by inferring their legal opinion and legislation. The deep knowledge of the theme of the workshop constitutes the basic element for any resolution of the modern problems. According to Abu Ishaq al-Shatibi, the authoritative jurist on the objectives of Shariah and the author of *al-Muafaqaat*, the knowledge of this discipline forms the status of base and foundation for any act of independent reasoning (*ijtihad*). Knowledge of other disciplines is incidental to this main branch on learning. For the sake of better understanding and fruitful deliberations on such an important issue, full preparation was made on behalf of the Islamic Fiqh Academy. Along with the workshop being organized on the campus of Jamia Hamdard, the participants and delegates were provided with full hospitality on the same premises to ensure the intellectual exchange and the rich participation and academic share of the learned guests.

In order to expand the utility of the jurisprudential workshop, modern technological gadgets too were used as the computer projector, C.D. player and black boards etc. were utilised for the sake of clear understanding. The Academy also managed to provide in advance the participants with the important relevant writings and books. A number of research-based works were dispatched to the learned audience. Between the on-going sessions of the workshop various academic writings, research papers and leaflets were also distributed.

While making the participation of learned scholars in this

jurisprudential workshop of its own kind more effective and fruitful the programme was worked out in such a way that the audience could share their views after each lecture was delivered; queries and clarifications were sorted out; analysis and criticism opened the windows of thought. The sessions of such interactions proved very fruitful because of the farsightedness, broad thinking and deep understanding of the participants.

Mujahid ul Islam Qasmi, the founder of the jurisprudential movement in the modern intellectual history of India, had initiated through the Islamic Fiqh Academy, in his life the two magnificent projects for the Islamic response to modern issues and for training a team to perform that noble job. This 5-days jurisprudential workshop emerged as a milestone in fulfilling the second objective of the late founder.

The inaugural session was to be presided by Sayyid Muhammad Rabey Hasani Nadwi who could not do so because of the non-availability of the seat in the train and then in the aeroplane. Representing him Professor Sayyid Muhammad Ijteba Nadwi presided the session that was inaugurated by Sayyid Jalaluddin Umri the then Vice President of Jamaat-e-Islami of India. Umri shedding light on the significance of the objectives of Shariah emphasized that the Shariah was revealed only for the sake of achieving success in this world and in the Hereafter. It maintained that in each and every step the noble objectives of life might be achieved through the noble means. While referring to the Quran and the hadith He clarified the right position of a Muslim was to believe in the Shariah as sacrosanct free from all human errors and as full of wisdom and interests; and in case the rationale behind any ordinance was beyond his comprehension, he should not contest the Islamic law, it may be owing to his own shortcoming. The learned speaker appreciating the workshop declared it an important initiative, and hoped that the trained jurists having completed the due course would have deep insight into legal ordinances and their objectives, and deeper understanding of their application, and thus they would serve religion and society better.

Introducing the programme Atiq Ahmad Qasmi, the Secretary, Research Wing presented a precious writing to the audience that was distributed. He emphasized that all the ordinances and teachings of Allah and His Messenger (SAW) were based on the noble objectives and pious interests. Every verdict of Shariah inherits the wisdom. Referring to *Hujjalullah al-Balighah*, the remarkable contribution of Shah Waliullah of Delhi, he criticized those who claim that the Shariah ordinances were revealed for the sake of human trial and had no objectives and interests of their own. He further explained that Shah Waliullah had mentioned seven points in favour of codifying the discipline of the objectives of Shariah. While analyzing the historic contributions made by the scholars on the theme he referred to Imam al-Haramayn Abdul Malik al-Juwayni (d. 478 AH), Ghazali (d. 505 AH), Izzuddin bin Abdus Salam (d. 606 AH), Shahabuddin Qirafi (d. 685 AH), Najmuddin Tufi (d. 716 AH), Ibn Rajab Hanbali (d. 795 AH), Ibn Taimiyah (d. 727 AH), Ibn Qayyim (d. 751 AH) and Abu Ishaq al-Shatibi (d. 790 AH). While referring to Muhammad Qasim Nanautwi (d. 1297 AH) and Ashraf Ali Thanawi (d. 1362 AH) he also mentioned the modern dignitaries of the Arab world as Muhammad Tahir bin 'Ashur of Tunisia (d. 1973 AD), and Allal al-Fasi of Morocco (d. 1974 AD) and also Shaykh Ahmad Risuni, Dr. Yusuf Hamid Alim, Dr. Jamaluddin Atiyyah and Ismail Hasani all belonged to the International Institute of Islamic Thought, Herndon U.S.A. established in 1981.

Atiq Ahmad Qasmi while elaborating the aims and the gains of the workshop clarified the sensitiveness of the theme. To him neither any neglect of the objectives approved by or derived from the Quran and the hadith, is tolerable. Nor is any attempt to define the noble objectives bypassing the original sources of Islam bring out. He also pointed out the utility of the workshop that would bring out what contributions till date were made; what were the aspects and the dimensions left, yet to be explored by researchers; what was the significance of the theme in the contemporary perspective and in what way the theme might help in resolving the problems of the modern society and what were the limits and boundaries of the

discipline.

Khalid Saifullah Rahmani, the General Secretary of the Academy, offered his thoughtful, intellectual and historical welcome address. It was historical in the sense that it beautifully narrated the golden history of the intellectual fountains of India. He especially mentioned Ruknuddin Nagauri, the author of *Fatawa Hammadiyah*; Alim bin Ala of Delhi, the compiler of *Fatawa Tatarkhaniyah*; Qazi Jaggan of Gujarat, the author of *Khazanah al-Riwayat*; Qazi Shihabuddin, the author of *Fatawa Ibrahim Shahi*; Aurangzeb Alamgir and the compilers of *Fatawa Hindiyah*; amongst the Shafiites Abdul Aziz of Malabar, in the field of the principles of jurisprudence Safi Hindi; Mulla Abdush Shakur Bihari, the famous author of *Musallam al-Thubut* and its interpreter Bahrul Uloom of Lucknow; Abdul Hai of Farangi Mahal; Nawab Siddiq Hasan of Qannuj; in the field of *fiqh al-Quran* Mulla Jiwan, Zafar Ahmad Usmani; in the field of *fiqh al-hadith* Zaheer Ahsan Shawq Nimawi; Zafar Ahmad, Shah Willullah Muhaddith of Delhi; Ashraf Ali Thanawi; Muhammad Sajjad; Sayyid Sulaiman Nadwi; Anwar Shah of Kashmir, Sayyid Abul Hasan Ali Nadwi and amongst the contemporaries Ali Ahmad Nadwi etc.

The intellectual aspect of the welcome speech covered the areas of permanence and never-changing as the characteristic of the Shariah, and that the noble objectives were also eternal. Enlightening about the various kinds and grades of objectives he emphasized if the respectable jurists would maintain them, they would neither be tilted to the liberality declaring the Shariah's undertakings as invalid, nor would they be inclined to narrowness in treating Islamic law as the unbearable burden. Before touching on these issues he thanked the IIIT, Washington that collaborated with the Academy on the workshop. He urged the young graduates coming from all the corners of the country to discuss for the sake of the implementation of the Shariah objectives in the modern issues, the following seminal points:

- a) In case of a contradiction between the objectives of Shariah and the application of *qiyas*, and reasoning which one will be

preferred?

- b) In case of a clash between the stipulated text and the common objectives, whether the text may or not be specified.
- c) While offering the example of the Prophet (SAW) who prohibited the fixation of the price in the market and the changing stand of the jurists who legalized the fixation keeping in view of the oppressing tendency of the traders, Rahmani asked the jurists in case of suspending temporarily the practice of a text because of the general interests of the public, whether that will be treated as the neglect of the text or that will be considered as the otherwise application of the text in the changed situation ?
- d) In case the mutual relation between reason and an interest does disappear, would the ordinance be based on the juristic reason or on the interest of the Shariah ?

After raising these serious questions, the General Secretary of the Academy welcomed the participants and the audience as well.

The scheduled presidential address to be delivered in Arabic by Sayyid Muhammad Rabey Hasani Nadwi already faxed to the organizers, was translated by this writer into Urdu and was read out. The learned scholar highlighted in his address that the Islamic Shariah is basically a humane, noble way to God on behalf of the Creator, guided by all the Prophets in the history and in the last by Muhammad, the Seal of the Messengers. Only those who spent their lives on understanding the Shariah have the authority to interpret it. They differed on the basis of their varying understanding in the process of deducting the legal opinion, and not because of any selfish interest. This difference occurred honestly in the comprehension of the meanings of the texts of Shariah. Hence various juristic schools emerged, the most prominent of whom were four. The Hanafi school flourished in the Transcaucasia, Khurasan, India and Turkey. The Maliki school was established in Arab Morocco. The Shafiite school was expanded to Hijaz, Yemen,

Egypt and the coastal areas of India, while the hanbalites established their stronghold in the regions of Najd and some other areas. The inhabitants of each region practised their respective school. Apart from this, a group of ulama emerged who were inspired directly from the original sources of Islam and did not follow the imams of any juristic school. There appeared a new opinion in the field of jurisprudence which was not a juristic school in the popular sense but it was a semi-juristic school.

Nadwi pointed out that there was no major change in the global scenario after the early centuries of Islam, that might lead to independent reasoning and judgement following the broader *ijtihad*. In the modern period, however, the requirements of culture and civilization have created the need to do *ijtihad*. Because of the shortage of inclusive and all-pervading capabilities, the juristic academies in the different parts of the Muslim world have now replaced the individual *ijtihad* by the collective one. The Islamic Fiqh Academy is one of these. The learned speaker while referring to the magnificent juristic contributions made so far in India detailed the foundation and the background and the noble efforts relating to the protection of Shariah made by the All India Muslim Personal Law Board. He pointed out that Qazi Mujahid ul Islam Qasmi was among the vanguards of this movement; the Academy founded by him has been doing great service to Islam in the present situation.

A number of prominent academicians and ulama paid tribute to the Academy in their speeches in the inaugural session. Asrarul Haq Qasmi was pleased to see the noble cause initiated by Qazi Mujahidul Islam was going on even after his sad demise. Dr. Muhsin Usmani Nadwi opined that as Abu Hanifah, the great imam had turned the juristic efforts being made in his age into a collective job, and as various ulama in the history had oriented any cause to the collectivity, the late Qazi too turned the juristic studies and research into a movement. Dr. Nadwi said that late Qazi was fully equipped with the heart-winning habit. He coopted all the Muslim leaders and ulama belonging to any school of thought in this noble

campaign.

Abdur Rahim Quraishi Advocate who needs no introduction in the country, appreciated wholeheartedly the Academy and the on-going workshop and pointing out the different fields for thinking and revision resulting from rapid changes due to modern life style he declared Islamic Fiqh Academy a clear proof of the farsightedness of the late Qazi.

The concluding address in the inaugural session was delivered by Professor Sayyid Muhammad Ijteba Nadwi. Emphasising the significance of the objectives of Shariah and on the need of its deep understanding, he described in detail the contemporary Arab jurists and their vast contributions to this field. He while highlighting the nature of the workshop reminded the jurists and the muftis of their responsibilities. He finally paid tribute to the great struggle made by the late Qazi and the Academy. The inaugural session was concluded with the prayer to God.

Delhi, the capital turns usually into the coldest city of the winter season in the month of December. In the morning of December 21, Sunday, the city was enveloped with heavy fog resulting into severe cold. But the intellectuals, academicians and the learned scholars from the different parts of the city rushed to attend the inauguration. Among these dignitaries were Qazi Muhammad Zubayr, Manager Madrasah Shamsul Uloom; Mr. Ejaz Aslam, Secretary, Jamaat-e-Islami Hind; Warith Mazhari, editor Tarjuman Darul Uloom; Abdul Qadir Shams Qasmi, correspondent Rashtriya Sahara and a number of teachers and students of Jamia Hamdard. The Academy had provided lunch for their hospitality.

In the evening the working session of the workshop commenced. The sessions were addressed to the participants of the workshop. The first working session, therefore, started in a less-spacious hall within the campus. The first paper presented by Atiq Ahmad Qasmi was titled: "Introducing the objectives of Shariah: Its Historical Continuation from the earlier period till the 14<sup>th</sup> century". He said Imam al-Haramayn Abdul Malik al-Juwayni historically was the first writer who established the three grades of Shariah:



*dharurah*, *hajjah* and *tahsin*. He discussed the significant value of the two books of al-Juwayni namely *al-Burhan fi Usool al-Fiqh* and *Ghiyath al-Umam fi Iltiyath al-Zulm*. He pointed out that Ghazali for the first time had discussed the protection of religion, life, property, affinity and intellect as the five objectives of Shariah. The second paper titled “The characteristics of Islamic Shariah” by Dr. Taha Jabir al-Alwani was presented by the compact disk. He said that the holy companions, as the first generation of Islam, received Islamic Shariah from the Prophet (SAW). The second generation transmitted and narrated it and the third one derived the legal ordinances in the light of that and performed *ijtihad*.

In the morning session on December 22, Khalid Saifullah Rahmani presented an important and relevant paper in today’s context entitled as the “Role of the objectives of Shariah in Resolving the Contemporary Issues and the Problems of Muslim Minorities”. He explored in his scholarly discussion what the new issues mean, and how the pious predecessors struggled to resolve the problems. He detailed the moral decadence, the changing political situations, the replacement of (*urf* and *adat*) customs and traditions, and the emergence of new resources as the main factors responsible for the new problems. The rethinking of some *ijtihad*-and-interests-based issues is needed.

Rahmani insisted that because of the circumstantial changes holding of new opinion had been an established and recognized phenomenon for the Muslim jurists. It has continued since the day of the period of the holy companions. The Prophet (SAW), for instance, had prohibited to catch the wandering camels since they sufficed to protect themselves. Uthman, the third caliph, observing the moral degeneration in his days instructed to take such camels to the official treasuries. Aisha, the mother of the faithful analyzing the moral situation of her age declared that had the Prophet (SAW) observed the worsening moral condition of today’s women he would have certainly disallowed them to join mosques. The possession by the working class and those involved in the handicrafts was treated a trust. Ali the fourth caliph, instead

declared them the guarantor. The pious predecessors used to prohibit any payment for leading the prayer (*imamah*), calling for prayer (*azan*) and for teaching the Quran. The jurists later permitted them all with the payment. Abu Hanifah, likewise, according to one of his sayings, allowed the families of a sayyid to receive *zakah* since the fund of *khums* (one fifth of the booty) is not longer there. All these legal verdicts (*fatawa*) are related to the changing situation. The learned speaker pointed out a number of new issues in this regard and applied them, correlating to the objectives of Shariah in the modern circumstances.

The second lecture in the same session was to be delivered by Badrul Hasan Qasmi, the famous theologian and researcher, fully conversant with the modern studies in Islamic sciences. He in spite of being the Vice-president could not attend in person. His lecture was presented by Badr Ahmad Mujibi Nadwi. Entitled as “objectives and Grades of Shariah” this scholarly writing emphasized that the knowledge of the ‘Shariah Objectives’ essential and also useful to everybody. A legal ordinance accompanied with the wisdom and the rationale always enhances the faith and refreshes one’s religious spirit. That was the reason why the scholars like Izzuddin, Ibn al-Qayyim, al-Shatibi, Shah Waliullah, Muhammad Qasim Nanautawi all following al-Ghazali made the secrets (*asrar*) of Shariah the subject of their interests. The scholar declared outdated the disputes over the issues like the divine acts of God were or not compulsorily accompanied with interests and reasons. He added these issues were related to *Kalam* (scholasticism) and not to the principles of jurisprudence. According to Ibn al-Hamam, most of the later jurists agreed that all the ordinances and teachings of Allah catered to human interests and betterment. The speaker clarified that with the detailed examples and arguments the noble objectives of Shariah and their three stages. He described the principle of preferring the stronger one in case of a clash between the two interests. The Vice President of the Academy had dispatched a writing in Arabic also, highlighting the significance of the workshop as well as the theme of Shariah objectives in the contemporary perspective. In that write

up the rich contributions in the field made by the scholars of IIIT Washington were also appreciated in full.

Badrul Hasan Qasmi, in his third thought provoking and paper offered a deep analysis of the contemporary, entirely changed circumstances, criticizing the double standard maintained by the dominating nations today. Clarifying the Shariah objectives he suggested to work out a detailed programme of religious awakening and spiritual reformation in future. The better method to understand the new age and to represent the Islamic teachings accordingly was not to merely criticize the West; it required, instead to bring out the distinctive features of Islam gradually before the West. Since the essence and spirit of Islamic jurisprudence lies in the objectives of Shariah, the pragmatic clarification of these objectives would be the first stage of this process. He hoped the workshop on the objectives of Shariah would focus on the two targets:

- i) The basic elements and the five objectives of Shariah: protection of religion, life, property, honour and intellect, should be declared as the basis for dialogue and agreements.
- ii) The anarchy of fatwas prevailing in the Muslim world should be checked; the *fatawa* should be linked to the Shariah objectives in order to escape the self-contradictory and damaging *fatawa*.

The workshop was expected to be attended by a number of Arab dignitaries well versed with the Shariah objectives namely, Dr. Ali Jumu'ah, the grand mufti of Egypt; Dr. Jamaluddin Atiyah, the famous thinker; Dr. Ahmad Risuni, the specialist in the Shariah objectives; and Shaykh Ismail Hasani. However, they could not make it. Dr. Salahuddin Abdul Haleem Sultan, academically the most dynamic personality from the US, however, arrived in New Delhi on the evening of December 22. He is the President of Islamic-American University, member of European Ifta Council and author of various research-based books. He is equipped with the missionary zeal, dynamism of faith, attractive personality as well as with the deep knowledge and insight. He delivered faithfully in the

evening session an enthusiastic speech of both the kinds of *ijtihad* – relating to (*maqasid*) objectives as well as (*masalih*) interests – and suggested the young scholars to inculcate in them both the qualities of God by submissiveness (*ikhbat*) and the legal argumentativeness (*hujjah sharyiah*). Next to it was the lecture of Dr. Taha Jabir al-Alwani communicated to the audience by the C.D. player in eloquent Arabic language with a clear style on the repercussions of the neglect of the Shariah objectives.

In the morning session on December 23, an important issue was raised in the scholarly, eye-opening lecture of Dr. Salahuddin Abdul Haleem Sultan, In the light of the Quran, the Sunnah and some contemporary pragmatic examples, on the three aspects of the theory, the kinds, and the authenticity of Shariah objectives. Dealing with the first aspect, he introduced the objectives and defined them. In the second portion of his lecture he highlighted the three kinds of objectives : the general, the particular and the partial. Talking of its authenticity he mentioned the two stands of the holy companions about performing ‘*asr* (afternoon) prayer at the fort of Banu Quraydhah, and referred in this regard to Ibn Qayyim who commented that those performing the prayer in the way to Banu Quraydhah constituted *ahl al-m’aani* (those maintaining the meaning and spirit), while those who performed the prayer after they arrived at the fort formed *ahl al-zahir* (those practising the literal understanding).

Muhammad Rabey Hasani Nadwi accompanied with Wazeh Rasheed Nadwi, Muhammad Ijteba Nadwi, Anisur Rahman Qasmi, Sayyid Mustafa Rifai Nadwi, and Dr. Muhammad Manzoor Alam graced the workshop as well. Sayyid Muhammad Rabey Nadwi delivered a thought-provoking speech in Urdu. He spelled out the characteristics of Islamic Shariah, and stressed the need for collective *ijtihad*. He appreciated the noble efforts of the Academy and declared the workshop the need of the hour. Wazeh Rasheed Nadwi stated the need to pay attention to the fiqh in the perspective of correlating life to Islamic law, and paid tribute to the Academy. Muhammad Ijteba Nadwi emphasized that deep knowledge of Arabic was necessary for a deeper understanding of Shariah, and

full cognizance of the world was essential to a jurist.

In the evening session the lecture of Dr. Salahuddin Abdul Haleem Sultan continued since it had provided a broader canvas. In this second part of his lecture, Dr. Sultan spoke of the history of theorizing the objectives of Shariah. He clarified that the holy companions always considered these objectives while deducting the legal opinion. The *tabiyyun* and the mujtahid imams maintained them largely. The writing on the theme was, however, initiated by Hakim Tirmidhi. Then Imam al-Juwayni touched on the issue and thus the discipline was established.

The morning session on December 24 was devoted to the ideologues of theory of Shariah objectives, Imam al-Shatibi who is rightly considered the imam (leader) of theorization. Dr. Sultan, therefore, talked of the theory of Shariah objectives as propounded by al-Shatibi. He also discussed the method of preference in case of a clash between the various objectives. He pointed out that in case a practice emanating from any shariah objective contradicted the intention of Shariah itself, that would not be accepted. *Masjid Dhirar* was disapproved (the Quran, 9:107) by Allah because it was constructed for mischief; the building a mosque was an objective of Shariah but that objective was manipulated. The learned speaker also introduced Muhammad Tahir bin ‘Ashur and his contribution. It was Imam Tahir who enhanced the five objectives to seven and added the objectives of freedom and equality, turned these objectives into a discipline and invited scholars to enrich it.

The second lecture in the session was delivered by Burhanuddin Sambhali, the famous theologian working as *shaykh al-tafsir* in Nadwatul Ulama and also the Vice President of the Academy, on the topic of “Corelation of Shariah Objectives to the Principles of jurisprudence”. He defined the objectives and the principles of fiqh in the light of the writings of the scholars of the juristic principles, shed light on the historical continuation of the meaning and concept of fiqh. Referring to al-Shatibi and al-Ghazali

he clarified that the juristic principles had strong relations with the objectives. He pointed out that in the vast literature on the juristic principles the words *hikmah*, *'illah*, *maslihah* had been used frequently to convey the same spirit. The holy Quran itself has used all these terms. In the context of *maslihah* (human interests) he referred to the eye-opening text of *Hujjat Allah al-Balighah* by Shah Waliullah of Delhi, that says that the two branches of knowledge revealed by Allah consisted the knowledge of interests and harms as well as the knowledge of Shariah, the rights and the obligations. It reveals how important it is to maintain human interests and harms.

In the evening session immediately after 'Asr prayer the lecture of Dr. Jamaluddin Atiyah was presented by the C.D. player. After *maghrib* (sunset) prayer Dr. Salahuddin Sultan talked thoroughly on the "Methodology for the Fiqh of Muslim Minorities" through the projector. The principles mentioned for that methodology were:

1. a consciousness of being a citizen,
2. responsibility for the reform of the country,
3. familiarity with both the Shariah texts and circumstances,
4. collective *ijtihad* on the common issues,
5. correlation between the juristic schools and benefiting from them in the process of *ijtihad*,
6. an insight into the partial ordinances in case of *'ibadat* (religious rituals) and in the objectives, principle and essentials in the case of transactions,
7. fixing priorities according to the domestic capabilities and external situation,
8. adopting the fiqh of facilitation and keeping in view the gradual implementation, and
9. offering the legal and sanctioned alternatives to the prohibitions.

All the above-mentioned principles were substantiated by the Quranic verses, the hadith and examples that facilitated the understanding.

Dr. Salahuddin Sultan also highlighted that all the juristic schools constitute the small rivers flowing from the same fountain of Islamic Shariah. In case any river is disconnected, it will be dried up. He said that the dissent in the thought and understanding is a benevolence and divine bliss but dissent in the hearts is disgraceful and suffering.

December 25 was the last day of the workshop. The concluding ceremony was also to be held. In the morning session Dr. Salahuddin Sultan delivered his concluding speech. He urged the scholars to adhere to the pious attributes, fear of and reverence to Allah, the purification of mind and soul and also to the pragmatic arguments and evidence in their academic accomplishments. Some participants reviewed critically the publications of IIIT on the theme. These reviews contained appreciation as well as some disagreement. A number of delegates expressed satisfaction over the utility and enrichment of the workshop and asserted the recurrent need for organizing such programme in future so that the scholars of the country as well as of abroad might have trained the young generation intellectually.

The concluding session, after the tea break, was presided over by Burhanuddin Sambhali. That was attended by the participants of the workshop, as well as by Dr. Qasim Rasul Ilyas, the editor *Afkar-e-Milli*, a Delhi-based Urdu magazine; and by the teachers and students of Jamia Hamdard. The session was enriched by the remarks of Khalid Saifullah Rahmani who highlighted the results of the workshop and also clarified the aim of the Academy was two fold: research on legal and jurisprudential dimensions as well as the preparation and training of research fellows. Seminars fulfil the first requirement while the workshops and training programmes meet the other. Atiq Ahmad Bastwi advised the participants for improvement. The chairman of the session urged for the wider study and understanding. The session was concluded formally after

the *dua* offered by the chair.



## **Chapter One**

### **Objectives of Shariah Need and Contemporary Relevance**

## **Introducing the theme**

### **Objectives of Shariah The Contemporary Perspective**

- Atiq Ahmad Bastawi

## **Ordinances of Shariah and Human Interests**

All the ordinances and teachings of Allah and His *Prophet* (SAW) are based on the noble objectives and human interests. Every ordinance of Shariah is marked by rationale and wisdom. Almighty Allah is absolutely the Wise, the Judicious; how can His ordinances (orders and prohibitions) be devoid of wisdom and justice. Possibly the objectives and interests of some Shariah ordinances may not be within the access of the human mind, but the entire system of religion and Shariah certainly operates for the success and prosperity of the human beings in this world and in the Hereafter. A number of the Quranic verses and the Prophetic traditions describe explicitly the objectives and the interests of the ordinances and teachings. The Quran, for instance, declared addressing the Prophet of Islam (SAW):

*We sent you not, but as a mercy for all the creatures”.*  
(21:107)

Elsewhere the Quran declares:

“It is He Who has sent amongst the unlettered an Prophet from among themselves, to rehearse to them His Signs, to sanctify them, and to instruct them in the Scripture and Wisdom, - although they had been, before, in manifest error” (62:63)

The Prophet is on record saying:

“I was sent by God in order to complete noble ethics”.

The objective and the benefit of *salah* (prayer), the most important pillar of Islam, the exclusive worship is described in the following verse:

“The prayer restrains from shameful and unjust deeds”.  
(29:45)

While pronouncing the obligatory position of fasting its objective is enumerated thus:

“O ye who believe! Fasting is prescribed to you as it was prescribed to those before you, that you may learn self restraint”. (2: 183)

Shah Waliullah of Delhi (d. 1176 AH), therefore, criticized severely those who claimed the ordinances of Shariah were revealed for the trial of human beings, and that these ordinances and teachings did not have any merit in themselves. He declared these people as devoid of knowledge (*Hujjat Allah al-Balighah*, part I, pp. 27-29).

Shah Waliullah after having provided a number of examples to clarify the objectives, benefits and secrets implying the ordinances, referred to the practice of the holy companions, and said:

“After that the immediate followers of the companions (*tabiun*) and the succeeding *mujahid* ulama and scholars have been accounting the ordinances for the reasons and interests; understanding the meanings of ordinances and thus deducting from the textual ordinance an appropriate justification and rationale in order to eliminate some harm or to bring out some benefit as is detailed in their books and different juristic schools”. (Ibid, part 1, p.31).

Shah Waliullah has also criticized those who recognized the correlation of the ordinances to the human interests to some extent but they declared the codification of the Objectives’ theory and the orderly arrangement of its formulations as logically impossible, because these involved complication and ambiguity and also because it was prohibited in Shariah. The predecessors, in spite of closeness to the *Prophetic* age and their academic depth and soundness, did not attempt to do so. These elements also claimed there was no palpable benefit in the codification and that practising the Shariah never depended on the knowledge of those interests and

objectives.

The learned thinker declared all these allegations as baseless assumptions and removed all the doubts and misunderstandings through his arguments. He enumerated the seven points in favour of codifying the objectives' theory. That may be studied in his magnum opus *Hujjat Allah al-Balighah*.

In spite of asserting the objectives and human interests of Shariah, Shah Waliullah warns:

“Yes, as the *sunnah* has approved it and the consensus on it is established, it has also approved and established that apart from these interests and objectives, the revelation of ordering and prohibiting anything itself implies the main factor responsible to reward the obedient and punish the disobedient. It is incorrect to assume that the beauty and ugliness of the deeds in the sense of entitling the doer for the reward and the punishment is rational in all the aspects” (*Hujjah*, part 1, p. 32).

In spite of major discussions about the Shariah objectives in the Quran, the hadith, the sayings of the companions and in the juristic reasonings applied by the scholars, it is a undeniable that the Islamic literature lacks detailed deliberations and books exclusively on this theme.

### **Some Notable Scholars and their Works**

Imam al-Haramayn Abdul Malik al-Juwayni (d. 478 AH), the teacher of al-Ghazali, has the honour to discuss in principle the issue of Shariah objective and to define and demarcate the terms like *dharurah*, *hajah* and *tahsin*. One of his titles on the principles of jurisprudence, *Al-Burhan fi Usul al-Fiqh* has been published and is available in the libraries. The author has discussed the Shariah objectives under the chapter of *qiyas* (independent reasoning). He touches on the issue of reason (*'illah*); what is the criteria of a reason; and what are the prerequisites of it. In this context he sheds light on the objectives also.

Another book of his entitled as *Ghiyath al-Umam fi Itiyath al-Zulm* popularly known as *al-Ghiyathi* is perhaps the most important work on the theme. This has also been published. Most of the writers, however, are unaware of the importance and role of *al-Ghiyathi* in the discussion on the objectives. The theme of the book is related to the abnormal situations, where prohibitions are commonly violated; lawful earning has disappeared; livelihood turned into sinful, how Islamic life would have survived and the Shariah teachings would be practiced. A jurist of the 5<sup>th</sup> century hijra assumes some unusual circumstances to confront the Muslims in future. When applied those writings to the contemporary scenario, we are surprised to see as if the book was composed in the modern times. The author has discussed how Shariah would be implemented in the given situation, and that after having graded the Shariah and divided it into stages, on which ordinances and how much will we enforce and implement. I specially request the young graduates to go through the book for a clear understanding of Shariah and its implementation in the modern world.

Nex to him is the name of Abu Hamid al-Ghazali (d. 505 AH) who contributed a lot to the theme of Shariah objectives. He has basically enlarged and refined the thoughts of his teacher al-Juwayni. One of his books, *Al-Mankhul* has been published. Another title of his, *Al-Mustasfa*, the most refined work on the subject, deals in detail under the discussion of *istislah* the Shariah objectives. For the first time the five objectives of Shariah: the protection of religion, life, affinity, property and intellect, were discussed with such clarity and explicitness, though these were found in his teacher's writings but in a brief and cursory way. His another title *Shifa al-Ghalil*, dealing basically with *qiyas*, has elaborated the objectives in detail.

An important issue in the jurisprudential discussions has been the gradation of the ordinances and the fixation of the priorities in the case of a clash between various ordinances, since all of them may not be placed in the equal position. A jurist must know various grades and stages of the legal ordinances. Abul Mahasin

Muhammad Sajjad, the founder of Imarat Sharyiah Patna, had advised the ulama to study Al-Ghazali's *Al-Mustasfa* and especially its relevant portions of *istislah* for the application and implementation of Shariah law in the contemporary age. *Shifa al-Ghalil* also referred to Abu Zayd al-Dabbusi, a great hanafid scholar of the principles of jurisprudence, and his book *Taqwim al-Adillah*, is an important source on the theme, on some issues of which al-Ghazali has criticized and commented. That reveals the importance of *Taqwim* which scholars wished to be published. Now *Taqwim* is everywhere available.

It also has emerged as an issue that the generation urging earnestly to have an access to a rare book or important source in order to refresh their knowledge and activate their wisdom, has now passed. Now the classical books have published and are available in abundance. The rarest books composed by the classical jurists and *muhaddithun* (the scholars of hadith) are now published. It depends upon the readers now to select and choose the one suitable and fulfilling the needs. Another title of al-Ghazali, however, *Ihya Uloom al-Din*, the encyclopaedia of Islamic learning and of the secrets and human interests inherent in the Shariah, is a major work in the field. The jurists and Islamic scholars must have access to the book especially its discussions on the Shariah objectives.

Another towering personality after al-Ghazali in this discipline is that of Izzuddin bin Abdus Salam (d. 606 AH). His book *Sultan al-Ulama* (king of the scholars) developed the discipline more. His title *Qawa'id al-Ahkam fi Masalih al-Anam*, frequently consulted by the Ulama deals with the same theme. His two other titles, less accessible to us, are more important. One is *Shajrah al-Ma'arif wa al-Ahwal wa Salih al-Aqwal wa al-'Aamal*. It was published a few years ago. It consists of several section and supplementary notes on the Shariah objectives. This is more pragmatic than a theoretical. He has viewed the entire scheme of Shariah in the objectives perspective and has offered a valuable discussion. This also should be within the access of the young graduates of Islamic learning. His another title *Al-Fawa'id fi Ikhtisar al-Maqasid* or *Al-Fawa'id al-Sughra* is also a thought provoking and

brain-storming book which is basically an abridged version of *Qawaid al-Ahkam*, adding some thing new not already discussed in the original book.

Shihabuddin al-Qarafi (d. 685 AH), the prominent student of Izzuddin, has also dealt with the objectives of Shariah. In his book *Sharh Tanqeeh al-Fusul* he has raised some principal issues in this regard. His more popular title *Sharh al-Furuq* contains rich material on the secrets and objectives of Shariah. He has discovered the logic, rationale and wisdom underlying the different ordinances being applied in the same circumstances, and vice versa. The same ordinance apparently is applied in the two different circumstances. *Al-Furuq* deals with all such pragmatics and feasibilities in Islamic law. Though purely technical, the book is accessible and also in circulation. These should be thoroughly studied.

A brain-storming and towering thinker and author on the Shariah objectives is Najmuddin Tufi (d. 716 AH). He while explaining the hadith that reads: “Neither any harm is to be inflicted on anyone nor it should be tolerated”, has elaborated these objectives in detail. He has claimed to the extent that in purely religious matters, ‘*ibadat*’, the texts were the base, forming obligatory and binding; while in the matters of transactions and customary laws the objectives and human interests constituted the base. He exaggerated the issue to the extent that in the case of a clash of interests with the texts or the consensus (*ijma*’) the former would be preferred, a dangerous stand, unacceptable in any form, and therefore was severely criticized by his contemporaries. He is a hanbalite scholar. His book *Sharh Mukhtasar al-Raudhah*, a voluminous work, has made the issues of the principles of jurisprudence easily accessible. His stand on the human interests, however, was too storming. In the 19<sup>th</sup> and 20<sup>th</sup> centuries the tendency to avoid the partial ordinances under the guise of the human interests was encouraged by some circles.

Shaykh Mustafa Zayd in his book on Imam Tufi and the human interests tried his best to refute all the allegations of *rafid* (turning into Shia) levelled against him. Shaykh Abu Zahrah has,

however, pointed out in the preface to the book that the evidence and texts quoted by the author to declare Tufi pronouncing him as *rafidi*. We may not bypass easily the comments made by Ibn Rajab Hanbali and other critics. I have gone through personally his book on the principles of jurisprudence. Some writings of his are explicit in this regard. Suppose he was not a *rafidi* and was a hanbalite scholar and a Sunni Muslim. His stand on the human interests however, was not acceptable. In case of an agreement with that stand, the entire Shariah would be vulnerable. The young scholars of Islamic jurisprudence, should, however, know what are his arguments; what foundations he has laid, why does he speak in such terms; what rationale is offered by those who support him. Our ulama and youth should be aware of all this, and be trained while keeping in view all these viewpoints.

Hafiz Ibn Taymiah (d.727 AH) writings and *fatawa* incorporate the spirit of Shariah objectives and interests. He has criticized in his *Fatawa* the objectives of Shariah being confined to five and has pointed out some more objectives.

One important point to be noted here is the issue of interpretation made by the classical jurists in their own period, confining the noble objectives into five, rightly claiming for the replacement of harm and having the interests as the aim of Shariah. Today we require a new methodology to discuss the objectives. You may talk today in such terms as the objectives of Shariah in the individual life is the freedom of opinion. In the family life what are the Shariah requirements? What does Islam teach in this context? The objectives were portrayed by our predecessors in the discipline of *ilm al-Kalam*. The modern *ilm al-kalam* to be developed by our young scholars, will tell us how to offer these objectives, the Islamic law, and the ordinances of Shariah in the present scenario that might be acceptable to others. Ali has perhaps reportedly said, “Talk the people according to their own rationale. Do you wish Allah and His messenger to be refuted otherwise?” Talk truly and honestly without any compromise, but do talk in a way appreciating and convincing the others. Use the modern interpretations keeping in view the changing circumstances. It is desirable.



Hafiz Ibn Qayyim (d. 751 AH), the notable pupil of Ibn Taymiah, has elaborated the objectives independently through *ijtihad*. In his work *Ilam al-Muaqqin* and some other books he has studied a number of legal ordinances with reasoning and analogy and has highlighted interests which were generally treated by the jurists as those unaccessable by analogy and reasoning or those opposed to *qiyas* and *ijtihad*. Hafiz Ibn Qayyim says unambiguously :

“The base and foundation of Shariah is the rationality and the human interests in this world and in the Hereafter. The entire Shariah is justice. It is the human interests. It is wisdom. Every problem that leads a man from justice to injustice, from benevolence to suffering, from interest to harm and from wisdom to futility has no link with Shariah, Shariah always implies maintenance of justice among the human beings”. (*Miftah Dar al-Saadah*, vol. 2, p.2)

In the eighth century hijrah there emerged the high statured personality who paid full attention to the theme of Shariah objectives which paled the academic accomplishments of the predecessors. I mean Abu Ishaq al-Shatibi (d. 790 AH) who gave the theory of objectives a new direction by his magnum opus *al-Muafaqaat fi Usool al-Shariah* in to four volumes. This book alone suffices to keep the author eternally alive in the academic field. You should know Al-Shatibi was not an prolific writer. Besides *al-Muafaqaat*, his another book *al-Itisam* is famous. Some of his *fatawa* were also edited and got published. But these two books of his are circulated among scholars. Yusuf Bannauri, the scholar used to say: had a man composed a single book like *al-Muafaqaat*, his whole life was more successful than a writer who had written in abundance, had composed 100 books or 500 books but no one among them was a surviving one. Now the scholars are growing but below the academic standard. They have the urge to write, to publish, to circulate and enhance the number of publications. They, however, do not maintain the standard. They have no urge to deepen study, to widen the canvas of understanding and to write the ever-memorables. Bannauri says that the two books of Al-Shatibi

have more weightage than numerous books of Al-Suyuti who also made contributions undoubtedly. Sometimes single book proves heavier than hundreds. Our young scholars and muftis, however, must consult sources like *al-Muafaqat*.

In the post-al-Shatibi academic world Shah Waliullah of Delhi (d. 1176 AH) wrote *Hujjat Allah al-Balighah*, *al-Tafhimat al-Ilahiyah* and *al-Budur al-Bazighah* and other books. In the first book he represented feasible Islam covering all aspects of life. he interpreted rationally all the aspects of *din*: *aqaid*, beliefs and dogma; *ibadaat*, religious rituals; *muamalat*, business dealings and transactions; *uqubat*, penal code; and *akhlaq*, moral ethics and manners and elaborated in detail convincingly the human interests and objectives the Shariah implies, as if he felt in advance the future generations would not be satisfied with the traditional approach referring to the Quran and Sunnah without any justification. Were the teachings of the religion not justified rationally the people would have the other path. He provided a model for us how to interpret entire *din*; and how to expose its secrets and symbols. Whatever he has written on the benefits and interests of the Shariah objectives in the preface to the book, deserves to be studied seriously. I may be allowed to add that in this city of Delhi was founded his madrasah (Madrasah Rahimiyah). His sons resided here after him and carried out his religious, reformatory and revolutionary movement.

In the twentieth century India, the towering personality who brought out the secrets of Shariah after Shah Waliullah, interpreted the Islamic teachings with rational arguments, and provided satisfactory answers to the apparently reason-based doubts and confusion, was Muhammad Qasim Nanautawi (d. 1297 AH), the founder of Darul Uloom Deoband known as *hakim al-Islam*. He strengthened the campaign already launched by Shah Waliullah. The Arya Samajis, Christian missionaries and others used to target Islam, hurl allegations against Islamic teachings on the basis of reason and tried their worst to de-Islamise Muslims. Among those who made the noble efforts to defend Islam in that age, Nanautawi was the topmost. His writings, his books, his speeches, his treatises

are beyond the comprehension of the common man. But the Islamic scholars and Ulama should have access to them. They should study the rationale and the logic provided by him in the modern style and idiom. His books are hardly available. These should be edited and studied.

More importantly, even if we are not aware of the rationale, wisdom, base, benefit of an ordinance, we are even then, obliged to follow sincerely. The common people are unable to have access to these secrets; only the scholars are entitled to think over the issues and understand them properly. It is essential to create the spirit to follow honestly an ordinance revealed by God. Finding any rationale and secret behind that ordinance is only for further satisfaction. The practice does not depend on any logic without which no ordinance is to be treated as authentic.

Ashraf Ali Thanawi (d. 1362 AH) called *hakim al-Ummah* was next to Nanautawi in this field. His rich contributions, writings, books and sermons unveiled the secrets of Shariah and presented the Islamic interests and objectives while responding to the modern mind. His title *Al-Masalih al-Aqliyah li al-Ahkam al-Naqliyah* is specifically more significant and insightful.

This piece does not cover all the areas of Shariah objectives nor it includes in any way all the writers and scholars on the theme. It aims at a brief description of a few personalities and their works.

In the 19<sup>th</sup>-20<sup>th</sup> centuries the Islamic scholars of various countries produced vastly rich literature to interpret Islamic beliefs and teachings, and to defend Islam against the doubts created by modern rationalism. If all this is analysed in detail and the material on the Shariah objectives scattered in their writings, is compiled, it will certainly enrich the field.

In the Arab countries the thematic study on Shariah objectives as of Imam al-Shatibi was suspended for a long time. It was only in the 20<sup>th</sup> century that Muhammad Tahir bin 'Ashur of Tunisia (d. 1973 AD) extended the work of al-Shatibi and wrote his internationally recognized book *Maqasid al-Shariah al-Islamiah*

which is a milestone in this field. He did not only summarise and interpret al-Shatibi but added a lot to this theme after due consideration and deep research. He presented new ideas. Another thinker and theologian, Allal al-Fasi also wrote his book entitled as *Maqasid al-Shariah al-Islamiah wa Makarimuha* which is a valuable addition to the field.

It is the first attempt of its kind that you, the young graduates, are assembled here. The Academy has organized so far a number of camps for the students on the campus. Those who are graduated, have first time met together to refresh their knowledge, and to enhance their urge for research. That was desired by Qazi Mujahid ul Islam. He had wished to create a taste of fiqh in particular and of Islamic learning in general in the young ulama and muftis. He had urged to get them together on a host of issues; experienced ulama should address them; and discussions and deliberations go on accordingly. In this workshop too, you will be provided a chance to share your views with the speakers.

The International Institute of Islamic Thought, founded by some Arab thinkers and intellectuals in 1401 AH/1981 AD, initiated a mission to reinterpret the Islamic thought and to Islamise learning. It paid special attention to the Shariah objectives also, and encouraged studies and research on this theme. It produced a number of valuable books on the subject some of these are:

1. *Nazriyat al-Maqasid 'inda al-Imam al-Shatibi* by Dr. Ahmad al-Risuni.
2. *Nazriyat al-Maqasid 'inda al-Imam Muhammad al-Tahir bin Ashur* by Dr. Ismail al-Hasani.
3. *Qawaid al-Maqasid 'inda al-Imam al-Shatibi* by Dr. Abdur Rahman Ibrahim al-Kilani.
4. *Nahwa Taf'yil Maqasid al-Shariah* by Dr. Jamaluddin Atiyah.
5. *Al-Maqasid al-'Aammah li al-Shariah al-Islamiyah* by Dr. Yusuf Hamid al-'Aalim.

The aim of the workshop organised in collaboration with IIIT, is that our intelligent young ulama and muftis should be in

touch with the works already done on the objectives; they should analyse them critically, try to explore new areas of studies and research on the theme and receive the feed back to do research and analysis on new aspects.

### **Organising the Workshop in Delhi**

This city of Delhi is closely associated with Imam Ahmad bin Abdur Rahim Waliullah (d. 1176 AH) So, organizing this 5-days workshop is a pleasing and appreciable initiative. Shah Waliullah had declared this city the nucleus of his educational, reform and intellectual movement. In the same city was founded the educational institution from which graduated individuals who established in the subcontinent a magnificent school of reform and revival that led the entire Muslim world in the fields of education, religious studies, intellectual growth and propagation of faith. While residing in the same city he composed *Hujjat Allah al-Balighah*. Delhi was also honoured with the gracious dynamism of the high statured sons of Shah Waliullah: Shah Abdul Aziz (d. 1239 AH), Shah Rafiuddin (d. 1233 AH) and Shah Abdul Qadir (d. 1230 AH) who made it the centre for their educational, academic and reform activities. The educational, reform and revolutionary steps taken by his genius and mujahid grandson Shah Ismail Shaheed (d. 1246 AH) too had originated from the same site.

Going back to history, the same city had the teaching dias of Shah Abdul Haq Muhaddith (d. 1052 AH). He contributed a lot to the hadith and its sciences through his writings and recurring lectures. *Al-Lam'aat*, *Ashia'at al-Lama'at* and *Akhbar al-Akhyar* are his notable works. His family and students had been involved for a long time in teaching, writing and lecturing on hadith.

On turning some older pages of history, we are reminded of *Fatawa Tatar Khaniyah*, no less than an encyclopaedia, which was also compiled in Delhi by Shaykh Alim bin Ala (d. 786 AH). With the special attention of the Government of India a few volumes of *Fatawa*, edited by Qazi Sajjad Husain, were published. After the sad demise of the editor, its publication was suspended. If the

government or any research institute bears the responsibility of editing and publishing the remaining volumes it will amount a great service to the knowledge and our country will gain name and fame in the world.

Qazi Imaduddin Muhammad bin Muhammad bin Ismail al-Ashfurqani (d. 646 AH) wrote in Delhi on the formulations of *qada* (judiciary) the book entitled as *Sinwan al-Qada wa Unwan al-Ifta*, which was published by Awqaf ministry, Kuwait a few years back with the editing by Qazi Mujahid ul Islam Qasmi in to four volumes.

We cannot forget at this occasion Mamluk Ali Nanautawi (d. 1267 A.H.), the teacher of Delhi College, who was engaged for a long time in the teaching in Delhi, who educated and trained Muhammad Qasim Nanautwi (d. 1297 AH) and Haji Rasheed Ahmad of Gangoh (d. 1323 AH). These two luminaries infused a new spirit into the Indian Muslims by their educational and reform movement and constructed the forts of Islam in the form of Islamic seminaries in different cities and towns.

### **Sensitivity of the Theme**

The theme of the Shariah objectives is important as well as sensitive. Undeniably a *faqih* and a *mufti* is required to be aware of the secrets and objectives of Islamic teachings and ordinances. In order to recognize the grades and stages of law and to resolve the new issues and problems a *faqih* and scholar should not essentially be confined to the letter of the texts and their apparent meanings. He must have access to the reasons, wisdom, human interests, objectives and the secrets of the Islamic ordinances.

A group of the claimants of *ijtihad* in the modern period, on the other side, attempts to damage the Shariah itself under the guise of the Shariah objectives. They under the shade of the “self-created Shariah objectives” want to escape the explicit ordinances of the Quran and sunnah and clear and unambiguous orders and prohibitions. They are engaged in imposing their baseless, self-assumed meaning on the Shariah diverting the texts and their

ordinances form their true and original conceptions as Batiniyah sect did in the classical Muslim period. This group of intellectuals is rooting out the Shariah and is playing havoc with ordinances.

The right and balanced way is the middle one. Neither any neglect of the objectives approved by or derived from the Islamic texts in the process of legislation on the non-textual issues, is correct nor any attempt to identify the objectives of Shariah by oneself avoiding the texts of the Quran and the hadith, and to exclude the explicit ordinances of the Quran and the hadith from the religion after taking refuge in these objectives, is appreciable. The latter is heresy.

### **Participants of the Workshop**

Those researchers, ulama and experts of fiqh, invited to deliver their lectures, who would benefit us and honour us after having undertaken long journeys, are specialized in the principles of jurisprudence especially in the Shariah objectives theory. They have valuable books, research papers and discussions on the theme to their credit. While the young scholars, dynamic and enthusiastic, invited to this workshop are eagerly pursuing knowledge and have sincere urge for learning methods of research. They have fully concentrated on the Islamic learning in general and Islamic jurisprudence in particular. Most of them have made a mark in the field of research and analysis and have their own papers and books.

### **Expectations**

We hope the theme of Shariah objectives and the sensitive issues relating to it would prove illuminating after the lectures following the discussions and fruitful deliberations in the workshop. Our young researchers, ulama and muftis would become aware of the contributions made on the theme of Shariah objectives, and of the aspects and dimensions still awaiting the attention of the enthusiastic young scholars, and of the significance of the theme, especially in the contemporary perspective and of the role to be played by the theme under discussion in resolving modern issues and problems, and of formulations and boundaries of the theme.

The theme of the Shariah objectives is essentially linked to the discipline of the principles of jurisprudence. It is very difficult to fully grasp and accordingly digest the discipline of Shariah objectives without a masterly knowledge of the detailed discussions on analogy (*qiyas*) made by the experts of jurisprudential principles. Whatever is taught in the religious seminaries of Indo-Pak subcontinent on the subject of the principles of jurisprudence does not suffice to create an awareness and taste of *usul al-fiqh* in the students. I hope these lectures and discussions in the workshop would pay more attention to the discipline of jurisprudential principles and to introducing some major changes in the curricula as well as in the method of teaching in our madrasahs; and the morale, advice, incomplete research areas to be disclosed to our young scholars in this workshop will open the new paths to learning and research; and their academic achievements will further ensure success and progress for the coming generations.

### **Concluding Point**

13 years ago the first juristic conference was held in the same hall of Jamia Hamdard on 1-3 April 1984. Qazi Mujahid ul Islam Qasmi, the founder (d. 2002) had set up a seat of knowledge and research, of deep understanding of religion and deduction of legal ordinances. The caravan used to move on the path of studies and research continuously. It played an active role in resolving the complicated issues of modern period. Notwithstanding the grief over the sad demise of the founder we are still associated with the caravan with the will and enthusiasm that the objectives for which the juristic conferences and other academic activities of the Academy were carried out by the late founder, we will devote our energies to achieve and for the sake of Islamic revival we will accelerate our efforts.

May Allah help us all and grant us success in carrying out our objectives !



## **Keynote Address**

### **International Issues and the Objectives of Shariah**

- Badrul Hasan al-Qasmi  
(Kuwait)

The circumstances of the modern world are entirely changed. The attitude of the Western countries – proud of the championship of freedom, democracy and human rights – is changed at least towards the Muslims. No more respect for human rights survives. No more feeling and sensitivity towards the freedom and autonomy of the nations does work. Nor is the real democracy encouraged by the West. A civilizational war against Islam and Muslims is, instead, imposed. In the US every Arab and Muslim is treated as suspect. Every religious seminary is supposed to be the den of terrorism. France is not convinced about the Muslim girls using their scarves in the educational institutions. American and European media is all about to prove Islam and Islamic teachings responsible for terrorism. The means of communication under the custody of Jews are fully engaged to propagate against Islam and Muslims. Apart from imbalance and unrest between the countries of the East and the West, in order to hegemonise trade as well as culture and civilization, the propaganda of globalization was first made and then a forceful attempt to change the map of the world was initiated. Now under the hollow slogans of freedom and democracy Muslim countries are pressurized to replace or modify their system of governance, their education and their learning. The ‘sick man’ of the East was already unable to resist unsuitable circumstances. Consequently not only in the programmes and plannings to be carried out but on the surface of actual happenings and events, the map of the regions and countries is being readjusted. More importantly the minds are forcibly being orientated and the boundaries of thoughts and beliefs are being demarcated. As for as Muslims are concerned neither their countries and their economic resources are safe. Nor is their religion any more sacrosanct and beyond mischievous conspiracies doubts and allegations.

Muslims, on the other hand, are portrayed as terrorists; tyrant; unaware of human rights; averse to light and loving darkness; identified with poverty, ugliness, inhumanity and quarelling always for money and poer. Every bloodshed in the world, every destruction is first linked to the Muslims. Neither the Jews victimizing the Palestinians for half a century, are named nor any other extremist group is blamed.

In the given circumstances, the noblest and foremost obligation is to present the dignity and respectability of Islam and its teachings to the world in a new style with the contemporary idiom. The world should be well informed that not only terrorism but all the outer and inner diseases of the modern civilization may be rooted out by the Islamic teachings. Not only the matter of human rights but a compact programme of turning man humane is preserved in the holy Book and in the sunnah of the Prophet (SAW).

Recognition of the new age and interpretation of Islam effectively does not require at all to satisfy oneself by criticizing the West while having resided in the East, availing all the facilities of the West. It rather, requires to clarify stagewise distinctive features of Islamic teachings to the West. Likewise other countries, their cultures, their religions and faiths may be interacted with the Muslims. Since the gist and spirit of Islamic jurisprudence lies in the Shariah objectives, the pragmatic and applicable interpretation of the Shariah objectives would be the first stage. The foundation of the objectives should be on the following five points:

1. protection of all religions. This roots out religious clashes.
2. protection of life. This elevates the human life and stops undue bloodshed.
3. protection of intellect. This purifies the society from intoxication and checks everything that may affect badly the human intellect and harm the human life and civilization.
4. protection of property. It not only stops theft, robbery and undue possession but also minimizes the economic

imbalances in the society and removes poverty if wealth is properly circulated by implementing sincerely the Islamic teachings, and

5. the protection of affinity and honour. This makes the society safe from illicit sex, prostitution and shameful activities. It also saves the society from all the means of immorality and unethical anarchy.

The objectives of Shariah only retain those elements of civilization that guarantee human rights and the concept of freedom equally applicable to all. All the ordinances of Shariah revolve around these five objectives. Allah has revealed the legal codes in order to save humanity from bloodshed and misdeeds, and to check strictly all the atrocities that are committed under the pretext of some false religion, and to turn the human life into cradle of peace and tranquility in which everybody regards his life, property, and dignity safe from all kinds of injustice and oppression. As per the Quranic command, an undue slaughter is supposed to be as the slaughter of all the humanity. Islam, therefore, in response to an undue killing, has implemented the law of *qisas* (equality of punishment); the punishment of chopping the hand of a thief; those apostates who play havoc with religion and turn over after embracing faith are declared as liable to death. Allah has graced man by giving him intellect, one who damages it by the alcohol and other *intoxicants* is liable to be flogged. The sexual assault and the violation of the chastity of a woman is severely punishable in Islam.

The structure of human civilization laid out by Islam has certain fundamental objectives to be safeguarded by varying degrees and stages of ordinances. The factors of human survival are categorized as *hajiyyat*. The accessories and decorations of life enhancing beauty and perfection, the absence of which might affect the glamour of life and its high standards are titled *tahsiniyat*.

Now the demand of time lies in planning and follow up of the religious and reform programmes to be carried out in future along with elaborating the objectives of Shariah. Confining the fiqhi

workshop to academic accomplishments: research papers, lectures, discussions and deliberations, it will be reduced to an academic exercise and a religious activity, like other ceremonial activities. Why should not a more effective and more purposeful programme be scheduled in the perspective of world scenario?

In my humble opinion the juristic workshop on the Shariah objectives to be held in future must be a starting point to achieve the following aims:

1. Keeping in view the five objectives of Shariah: the protection of faith, life, property, intellect and honour, the dealings, dialogue and the agreement with the others should be initiated.
2. The arbitrarily issuance of *fatawa* in the Muslim world should be stopped. Linking the *fatawa* to the Shariah objectives and coordinating them with each other is the need of the hour so that the Muslim *ummah* might be saved from those *fatawa* that do result in the horrible trials, damage to life and property and create conflicts and contradictions in the society, and in discord among Muslims.

By the descriptive and the pragmatic interpretations of the Shariah objectives, the foundation of a preventive jurisprudence (*al-fiqh al-waqai*) in order to revive the past glory of the Muslims, may be initiated. The holy Quran, the sunnah of the Prophet (SAW) and the juristic literature has material in abundance on the preventive jurisprudence. The discipline of Shariah objectives may also help in this direction. In this perspective the responsibility of Islamic Fiqh Academy is increased. Is Academy ready to come forward in this field?

## **Inaugural Address**

### **Understanding the Rationale and the Relevance of the Shariah Ordinances**

- Sayyid Jalaluddin Umri

One approach towards understanding the legal ordinance of Islam is to negate any philosophy or wisdom working behind them. This approach regards it useless to look for any relevance or rationale. As if a king instructs any one of his subjects to carry a heavy load or stone and to run away or to touch a tree standing far. The aim of the king is to examine his loyalty and obedience; to reward him if he follows unhesitatingly, and to punish him for his disobedience. This instruction would necessarily test the loyalty or disloyalty of that man. This, however, would not affect ethics, morality or socio-political conditions. The status quo would remain maintained.

This approach was declared by Shah Waliullah as a mischievous assumption (*zann fasid*) regarding Shariah. He says that, the holy Book and the Sunnah of the Prophet (SAW) negate it. The consensus of the predecessors also contradicts it. It is to be adopted only by one who has no concern with the science of religion. He should be ashamed of his ignorance. It does not deserve even to be mentioned (*Hujjah*, the Preface).

Shah Waliullah has described reality without mincing words. The Shariah was revealed in order to grace the human being with success in this world and in the Hereafter. It creates a sense of belonging and affection towards Allah and teaches rituals and forms of worship as well as it resolves worldly problems and social issues. It has fully taken into consideration that the highest objectives of life are achieved through the noblest means and they may not be damaged in any stage. Shariah for the replacement of harm and the achievement of good, is the message of the original and pure divine scripture given by Allah to human being. All the ever-changing needs and circumstances are fully taken into account in its construction. Its every ordinance is accompanied with wisdom.

Both the ordinances and the human interests are so closely interlinked that this wisdom could not be attained otherwise. Unless man identifies the aims and objectives of Islamic ordinances and understands the inherent wisdom and philosophy, he may not be aware of the value of Shariah nor he may apply them properly in the varying circumstances. The spirit of *ijtihad* leading to the requirement of Shariah in all the ages and in every circumstances, strikes man only when he understands genuinely the philosophy of law and has an insight into its sensitivities and details.

Another aspect, equally considerable, is the method applied by some rationalists that would follow any legal ordinance only when they would identify its wisdom and rationale. They are not reluctant to reject a number of ordinances only because they are unable to understand their usefulness.

The question arises, whether are those who emphasise the rationale of Shariah ordinance, ready to follow the ordinance, rationale of which is clear to them? Which ordinance is there, the rationale of which is not provided by the Islamic thinkers and the experts of Shariah?

Apart from this, the holy Quran, and hadith clearly describe the wisdom, rationale of ordinance, and the utility and usefulness these teachings. Some examples are illuminating in this regard:

“The prayer restrains from shameful and unjust deeds”  
(The *Quran* 24: 45).

“O ye who believe ! Fasting is prescribed to you as it was prescribed to those before you, that you may (learn) self restraint”. (The *Quran*, 2: 183)

“Of their goods take alms, that so you might purify and sanctify them; and pray on their behalf. Verily the prayers are a source of security for them” (The *Quran*, 9: 103)

“Alms are for the poor and the needy, and those employed to administer (funds); for those whose hearts have been (recently) reconciled (to Truth); for those in bondage and in debt; in the cause of God; and for the wayfarer”. (The

*Quran*, 9: 60)

“In it (Kabah) are signs manifest; (for example), the station of Abraham; whoever enters it attains security; pilgrimage thereto is a duty men owe to God, those who can afford the journey” (The *Quran*, 3: 97)

These examples are explicitly clear. The rationale behind other ordinances is also described by the Shariah. These pragmatics and interests are directly related to the religious, moral, spiritual, social and political life of man. Islam insists that following these ordinances only may result in the building of a solid character and in the construction of a pious society. Those who are determined to know the secrets and human interests these ordinances imply, and are not eager to accept them without any rationale, are they ready to follow the ordinances prescribed in the above-quoted verses?

Among these advocates of rationale are also those who think the five obligatory prayers in a day, one month long fasting in the month of Ramadan affect the efficiency of man who cannot play a dynamic role while *practising* them. They declare the usual tax to be paid to the government as an alternative to *zakah*, and think the performance of pilgrimage to Makkah and sacrificing the animal a wastage of both time and money. The question arises those who are not satisfied with the rationale provided by Allah and His *Prophet*, who can convince them?

Having firm faith in Shariah as the divinely revealed one, and then persuing its aims and objectives and applying them in the varying circumstances is another approach, and denying any ordinance until its rationale is grasped is another approach opposed to the first. The first one is pleasing to Allah and the second unimaginable to a Muslim. The right attitude of a Muslim is to follow all the ordinances of Allah inhesitatingly. He cannot reject any Islamic law because it is beyond his comprehension. He will believe in Shariah as sacrosanct and wisely legislated. In case an ordinance is beyond his understanding he will realise his short-coming and will not blame the Shariah in any respect.

Realistically, those who think the Shariah in terms of a heavy burden to be thrown out as soon as possible, see no wisdom and rationale in the ordinances. They wish to escape the Shariah tactfully so that they might not be blamed. They, consequently, try to argue that they have left the Shariah behind not because of their selfish interests but because of the shortcomings within the Shariah itself. The prohibitions of Shariah themselves are useless, their absence is better than their existence. It was better to these apologists to recognise their inability and unwillingness rather than to blame the Shariah. Apparently the young scholars and ulama who are participating in the workshop, have the different mentality. This lecture aims at urging them to know better the objectives of Shariah and to lead the society in the light of that.

I am pleased to see the Islamic Fiqh Academy has organized this workshop on this important theme. As Khalid Saifullah Rahmani has told, you would be benefited by a number of good scholars and you would be equipped with the true perspective to understand the ordinances and the objectives as well. To guide you continuously Khalid Saifullah Rahmani who himself has deep insights into juristic topics, and Atiq Ahmad who thinks over these issues recurrently are sufficient. I hope you will be benefited by their presence. I wish some more camps to be organized in future on the similar subjects. Some other issues of the religion are there for further discussion and deliberation. We are fully aware the Islamic Fiqh Academy that has assembled a variety of Ulama and has raised varying subjects and themes of academic nature. This workshop is also one of in the series. Allah willing, those trained by this would be more insightful in the ordinances of Islam and objectives of Shariah as well as in their applications, and thus they would be more capable to serve Islam. I pray Allah to accept these services and efforts and to produce better results.



## **Welcome Address**

### **Workshop on the Shariah Objectives A Continuation of Academy's Contribution**

- Khalid Saifullah Rahmani

We welcome you wholeheartedly in this blessed gathering convened by Islamic Fiqh Academy India with the collaboration of International Institute of Islamic Thought. This is a purposeful gathering fully in consonance with the objectives and aims of both the institutions. Qazi Mujahidul Islam Qasmi founded the Academy in 1989. He was a juristic religious scholar who had expertise knowledge of Islamic Shariah and had plunged into the learning and reason-based independent verdicts evolved by the pious predecessors. He had deep insights into the requirements of the day. The biggest contribution of the Academy is to draw the attention of the ulama to the problems of the new age. It has encouraged the need for studies and research in the young graduates and thus launched a campaign for academic and juristic discussions and analysis. The ulama, on the one side, were drawn to a new constructive thinking and were convinced to reflect on the real issues of Muslim community collectively. Those well versed in the modern education soon realised, on the other hand, the ulama, religious scholars and muftis were no more unaware of the circumstances of their age and were not outdated captives of partial and controversial issues; they were rather conscious of the Shariah objectives, aware of their age and were capable to express their opinion with deep insights and moderation.

The Academy, for the first time in the history of this country, started a series of *fiqhi* seminars. Till date 13 such seminars have been convened, dealing with 41 issues as a whole: 8 relating to 'ibadat (worshipping rituals); 9 to societal problems; 15 to economy and fiscal policies; 3 to medical and 5 to the jurisprudential principles. Majority of the decisions were made unanimously: some were decided with the note of dissent while some were left for further research and studies. These were attended by 40 delegates from 20 countries of the Muslim world. Arab nations, Asia, Africa,

Europe and America besides India.

The Academy also has organized a number of training camps and extension lectures to create consciousness among the students of religious seminaries. Such extension lectures have been organized so far in the 17 seminaries and the camps conducted so far are 3 in number. The topics covered in these programmes varied from economics, civics, psychology, anti-Islam campaigns and movements to different aspects of jurisprudential principles. The Academy also has conducted a successful inter-madrasah academic discussion on the theme of *waqf* (endowment) on the premises of Darul Uloom Deoband (Waqf).

The books published by the Academy on various issues of intellectual nature have also rendered a great service to Islam. So far 17 voluminous collections of the research papers presented in the various seminars have been published and some collections are in the pipeline. Apart from these, 54 books and monographs have been printed so far. One major contribution of the Academy is the Urdu translation of *al-Masuah al-Fiqhiyah* published in Arabic in 41 volumes so far by the Waqf Ministry Kuwait. Out of these 40 volumes have been translated into Urdu.

Alas! The dynamic leader of this caravan of knowledge and research left us on the night of Friday April 4, 2002. His memory in this blessed and magnificent gathering fills our hearts and wets our eyes. Had he been present in this august gathering, it certainly would have intensified its grace and dignity. One of his distinctive characteristics was the preparation and training of the individuals. He in his life channelised this research institute and established a sound methodology because of which this caravan of study and research is on the march and all the programmes of the Academy are carried out along the lines marked by the late Qazi and Allah willing it will go on in future accordingly. We pray to Allah to forgive him, to exalt his stature and rank in the Hereafter and to maintain for long the affection and supervision we receive from Zafeeruddin Miftahi, the present head of the Academy, the distinguished author, the farsighted scholar and the experienced

mufti. His prayers, good wishes and caring attention are the best provisions for us. For the continuation, survival and strength in the noble jobs of the Academy we are thankful to the elders of Ummah, well wishers, honourable members and patrons of the Academy as well as to the associates and sincere and capable workers of this institute who have played an important role in our determination to continue its journey.

While welcoming our Arab guests we would like to remind you that, you are greeted with open arms by a country that belongs to the non-Arabs and is geographically situated in the region too far from the Islamic centres. But it has played an important role in the service and development of Islamic learning and has left unmatched imprint on the academic and intellectual history of Islam. In the field of Islamic jurisprudence specially, the contribution of this country has been always remarkable. *Fatawa Hammadiyah* by Ruknuddin Naguri, *Fatawa Tatarkhaniyah* of Alim bin Ala of Delhi, *Khazanah al-Riwayat* of Qazi Gujarati, *Fatawa Ibrahim Shahi* by Shihabuddin and *Fatawa Hindiyah* compiled collectively by a group of scholars with the support provided by Aurangzeb Alamgir, a pious ruler fully aware of the spirit of religion, are the products of this country. Each of all these contributions may be considered an encyclopaedia of jurisprudence. Amongst the Shafiite jurists Abdul Aziz of Malabar belonged to the same country. In the field of jurisprudential principles Safi Hindi, whose writings are preserved in the form of manuscripts still unaccessable to the researchers, was the gift of the same region. Covering the branch of *usul al-fiqh*, the famous title *Musallam al-Thubut* by Mulla Abdul Shakur, the compiler of the hanafid and Shafiite schools together, and its valuable commentary entitled as *Fawatih al-Rahmut* by Bahrul Uloom of Lucknow are the products of Indian scholars. Abdul Hai of Firangimahal, and Nawab Siddique Hasan Khan of Qannauj have received the tributes from the entire Arab and Muslim world because of their writings on Islamic learning and research.

In the field of the Quranic jurisprudence, *Tafsirat Ahmadiyah*

by Mulla Jeewan, *Ahkam al-Quran* by Zafar Ahmad Uthmani and his associates; and in the area of hadith jurisprudence, *Athar al-Sunan* by Zaheer Ahsan Shawq Nemwi, and on the subject of ordinances of hadith *Ila al-Sunan* the most bulky collection comprising of 22 volumes also edited and compiled by Zafar Ahmad Uthmani are the achievements of this country. Apart from this are the commentaries, additional explanations. On the theme of judiciary, *Sinwan al-Qada wa Unwan al-Ifta* (4 volumes) and its edited and annotated version by Qazi Mujahid ul Islam Qasmi go to the credit of the same land. In the field of Shariah objectives the writings of Shah Waliullah Dehlawi, Ashraf Ali Thanwi, Abul Mahasin Muhammad Sajjad, Sayyid Sulaiman Nadwi, Anwar Shah Kashmiri and Sayyid Abul Hasan Ali Nadwi and among the contemporaries the contribution of Ali Ahmad Nadwi to the juristic formulations are valuable, eye-opening and insightful. This country has always greeted with open arms the genius ulama and Sufis. Rabi bin Sabih the first Islamic writer, according to Shaykh Abu Muhammad Ramhurmuzi is buried here. This country, therefore, deserves to decorate this august gathering with the ornaments of knowledge and research and to open the door of thinking and reflecting on the issues of the principles of *fiqh* and *kalam*, relatively less studied by the scholars of Islam.

Gentlemen !

Islamic Shariah is the complete and the final version of the divine law. It was revealed by the Allah Who is well acquainted, the Wise, the Knowing, and therefore His every order is in accordance with the natural requirements and conforms to reason and experience. This religion does not hate any learning or research but appreciates it and invites humanity to embrace knowledge. All the ordinances of Shariah, therefore, provide full satisfaction to the human interests and no law is useless. They consider the interests of this world and of that world too; individual as well as collective.

There are differences in the classical thought. Do the beauty and ugliness inherit the thing in themselves or the things are beautiful or ugly because of Shariah orders ? Do the Islamic texts

approve the human interests or reject the human the interests? What is the role of reason in Shariah? Despite all the differences in responding to the above questions among Mutazilites, Ashariites and Maturidis, all agree on the fact that no order of Shariah contradicts the human interest. Sometimes reason identifies interests and sometimes not. No order of Shariah, however, negates reason and human interest. It is not only applied to the dealings and transactions but also to the rituals and forms of worship.

Another important feature of Islamic Shariah is its permanence and eternity. It is capable till the Day of Judgement to resolve the human problems, and may settle disputes of every society in every age because Islamic law guides in both the objectives and the means. It leads to the common objectives that provide the base to the entire Shariah ordinances, also to the particular objectives related to any specific aspect and any peculiar chapter of jurisprudence, as well as to partial objectives that point out the interests of partial ordinances and the spirit of Shariah in that regard. All these objectives as a whole represent the essence and the spirit of Shariah. One part of Islamic Shariah is eternal, permanent and not changeable, while some parts of it may be changed in the changing circumstances and transitory usage and customs. This change mostly relates to the means and resources. The Shariah objectives are eternal and all-pervading, neither any change in time can affect it nor amidst varying countries, regions and cultures these objectives may be neglected.

Reasonably the entire Shariah aims at gaining the (*maslihahs*) interests and avoiding evils and harms. The *maslihah*, as defined by the noble jurists, implies the acquisition of human interests as well as the removal of harms. Some human interests, however, inherit in their fold harms and evils as well as some materially and apparently harmful things inherit in their designs the spiritual and the other-worldly interests. No interest or harm may be identified only on the basis of human intellect and desires. The divine laws were, therefore, revealed by Allah to the Prophets in each and every age. The essential objective of all these revealed laws was the same – the

acquisition of interests and the removal of harms.

The other name of this objective is '*adl* (justice) about which Allah has explicitly instructed the following :

“God commands justice and the doing of good”.  
(The *Quran* 16: 90)

The main aim of all the religious ordinances is the establishment of justice and justice requires a thing should be placed properly at its due site. This can be achieved only when it aims at the removal of wrong and the acquisition of nobler interest. In order to explain this, the scholars of jurisprudential principles have divided the legal ordinances into five objectives: protection of religion, life, property, affinity and intellect and then have classified these five objectives into *dharurah*, *hajah* and *tahsin*. These Shariah objectives constitute the four corner stones of religion. If the jurists keep in mind all these basic objectives while framing their opinion they will be safe from any immoderation. Neither they would be led to the liberality declaring the Shariah obligation as invalid and useless, nor would they be tilted to the narrowness that might make Shariah as a heavy burden.

The objectives of Shariah, therefore, are very important. Unfortunately, apart from a few scholars of jurisprudential principles, the theme could not receive the attention of the scholars. Had al-Shatibi and Tahir bin Ashur not discussed the theme in its full depth and had they not refined and applied its formulations and regulations accordingly and masterly, the theme of Shariah objectives could be more neglected. The interests and rationale of the Shariah ordinances are to be identified and then these five objectives are to be applied to the ordinances of Shariah. In both these dimensions the contributions of al-Shatibi and those who advanced them especially of Tahir bin Ashur are significant. In the field of objectives and rationale working behind Islamic law and teachings the note of Shah Waliullah is generally recognized worldwide.

We must speak in this regard of the International Institute of

Islamic Thought, the great institute of research and analysis on Islam, that has paid special attention to this theme. The Institute has published a number of important books on the subject, the contents of some may be differed with but the difference of opinion is always welcome and not deniable – but their significance and need cannot be challenged. The IIIT was founded on the eve of the 15<sup>th</sup> century hijrah in 1401 AH/1981 AD. One important aim of the Institute is to correlate the partial and microscopic jurisprudential ordinances with the principles, objectives and public interests of Shariah. In this perspective the Institute has produced a number of works, some of which were dispatched in advance to the learned participants of this Workshop. These are valuable gifts on behalf of the Institute to scholars. Islamic Fiqh Academy is highly thankful to the Institute and its office bearers who provided a chance to the Academy to host the workshop. I hope this exemplary gathering will not only open a new path to mutual academic cooperation but both these institutions in collaboration with each other will facilitate the mutual learning process between the scholars of Arab countries and India in future also.

In the last I appeal to the young scholars coming from all the corners of the country to focus on the core points dealing with the Shariah objectives in their discussions that may help the application of the objectives to the newly confronted issues. These points, in my humble opinion, are as follows:

1. In case a *qiyas* (analogy) contradicts the objectives of Shariah, which will be preferred ? While applying the principle of *istihsan*, to the *Hanafi* school, in case of a clash between the analogical reasoning and the Shariah objectives the latter will be preferably opted, since the main aim of Shariah lies in the removal of harms and the acquisition of interests.
2. In case of a conflict between the stipulated text and the common objectives of Shariah, whether any specification of the text is needed?
3. Keeping in view these common objectives of Shariah, if the

practice and exclusion of the text is suspended whether that will be treated as neglect of the text or it will be considered the execution and application of the text otherwise in the changed circumstances? The Prophet of Islam (SAW), for instance, was asked to fix the prices in the market. He said :

“Verily Allah is the One who checks provisions and also provides the provision in abundance; Who expands the earning and also narrows it down. I wish I meet Allah on the Day of Judgement and no one would have any claim to the blood or property because of any oppression I had committed against him”.<sup>1</sup>

The Prophet (SAW) had prohibited this fixation of price lest it might turn into oppression against the merchants. In the later period when the jurists observed the merchants had misused this freedom and made it an excuse to commit aggression against the public, they keeping in view the objective of removal of a wrong legalized the *tas'yir* (fixation of the prices). The jurists of the later period generally held this view. Because the aim of the *Prophetic* prohibition of *tas'yir* was the removal of the wrong. By legalizing the *tas'yir*, the objective of removal of wrong was achieved. The question arises whether such jurisprudential reasoning is considered as the application of the text in the changed circumstances or it will be treated as the suspension of the text?

4, In case the relation between reason and the objective is suspended, whether the ordinance would be based on reason or on the objective ? I mean by reason, the apparent precise condition and by the term objective, the general objectives of the religion.

These are very important points about which a moderate and cautious opinion is needed to be formulated. The ulama are bound to resolve the problems of the age in a reasonable way that may close the door of liberality on the one side and may be in line with the basic principle of removing narrowness. I hope these points would be thoroughly discussed in the Workshop that will leave certainly its sound impact on the researchers and ulama of the country.



We are also thankful to the respectable dignitaries of the city and the audience who in spite of inclement weather and a long distance from the main area of the city graced the occasion. We hope this gathering will prove a milestone in creating a new thinking, about the topics of jurisprudential principles and in considering fully the objectives of Shariah alongside the jurisprudential particulars while identifying legal ordinances.

I pray to Allah to make this gathering a means leading to good, to show us the path of right and truth, and to save us from the path that may lead us to His displeasure.

Note :

1. Abu Dawud, *Kitab al-Sunan*, Kitab al-Byuu', Hadith No. 49. It is narrated by Anas bin Malik (Editor).

## **Presidential Address**

### **Civilizational Revolution and the Role of the Ijtihad**

- Sayyid Muhammad Rabey Hasani Nadwi

*It is a great pleasure and also divine benevolence for us that Sayyid Muhammad Rabey Hasani Nadwi has graced the occasion. Every religious seminary has its own identity. Darul Uloom Nawatul Ulama, Lucknow, as a great movement of the age was founded and is still flourishing. Rabey Nadwi is its rector. Its juristic contribution is also enormous that is generally overlooked. In Hyderabad we served Al-Mahad-al-'Aali which was joined by a Nadwi graduate to work on "The Juristic School of Nadwah and the Juristic Contributions of Nadwi Graduates". He prepared by the grace of Allah, the treatise running over 450 pages. We ask him to add something more. I was pleased to see the areas covered by him. Darul Uloom Deoband, Mazahir Uloom Saharanpur and other Islamic seminaries had their own juristic achievements in which that of Deoband is certainly distinctive. Nadwah too has valuable share in this field. The balance and moderation in the thought is also its hallmark. Rabey Nadwi is recognised in the academic world as an authority on Arabic literature and Islamic history and Sirah writings. He is officially associated with Rabitah al-Adab al-Islami al-Alamiyah as the Vice President in the headquarter and as the President of the eastern region. I was honoured to talk him a little on the subject of jurisprudence during only visit to Nadwah. He enlightened me how the juristic ordinances were affected by change in culture and civilization and by cultural transformations. He provided a number of examples. I realized Rabey Nadwi inherited in his fold another personality. When I went back to Hyderabad I told to my colleagues we knew Nadwi with an identity; after a discussion with him on jurisprudence, I discovered another identity of him which was unveiled so far. We requested him as the leader of Muslim Ummah in the country, the patron of the Academy, and also because of his juristic nature and identity, to preside over the workshop. The session by the grace of Allah, will be under his presidentship. I request very humbly Rabey Nadwi to enlighten us by his address. All of us pray to Allah to prolong the caring and affectionate disposition of Rabey Nadwi for the Muslim Ummah in this age of the scarcity of such gifted individuals".*

(Khalid Saifullah Rahmani)

I wished to speak in Arabic language because our Arab guest Dr. Salahuddin is present in the session whom we heard and benefited a lot. It was quite advisable to speak in Arabic, in his language. But I apologise to him to speak in Urdu because the majority of the participants of this gathering speak this language. I will speak occasionally in Arabic also.

My friends, respected elders and colleagues !

Whatever has been so kindly said by Khalid Saifullah Rahmani about me is entirely based on his affection and love to me. I cannot say this is a false statement. I would like to say only that he in his appreciation of mine has exaggerated. I have taken interest in jurisprudence occasionally. My area of study has been the Arabic literature. The Arabic language being the language of Islam and the representative to religion covers all the areas of interest. It is a manifest reality, and some scholars have elaborated this, that the words, which we consider merely words, are the meanings in original, since these are the words only that convey meanings; these basically inherit and imply the meanings in their fold. Every word inherits in its design its meaning. When man learns a word he learns the meaning automatically. Words are different. Some convey meanings in abundance while others convey less. I used to think why the word *asma* (names) in the Quran is used sometimes for *musamma* (meaning). I found the word the title of the meanings. When we speak the word Khalid for example, the whole structure with its qualities, features and characteristics appears to us. And this happens by speaking the word Khalid only, not by any other word else. The word Khalid is a meaningful word and is not merely a sound. This is the difference between a word and a sound. Sound has not necessarily any meaning while word has it. A person having any link to any language and a command over it, is automatically aware of the culture, ethics, moralities and the characteristics of those who speak that language, since that language itself inherits all this. One who is aware of the Arabic language would be aware of Arabs' life, their nature and characteristics, their customs and

traditions, their culture and civilization because the Arabs' poetry and prose inherit in their very design all these details. All this may be unveiled by their words.

Likewise knowledge has its words and its language by which we learn knowledge, the sciences, when we use the word *raf'a* (nominative case), for instance in Arabic grammar for a singular noun or adjective, we know automatically the grammatical case for which the word *raf'a* is spoken. The same is the case with the word *jarr* (genitive case) and so forth. The words of knowledge and learning, convey the learning and the sciences for which these words were coined. The words are not separate from the meanings they inherit. Both are interconnected and inseparable. See, for example, by a few words a person feels humiliated, why? Because those words convey the humiliating element. We say, for instance, Mr. A. lacks aesthetic sense. The word 'lacking in aesthetics', explained in whatever way, is humiliating in any case. Other examples may also be quoted.

By this elaboration, I wish to say I am associated with Arabic language and literature, as my profession and also as my area of interest. I am aware of the culture and the knowledge falling under the Arabic language. It will be perhaps interesting to note that I have learnt the religious sciences and also the jurisprudence through the medium of Arabic. I have learnt the first two parts of *al-Hidayah* when I was in Darul Uloom Deoband for one year. Had I been directed to Islamic jurisprudence, I would have paid attention to it. I did not choose fiqh as my area of interest. The Islamic jurisprudence, however, is the topic to which every Muslim is linked. No Muslim can escape it. If he is absolutely unaware of this subject he may not even practise this religion. If man takes this subject as his area of study he may be deeply conscious of it. Those who know the Arabic language would find no difficulty in taking interest in jurisprudence.

My mind has led me time and again to the question why are the differences in Islamic law and why did emerge the various schools? Here in the Workshop the objectives are also discussed. It is

apparently clear the Shariah is revealed by Allah. One Who has created man, has also masterly identified his characteristics, and his needs and requirements. The Shariah, revealed by Allah, has considered all these human needs and characteristics; because it is the religion of nature and has accommodated all the nature-based requirements and limitations. The Shariah was revealed to and explained and implemented by the last Prophet (SAW) and therefore it is the last Shariah to be implemented till the Day of Judgement. Then why is this difference in Shariah? Is this a shortcoming?

This difference in the Islamic law, is basically in conformity with the nature. Everyone is different in his nature, stature, characteristics, and in his tolerance, and in other aspects. Allah has provided us a law that has accommodated this difference. The Jews were commanded by Allah to slaughter a cow as they found it feasible. But they started questioning a lot and making queries in abundance. Allah, in response, restricted and imposed a number of limitations. The Jews suffered a lot and found for sacrifice that specific cow after a hard and tiring exercise. That is why the Quran commanded :

“O ye who believe ! Ask not questions about things which, if made plain to you, may cause you trouble”. (The *Quran*, 5: 104).

I think the difference has been accommodated in order to facilitate the practice of religion. The Prophet (SAW) maintained this difference. The different opinions maintained, and the different schools of law emerged, do conform with the human needs and limitations. I have explained elsewhere in my articles that the juristic schools spread over different regions in the world had, suitability to their specific areas. For example the areas where water is abundantly available, hanafid school of law flourished mainly there and the areas where water scarced therein developed in majority the *Maliki* school. The legal position of water is different in both the schools. We are surprised to see the liberal position of malikids about water. The countries of Al-Maghreb, Algeria,

Morocco are dry and have too much scarcity of water, as we know.

In one of my journies to Algeria, I was to attend a function in a city. For the sake of cleansing in the toilet room I was provided a bucket of water without any mug placed, below the tap. I was too much reluctant what to do, I remembered at random the hadith that the Prophet (SAW) performed the ablution for prayer by using the water directly from the container. Consequently I tilted the bucket downwards, washed the right hand first and then completed the process. I realized the Algerian Muslims practised the same. Then in the process of ablution I again practised it and was satisfied. This was the normal practice in Algeria. Thus the water was used to be saved from wastage.

In a journey accompanied with Abul Hasan Ali Nadwi I was worried too much. Ali Nadwi was too conscious of purity and cleanness. He asked the host a mug to use in the toilet room. They could provide only a kettle that was used by Ali Nadwi to clean him self. Can we criticize them? No, they derived this practice from the hadith and they rightly did so. If the Prophet (SAW) can afford a little water for cleaning him, why can we not? If a tub is filled with water and we were requested to take bath from it directly we would be reluctant. According to hadith, however, both the Prophet and his wife Aishah used to adopt the same method unhesitatingly. In our countries, water is abundantly available and its use for cleaning and purity is excessive. But the African countries have scarcity of water and their method of cleaning is different.

All these differences in the schools of law, is essentially benevolence. Were an exact and rigid method adopted without any flexibility men, but would have suffered a lot. You do survey the followers of shafii school of law. Most of them reside in the coastal areas where sea material is easily available. The *Shafii* school in dealing with sea material is liberal while the hanafid school is not. If the two schools are take a very rigid stance, the followers will be trapped in troubles and the proverb “The religion is easy”<sup>1</sup> would not be found true. The flexibility of difference is provided by Allah through the Prophet (SAW). And whatever is prohibited in the

Quran (5: 104) about asking futile questions, is basically to maintain flexibility and to avoid rigidity. Whatever is not unveiled by Allah and is left for our understanding, why do we wish to specify them by questioning to Allah more and more. We should benefit from this flexibility. A number of things in Shariah are left for human understanding while other things are clarified and specified exactly. Those left for human understanding do not contradict Shariah but would lead man in the light of the legal ordinances to the path desirable in Shariah.

As far as the objectives are concerned, if man is aware of them he would not be misled. The objective itself will lead man to a reasonable and genuine path. In this perspective the Workshop is too important. Unless we are aware of the objectives we may not be able to define Shariah; we will be misled. If we decide according to the letter or apparent meaning of the texts we will be confronted with the aspects that would be culminating into troubles for us and the texts would not be applied. See the various schools differing on the issues like *rafa' yadayn* (raising the two hands in the prayers), *aamin bil jahr* (responding to imam in the congregational prayers with the word *aamin*) and so on. All the four schools are based hadith. The order of the Prophet (SAW) was explicitly clear but at the same time was flexible too. In case the two aspects of a thing are approved by the Prophetic practice, the adjustment between the two becomes important. This adjustment and justification was left to human understanding.

Man has his religious understanding as well as worldly understanding. In the religious issues one applies his mind keeping in view the nature of the religion as well as its objectives and the public interests. If you have a religious mind you will be guided to the path that is true and genuine. If the objectives are clearly defined the difference of opinion will lead man to divine benevolence. No follower of a right school can check the followers of other right schools, because a specific school is closer to the Shariah objectives and more suitable in the circumstances. The flexibility, the Shariah inherits as granted by Allah, is futile. The

religion revealed by Allah eternally may not be defective. The defect we think is the flexibility maintained by Allah for our convenience. The scope of difference is possibly established so that we may benefit from it. Our circumstances, our needs may be changed. In case of illness the ordinance of cleanness and ablution is altered. Being on journey we are allowed to shorten prayers accordingly as clearly defined in the Shariah. Why is this shortening allowed? Since man in travel suffers from inconvenience, Allah has resolved his hardship. Likewise if the use of water increases illness it is disallowed by Allah explicitly revealing that He has considered the comfort and bearing capacity of man. It demonstrates that this is the religion of nature and has taken into account the sufferings and requirements of the man. We should infer from this that this difference in the understanding is maintained by Allah Who has allowed us to opt what is more suitable to us and is also accommodated by Shariah. If we are inspired by Shariah we should benefit from it.

When Islam came to the Arabs they were illiterate had no civilization at all and lived a simple life. Allah revealed to them the religion so flexible that it fulfilled all the requirements of an advanced civilization. How? It was fulfilled by the human understanding of religion. Under the Abbasids the civilization prevailed. From where did that civilization emerge? The civilization emerged out of their interaction with Iran, Greece, India and other neighbouring cultured regions. The Arab Islamic civilization developed out of interactive learning.

The religion revealed among the unschooled Arabs became so expansive and inclusive under the Abbasids that it met all the political and fiscal requirements of a civilization and used to meet them uninterruptedly. That was not possible but by the serious efforts made by the ulama who applied their understanding of religion. The age of Abu Yusuf was that of an advanced civilization that did create two varying and complicated problems inaccessible to the unschooled Arabs. These scholars, noble imams and *mujtahids* interpreted flexibly religion and deducted the various issues that met all the needs of life. They provided reasonable response to



every problem and that response sufficed in all the aspects. Abu Yusuf was a hanafid scholar and whatever he derived was governed by the hanafid methodology. The countries where shafii school or any other school dominates today, benefit usually in the civilizational problems from the hanafid school only because independent reasoning, judgements, juristic deductions made by the hanafids were concerned with an age of civilization fulfilling all its contemporary requirements. That is the reason why Abu Yusuf, Muhammad bin Hasan and other hanafid scholars are much consulted even today.

Allah has given us the religion that meets varying needs of human beings and considers in full the variety of life. Man lives in the icecap, in deserts, with an advanced civilization, and somewhere in the state of ignorance leading a village life. Shariah is applicable to everywhere without facing any challenge. All the juristic extractions were completed under Abbasids. No major change in the Muslim civilization occurred later on. This was the major change that Muslims coming out of the deserts of Arabian peninsula had formed a powerful civilization. Europe was enveloped in the dark age. Iran and Greece lagged behind. Arabs now led an advanced civilization, a life of the highest standard, a law of balanced moderation. The Shariah met all these requirements. All the schools of law, all the major juristic interpretations were made in 2<sup>nd</sup>-3<sup>rd</sup> centuries. It means the Shariah along with all its varieties had proved its feasibility even in 2<sup>nd</sup> and 3<sup>rd</sup> centuries. Some partial corrections and modifications were made later on but the human life was not confronted with any major revolution onwards until the emergence of Europe.

In the modern age when European civilization emerged and science and technology developed to its full, the new challenges now confronted the society. The life now bristled with a new style, a new fashion, and a novel thinking. Before that our ulama and scholars were not compelled to do any new thinking. Now technological developments have pressurised them into rethinking and revision. Now the new issues challenge our scholars.

Some 25 years ago I was persuaded to travel to Europe. After arriving at Glasgow, the largest city in Scotland on the River Clyde, in the summer season I was asked how to identify the time of *salat al-Fajr* (prayer in the early morning) because before the light of dawn (*shafaq*) was set the dawn itself (*fajr*) did rise, turning the *shafaq* itself into *fajr*. The ulama differed on the exact time of ending the *shafaq* and starting the *fajr*, and the scholars of jurisprudence along with their followers were divided. A group in Glasgow used to perform the *fajr* prayer on 12.00 p.m. and onwards arguing the first half of the night formed the *shafaq* while the second half formed the *fajr*. Another group of scholars advocated the implementation of the timetable scheduled in the tropical countries allotting half an hour to *shafaq* and another half an hour to *fajr*. To them after half an hour the time of *isha* (night prayer) ended. Thus they allotted half an hour to each *shafaq* and the *fajr*. This equal distribution of time to each is different; to hanafids it is half an hour and to shafiites it is quarter an hour. Now even the time table of the prayers has become controversial.

In the given circumstances we are compelled to do rethinking and applying our independent reasoning based on *ijtihad*, and thus displaying that enthusiasm, and dynamism that was exhibited by our predecessors. It does not mean hapahazard reasoning, it rather requires knowledge, intelligence, deep insights in the texts held by our classical scholars. The Shariah, otherwise, would be branded as doubtful, incomplete and incapable. Had the scholars not applied *ijtihad* our detractors would have declared Shariah as the religion of unlettered Arabs, not feasible for others.

Today we need the same academic exercise. Since we lack individuals of such competence, with such hard labour required for independent reasoning and extraction of suitable ordinances, the better method of judicial and juristic exercises is the establishment of academies where competent ulama of capabilities and of distinct expertise of varying aspects of Shariah having the qualification of performing *ijtihad* and *istinbat* are assembled. These ulama may differ having various grades and ranks of knowledge. If they would sit together, interact with and share each other's knowledge and

experience they would arrive at a better result. All these sittings and procedures would be actualised within the jurisdiction of texts, and then *ijtihad* on the basis of the formulations made by our predecessors using all the intelligence and masterly dealings provided by Allah but not any thing new from their own.

Allah has bestowed intelligence, consciousness and understanding on every man. The religious understanding is granted to those who have loving concern and association with the words of Allah and of the Prophet (SAW). This intelligence is a kind of consciousness, an awakening, that leads man to the right aim, to the true nature and spirit of religion, to the meaningful understanding of Shariah. He thus immediately gets the point that this does not conform to the spirit of religion and that runs counter to the nature of Shariah, and thus becomes safe from any violation of religion.

This divine safety is better provided by the collective efforts, of the academics; in case a scholar misses a point and commits a mistake the others remind him and correct his error. And for that the knowledge of objectives of Shariah is essential. Unless we know the objectives and are aware of the factors, reasons and rationale behind Shariah, we can produce no major work, no result. To keep in view the objectives is essential. Around the same theme this Workshop has been revolving and in the past our predecessors have done a great job in this regard.

Allah has clearly stated in the Quran:

“Allah intends every facility for you; He does not want to put you to difficulties” (2: 185)

It clarifies explicitly that Allah has considered all the requirements as well as the limitations of man while revealing Shariah. Allah has accommodated all the pragmatic problems. The differences in understanding the text are basically no differences as such, these are, rather, the opportunities to assess our capabilities and resources and act accordingly. Our great jurists availed of these opportunities and provided us a well regulating detailed Shariah which has been practised conveniently over the centuries without

facing any major challenge. Now we are to take unusual steps with the full caution and keeping in view the entire legacy of the texts and the judgements made through *ijtihad* by our predecessors. Then only Allah will grant us the true understanding of religion that will enable us to decide rightly and honestly.

It was good that Qazi Mujahid ul Islam Qasmi was persuaded by Allah to found this Academy. And then a series of seminars and workshops started. This is also a Workshop from which we are benefiting. A workshop on *fiqh* means a training course to enable those working on the juristic issues learn interactively how to experience *fiqh* and how to learn new interpretations which may convince both the speaker and the listeners with the complete, permanent, feasible Shariah that fulfils the requirements of human nature. This requires practical exercise. This Workshop will explain how to work and how to convert one's qualities and qualifications into constructive and useful directions.

I express my pleasure and do pray to Allah produce better results. I would however, like to say the students and participants of the workshop, that knowledge depends on your own labour. Neither a teacher may add nor any religious seminary and library; all these constitute only the medium. You will have to expedite these mediums and improve your knowledge as much as possible. You must keep in your mind that man is valued always according to the contributions he makes for the welfare of others. If he contributes nothing, he has no value as such. Everyone is to depart this world. You should see whether are you enriching the others. The towering personalities who are memorable, are those who enriched the world by their valuable contributions. We must think what we are going to add. This will be our value. We need to produce this value. May Allah grant us this benevolence to engage ourselves in jobs that may benefit the Muslim Ummah and may strengthen Islamic Shariah and support it.

**Notes :**

1. Bukhari, *Al-Jami al-Sahih*, Kitab al-Iman, Bab al-Din Yusrun, Hadith No. 39 (Editor).

## **Special Address**

### **Basis of the Objectives**

#### **Safeguarding the Interests and Eliminating the Harms**

- Sayyid Muhammad Ijtiba Nadwi

Some scholars in the Arab world had initiated the idea of an academy of fiqh especially for the sake of emphasizing Shariah objectives. Amid the global assault made on the Muslims, it was felt essential to lay the foundation of an institute in which Muslim ulama, scholars and jurists may sit together and frame the guiding principles for the entire Muslim world. It was the month of April or May 1957 in which Shaykh Abu Zahrah, Dr. Yusuf Musa, Shaykh Mustafa al-Sibai, Mustafa Ahmad al-Zarqa and Dr. Maruf al-Dawalibi assembled in Damascus. They decided to initiate two projects: (i) to prepare an encyclopaedia on Islamic jurisprudence (*masu'ah fiqhiyah*), and (ii) to establish fiqh academy in the important cities and towns of the Muslim world. The project of encyclopaedia was started under the convenorship of Shaykh Abdul Fattah Abu Ghuddah (whose name and personality is known to all the Indians since he introduced to the Arab world Abdul Hai of Firangi Mahal, the great scholar of India and has edited his books and popularised them in the Arab world). The project went on for a long time in Damascus. When the political situation turned hostile to him in Damascus, he came to Kuwait along with the project on the invitation of the government. So far 41 volumes of that encyclopaedia have been published. I do not wish to add anything in this regard nor would I like to comment on the the project.

I would like to mention two great personalities in this regard; Shaykh Allal al-Fasi of Morocco and Dr. Muhammad Maruf al-Dawalibi of Syria. Both of them were the jurists as well as politicians. Both of them were entrusted with the office of the prime minister in their respective countries time and again. They have done valuable works on the jurisprudential principles in general and the objectives of Shariah in particular.

Allal al-Fasi was a poet, a literary man as well as a jurist. You know it is essential for a jurist to be aware of the world, its conditions, its changes otherwise his understanding of religion and his juristic experience and expertise would be as defective and incomplete. This was the distinction of both these scholars. Dr. al-Dawalibi was a politician and an expert of the Roman law. His book on Roman law was taught in the Faculty of Law, University of Damascus as a text book. He himself being a teacher used to teach that book. In the meantime he prepared his new book *Al-Madkhal ila Ilm Usul al-Fiqh* which was a notable and prominent work in the modern style with the contemporary research methodology applied. The introduction of the Academy and other relevant issues are already made. Now we have to do some memorable jobs.

The Workshop is conducted not for delivering the lectures, or presenting research papers. It is convened for interactions resulting in to highlighting the points that may prove for the students of jurisprudence as the guiding principles in future in the form of a syllabus, or important notes or dialogue and mutual discussions, so that these guiding principles might be implemented in the universities, seminaries and institutes, and the jurisprudential preparation might be made accordingly. In all the universities such workshops are held annually or after a gap of two or three years, so that the curricula is revised and the change, if necessary to accommodate the contemporary requirements, is adjusted in order to provide guidance in the dynamic and ever-moving life.

I hope we will sit together in the workshop and provide juristic insights and expert knowledge. We will formulate some guiding principles for the sake of creating a new sensibility. The circumstances in which we are living are serious, as pointed out by Abdur Rahim Qurayshi Advocate and other respected elders. We should offer Islamic solution to the new problems and challenges confronted in the light of Shariah and Islamic jurisprudence so that it may not be said that the ulama, the bearers of the Quran and the hadith and the jurists are unable to guide in the contemporary situation.

Our ulama and jurists have formulated the regulations of jurisprudence under the title of *qawaid fiqhiyah*. They explicitly declared the change of ordinance with the change of circumstances may not be overruled. The objectives of Shariah are based on the hadith that reads: “Neither you harm anyone nor you tolerate it” that is the principle of ensuring interests and avoiding harm. In an organised and systematic way these juristic formulations were made and codified in *Majallah al-Ahkam al-Adliyah*, the authentic juristic documentation in later Ottoman period. In this process of codifying the Islamic law Muhammad al-Zarqua, the father of Shaykh Mustafa al-Zarqua participated. Shaykh Mustafa al-Zarqua has mentioned his name in the end of his book *Al Madkhal* or *Al Fiqh fi Thawbihi al-Jadeed*. That is why Khalid Saifullah Rahmani has mentioned that a scholar Dr. Ali Ahmad has completed his Ph.D. on *Al-Qawaid al-Fiqhiyah* under the supervision of Shaykh Mustafa Ahmad al-Zarqua. You have to keep all this in your mind while working out a plan in this Workshop under the guidance of those respected elders who were trained by Mujahid ul Islam Qasmi, and represent him truly, especially Khalid Saifullah Rahmani, the leader of this academic caravan, and his associates and colleagues. We hope and pray this caravan will go on enthusiastically and thus comfort the soul of the late Qazi. We will be able through these juristic efforts to resolve the problems arising in the modern world and thus prove the permanence and eternity and also the superiority of Islamic Shariah. With these few words I am thankful to all of you and especially to Khalid Saifullah Rahmani who provided me with a chance to speak to you. I pray Allah to reward you the best and to make this Workshop successful.

## **Chapter Two**

### **Objectives of Shariah Foundation and Gradation**



### **Objectives-Oriented Ijtihad and Reformative Ijtihad**

- Dr. Salahuddin Sultan

After preliminary praise and prayer to Allah.

The Islamic scholars and the Brethren in faith!

First I thank Allah for this pleasant visit. I love you for the sake of Allah. I always pray for all of you. Today the world has come closer and has turned into a village. It rather, has turned into a hotel and not village because a village has ethics, values and culture. The world today is devoid of these of. The life in the hotel is too liberal and valueless. In the given situation it is neededau more that the scholars should get together for the sake of Allah's pleasure and initiate a joint project for the advancement and defence of faith. I am thankful to the office bearers of the Islamic Fiqh Academy, India. I also thank Dr. Taha Jabir al-Alwani and I convey to all of you the salutation as well as the greetings of International Institute of Islamic Thought Washington and also of Majma al-Fiqh al-Islami, North America with which I am officially associated as a member, with the prayer that the theme of the Shariah objectives may unite all of us in such a way that our minds and our hearts be closer to each other and we may be able to establish this religionau over the world. Allah has commanded :

“You are the best of peoples, evolved for mankind,  
enjoining what is right, forbidding what is wrong,  
and believing in God”. (3:110)

The Workshop on the theme of the Shariah objectives, will lead us to understand the objectives for which Allah has revealed Shariah. What are the greater objectives behind creating man? What are the major aims of enjoining right and reforming the world? Allah says :

“We sent you not, but as a mercy for all creatures”.  
(21:107)

Though we, the Muslims, are living a backward life after we had led an advanced and progressive life, are potentially capable of

reforming the world by the grace of Allah. We own the reform ideology and method. The world needs more than ever that reformat ideology in different fields of life. Before that we must to understand the general objectives of Shariah so that we may interpret to people the living and dynamic Shariah, resulting into the solution of their problems and into the success and prosperity in this world and in the Here-after. The holy Quran explains :

“Thus does God make clear to you His signs in order that you may consider their (bearings) on this life and the Hereafter”. (2:219)

“But seek with (wealth) which God has bestowed on you, the Home of Hereafter, nor forget your portion in this world: but do you good, as God has been good to you, and seek not (occasions for) mischief in the land : for God loves not those who do mischief.” (28:77)

The mischief spread over the entire world, has cultivated three kinds of commercial trades (i) vulgar sex trade, (ii) trade of alcohol and *intoxicants* and (iii) trade of arms and ammunitions as a result of which innocent civilians, women and children are victimized. The civilization of 20<sup>th</sup> and 21<sup>st</sup> centuries has gifted these trades to the world. The highly profitable and also the most wanted trade deals neither in food and basic provisions, nor in medical treatment. But the top most trade revolves around sex, then around intoxicants and thirdly arms.

In the 17<sup>th</sup> century Jews had planned to commit prostitution in the open light of the sun. Today in the open air before the camera flashes the worst forms of sexual anarchy and prostitution is committed under the protection of law. In 1990 United Nations organized a conference in Cairo - the very city of Jami Azhar and of king Muizzuddin. The Conference urged the Islamic countries to legalize homosexuality, lesbianism, collective sexual relations, and all the perverted forms of sex. Owing to most effective demonstrations launched by the Muslims, the office bearers of conference and conspirators could not succeed in their designs. The U.N. then convened the second conference in China,

the third in Istanbul and so on in order to achieve its aim of spreading in the whole world immorality and sexual degeneration. I was to attend a conference in July 2003 in London. I read a news in the front page of a national daily declaring the British official announcement that one lakh homosexuals had enrolled in one week after the legislation was made. On the first and third pages of the same daily in a compliance with that news item two pictures of elderly men were published: one aged 70 and the other 71, saying now they would die being legally married since they had been homosexuals illegally for the last 40 years. Think over. They had been living as homosexuals and now their perverted sex was sanctioned by the British government. In Canada and in some states of United States man is allowed to marry another man.

In the field of economy, on the one hand poverty is killing the human beings and on other the resources in abundance are wasted for spreading mischief and evils. Either man is deprived even of his livelihood and may not meet his basic needs or he is unable to think how to spend his wealth. In this world atrocities are committed against innocent women and children who are killed individually and collectively. The modern technology and the resources are now used to annihilate the human population while one of the objectives of Islamic Shariah is to increase population and strengthen the human civilization and to promote good and welfare to all and not to the Muslims alone. The world is now confronted with the challenges. In this gathering we talk of the global challenges because we cannot overlook them. Essentially we should convert ourselves into a dynamic force in the global society and should not be confined to any locality or region. Our jurisdiction may not be limited to individual life.

The challenges described earlier may be met successfully only when we are equipped with the prerequisites. Allah commands explicitly :

“Who is better in speech than one who calls (men) to God, works righteousness, and says: I am of those who bow in Islam? (The *Quran*, 41:33)

We should realize that we, the Muslims, are the best of the creatures of Allah. It is immaterial who lives in the White House or in the Kremlin, or holds a dazzling post. We must try to get nearer to Allah. He himself has said:

“Nay heed him not: but bow down in adoration, and bring yourself closer to God” (96:19)

A man bowing down to Allah in adoration is the closest to God. On the Day of Resurrection a bulky man would be brought to God and would have no weight even that of a mosquito. In contrast, a man who is down-trodden and the victim of grave poverty does swear in Allah who fulfils it in compliance with that. Muawiyah bin Sufyan, the companion has narrated a hadith quoted by both Bukhari and Muslim. The Prophet (SAW) is reported to have said :

“Whom Allah intends to bestow a good to him He grant him true understanding of religion. I am merely a distributor; it is Allah only Who gives. One group of my peoples would be always the upholders of truth. Those who oppose them would have no authority on them till the commandment of God will prevail and they would be in a position to maintain right.”<sup>1</sup>

One who is bestowed by God the holy Quran and he thinks others better and nobler than himself, he mistakenly defames the noblest divine gift and actually respects a mean thing. We, the Muslims, due to our commitment to Islam, the Quran and the *dawah* work are the noblest of the creatures of God on this earth, irrespective of lacking in material goods and worldly resources. The Prophet of Islam was an orphan and could not earn his livelihood. The holy Quran, however, titled him thus:

“And you do stand on an exalted standard of character”  
(68: 4)

Say: “If (God) Most Gracious had a son, I would be the first to worship”. (43:81)

The Prophet (SAW) himself declared in a hadith :

“Not proudly, I am the chief of the children of Adam”<sup>2</sup>

The ulama and the Islamic scholars are the inheritors of the Prophets who make them the heir of knowledge and not of dirhams and the dinars. One who receives this inheritance, becomes the richest man. I ask my own self and all the brethren in faith to be proud of our religion. We are neither in minority nor helpless. We are helpless in our soul in our personality and in our inner selves. If we link ourselves with to our Creator, our Sustainer we will turn into the super power. We are poor and lack the basic needs of life. When we link our poverty to the riches of Allah we become the richest in this world. When we link our insult and humiliation to the Divine dignity and respectability we turn into the most honoured and the most dignified persons.

Another point that must be taken into account is that our personality must combine humbleness and authenticity. The ulama and the Islamic scholars who changed the world history and left their tremendous impact on it, were not only the bearers of knowledge and inheritors in the field of learning. More importantly, they were humble and servile to God alongside being the followings of the authentic and argumentative Islamic law. Izzuddin bin Abdussalam, popularly known as Sultan al-Ulama (the king of scholars), had a legal and jurisprudential understanding of Islam. He had a humble and God-fearing personality. Allah has emphasized this in the following verses :

“Who preach the messages of God, and fear Him, and fear none but God”. (33:39)

“Those truly fear God, among His servants, are those who have knowledge”. (35:28).

The Mongols from the eastern region invaded Baghdad and assassinated the Muslim caliph humiliatingly and killed 20 lakh Muslims brutally. They eliminated them by swords or the heavy stones. Today Baghdad, the country of Kufah and Basrah, in which the last companion Anas bin Malik died, the gateway to the Arab world is occupied by the foreign forces. Abdur Rahman al-Jabarti (1754-1822), the historian says : a Mongol army man used to enter the village alone and order that every villager had to bring a heavy

stone and lay down with it under his head. The Mongol then proudly used to pass by every man and crush him by another stone in his hand without observing any resistance. Al-Jabarti is surprised to quote this and we also are surprised. You have stone in your hand. If there is no way out except to die, then why this humiliating death? Where is the faithful fervour and zeal? Umar bin al-Khattab, the second Islamic Caliph, says : I like a man who being humiliated resists forcefully and declares that act unlawful. The situation was more severe. According to the historians, a Muslim ruler purchased for him two new shoes and imprinted on them his own face. He sent his son carrying these shoes along with the valuable gifts and golds to the Mongol chief Hulagu Khan with the request to honour him by crushing his face by using those shoes daily. Hulagu Khan desired to kill his son and assassinated his guard immediately. How truly has commanded the Almighty :

“Never will the Jews or the Christians be satisfied with you unless you follow their form of religion.”  
(2:120)

In these circumstances Izzuddin bin Abdussalam, the king of scholars was born. He combined both the traits of legal authenticity and the humbleness. If a scholar has knowledge and popularity in the society but has no humbleness to God, he will be a fraud and impostor and will issue the false legal verdicts. He will be in search of the ways and the methods by which he might earn more and more and gain the post and stature from the kings and the rulers, or from people. Those scholars adorned by both the traits, are confronted with trials and persecution. The four founders of the Islamic legal scholars were to face unpleasant, hostile situations. Abu Hanifah insisted on truth patiently and gained people’s respect for ever. Shafii, Malik, Ibn Hanbal all the great jurists suffered a lot and are now memorable figures. These respected jurists did possess not only knowledge but they were full also of the fear of God and humbleness.

Allah revealed first the following verse :

Proclaim (or Read) in the name of your Lord and Cherisher, Who created.” (96:1)

The chapter consisting this verse concludes with the following verse :

‘Nay, heed him not: but bow down in adoration, and bring yourself closer to God”. (96:19)

In another chapter of the Quran Allah says:

“Nūn. By the pen and by the (record) which men, write.” (68:1)

The holy Quran also commands :

“Then celebrate with praises the name of your Lord, the Supreme!” (56:74)

Another Quranic chapter begins with the following :

“O you folded in garments! Stand (to prayer) by night, but not all night! (73:1-2).

The same chapter in the concluding part has commanded: “to read and recite of the Quran as much as may be easy for you”. (73:20). The balance between knowledge and authenticity in Shariah and fear of and reverence to God is well maintained in the Quran. We are, therefore, required to build our personality with the advancement of Islamic research and analysis as well as with humbleness and God-fearingness. If we have humbleness but do not have deep knowledge of Shariah, what will we communicate to others? One who issues the legal verdict of Shariah without any knowledge will take his abode in the Hell.

Ibn al-Qayyim says that, the abundance of *fatwa* occurs because of one in knowledge or of having plenty of knowledge. One becomes habitual to issueing *fatwa* on each and every issue whether he has the required knowledge or not. For instance, a person joins on his own some letters of Arabic with each other and constructs a word not found in any dictionary of Arabic language. Having joined *kh n f sh a r* he thus makes *Khunfashar* and asks the shaykh to tell him its meaning in Arabic. The shaykh describes the

meaning of *Khunfashar* as the thing to which another thing is fastened.

What is the position of such a *shaykh* or *mufti*? He is basically an imposter and a deceiver who desires to have his stature and place in the public. We require a God-fearing scholar of with a humble personality. We need the qualification that diverted historically the personality of Hasan Basari into a courageous scholar who stood at the door of Umar bin Hubayrah, the ruler of Iraq and Iran appointed by Waleed bin Abdul Malik, the Caliph and Hajjaj bin Yusuf, the viceroy. The Caliph had allowed Umar to do even the un-Islamic acts. He called for Hasan Basari and Shàbi and consulted them what to do. Allah has commanded to obey the Caliph and the caliph desires from me the things which are displeasing to God. You ask me what is the way out. Shàbi responded ambiguously. Let me tell you a joke to entertain you. A scholar was supposed to talk on the topic of birth control on the radio station. He asked the programme director: I should speak on the permissibility of birth control or I should argue for its prohibited position since I am equipped with both the arguments. Such a scholar is trying to play with the book of Allah. May Allah protect us! Shàbi responded ambiguously. Hasan Basari, however, explicitly said : “O Ibn Hubayrah! Fear Allah in the case of Yazid, but do not fear Yazid in the case of Allah! O Ibn Hubayrah! Allah will save you from Yazid but Yazid cannot save you from Allah. Ibn Hubayrah! You will face the Day of Resurrection and Yazid will not be with you! Beware of the Day on which you will be accompanied with your deeds only! Fear the Day on which you will be supported by your good deeds only!” The religion of Islam is served only by the scholars like Hasan Basari and Izzuddin bin Abdussalam.

Shaykh Izzuddin bin Abdussalam persuaded Saifuddin al-Qutuz who left Baghdad of Hulagu Khan just after two years of its occupation. Baghdad was occupied by the Mongols in 656 AH / 1258AD and was made independent in 658 AH/1260 AD. We are the members of an Ummah, if one leader of which dies, he leaves another leader behind him to guide the community. The leader is a



man of sound character. All of us hope expect Allah for such management of leadership. This is the second point to be always remembered.

The third point concerns an initiative of reformative *ijtihad* to be taken by us immediately, and not to opt for any accommodative or status quo *ijtihad*. The reformative Islamic reasoning on the basis of *ijtihad* opens its way itself. This *ijtihad* neither cuts itself off from the society we are living in, nor it commits any aggression against the society. We, the Muslims, form a balanced moderate community. We do mix with the society but do not lose our identity. We may not commit any aggression against the innocent. Islam invites us to address the entire world and not to alienate us from the rest. The Quran clearly commands us :

“You are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing in God” (3:110)

In all the programmes of the United States I participate and communicate the message of Islam to the Americans who whole-heartedly accept it. When I convey the Islamic teachings to them they welcome this. I tell you Allah will ask us on the Day of Judgement whether we had communicated the message of Islam to our neighbours to the non-Muslims whom we had visited though once in our life? Allah has explicitly commanded us to do the Da’wah propagation work:

Why were there not, among the generations before you, persons possessed of balanced good sense, prohibiting (men) mischief on the earth – except a few among them whom we saved from(harm)? (11:116)

Al-Qurtubi says that the Quranic word *ulu baqiyatin* in the above verse qualifies ‘a few among the faithful and righteous people’ who will save the society from all kinds of mischief:

“But the wrong doers pursued the enjoyment of the good things of life which were given them, and persisted in sin. Nor would your Lord be the One to

destroy communities for a single wrong-doing, if its members were likely to mend”. (11:116-117)

The word *muslihun* (those who try to correct) is used in the verse and not the word *salihun* (The pious and righteous) most importantly because Muslims are to correct the wrong and are reformatory and corrective people. The holy Quran further clarifies this :

“They ask you concerning orphans. Say: The best thing to do what is for their good; if you mix their affairs with yours, they are your brethren; but God knows the man who means mischief from the man who means good.” (2:220)

Here the Quran differentiates the role of a *muslih* (reformer) from that of a *mufsid* (mischievous). Dealing with the family affairs the Quran commands :

“If you fear a breach between them, appoint two arbiters, one from his family and the other from hers; if they wish for peace God will cause their reconciliation.” (4:35)

Even in the family issues a reformatory method is appreciated. On the political and international issues, the Quran instructs its followers to be corrective and reformatory:

“The believers are but a single brotherhood: so make peace and reconciliation between your two (contending) brothers; and fear God, that you may receive mercy”. (49:10).

“But if the enemy inclines towards peace, do you (also) incline towards peace, and trust in God: for He is the One that hears and knows all things.” (8:61)

In financial affairs too, we are to opt for the reformatory method :

“But if anyone fears partiality or wrong-doing on the part of the testator, and makes peace between (the parties concerned) there is no wrong in him.” (2:182)

The arbitration by Shariah will prevail all the aspects of life - political, economic, social, in and so on. The method we adopt in our reasoning and application of *ijtihad*, must be reformatory. We should not accommodate each and everything. Neither should we follow the status quo. We must convert the status of weakness into the status of strength and dynamism. We do observe the same in the Quranic chapter of *Al-Kahf*. In the state of helplessness and subjugation the faithful took shelter into the cave in the first phase. The second phase of the chapter deals with the negotiation and mutual understanding. Then the third phase comes and this was the phase of strength and force when the Quran declared :

“Bring me blocks of iron. At length, when he had filled up the space between the two steep mountains-sides, he said, “Blow (with your bellows) then, when he had made it (red) as fire, he said : “Bring me, that I may pour over it, molten lead”. Thus were they made powerless to scale it or to dig through it”. (18:96-97)

According to the Quranic statement, Zul Qarnayn never told this when he was powerless and had no sovereign state, nor responded in this way those faithfuls who took refuge in the cave because they had no might. This is the chapter of *Al-Kahf* we recite especially on every Friday. Concerning this is a hadith, though weak by its channel, but offers a methodology to a *mujtahid* that signifies the following; we should bring the people out of the cave, making them mighty by negotiations and dialogues to the stage of power and strength, the clearly defined stage in the Quran :

“Verily We established his power on earth, and We gave him the ways and the means to all ends.” 18:84).

If the Muslims are financially poor, we should perform independent reasoning and *ijtihad* in such a way that makes them rich and wealthy. Allah has said :

“To those weak of understanding make not over your property which God has made a means of support for you, but feed and clothe them therewith, and speak to them words of kindness and justice”. (4:5)

Do you think the verse is confined to the orphans who were prohibited by the Quran to do what they liked absolutely, but their guardians were directed to stop them from any misuse. No, the wording of the verse is perfectly general. Those who constitute the *safih* and lack the qualification and ability to run administration must be sacked. It is our responsibility to persuade our youth to learn and gain the highest position in education. In the United States, a student earning the distinction in his subjects is monitored by the Jews. In the United States after one year's stay when my daughter gained the distinction she received a letter from Who is Who. The letter consisted of a prediction that she was placed among the five who would rule USA after 20 years; was she ready to join a special programme to be arranged for visiting the President of USA, the President of Ford Company, the Chairman of Microsoft Company and also the presidents of other countries in order to be trained as the best potential leader for future. Since the project included a number of things strictly prohibited in Shariah we rejected the proposal. The Jews pick up the meritorious students, provide them with the scholarship to get admission in the best colleges and universities. When they need the experts in the economics, political science, social work or any field, the most intelligent and capable experts are easily available to them in abundance. We must select the intelligent youth and introduce them to Islam. These youth should learn medical science, astronomy, engineering and computer science. We apply our reformatory method that will bring us from the phase of poverty and weakness to the phase of power and enrichment.

If our *ijtihad* maintains the status quo for Muslims we would be sinful in the eyes Allah. Essentially we should orient the Muslims' energies and potentials so that their violent *jihad* turn into the jihad of learning and education. In the world there are only two categories of scholars or students. We should bring up our children as future's leaders. They should march ahead in all the specialized fields. I tell you good news. A conference was held in the United States to identify the most capable scientist in physics. Seven hundred experts from Europe, America, Australia. Japan and other

countries assembled in the conference. The man who topped the list in physics was a Muslim brother namely Dr. Ahmad Rashad. When they identified the best student on the level of secondary education in the United States, they surprisingly found a Muslim girl wearing *hijab* ( a scarf on the head). We lack no energies, no potentials. All the capabilities of power we possess. Our *ijtihad* should be exercised for understanding the Shariah objectives. We should not issue a *fatwa* of transitory nature that would prove problematic in future. We will not plan for this world only. Our long-term planning would include the life in the Hereafter too. The holy Quran defines clearly :

“Thus does God make clear to you His signs in order that you may think over this life and the Hereafter.”  
(2:219-220).

The hadith, though declared as weak, says that :

“Do your deed for this world as if you will live for ever, and do your deed for your Hereafter as if you will die tomorrow.”<sup>3</sup>

Huzayfah bin al-Yaman is reported to have said:

“Neither one of you is better who leaves this world for the Hereafter, nor one is better who leaves the Hereafter for this world; the better is one who takes his portion from this world and from that world too.”

It is essential to follow the objectives-based *ijtihad* and that is the fourth point to be considered by our ulama and Islamic scholars. We must understand the general spirit of Shariah. Umar al-Farooque, the second caliph of Islam, got such a position in Islamic society that a number of revelations were made by Allah in conformity with his individual opinion. About the prohibition of wine Umar had prayed to Allah to send down an explicit statement. About the *hijab* and other issues Umar predicted and that was justified or affirmed by the divine revelation. Umar used to think over the future of Muslim Ummah. Abu Bakr, the first Caliph, why did he stand sound on his initiative against the apostates? He was foreseeing that the gap caused by the death of the Prophet (SAW)

would culminate in to Islam being rooted out. He had challenged the ego of Umar addressing him: ‘O Umar! Has a bold and courageous man in the pre-Islamic period turned into a coward in Islam? By Allah, Had they denied me a rope which they used to pay to the Prophet earlier I would fight against them certainly!’” This objectives – based jurisprudence was initiated by the Prophet (SAW) himself. This was further channelised by the four caliphs. The jurists amid the companions and their immediate followers maintained the objectives. All of them laid the foundation of a wholistic approach that did not sacrifice the fundamentals at the cost of the particulars.

Today we are faced with a crisis. The crisis in the jurisprudence of the fundamentals and wholistics prevails in the society. Do you know about cancer? Cancer causes the swelling in the cells of the body and demolishes the entire physiological system. Avoiding the fundamentals and the objectives of Shariah, and concentrating on the jurisprudence of the particulars is the swelling that penetrates the particulars of fiqh and demolishes the Islamic physique entirely. It strikes at the fundamentals. Adopting the jurisprudence of Shariah objectives is, therefore, compulsory – the jurisprudence of priorities, the jurisprudence that keeps in view consequences and results.

Historically Makkah was conquered by the Prophet of Islam (SAW) and the entire Arabian peninsul fell to Islam but he was still not convinced to rebuild Kabah on its previous foundation. He, instead, said to Aisha, the mother of the faithfuls :

“If your peoples had not recentry embraced Islam I would have demolished Kabah and rebuilt it on the foundations of Ibrahim.”<sup>4</sup>

Why did the Prophet (SAW) do it? Because he maintained the objectives of Shariah. He realized the Makkans and others had entered Islam recently. They would observe the Prophet had captured Makkah and the holy Kabah and since they had too reverence for the Black Stone for which they had fought before the pronouncement of the prophethood, they might have turned into

apostates. When the holy region came under the domain of Abdullah bin Zubayr (01-73 AH) he demolished the building and rebuilt it on the foundations of Ibrahim. When Hajjaj defeated and later on killed him, he demolished the building and rebuilt it again on the foundations of the Prophetic period. He was keen to demolish all the memories of Abdullah bin Zubayr. Abu Jafar Mansur under his caliphate (136-158AH/754-775AD) planned to rebuild the holy building on its classical foundations. He consulted Malik bin Anas in this regard and Malik advised him not to play with the holiest sanctuary. Every Caliph or king, otherwise, would try to demolish it and rebuild on the Abrahamic foundations. The succeeding ruler, will do the same. He therefore suggested the Caliph not to turn the holy Kabah in to a toy for the kings. These are the examples of objectives-oriented jurisprudence.

The last point that must be seriously considered by our ulama and *muftis* is that our *ijtihad* should be linked to the Muslim minority problems. We form a minority in the USA though we are 80 lacs, as stated on the internet by the Information Ministry, America, while the total population is 28 crores. You, the Indian Muslims, also constitute a minority while this country was once the Islamic one. In Europe Muslims number 5 crore 70 lacs. In Kashmir Muslims are in majority. We are not less in number but still we are weak. Muslim Ummah is now living under (the minority-oriented jurisprudence) *fiqh al-aqalliyat* Muslims are in minority whether in their number or in maintaining their rights.

We were in Egypt before the Eid celebration. The Egyptian government disallowed us to perform *Iietikaf* (secluding oneself in a place) in the masjid. In the 80 thousand mosques all over the country a written sermon was delivered. A sermon prepared by a shaykh in the presence of a security officer, dead and lifeless, was despatched to all the mosques and was recited from the holy pulpit: the words coming out of a living heart and conscious intellect can not be dead and lifeless. The words of the sermon in Egypt even before being delivered are dead and ineffective. The Muslims in Saudi Arabia are asked to modify their curricula in the schools and colleges, and this process has started. This humiliating

process of change in the education is committed in the holy land of Prophethood. Muslims in Palestine are suffering under the worst conditions, and no Muslim country is capable to help them in the real sense. Years after years are passing and no one except Allah knows the end of the oppression against them. It means the majority in number does not count. One who has power alone matters. We are, therefore, living a life of *fiqh al-aqalliyat*. We are in minority whether in the number or in rights.

It was in 1985 when we visited a shaykh in his house in Makkah. I asked him a question that had troubled me those days, that what was the application of *dar al-Islam* and *dar al-harb* in the modern times. He asked me where I was sitting in. I told we were in Makkah. He replied: “In this city we and you are not authorized to announce publicly the words of Allah. In Europe and America, however, we are free to pronounce whatever we wish. We can not say that Europe has turned into *dar al-Islam* or this city is not a *dar al-Islam*. But this is the situation we should realize. This requires a new academy of fiqh to respond afresh. A number of fiqh academies have explored the issues of *dar al-Islam* and *dar al-harb* and concluded that Europe, America and other countries constitute the legal position of *dar al-ahd* (abode of agreement). We also have followed this opinion.

My dear brethren!

Do we not disdain while claiming that we are crores in number? We should remember that one group of the Israelis had requested their Prophet :

“Appoint for us a king, that we may fight in the cause of God”! (2:246)

That was a verbal request. Human beings may not be deceived by the abundance in number; it is inspired only by the abundant quality. Today we need to rebuild our thought, living within the jurisdiction of *fiqh al-aqalliyat* and to strengthen our mutual relations. We have common projects and numerous individuals, different capabilities and separate jobs. A good



coordination among them altogether is required. The world has become closer. America is located only on 40 hours flying destination from here. In suitable weather time may be reduced. Imagine, a journey by the camel would have occupied a number of years along with the fear of death on the way to India. I was busy in my studies uninterruptedly and arrived at New Delhi. The world has become shorter because of the speedy communications. We should interact through the internet. We should use all the modern means of communication. Dr. Taha Jabir al-Ulwani has sent his message through the computer CD. You might have received that. Sitting in this hall in New Delhi you will be hearing him from U.S.A. Our Islamic American University is planning to install an electronic system by which the teachers from other cities and countries might be able to deliver lectures to students and interact with them conveniently only at the cost of 50 thousand dollars. This interaction and mutual contact is essential.

According to Dr. Imaduddin Khalil, we condemn usually Western civilization, but we must appreciate its constructive aspects too. It was this civilization that made distances shorter, activated knowledge and visualized the Prophetic prediction that this religion would have access to the every pace of horse and camel certainly and would address every human being in any part of the world. Think over, without using internet and other modern communicatives how can we communicate this religion to each and every place? The Western world should not compete us in this field especially when we are the bearers of the divine message. It is unavoidable for us to coordinate our activities and perform *ijtihad* unitedly. We should benefit from each other and should educate each other. We should spread knowledge and good. Knowledge itself is a mode of relation between its bearers and Islam provides an unbreakable link among its believers.

Dear Brethren!

I apologize for this long speech. I swear by Allah I love this religion affectionately more than I love my life, my children and all the belongings of the world. I pray Allah to unite our hearts

and to channelise our mind so that we may lead the movement of Islamic reform and Islamic domination and serve Muslims selflessly – the aim they think to be very far but we find it closer. I would like to conclude my talk but before conclusion let me quote the Israeli defence minister. He, in the post-Iraq war, once went to the first adviser the top most strategist and expert of futuristic planning in the Sharon government. The defence minister asked the first advisor why was he so worried and sorrowful? He said the state of Israel would disappear and one day Islam would overcome. The defence minister surprisingly asked him the reason. He responded he had gone through the books on Islamic history. When Hulagu Khan attacked Baghdad, Muslims were in the worst position than they are today. Today they are living a better life. Only after two years of occupation Muslims freed Baghdad from the Mongols. We will be replaced and the future lies with Islam. This is the statement of the first adviser of planning and strategies of Israel. What should we say now? Allah has pronounced:

We will, without doubt, help our messengers and those who believe, (both) in this world's life and on the Day when the witnesses will stand forth.” (40:51)

### Notes

1. Muslim, *Al-Jami*, Kitab al-Imarah, Hadith No. 175. Also see Muslim, Kitab al-Zakah, Hadith No. 100.
2. Abu Dawud, *Kitab al-Sunan*, Kitab al-Sunnah, hadith No. 13. The hadith in full reads: “I am the chief of the children of Adam, would be the first for whom the earth would be rent asunder, the first man to be entitled to recommend and whose recommendation would be accepted on that Day”.
3. The hadith could not be traced. The author himself has declared it as a weak tradition.
4. Tirmidhi, *Al-Jami*, Kitab al-Hajj, Hadith No. 47. The narrator says that when Abdullah Ibn Zubayr occupied the holy Kabah demolished it and the two doors therein in line with the wishes

of the holy Prophet. Imam Tirmidhi has declared the hadith as *hasan sahih* (Editor).

## The Great Quranic Objectives: Tauhid, Tazkiyah, and Umran

- Dr. Taha Jabir al-Alwāni

I will try in today's talk to highlight the great objectives laid down in the Quran. It will enable us to understand what is the aim of the Lawgiver in revealing the Shariah. These great Quranic objectives in my opinion are three: *tauhid*, *tazkiyah* and *umran*. By the grace of Allah, a complete and thorough study of the Quran, an insightful recitation covering from the chapter *al-Fatiha* till the chapter *al-Naas* reveals this classification of the great objectives.

*Tauhid* (oneness of God), as you know, is the belief that reflects the rights of Allah to the human beings. So important is it that every chapter of the Quran contains the verses relating to *tauhid*, describing its arguments, arguing against its rejecters and deniers and nullifying their doubts and misunderstandings and dismissing their charges. The oneness and unity of Allah is proved in the Quran by quoting the initial stage of the creation of this universe on the one hand, different stages of human birth and nourishment, varying divine arrangements for human progress and advancement and other arguments on the other.

Some other verses reveal the consequences and impact of *tauhid* on human life. These verses tell us how the belief in *tauhid* affects the ideas and thoughts of man and then consequently how it does orient him to acts and deeds and shape his transactions and system of life. *Tauhid* is likewise a divine objective and has special place in the eye of the Lawgiver. This is the first fountain of the ordinances and cannot be overlooked at all.

*Tauhid* affects all the aspects of human life. It covers all the dimensions ranging from ideas and concepts, methods of knowledge and modes of thinking to all the codes of life: political, social, economic and so on. *Tauhid* includes under its rubric the belief in Allah, in His angels, in His revealed books, in His Prophets, in the Last Day, in the Resurrection and all the details of Paradise and the Hell. All these beliefs revolve around the nucleus of *tauhid*. *Tauhid* thus, shapes the trait of higher Shariah objective. It means when this belief in *tauhid* is clarified along with its kinds

of *tauhid fi al-uluhiah* (oneness in the divine existence), *tauhid fi al-asma* (oneness in the divine names), and *tauhid fi al-sifat* (oneness in the divine attributes)<sup>1</sup>, and its impact on the life of a man, his thoughts and concepts, and his dealings and interactions is felt and when his relation with the universe and its desired role in the entire life is acknowledged, this fulfils a number of major aims, some of which concern *fiqh akbar* (the greater jurisprudence) while others correlate *fiqh asghar* (the shorter jurisprudence).

We should remember the negative impact of jurisprudence on man, life and the universe, in order to know that *tauhid* is the essence of the message of all the Prophets, and is the greatest objective behind all the divine revelations. Only through the medium of *tauhid*, the truth may be identified, its nature, its milestones and its unity are recognized, and only by *tauhid* we may know the reality of the divine existence as well as the reality of the things and other secrets and inherent points. *Tauhid* has its impact on the soul, conscience, the mind, the intellect and knowledge, on doings and dealings of this world as well on the life in Hereafter. While keeping in view always the concept of *tauhid* we may assess whether or not our *ijtihad* contradicts or negate the ideology of *tauhid*? In case *ijtihad* is applied whether that application conforms to the *tauhid* ideology? *Tauhid* thus, becomes an objective of Shariah by which a human action may be assessed, the nature and essence of human act and its consequences on both individual and collective levels may be judged. *Tauhid* facilitate the understanding of human being - which is a responsible being and a combination of physique as well as matter –and the far-reaching effect of human acts. It brings out the link between man and the universe and its creatures, plants, environment and inorganic substances. Thus the human act correlates with Allah and His oneness. Whether the human act would be ascribed to Allah? What is the position of man in the orders and prohibitions, in the beauty and ugliness, in the truth and the mischief, in the recognition and rejection, in the individual and the collective affairs? What impact would the human act leave on the life in Hereafter? What are the human motives and objectives that persuade man to do or not to do? What are the

human intentions? What is the weight and value of intention? What is the value of the end which is produced from an act? All these questions are resolved by the ideology of *tauhid*.

The second great Quranic objective is *tazkiyah* (purification of the soul). The collective groups of the Quranic chapters and the verses of the Quran emphasise the purification and training process to be adopted. The human being – capable to fulfil the promise to Allah and bear the responsibility of *Khalifah*, able to respect the divine trust ordered by Allah, to get success in all the trials and to do good to others – must be subsumed with the trait of *tazkiyah* and with the quality of *taharah* (clearness). One who is far from *Tazkiyah* will be trapped by the provocative soul (*nafs ammarah*) and would be among those who are described in the following verse :

“There is the type of man whose speech about this world’s life may dazzle you and he calls God to witness about what is in his heart; yet is he the most contentious of enemies. When he turns his back, his aim everywhere is to spread mischief through the earth and destroy crops and cattle. But God loves not mischief. When it is said to him, “Fear God”, he is led by arrogance to (more) crime. Enough for him is Hell; and evil bed indeed (to lie on)!” (2:204-206)

The soul not purified through the divine process is among those who are condemned by the Almighty Allah :

Say: “shall We tell you of those who lose most in respect of their deeds? Those whose efforts have been wasted in this life, while they thought that they were acquiring good by their works?” They are those who deny the signs of their Lord and the fact of their having to meet Him (in the Hereafter): Vain will be their works, nor shall We, on the Day of Judgement, give them any weight”. (18:103-105).

These people devoid of *tazkiyah* are essentially mischievous though they claim to be reformers:

“When it is said to them: “Make not mischief on the earth”, they say: “Why, we only want to make peace”! Of a surety, they are the ones who make mischief, but they realize it not.” (2:11-12)

The man purified through the divine process alone is able to comply with the aims and the objectives of Allah towards the creatures as well as towards the Lawgiver. The *tazkiyah* after the *tauhid*, therefore, forms the second grade in the classification.

The third great Quranic objective is ‘*umran*. ‘*Umran*, to my mind, means that Allah has created the universe and bestowed on man the responsibility of *khilafah* (divine succession) in order to process the perfection of *umran*, the human civilization . ‘*Umran* is the construction of a civilization not devoid of values. It does not concentrate on material progress, distancing itself from the moralities. This civilization respects duly the human being and is based on the purification of man spiritually and on the advancement of human population. This enables man to discharge his responsibility of *khilafah*. This ‘*umran* is the right of the earth.

*Tauhid* implies the right of Allah towards man. *Tazkiyah*, on the other hand, is the right confined to man so that he may purify and cleanse himself and join the caravan of those who are busy in praising Him :

“There is not a thing but celebrates His praise; and yet you understand not how they declare His glory!” (17:44)

‘*Umran* is the right of the earth. It is the right of the universe on man who is supposed to be *Khalifah*. Allah has created us out of this earth. We consequently inhabit it, would be buried in it and would be taken out of it. For the sake of a clear understanding of this third objective of the Quran (*umran*) we should know the essence and the nature of ‘*umran* and what the Quran has described it in its different chapters and verses, what is the difference between *umran* and civilization devoid of values, or how is ‘*umran* distinct from the civilization that does not care for man nor takes any interest in the values common to and desirable in his life.

*Umran* constitutes an important objective of human vicegerency (*Khilafah*); it is rather its fundamental aim. This should be fundamentally clear and its correlation with *Khilafah* should be explicitly stated. '*Umran* is the essence of the trust (*amanah*) that man has undertaken. It should be essentially understood as the medium of the beginning of the life. It is the basic agency and standard of human action. Man should know the link between the divine *sunnahs* (ways of God which are never changeable) and '*umran*. One of these divine *sunnahs* is related to the foundation, advancement and then decadence and fall of nations. It should also be analysed how the Prophet of Islam (SAW) interacted with '*umran* in the Madina society, and how Yathrib of the past turned into the city of Madinah Munawwarah; how the Muslim *Ummah* acquired the knowledge of '*umran* from the earlier nations; how the concept of the seal of the prophets, and the finally revealed Shariah are correlated to '*umran*. In what way the obligation of *shahadah* (being witness to the truth) is linked to the Quranic civilization? The Quran has described the following traits of Shariah:

“For he (the Prophet) commands them what is just and forbids them what is evil; he allows them as lawful what is good (and pure) and prohibits them from what is bad (and impure); he releases them from their heavy burdens and from the yokes that are upon them.” (7:157)

“It is God who has created for you all things that are on earth”. (2:29)

“Thus We have made of you an Ummah justly balanced, that you might be witnesses to the nations and the Prophet a witness over yourselves.” (2:143)

We must be aware of the divine *sunnahs* that protect and preserve '*umran* as well as those that destroy it, and also of the relationship in between the three Quranic objectives – *tauhid*, *tazkiyah* and '*umran*. How the holy Quran has narrated the issues of '*umran*. While describing the stories of older nations, how the revealed book discussed the factors behind their progress and prosperity and then fall and demolition. The holy Quran has



narrated the history of mankind, starting from Adam, the first Prophet and culminating with Muhammad (SAW) the last one.

*Tauhid*, *tazkiyah* and *'umran* correlate the three major dimensions. The first dimension concerns *tauhid*, e.g. interpretation of *tauhid* in terms of the right of Allah towards the human being and its impact on the human life. *Tazkiyah* represents human capabilities in term of inhabitation, cultivation and construction and not demolition or destruction. For this qualification only man inherits governance in this earth:

“My servants, the righteous, shall inherit the earth”. (21: 105)

Only the ‘righteous’ people have merit, to lead the process of *'umran* (civilization) Allah pronounces:

“The mosques of God shall be visited and maintained by such as believe in God and the Last Day.” (9:17)

This is managed wholly by the faithfuls. This civilization (*tamir*) is directly concerned with *tauhid* :

“And the mosques are for God (alone): so invoke not anyone along with God” (72:18).

It is *'umran* that channelises and orients the other two objectives of *tauhid* and *tazkiyah* toward the values responding to the creatures and the existence as well. By this process only the earth is inhabited and becomes safe from the death and destruction. Allah has declared a land not inhabited and not able to produce any process of living as dead (*maytah*) (The *Quran*, 36:33). It is dead to all intents and purposes in winter, but Allah revives it in the spring by giving it life and producing grain from it. This process is branded by the great jurists as *ihya al-mawat* (giving life to dead).

The process of *'umran* is to be initiated by man as a duty prescribed by God. He is required to adopt and follow *tauhid* as the right of Allah towards human being, and to follow *'umran* as the right of earth towards him. The earth in which he was charged by Allah with the trust of *Khilafah* (vicegerency) and was prohibited

by Him to spread mischief therein and is instructed to establish a humane civilization along with all its dimensions and aspects so that the objectives might be fulfilled.

If the three objectives of the Quran : *tauhid*, *tazkiyah* and *'umran* are clarified and interpreted to a jurist or a mufti he will keep them maintained in all his *fatawa* and legal verdicts. He will assess whether his *fatawa* are complying with these objectives. In his verdicts of lawful or unlawful, right or wrong, good or evil, he will see to what extent he is correlating *tauhid*, *tazkiyah* and *'umran* with his legal opinion. These three objectives will help the jurist assess the implications of his *fatawa*. When he would correlate his *fatawa* to the three objectives of the Quran and would exercise it after considerable experiences he would be able to see consequences and implications also. He will know which is preferable; which is more important; which is immaterial and negligible or less important. Thus through these Quranic objectives he will be able to tackle all the new problems of the day under the category of *dharurah* or *hajah* or *tahsin*. The jurist having command over it, would critically evaluate the opinions and *fatawa* of the classical jurists, whether or not these suit contemporary circumstances. This perspective leads to other points and views also. The concepts of *'adl* (justice), *hurriyah* (freedom), *musawat* (equality), *amanat* (trust) and their particulars may also be incorporated. If scholars are satisfied with this methodology and start experiencing them, they will be further clarified, channelised and worked out, and new *fiqh* would be evolved that would be able to face new challenges successfully. The Islamic jurisprudence would be exonerated from the allegations of inefficiency, narrowness and being problematic. We would be in a better position to present our viewpoint. Muslims in India, Europe, America and other countries where they form a minority, would benefit from these three objectives of the Quran and would work out *fiqh akbar* as well as *fiqh asghar*. I mean by the term *fiqh akbar* what was understood and interpreted by Abu Hanifah in his book *Al-Fiqh al-Akbar*. Only after this book Abu Hanifah had codified his principles and *fatawa*. These great values would then cover the objectives

already defined by our ulama and the jurists, and thus we would combine both the general interests and objectives of the Lawgiver and public interests as well.

**Notes :**

1. Muslim scholars have generally defined the *tauhid* with its three dimensions. According to them, *Tauhid* (Islamic monotheism) is to believe in Allah. It means declaring Allah to be the only God in the heavens and the earth and all that exists. It has three aspects:
  - i) Oneness of the Lordship of Allah (*Tauhid-al-Rububiyyah*): To believe that there is only one Lord for all the universe, and He is the Creator, Organizer, Planner, Sustainer, and the Giver of Security and He is Allah.
  - ii) Oneness of the worship of Allah (*Tauhid-al-Uluhiyyah*): To believe that none has the right to be worshipped but Allah e.g. praying, invoking, asking for help (from the unseen), etc.
  - iii) Oneness of the Names and the Qualities of Allah (*Tauhid al-Asma was-Sifat*): To believe that: (a) we must not name or qualify Allah except with what He or His Messenger (SAW) has named or qualified Him; (b) none can be named or qualified with the Names or Qualifications of Allah; (c) we must believe in all the qualities of Allah which Allah has stated in his Book (the *Quran*) or mentioned through His Messenger (SAW) without changing their meaning or ignoring them or twisting the meanings or giving resemblance to any of these with any of the created things.

These three aspects of *tauhid* are included in the meanings of *La ilaha illa-llah* (none has the right to be worshipped but Allah).

See the Index to *The Noble Quran : English Translation of the Meaning & Commentary* by Dr. Muhammad Taqi-ud-Din al-Hilali and Dr. Muhammad Muhsin Khan, Madinah, K.S.A. (Editor)

## **Objectives of Shariah Ordinances and Their Grades**

- Badrul Hasan al-Qasmi

In the subsidiary issues of jurisprudential principles comes the rubric of “the objectives of the Shariah ordinances and their grades”. The importance of the theme and its natural order required that it was to be discussed as a prelude to all the core topics, themes and the related issues in jurisprudence, or the discussions of the fourth source, *qiyas* – other three are the Quran, Hadith, and *Ijma* (consensus) – It is to be initiated by focussing on the objectives so that the objectives and the human interests incorporated in Shariah are highlighted first and this helps the understanding of the relevant issues. But the experts of jurisprudential principles (*usul al-fiqh*) describe it as a subsidiary issue probably because these objectives in the texts are not mentioned explicitly, though their authenticity and the position of being nucleus in the Shariah ordinances is an undeniable reality and this is proved by investigation in the Quranic verses and the Prophetic traditions.

The eminent scholar of the jurisprudential principles, Imam al-Shatibi has elaborated the theme in his magnum opus *Al-Muafaqat*. The work combines the jurisprudential principles and the secrets of Shariah. Al-Shatibi himself has raised the question that if the Shariah ordinances have well considered the objectives and the human interests and all of them revolve around *dharurah*, *hajah* and *tahsin*, the three grades of *masalih* (interests) it must be proved by the explicit and unambiguous arguments since these objectives are the spirit and the fundamental principles of Shariah. He then responds to the question that a detailed study of the Shariah ordinances identifies the authenticity of these objectives and makes them as certain as people believe in the generosity of Hatim al-Tai. The general and specifics of Shariah texts, the general and the conditioned particulars of jurisprudence and other evidence all testify that Shariah has maintained these objectives and all the ordinances are based on these interests and objectives, fundamentals and basics. This discipline of knowledge, is as certain as a recurrent common value being practised uninterruptedly. It

may be claimed, therefore, that it has a number of arguments in favour and the accuracy of these objectives is beyond any doubt.

The human being is bestowed by Allah with reasoning and intellect and this distinction is the base of all the legal obligations. Because of this quality only Shariah addresses man. We believe Allah is the most Wise and no action of a wise is without wisdom and interest. He is kind and compassionate and each order of His implies the success and welfare of man. The general texts of Shariah reveal this. The Prophet of Islam (SAW) was declared as the ‘Mercy’ in the following verse:

“We sent you (O Prophet), not but as a mercy for all the creatures”. (21:107)

The general teachings of Islam were pronounced as thus:

“God does not wish to place you in a difficulty but to make you clean and to complete His favour to you that you may be grateful”. (5:6)

About the prayers it is declared:

“Verily prayer restrains from shameful and unjust deeds”. (29:45)

The fasting in the month of Ramadan was prescribed to create *taqwa*:

“O ye who believe! Fasting is prescribed to you as it was prescribed to those before you, that you may learn the self restraint”. (2: 183)

While describing the law of *qisas*, its rationale is also mentioned :

“In the law of equality there is (saving of) Life to you, O ye men of understanding!” (2:179)

There are other hundreds of verses and Prophetic traditions that reveal the objectives implied in the Shariah ordinances, and the public interests for the sake of which these teaching are carried out.

The knowledge of the Shariah objectives is essential as well as useful to every Muslim. The rationale and wisdom working

behind an ordinance enhances and refreshes faith. The *ilm al-yaqin* turns into *haqq al-yaqin*. That is the reason why Abu Hamid al-Ghazali, Izzuddin bin Abdussalam, Ibn al-Qayyim, al-Shatibi, Shah Waiullah of Delhi, Muhammad Qasim Nanautwi all the eminent scholars of Islam made the discipline of *asrar al-Shariah* (the secrets of Islamic law) as their area of study and research and tried their best to introduce the wisdom and rationale of Islamic teachings.

The knowledge of the principles and the fundamentals as well as the objectives of Shariah and the command over them is more important for ulama and *mujtahids* so that they may seek guidance from them for tackling the new problems and coordinate between the apparently contradicting texts, and in the process of legislation on a partial issue may not overlook the general objectives and the common interests.

As far this outdated objection is whether the divine acts of Allah are or not accompanied with the objectives and reasons, and would an emphasis on these objectives and interests not amount to finding fault, all this is discussed in the discipline of *Kalam* (Muslim scholasticism) and not in the discipline of jurisprudential principles. Fakhruddin Razi, though, has claimed that the ordinances of Allah as well as His actions are not accompanied with reasons. But it is unacceptable. Ibn al-Humam (d.861/1457), the famous hanafid jurist has pointed out that the majority of the later jurists have agreed that the ordinances of Allah have maintained the human interests well. (*Al-Tahrir*, Vol. 3, p. 306).

The Asharites as well as the Zahirites are convinced that Allah may possibly issue an order without any human interest. Both these schools however emphasise that the orders already issued by Allah are not devoid of human interests.

Among the hanafis and shafiites those who declare the human interests the main reason of the ordinances they provide an interpretation otherwise. They by the term *illah* (reason) mean the symbol of ordinance, and not the reason in its exact sense that may act as a factor.

Other scholars and jurists who see the *illah* (reason) in terms of human interests, say Allah is kind and compassionate to His creatures. He removes mischiefs and evils and provides comfort and ease to human being. Any of His orders may not be free of interest. It is undesirable to impose any thing upon Allah as well as it is not advisable to declare any of His act as useless and devoid of human interests. Both the Mutazilites and Zahirites were trapped into imbalance. The moderate view is advocated by Ibn al-Humam and other jurists. Anwar Shah Kashmiri used to interpret that all the acts of Allah should be pronounced as *muallal bi al-ghayat* (those accompanied with the objectives and interests) and not as *muallal bi al-aghrad* (those accompanied with the motives). In the preface to *Faiz al-Bari*, this view is explained as follows :

“Shaykh Ibn al-Humam has mentioned in his *Al-Tahrir* :  
“All the jurists and the scholars of hadith agree on the point that all the actions of Allah are accompanied with the motives (*muallal bi al-aghrad*). This implies basically perfection. His being perfect requires all His actions must be accompanied with these features since His Being may not be free from any grade of perfection. The attributes are the branches of the Being” as Ibn al-Humam says, this is a novel interpretation. The most appropriate to me is to avoid the term *aghrad* (motives). The term *ghayat* (objectives and aims), instead, should be used. (*Faiz al-Bari*, Vol. 1, p.56)

Whatever be the verbal dispute the justification of the texts and interpreting them reasonably (*talil*) is a reality and all the debatable issues of *qiyas* are based on *talil*. The later ulama and Islamic scholars have therefore made this their area of study and research. Among their notable works. *Talil al-Ahkam* by Dr. Muhammad Mustafa Shalbi is important. He has branded the opinion of Maturidiyah as balanced and moderate.

The human interests (*masalih*) fully accommodated by Shariah, are classified in to three grades after investigation and thorough follow up made by the scholars of jurisprudential principles :



1. *dharurah*
2. *hajah* and
3. *tahsin*

#### 1. *Dharurah* – based Interests

These are defined as essential and unavoidable interests on which depends the religious and worldly life of man, and in case of any disturbance of which not only the worldly life is impaired but the life in the Hereafter too is damaged and man suffers.

In this context the protection of five basic things is the aim of Shariah and the objective of legal ordinances. By protecting these worldly life becomes safe and secure and the life in the Hereafter is guaranteed with success and prosperity. These five objectives in the sequence are as follows:

- a) the protection of religion,
- b) the protection of life,
- c) the protection of mind and intellect,
- d) the protection of affinity and
- e) the protection of property.

##### **a) Protection of Religion**

For the sake of human welfare and betterment Allah has sent down religion, and for the perfection of both the theoretical and practical faculties of man He has commanded man to follow true faith and to worship Him sincerely. He has obliged the human being to be committed honestly to the right faith and has declared jihad obligatory in order to defend faith. He has prohibited the dominance of false beliefs and thoughts, has ordained punishment against apostasy and heresy though in principle He has ensured others the freedom of religion and belief. When this freedom turns by abuse into a hindrance for the righteousness and truth, it must be checked.

##### **b) Protection of Life**

Allah has created man and sanctioned *nikah* (marriage) for the preservation and continuation of generation as well as for

procreation. The proper use of sustenance material: food, water, as well as the minimum requirement of clothing necessary for the protection of life, is declared by Allah as essential and compulsory. All the dangers to life are to be avoided. Suicide is strictly banned. Undue killing is absolutely prohibited. The punishments of *qisas* and *diyat* (monetary compensation for a killing) as well as *Kaffarah* (legal compensation for a killing) are sanctioned in order to protect the human life.

**c) Protection of intellect**

The intellect is a divine bount that distinguishes man from other creatures and provides the base for Shariah responsibilities. Shariah educates man to protect reason and intellect and in order to improve it the acquisition of knowledge is declared obligatory. Everything that possibly affects mind and reason of the man is banned. Alcohol was prohibited. One who drinks and thus damages his mind and the intellect is to be punished by the flogs through the implementation of *hadd*.

**d) Protection of Affinity**

For the protection of human generation, Allah has sanctioned marriage (*nikah*) on the one hand, and prohibited prostitution and adultery on the other, for the purity of affinity and to avoid any rivalry and hatred in family life. Islam has pronounced a severe punishment for adulterers. It has also declared defamation (*qadhaf*) as a crime severely punishable so that the shameful acts and rumour may not be spread and people might not be trapped into any doubt or confusion. The affinity like life should be safe.

**e) Protection of Property**

Property too is a benevolence of Allah. The survival of life depends on it. Allah has therefore allowed the earning of livelihood on the one hand and instructed man to do efforts for that. He on the other hand has permitted all the lawful means of earning and trade in order to sanction all the legal ways to gain wealth. Allah has likewise banned usury, bribery, financial exploitation as well as

theft, robbery, confiscation and all illegal occupations. The punishment of theft is pronounced as the chopping of the hands of the criminal in order to save the property of people.

All these five points regarding protection are the fundamentals of religion which are pronounced as the basic objectives of Shariah. Other religions and laws also have taken them into account in one form or the other. The comprehensiveness is however, maintained by Islam in protecting these five basics and the laws it legislated to regulate them are unique and unparalleled in the field.

It may be reminded here that it will be useless and vain to protect life, property and intellect as the ultimate aim for the sake of nothing. All these things in Islam are correlated to the Hereafter. The human existence in this world is desirable only so that man should duly worship Allah alone and prepare himself to receive the prosperity in that world. Living in this material world, his life, property, faith, affinity and reason should be protected as pronounced by Shariah.

It is also considerable that for the sake of the most important of these five basic objectives others may be sacrificed. For the sake of religion, for instance, life, if needed, may be laid down. Life may be saved by eating other's food in emergency and so on. The sanctity of life would be preferred to the sanctity of property in this case:

Imam al-Ghazali, the expert on Shariah says; "The objectives of Shariah concerning the human being are five: the protection of his religion, his life, his reason, his affinity and his property be guaranteed. Every step taken for the protection of these five basics is a *mastihah* (interest); and every step taken to disturb them is an evil, the replacement of which is an interest to be achieved."

That learned author further says:

"Protecting these five objectives is placed in the grade of *dharurah* which is the strongest of all the public interests. Its instance lies in the permissibility of slaughtering a

pagan who misleads people, or in the permissibility of punishing a *mubtadi'* (a Muslim who innovates in religion) who calls people to a *bid'ah* (any innovative thing in religion) because it affects the religion of people. Shariah has prescribed the execution of *qisas* since it defends life. It has pronounced a clear cut punishment (*hadd*) against the drinker on which Shariah responsibilities depend. It has implemented *hadd* for adultery to save the society from impurity and to guard the purity of the race. Shariah has also declared thieves and confiscators as criminals to be severely punished to defend people's property which they may not avoid at any cost. The protection of all these five basic objectives may not be overlooked by any religion or law that intends to reform the society." (*Al-Mustasfa*. Vol. 1, pp. 287-288).

## 2. *Hajah* – based Interests

The second grade of Shariah objectives requires the elimination of narrowness and suffering from the human life. Though the worldly life and the life in Hereafter do not depend on the achievement of *hajah*-based interests, but for the sake of replacing narrowness and hardship in life, the consideration of these interests is necessary. For instance, Muslim on journey is allowed to shorten his daily prayers. In the holy month of Ramadan the severely ill or the traveler are permitted not to fast. One unable to stand is sanctioned to pray while sitting. The women suffering from menses are exempt from the daily prayers. The permission to clean by (*mash*) rubbing the *khuff* (leather half boots) in travel as well as in his residence is made. All these concessions provided by Shariah come under the category of *hajah*-based interests.

Shariah also allows transactions on credit. It has permitted to play the role of guarantor or guardian in the case of rights. It sanctions to declare a business dealing null and void accordingly; to break the marriage through divorce (*talaq*) if unavoidable. It allows the guardian of the victim to forego *qisas*, to relax in the matter of blood-money. In some cases it has fixed blood-money on paternal

relatives of the killer (*aqilah*). All these are to facilitate life and to remove narrowness from ordinary man.

Abu Ishaq al-Shatibi explains:

The *hajiyyat* refers to the interests maintained for the expansion to remove narrowness and sufferings from life, which, if not considered will cause troubles and problems but not so intense that their absence would have damaged as the damage in the absence of *dharurah*-based interests. *Hajiyyat* are applied to the fields of worshipping rituals (*ibadat*), usage and customs (*adat*), transactions (*muamalat*) and criminal cases (*jinayat*). Its examples in the field of *ibadat* are relaxations provided in Shariah to remove the sufferings and hardships confronted in the state of travel or severe illness. In the field of *adat* are the examples of lawfulness of hunting, benefiting to the maximum from all the pure and legal things in food, in dressing, in availing residence facility or the vehicle to drive. Its examples in the field of *muamalat* are the cases of *mudharabah* (a business dealing of mutual profit with the investment of the second party) *musaqah* and *salam*.

In the field of criminal cases Shariah has obliged (the paternal relatives of the killer) the blood money in some cases and on the basis of oath taken by the custodians of the victim also the blood-money is imposed. The guarantee of the property lost is also taken into account. These come under the category of *hajiyyat*.

### **3. *Tahsin*-based Interests**

The third grade of the interests are of beautifying and perfecting nature on the consideration of which neither life depends nor the neglect of which may result in any hardship in life. These, instead, concern etiquettes and manners of life and also ethics and moralities. The human intellect and the common sense require the actualization of these interests. The natural instinct demands these objectives be realized in the society and life be adorned with these traits. To Abu Hamid al-Ghazali:

“The third grade is not classified into *dharurah* or *hajah*. It may be placed under the beautification, adornment and facilitation of the traits and qualities and under the consideration of the best method in the transactions and customs and traditions.” (*Al-Mustasfa*, Vol. 1, p. 290)

In the field of worshipping rituals may be cited the cases of supererogatory prayers, supererogatory fasting and charities. The legal position of cleaning (*taharah*), of *satr* (concealable portions of the body), prohibition of dirty and impure commodities in the business dealing, emphasis on pure and clean provisions, avoiding shameful actions and harming things (*Khabaith*), in the field of criminal procedure the prohibition of disfiguring the dead body, as well as the slaughter of the innocent, women and children and so forth come under the category of *tahsin*.

Abu Ishaq al-Shatibi describes this thus:

“The *tahsiniyat* implies to follow good manners and to avoid evils and dirtiness that common sense dislikes. All this may be summarized under the title of *makarim al-akhlaq* (noble ethics and morality). In the field of worshipping rituals are the examples of the performance of *taharah* (cleaning) and preventing *najasah* (uncleanliness), the concealable portions of the body of woman, adopting ornament and decoration, being closer to Allah through supererogatory prayers and charities. In the field of *adat* (usage and customs) are included the etiquettes of dining, avoidance of the dirty and unclean things, prevention of excessiveness as well as shorthandedness in expenditure. In the field of *muamalat* come the prohibition of dirty and unclean things in transactions, and of selling of water and pasture in excess. In the criminal law the prohibition of killing monks, women, children during war time, is an example of *tahsin*. (*Al Muafaqat*, Vol. 2, p. 6.).

Some ordinances of Shariah may be taken in account as complementary to the three grades of Shariah: *dharurah*, *hajah* and *tahsin*. Some instances are given below :

The consideration of resemblance in implementing the case of *qisas* is in the compliance of the word *nafs bi al-nafs* (The *Quran*, 5:45). The prohibition of a drop of alcohol is maintained as a complement to protecting the interests of the mind since this negligible quantity too affects man. Looking on woman and visiting her in privacy is discouraged in order to save affinity. The instructions for calling people through *azan* for congregational prayer in mosque are for establishing faith in entirety so that religion might prevail the society and it might be defended well. Likewise in the case of surety of property the condition of resemblance was added and also usury was banned as a complement to protecting the property.

The ordinances and teachings complementing the *hajah*-based interests, include the consideration of *kifaah* (equivalence) in marriage, taking into account similar dowry (*mahr mithl*) in the case of marriage of a minor girl, prohibition of the business dealing of an unknown commodity, condition for purchaser to see goods, and condition of option being lawful, All this is complementary the general objectives.

In the case of a complement to the *tahsin*-based interests, are the cases like spending legal wealth in the charities, the selection of the best animal for the sacrifice on the eve of *Eid ul Azha* or in *aqiqah*, the celebration on the eve of the birth of a baby.

The interests counted under *dharurah*, are placed according to Al-Shatibi, in jurisprudence as the basics of religion (*usul al-din*), Shariah principles (*qawaid Sharyiah*), and the fundamentals of the religious form (*Kulliyat millah*). They would be preferred in all circumstances. For instance the *tahsin*-based interests may be overlooked if required by *dharurah* or *hajah*. For example, in the case of surgical operation or for the diagnosis of the disease the interest of *satr*, concealable portion of an ill body (constituting *tahsin*) may be withdrawn.

In pressing circumstances the eating of dead (*maytah*) would be justified and the *tahsin*-based interest of avoiding the unholy and impure things amid the provisions would be

overlooked. In the lawfulness of *salam* and of *istisna* in the transactions lies the same justification. Because of the importance of *hajjah* the objective of *tahsin* implying the condition of the presence of the commodity was withdrawn.

Even in the case of *dharurah*-based interests the sequential difference is maintained in Shariah. For the sake of protecting religion the protection of life is relegated. Likewise, the protection of life would be preferred to the protection of property. To Abu Hamid al-Ghazali and some other experts of jurisprudential principles the protection of intellect would be suspended for the protection of affinity while for other jurists the protection of intellect would be preferred.

Another classification of the objectives and the interests is made. Some objectives concern the individual while others are related to the entire community or Ummah. For example defending the country against the enemies, the defence of the Quran and hadith, defending the two holiest sanctuaries the Haramayn Sharifayn against the enemies of Islam all this represents wholistic interests for which the partial interests would be sacrificed.

Muhammad Tahir bin Ashur has made another classification. According to this, some interests are absolutely certain, identified by the texts themselves or by investigation and follow up of the entire legal ordinances as discussed in the context of protecting the *dharurah*-based interests or the five fundamentals (*kulliyat khamsah*), or testified to by reason itself the neglect of which would culminate in a heavy damage to Muslim community as was the case of the apostates refusing the payment of *zakah* against whom Abu Bakr waged the violent war.

Other interests are based on *zann* (supposition) and are uncertain. The example of this category is the permissibility of having a puppet dog for protection against the supposed danger, approved by an argument based on supposition.

The third category of interests is based on the *wahm* (imagination) and has an extensive scope. The use of alcohol,



heroin, cocaine, and smack under the delusion that these are useful comes under this category. These imaginary interests are disregarded by Shariah and are forbidden.

### **Some Clarifications**

1. By these classifications of the Shariah objectives and their gradations one should not be confused that all the things classified under *dharurah* are obligatory, and things categorized as under *hajah* and *tahsin* are exclusively supererogatory. The *vice versa*, instead, is possible. A thing categorized under *tahsin* in line with this grading may be absolutely forbidden or obligatory, as the case may be, in Shariah ordinance. The obligation and the prohibition, the lawfulness and the undesirability in Shariah are the things entirely different from the topics of the Shariah objectives and their gradations. These legal gradations would be discussed separately in the law perspective and will not be elaborated here. The issues of (*satr*) concealable portions of a body, of *taharah* (cleaning) are placed here, for instance, under *tahsin* but all know that concealing a specific portion of the body is obligatory and the cleaning and bathing after having sexual intercourse is obligatory.

The classification in brief to clarify these confusions, may be made as the things addressed by Allah the intention and requirement therein would be either decisive and final or not so. In case the requirement is positive, qualifying any action, the divine address would be considered as *wajib* (obligatory); in case the requirement is negative qualifying any prohibition, the address would be treated as *haram* (prohibited). In case the divine requirement is non-decisive and non-final the two dimensions of doing or not doing so would be either exactly balanced or not. If they are exactly balanced the address would imply permissibility (*mubah*). In case of tilting towards the affirmative the address would be treated as implying desirable (*mandub*), and in case of tilting towards the negative the address would be taken as undesirable (*makruh*). It is immaterial if the address belongs to *dharurah* or *hajah* or *tahsin* in line with the classifications made by the jurists while dealing with the Shariah objectives.

2. The principles and criteria are framed with the consideration of general conditions and universal situation. In case a principle is not applied to any particular due to any specific reason, the extensive position of the principle would not be affected. Islamic criminal law, for example, is regulated by Allah to prevent a criminal from further involvement in crimes but possibly it might not check a person. He after having his hands chopped may commit theft, or after having been flogged he may still commit adultery.

Likewise a man on journey is entitled to shorten his daily prayers (*qasr*) or not to fast even in the month of Ramadan because Shariah protect him from sufferings. It is quite possible that a king or a prosperous man may travel with such comforts and facilities that he may not face any challenge or difficulty, but he will not be deprived of the concessions provided by Shariah.

The *taharah* (cleaning through washing) is sanctioned in Islam for the sake of cleanliness and purity but the performance of *tayammum* (cleaning by rubbing certain organs with clay) is also sanctioned in the special cases while clay itself bears impurity and dust. Abu Ishaq al-Shatibi says :

“All this does not affect any principle of legislation because if some particulars do not conform to the wholistic, extensive principle they do not harm its extensiveness. Protection of life is desirable in Shariah for example and constitutes a principle because it is ordained by Allah. For the sake of protecting the human life Allah legislated the law of *qisas*. Slaughtering the killer in retaliation in Islamic law is maintained in order to save life.”

3. Protection of life is one of basic objectives of Shariah. In case the protection of life is not possible without damaging property, the former will be preferred. If the objective of protecting life causes demolishing faith the objective of defending faith will be preferred, as is evident in the legal position of jihad and the death penalty upon the apostates.

Likewise if the protection of life culminates into destruction of several lives the second objective will be preferred. In case the pagans use any Muslim as the shield to defend themselves and without neglecting that Muslim's life unavoidably the pagans may not be defeated in the war, the life of that Muslim would be sacrificed in view the larger interest of Muslim community.

In case a Muslim is coerced on the gun point to turn apostate and pronounce the words of disbelief otherwise he might be killed, he is allowed to verbally declare the disbelieving words while his heart sincerely follows faith. Because of any coercion using the alcohol, eating other's food and using his wealth, not to perform prayers or not to hold fasting out of compulsion would be permissible for the sake of protecting life. Any coercion, however, does not authorize some one to kill the other unduly. Even in case of hunger causing death, he may not be entitled to use the flesh of a slaughtered Muslim.

4. In case of a clash between the two interests a legal ordinance that embodies the stronger interest will be preferred. For instance a man while praying *salah* should first save the life of a man drowning in water, provided the man praying has seen him drowning. He would complete the prayer late on.

In the field of prohibitions also are the gradings and sequential differences. Using alcohol is a crime severe than selling it. Illegal involvement with a married woman is a crime severe than his involvement with an unmarried woman.

Shaykh Izzuddin bin Abdussalam says :

“The *dharurah*-based interests and objectives constitute the origin for *hajiyyat* and *tahsiniyat*. Consequently in case *dharurah* requires to eat a dirty and impure thing for the sake of protecting life that will be used preferably. The unveiling of concealable portions of the body likewise is lawful for the sake of surgical operation or medical treatment.”

In case some individuals in an island, desert, or in a jail of a tyrant are trapped, and because of the non-availability of water and food they are closer to death and have no way out except to slaughter one of them for food and save the lives of the remnants whether it will be justified in Shariah?

Some individuals boarded a boat. Owing to stormy wind and surging sea they became unable to save their lives except by putting amongst themselves into water and keeping the boat balanced, otherwise all of them might be drowned. In the given situation whether it would be all right to put anyone into water and save others?

The pagans in the state of war used some Muslims as their shield to protect themselves in such a critical situation as if the lives of these Muslim captives are taken into account all Muslims would be overtaken by the non-believers and hundreds of Muslims would be massacred. In this situation whether it will be advisable to overlook the case of those Muslim captives for the sake of community's interests? Whether these captives may be spared in order to overcome the pagans?

These and similar issues may be resolved while going through the Shariah objectives and their gradings. For details al-Ghazali's *al-Mustasfa*, al-Sarakhsi's *al-Mabsut* and other sources may be consulted.

The following sources were used to prepare this article :

1. *Al-Muafaqat*, Vol. 2 pp. 2-39.
2. Al-Ghazali, *al-Mustasfa*, Vol.1, pp. 284-313.
3. *Musallam al-Thubut* on the margin of *al-Mustasfa*. Vol.2.
4. *Qawaid al-Ahkam fi Masalih al-Anam*, Vol.1, p. 62.
5. Abu Zahrah, *Usul al-Fiqh*
6. Al-Zuhayli, *Usul al-Fiqh*
7. *Faiz al-Bari*, Vol. 1.
8. Ibn al- Humam, *al-Tahrir*, Vol. 3, pp. 306-307.

### **Shariah Objectives and the Jurisprudential Principles**

- Burhanuddin Sanbhali

Let me first thank the organizers of this workshop to provide me with an opportunity to address the noble ulama. It is appreciable that they worked out the theme of the lecture and instructed me to speak on the mutual relations between the jurisprudential principles and the Shariah objectives. Without going into any introduction it is advisable to talk on the assigned topic, on the jurisprudential principles and then on the Shariah objectives. I will also explain the mutual relations between the two.

A number of experts on the jurisprudential principles while discussing on these principles have initiated discussion on fiqh itself. Abu Hamid al-Ghazali (d. 505 AH), the famous scholar who had combined learning and research in himself, says in his *al-Mustasfa*, the notable book on these principles:

“Fiqh in dictionary means knowledge, understanding...In the usage of ulama and scholars the term connotes the knowledge of Shariah ordinances about acts of those human beings declared responsible in Islam.” (*Al-Mustasfa*, Bulaq, Egypt, 1322 A.H. Vol. 1, p.4).

On differentiating between the dictionary meaning and the terminological implication of this word, however, Ulama and scholars say that the word in its dictionary meaning is used in the group (*bab*) *samiah*, and in its terminological meaning the group *Karuma* implies, as Ibn Abidin al-Shami (d. 1252 AH) in *Radd al-Muhtar* has quoted this from Ibn Nujaym al-Misri (d.970 AH). (*Radd al-Muhtar*, Deoband, Vol. 1, p. 25).

It is clear that the term in its specific meaning was later on coined otherwise its application was far wider among the early scholars. Hasan Basari (d. 110 AH), the great scholar among the *tabiun* has, for example, defined it thus:

‘*Faqih* is one who oversees worldly affairs, takes keen interest in the affairs of Hereafter and who assesses his

own shortcomings”. Al-Haskafi, *Al-Durr al-Mukhtar*, Deoband, Vol.1, p. 26.

Abu Haneefah, the *mujtahid imam* and the great *tabii* has defined the term in the following words :

“Fiqh implies the rights and obligations of one’s soul”.

Abul Hasan Ali bin Mahmood al-Bazdawi (d. 483 AH), the *imam* of the jurisprudential principles, prior to others in the field, top-listed in the early authors on the *usul al-fiqh* has discussed the issue in his *Usul al-Bazdawi*. Some of his observation would be quoted here and it would enrich readers. He says:

“*Fiqh* has three kinds (i) the knowledge of the legislation, (ii) its deep understanding e.g. to grasp the Islamic texts with their implications and to correlate the fundamentals to the particulars, and (iii) to practise it so that the objective is not reduced to mere knowledge. A man combining all the three is called a *faqih*.”

The learned scholar has argued in detail along with the proof and evidence:

“Allah has declared the knowledge of Shariah as the *hikmah* (wisdom) as He says : “He grants wisdom to whom He pleases”(2:269) Ibn Abbas, the companion has explained the Quranic *hikmah* in terms of the knowledge of what is lawful and what is unlawful. Allah further says “Invite (all) to the way of your Lord with wisdom and beautiful preaching”. (16:125) Al-Bazdawi says : *Hikmah* in the dictionary implies knowledge as well practice accordingly. The root of the derivative *fiqh* also approves it because *fiqh* inherits the absolute and certain knowledge, followed by its practice. (Abdul Aziz al-Bukhari (d.730 AH), *Usul al-Bazdawi ma’ al-Sharh*, Dar Sadat, Karachi, 1310 AH., Vol. 1, pp. 12-13).

In the circle of ulama and the jurists, however, the prevailing definition of *fiqh* is the one made by Al-Ghazali in *al-Mustasfa*. Some experts of jurisprudential principles, however, have offered a definition nearer to the definition of the *usul al-fiqh*.

Mulla Muhibbullah al-Bihari (d.1119 AH), for instance, has raised the issue in *Musallam al-Thubut*, the *magnum opus* of his. It has been taught in the religious seminaries in India for centuries. He has defined *fiqh* as the knowledge of Shariah ordinances along with detailed arguments. (Abdul Ali Bahrul Uloom (d. 1225 AH), *Fawatih al-Rahmut Sharh Mullam al-Thubut* Vol. 1, p. 7.).

Alauddin al-Haskafi (d. 1080 AH), the famous hanafid jurist has differentiated between Al-Ghazali and Al-Bihari in this regard. He says: “According to the experts of jurisprudential principles the word *fiqh* implies the knowledge of Shariah ordinances derived from detailed arguments, while jurists suffice the memorization of their particulars.” (*Al-Durr al Mukhtar*, Deoband, Vol. 1, p. 26.).

While defining *fiqh* the term *Ahkam Sharyiyah* (legal ordinances) is used time and again. It will be repeated in this lecture. It is advisable, therefore, to explain the term in the light of the authentic scholars. *Al-Taudhih fi Hall Ghawamidh al-Tanqih*, the famous book on jurisprudential principles by Ubaidullah bin Maswud al-Bukhari, (d. 747 AH) says:

“*Ahkam Sharyiyah* comply with the ordinances which may not be known without the address on behalf of the lawgiver, whether the divine address concerns the original order or concerns its precedent with which an analogy may be made”. (*Al-Taudhih*, Vol. 1, p. 12).

It is also advisable to quote some modern scholars in this regard, since their style is more comprehensible.

Muhammad al-Khuzari Bick, an eminent scholar in the beginning of the twentieth century, defined *usul al-fiqh* in his book very well. He says :

“*Usul al-Fiqh* implies the principles through which Shariah ordinances may be derived”. Clarifying the issue he further says: “*Qaidah* (the principle) implies the generality that may be applied to a number of particulars.” Providing an instance he says: our wording that “*amr* (the divine instruction provided in the positive

imperative case) signifies obligation (*wajub*)” is a principle that is applied to the particulars like” establish the prayer and practise regular charity” (2:43) and “Serve God” (4:36) and so on”. He further says: “Such principles work in each branch of knowledge. If these principles make the ordinances of Shariah accessible these are called *usul al-fiqh*. By applying these principles such regulations are worked out as to approve or disapprove the derived ordinances controversial between various *imams* of schools. The same is known also as ‘*ilm al-khilaf*.’” (*Usul al-Fiqh*, 6<sup>th</sup> edition, p. 13)

Abdul Wahhab Khallaf, another scholar of the twentieth century, has elaborated the definition. He says: “*Fiqh* is the knowledge of practical ordinances of Shariah or its collection, derived from their detailed arguments’. (*Ilm Usul al-Fiqh*, p.11)

Khallaf then defines *usul al-fiqh* in the following words :

“In Shariah terminology *ilm usul al-fiqh* implies the knowledge of discussions and regulations by which we are enabled to know the practical ordinances of Shariah by their detailed arguments, or it implies the collection of the discussions and the regulations by which the practical ordinances of Shariah by their detailed arguments become accessible.” (Ibid, p. 12)

It is advisable, after the definition of the discipline of jurisprudential principles was made, to talk on the objectives of Shariah. The word *al-maqasid* signifies the objectives of Islamic teachings. The letters *alif*, *lam* are to specify the objectives.

The word ‘Shariah’ signifies it in entirety and not any part or some parts of it though in case of an evidence the word entire may also be applied to the part and consequently Shariah word may also be understood as if some specific part of it is meant, provided the evidence in favour should be strong. If the organizers of the Workshop have meant the word in its general sense we may interpret it by the term *ghayah* used by our predecessors in early literature. The difference between the two is that *ghayah* is a



singular word while *maqasid* is a plural one. The justification for this difference is known to the scholars.

A great hanafid scholar of eleventh century namely Alauddin al-Haskafi (d. 1088 AH) has defined the *ghayah* (aim) of jurisprudence in his book *Al-Durr al-Mukhtar* in the following words:

“Its aim is to enjoy the success in this world as well as in that world”.

Ibn Abidin Shami (d. 1252 AH) the great commentator of it, has clarified this aim in the following words: “The success in this world implies that the soul should be advanced from the backwardness of ignorance to the peak of knowledge, demonstrating what is useful and what is harmful, elaborating rights as well as duties of people, settling human disputes. The success in the Hereafter implies that the enjoyment of greater bliss and divine benevolence.” (*Radd al-Muhtar*, Deoband, Vol, 1, p. 27).

It remains no more secret to the scholars how comprehensive are the words *ma linnas wa ma ‘alaihim* (the rights as well as duties of people). It covers all the affairs of this world and of the Hereafter.

It may be probably correct to say that whatever Ibrahim bin Musa known as Abu Ishaq al-Shatibi (d. 790 AH), the notable scholar of the jurisprudential principles of the eighth century hijrah, claims is basically an explanation of the classical terms *ghayah* and *maqasid*. He says: “The *ummah* is agreed on the point that Shariah is revealed for the protection of five basic needs: faith, life, affinity, property and intellect. He has also said that the knowledge of this to the Muslim Ummah is placed in the grade of certainty. This saying of al-Shatibi is nearer to that of al-Ghazali and is derived from it.

If my understanding is correct it reveals the strong and deeply-rooted mutual relations between objectives and jurisprudential principles. In other words, both are as interlinked as the cause and the causer or the means and the end are. It will not be out of context to say that the objectives is applied occasionally to

the rationale, reason and the human interest. In the holy Book and the *sunnah* the terms *hikmah*, *illah* and *maslihah* or their implications are often used or meant.

The holy Quran, for instance pronounces about the daily prayers :

“And establish regular prayer: for prayer restrains from shameful and unjust deeds”. (29:45)

About charity (*sadaqah*) Allah says :

“God will deprive usury of all blessings, but will give increase for deeds of charity”. (2: 276).

The benefit of holding fast is described as :

“That you may (learn) self-restraint’. (2:183)

After having provided the concession in fasting during travel or severe illness, the Quran also pronounces :

“God intends every facility for you; He does not want to put you to difficulties”. (2:185).

In the holy traditions of the Prophet (SAW) a number of reasons are provided. For instance, the Prophet (SAW) is reported to have said:

“The truth does deliver and the lie does destroy”.<sup>1</sup>

The long hadith, quoted in the chapter on the Prophets in *Sahih al-Bukhari*, includes this sentence too :

“Nothing may deliver you except the truth”.<sup>2</sup>

*Kitab al-Muatta* of Malik bin Anas in the chapter on the truth and the lie narrates a hadith saying :

“The truth leads to good...The lie leads to evil.”<sup>3</sup>

Paying dues to the relatives, enhances the span of life:

“One who desires his earning be expanded and his age enhanced he should maintain his kind dealings with his relatives”. (*Sahih Bukhari*, *Kitab al-Buyu'*)

In another hadith quoted in *Kashf al Khifa* from *Sunan Ibn Majah* or narrated in al-Munawi's *Kunuz al-Haqaiq* is pronounced:

“Adultery gives rise to poverty”.<sup>4</sup>

All these Prophetic traditions too may be placed positively or negatively under the objectives and interests.

If the organizers of the Workshop have meant the same by the term *maqasid* (objectives) the correlation of *fiqh*, *usul al-fiqh* and *maqasid* may be easily traced out in the light of our detailed descriptions.

While describing *maslihah* (interest), it is advisable to quote in brief Ahmad bin Abdur Rahim popularly known as Shah Waliullah of Delhi on the theme of human interests. This is a good discussion on the theme and is hardly found anywhere else. This may perhaps be proved as the eye-opening to those keenly interested in Shariah study. He says :

“You must know the Lawgiver has bestowed on us two kinds of knowledge, both of them are distinct from each other in their ordinances as well as their grades. One is the knowledge of interests and harms. I mean the interpretation that is provided by the Lawgiver in connection with the refinement of the soul and the replacement of its opposite, in maintaining the family in order, in establishing etiquettes of life and in administering the country by adopting in life the rules and regulations that may benefit in this world and in the Hereafter. The Lawgiver has not specified this interpretation by the exact standards nor has disclosed its secrets and ambiguous aspects by the regulated definitions. He has not made any clear distinction between its allegories by the defined symbols. Shariah has instead, encouraged good and desirable acts. It has discouraged evil and bad things, and has pronounced these things in a way easily accessible to those who know the language. It has based all its instructions and prohibitions on the actual human interests and harms and not the mere suppositions having a negligible contact

with the interests or the harms nor on the symbols recognizing them. The Lawgiver has likewise, appreciated the wisdom, boldness, kind heartedness, affection and moderation in life...Every interest encouraged by the Lawgiver and every harm discouraged by Him is not devoid of any one of the three objectives: (i) reformation of the soul that might have benefited in the Hereafter and facilitated the following of beneficial manners in this world (ii) to highten the words of Truth, to execute Shariah ordinances and to establish them and (iii) uniting people, providing them with the basic needs and correcting their affairs accordingly. The pleasure and displeasure of God depends on these interests and harms.

The second kind of knowledge revealed by God consists of Shariah ordinances, the limits of God and divine obligations. By this knowledge I mean the standards described by the Lawgiver. He has spelled out the exact symbols and the recognition for these interests the Shariah inherits and on them has based His orders and instructions, and by defining the basic pillars, the prerequisites and the etiquettes. He has regulated what is good or desirable. Thus legal responsibility became exclusively concerned with these symbols defined by Shariah and the legal ordinances were declared as based on these symbols....

(*Hujjat Allah al-Balighah*, the seventh discussion, *bab al-farq bayn al-masalih wa al-sharai'*, Damascus, pp. 129-130).

This detailed quotation from Shah Waliullah is eye-opening, and is very exact and accurate. I conclude it with thanks to you for your patient hearing.

**Notes :**

1. Imam Bukhari in his long tradition has narrated this hadith in *Kitab al-Anbia*; the text however is quoted in parts.
2. Muslim, *Al-Jami, Kitab al-Birr wa al-Silah wa al-Aadāb*, Hadith No. 103. The hadith is quoted in the text in parts.

3. Muslim, *Al-Jami, Kitab al-Birr wa al-Silah wa al-Adaab*, hadith No. 21, as narrated by Anas bin Malik.
4. The author of *Kashf al-Khifa* has quoted this hadith from Ibn Majah and other sources (Editor)

### Imam Shatibi's Theory of Objectives

- Dr. Salahuddin Sultan

Imam Shatibi is a great scholar of eighth century hijrah. Various scholars have written a lot on his *magnum opus Al-Muafaqat*. He took a revolutionary step in the field of jurisprudential principles as Imam Shafii had done by his work *al-Risalah*. The latter had initially drafted it in the form of various lessons offered to his students, after consultations with whom Rabi bin Sulaiman Muradi, one of his students, compiled and compared them and were later on verified by his teacher Imam Shafii.

We are discussing the great personality today who is actually the revivalist of Islamic thought (*mujaddid*). The first merit of his lies in his combining of Shafii school with the hanafid school in his book on the discipline of the jurisprudential principles. He after having seen in a dream his book *Al-Muafaqat*. The second merit lies in his independent research and original thinking inspite of following the predecessors in the field. He presented in his writings the theory of objectives in a novel style. He took the theory out of its infancy and developed it much. Though the theory, in my opinion, is yet to enter the age of maturity. After him came Imam Tahir bin Ashur who brought the theory to perfection. This discipline is still in need of research and further studies.

Shaykh Rashid Rida says :

The book *al-Muafaqat* is unique in its theme. No work similar to it was compiled before. Its author is a great renovator of Islam (*mujaddid*).

Shaykh Daraz, who has edited *Al-Muafaqat*, has appreciated the book in the following words:

“Imam Shatibi has played a distinct role after Imam Shafii in taking keen interest in the discipline of Shariah objectives.

In the revivalist perspective this book is significant. Shaykh Zarqa says :

*Al-Muafaqat* is one of the notable works we know on the themes of jurisprudential principles and the Shariah objectives. Its author has offered the brilliant examples of right thinking, jurisprudential insight and the modern style.

Shaykh Mustafa al-Khunn appreciates this in his own way :

Imam Shatibi in *al-Muafaqat* has adopted a novel method untraceable before it. In publicizing this book among ulama and the researchers and making it taught in the Jamia Azhar visited frequently by the Ulama from all the corners of the world, is the main role of Muhammad Abduh. After that the book was introduced by ulama in various countries. The link point in Imam Shatibi's contribution and that of Ibn Ashur is the personality of Abduh. When he visited Tunisia in 1894 he directed Ibn Ashur to study *al-Muafaqat*. Then onwards Ibn Ashur's thought turned entirely into objectives theory. He represented this theory in *tafsir*, in writing essays and in reformation, in the issuance of legal verdicts etc. The book was unknown in its day. You are fully aware of the reality that the contemporaneity is a hindrance.

You know rivalries and enmities amidst the ulama and scholars. In Egypt the Arabic proverb reads: "The musician in his locality can not please people".

Imam Shatibi in *al-Muafaqat* has raised a number of issues. The first issue he has thoroughly discussed is reasoning (*talil*) of the legal ordinances on all the issues of worshipping rituals and transactions. You will see all the jurists including Ibn Ashur who talked about Shariah objectives, had initiated the discussion starting with *talil* (reasoning). The issue of reasoning, to Ibn Ashur and all the scholars, is the focal point in these discussions on Shariah objectives. They first talked about reasoning as an introduction and then initiate the original topic that is they responded to the question what was the motive for the Lawgiver to legislate. Imam Shatibi was the first to add that the Shariah objectives were realized only when the intention of Lawgiver was in conformity with the

intention of the human being, the addressee of Shariah. If a woman, for instance, wearing *hijab* joins Muslim women, is the aim of *hijab* being fulfilled? In the United States a book dealing with McCarthyism in America was published. An Iraqi Jewish woman used to wear *hijab*. She went to Israel for training. Then she traveled to US and worked against Muslims in collaboration with the American government and finally narrated her experiences in her book. She claimed: I (means the author) living in the U.S. was the main perpetrator and culprit against America and Zionist Israel. I praise Allah for the great honour He awarded me. She wearing the *hijab* being equipped with the recorders entered a conference scheduled annually in Chicago. She heard the sermon delivered on Friday before the noon prayer. She wrote in her book if this man (meant Salahuddin Sultan) had instructed all the prayer-performers to rush to Israel for any military operation all would have followed him and none would have refused it. The question arises whether that *hijab* which she dressed fulfilled the objective of Shariah. She virtually opposed the noble objective. That was the reason why Imam Shatibi for the first time in the history of jurisprudential principles and also of the objectives' jurisprudence channelised the pragmatic implementation and correlated the intention of the Lawgiver with the intention of the human being. In this situation only the Shariah objectives would be complied with.

A man arranges his marriage with a woman, hiding his bad intention. He does not disclose his aim by this marriage was to gain any post or after some time he would leave her and would be involved with another woman. For instance he arranges a *mutah* (transitory marriage in Shiah tradition) and does not mention the actual period for which he has arranged this. The woman by this marriage intends to protect her character through the legal involvement with the man and tries to fulfill the objective of Shariah but the mischievous intention of husband opposes practically the objectives. He deceived the woman. The objectives of Shariah, therefore, would be realized only when a man fully considers in his deed the intention of the Lawgiver and avoids the promptings of his provocative soul. In dealing with the others he



should be sincere and for the pleasure of Allah only he should exhibit his fair dealing. In case of an affair between him and his Lord his target always should be that which was expressed by Rabiah al-Adawiyah thus:

I wish the relations between you and me were maintained and the relations between the entire world and me would have been severed.

The Prophetic instruction to have *masjid zirar* demolished, also comes under this discussion, since the construction of that mosque in the suburb of Madinah did not fulfill the objective.

Now we will talk about the third issue raised by Al-Shatibi, that is how to identify the intention of the Lawgiver. How the Shariah objectives would be recognized? Tahir bin Ashur too has touched on the question. He opines that we should disclose Shariah objectives referring to the reason explicitly declared by the objectives and interests, Shariah orders and prohibitions. He then describes the method of *istiqla*, investigation and deduction. He has stressed the point that by investigation and deduction we may acquire the knowledge of the objective.

Investigation is the method applied by the whole world even today. Highly regrettable is that Muslims are hardly benefiting from this method. We should have our analysis reports. Our elders, our friends should assess our social issues confronting our society, the rate of the crimes committed, the worsening condition of parents, the relations between father and his sons, financial deficit and losses prevailing the Muslim societies. When our brothers run a company in partnership why we always suffer from loss? It is essential to assess this phenomenon to know the exact reasons and factors. It is not only a condition, it has turned into a phenomenon and the difference between the two is clear. This difference should be realized by a Shaykh delivering a sermon as well as by an *imam* issuing the legal verdict. The individual problem may be resolved individually; the phenomenon is to be dealt by the entire community on the level of the society in which the *imam* or the speaker himself is living. To deal with the later situation

investigatory method is required. This method was first applied by Muslims. The world borrowed it from them and improved it while Muslims lagged behind.

Imam Shatibi has also discussed the authenticity of fundamental objectives and the subordinate objectives. I will express my views in this regard later. He has also touched on the issue of the silence of the Legislator. It is entitled by Shatibi as *mantiq al-asr* (the logic of the contemporaneity). Some scholars seek to declare everything prohibited. To them the base of legality in the things is prohibition unless declared by Shariah as lawful. Allah has, instead, instructed the following :

“And He has subjected to you, as from Him, all that is in the Heavens and on earth”. (45:13)

All the prohibitions are clearly made in the Quran. Nothing escaped the divine command :

Say: “Come, I will rehearse what God has really prohibited you.” (6:151)

The silence of the Legislator in all these verses in the matters not prescribed in Shariah inherits the intention of Allah Who desires that people should enjoy them. In contrast is an example in the Quranic chapter *al-Baqarah*. We all know what is a cow. The children of Israel, however, crossed the limits. They demanded :

“Beseech on our behalf your Lord to make plain to us her colour.” (2:69).

This was merely a joke and cunningness committed by Israelis. God destroy them! Where are they being misled!

Shatibi has explored a number of means to know Shariah objectives: divine order or prohibition; reasoned, unreasoned; the silence of Legislator; investigation and deduction; consideration of the fundamental objectives and the subordinate objectives etc. For example you wish to arrange marriage with four women for the sake of purity of the soul, the growth of the generation and for the

sexual satisfaction. One wife fulfils the need of homely love as the Quran pronounces :

“And among His Signs is this, that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your (hearts)”. (30:21).

The second wife being passionate provides you full entertainment :

“You derive benefit from them (women) and give them their dowers (at least) as prescribed.” (4:24)

The third wife increases your generation:

“And God has made for you mates (and companions) of your own nature, and made for you, out of them, sons and daughters and grandchildren.” (16:72)

The fourth wife takes care of social relations and maintains them:

“It is He Who has created man from water: then has He established relationships of lineage and marriage”. (25:54).

These form the fundamental objectives. When a man desires to marry he should prefer that woman who is religious and maintains these objectives. In case she lacks religiosity the fundamental objectives will be wither away. The subordinate objectives like beauty, her riches and wealthy position, her dignity and nobility may also be maintained along with fundamental objectives. In case the woman does not fulfil the desirable standard of beauty but has religiosity and nobility, the subordinate objectives would be disregarded and the fundamental objectives would be preferred.

Now we turn to the main topic e.g. the intention of Legislator. This intention has four aspects :

1. Aim of legislating Shariah
2. Communication, the aim of Shariah
3. Burdening with the aim of Shariah

4. Aim of Shariah in burdening man with ordinances.

**Aim of Legislation**

This aim is of five kinds. The first kind namely the *maslihah* (interest) is divided into three : *dharurah*, *hajah* and *tahsin*. Imam Shatibi has added to this discussion and has enriched it. The *tahsin*-based interests complement *hajah*-based interests and these two altogether complement *dharurah*-based interests. And complementing all the three objectives are things. In his book *al-Muafaqat* volume II consisting entirely of objectives, the author appears as an original thinker. In providing the details of the means of acquiring the objectives' knowledge he is distinguished from the predecessors and nearer to Izzuddin bin Abdussalam. Shatibi has, however, described the two aspects of acquiring objectives: acquisition and protection of the objectives in affirmative as well as in the negative aspects.

The affirmative aspect of the objectives is the example that we educate our children the teachings of Islam and the holy Quran. The religion, however, was not safe anytime in the history from the onslaught of the opponents and enemies. To face this situation Allah has prescribed jihad and the defence of faith. That is why Mawardi has defined *khilafah* as the vicegerency of Prophethood in defending religion and in administering worldly affairs. Al-Juwayni in his book *Ghiyath al-Umam* has described the duty of a *Khalifah* to safeguard what is already acquired and to acquire what is not gained. Ibn Taymiah also in his book *al-Siyasah al-Sharyiah* has maintained both the aspects.

The family, for example, was safeguarded by the institution of marriage (*nikah*) on the one side, and committing atrocities from any side, adultery, defamation (*qadhaf*) was prohibited and the law of *lian* (cursing each other in case of a severe dispute between the husband and wife) was legislated. This belongs to the negative aspect of the objectives. All the things that might disturb family life were banned. In the case of finance usury was prohibited and on the other hand for recurrent circulation of wealth trade was sanctioned.

Usury was banned so that man may not grow lethargic in earning his livelihood.

The law has both aspects. It safeguards and nourishes and advances as well as purifies it from the external negative effects and encroachments. While treating the patient medically it provides the nutritious food also. A man is bound to spiritually advance himself by performing worship, prayer, fasting, the remembrance of Allah, by humiliating oneself before Allah and imploring to Him. He should advance himself intellectually by studies, thinking over the issues, questioning, learning and investigation. Being equipped with the qualities of patience and dignity he should improve himself morally also. He needs physical growth and improvement. Being physically fit is the need of everyone:

“And Allah has gifted him abundantly with knowledge and bodily prowess.” (2:247)

The negative aspect of bodily growth requires the avoidance of harmful things, diseases, adultery, sexual anarchy, dullness, lethargy, weakness and lack of hard work etc. He should live a rough and tough life since prosperity is a transitory thing and not long lasting. Ali bin Abi Talib used to command his son Hasan to penetrate the enemy’s rows and cut them into pieces by his sword.

The development of human personality and advancement of the intellect is one of the objectives of Shariah. As per Shariah guidance the intellect may not be left useless and vain. I was once in Romina. I boarded a train. After a few hours’ journey our friends took out the dinning provisions. We offered them first to a Romanian neighbour sitting on a side. He was reluctant to receive saying had he these provisions he would not have offered these to us. I told him I had a revealed book, a verse of which educated me to deal with him gently. He wished to know our faith. I told him: “We are Muslims. We have a verse of the chapter *al-Nisa* that reads :

“Serve God and join not any partners with Him; and do good to parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers,

the companion by your side, the way-farer (you meet) and what your right hands possess.” (4:36)

The companion by our side, though lasting for one hour, is entitled to our good dealings. He said that he heard of Islam being a difficult religion, commitment to which is impossible. I answered this is what you have heard of, the reality is just the opposite. We talked him for six hours on the subject of Islamic teachings of good dealing. He said he was more than 40 years of age. I use alcohols instead of water. How can I embrace Islam and leave alcohol? I told him you are highly educated being a university professor. You have extensively spent on enhancing your reason and intellect. If you continue use of alcohol your intellect would be damaged partly or wholly. Islam wants your intellect to be in the position of innovating, creating, thinking and enriching the world. Does the religion like this not deserve to be respected? Whether is it advisable to devote yourself to the sex, to convert yourself by using the alcohol in abundance into a common man standing drunk before your room? He responded: “By God, this is a good idea. It persuades me to think seriously about embracing Islam. I will study Islam. If I found it as you have described I will not be hesitant to accept it.” We had the Romanian translation of the Quran and some other literature with us. We presented him all this. I pray Allah guides him to the right path and we may get some divine reward. The protection of intellect is required in order to keep energetic and dynamic; all the intoxicants must be avoided of and the things damaging must it be avoided.

Imam Shatibi very intelligently differentiated between the interests importantly affirmative and the interests to be safeguarded in the negative respect. Removing hindrances that make interests ineffective comes under the second category. In case of a clash between various objectives there are the rules that resolve this dispute. While interests are contradictory to each other the more appropriate and suitable interest would be observed. But the clash between interests and harms is complicated. The clash between job and education, for instance, is problematic. If you are an employee your planning for higher education is affected. I was trapped in a

critical situation as I was offered a good job to fulfill my basic needs which I rejected since I wanted to have education. I decided to continue my education and to undergo the most difficult phase in my life. Quite naturally I lived the most difficult life but I was successful in achieving my goals. That was the problem of priorities. On one side was the interest while on my other side was harm. Replacing harm is preferable to achieving gain.

In case of a clash between two harms the lighter one will be preferred to the heavier one, provided the harm is certain. In case a woman is pregnant and her abortion becomes unavoidable to save her life. What to do in the given circumstances? The majority of the jurists opine that it involves no illegality in the abortion of her pregnancy. Likewise in case an organ of the body becomes dead, in order to escape the grater damage that dead organ would be cut off.

The interests should not be contradictory nor any one of them should be suspended because of the other. These should support each other. Islamic Shariah is revealed to create a balance between various interests – the balance between the individual and collective interests, the balance between family and society, between the rich and the poor, between the ruler and the ruled. I say the entire world is in need of justice and the balance created by Islam. There is no law in the world that overcomes the shortcomings and flaws which people commit. The holy Quran explicitly pronounces:

“Truly many are the partners (in business) who wrong each other: no so do those who believe and work deeds of righteousness, and how few are they :” (38:24)

This wrong is done in the world without any justification or rationale. France, the claimant to freedom imposes restriction on wearing scarf (*hijab*). On the one side woman is presented nude on the TV screen and on the other she is not allowed to wear scarf in schools and government offices. How appreciable is the justice of Islam? It respects equally the non-believer and safeguards his dignity. It does not sanction any harm to him or target him because he is a non- believer. If he commits any wrong he will be punished

as Muslims are punished. To Imam Shatibi, interests do not contradict each other because these are provided by Allah and are of Shariah. I have thoroughly studied the tax system implemented in Egypt. In this system 70 amendments were made from 1830 to 1881. All these addressed the elites only in which the poor were victimized.

Observe Islamic teachings. These prohibit to collect better and costly things in *Zakah* and *sadaqah*(charity). Ibn Qudamah al-Maqdisi says that while collecting *zakah* the more valuable things would not be taken from wealthy people keeping in view their resources and the things of less cost would be received from others considering their poor conditions. In both the cases the things of medium grade will be collected. More importantly *zakah* is a religious rite commanded by Allah. The purpose of the Lawgiver in implementing *zakah* is to safeguard and strengthen the objectives of *dharurah*, *hajah*, and *tahsin*. I say *dharurah*-based interests will bring man to the limit of (*Kafaf*) minimum level. The *hajah*-based interests will lead him to the limit of *kifayah* (sufficiency) and the *tahsin*-based interests will lead to satisfaction. Beyond that is amusement and luxury which is undesirable. It is my individual opinion. I have never studied it in any book. You may accept or reject it. The question arises whether a faithful is required to live with minimum level only or is he allowed to expend sufficient money to meet his desires? The holy Quran has affirmed the second option:

“Say: who has forbidden the beautiful (gifts) of God, which He has produced for His servants, and the things clean and pure (which He has provided) for sustenance? Say: They are in the life of this world, for those who believe, (and) purely for them on the Day of Judgement”. (7:32).

Imam Shatibi further says by protecting *tahsin*-based interests, *hajah*-based interests as well as *dharurah*-based interests are saved, and by protecting the last two *tahsin*-based interests are safeguarded.



Al-Shatibi has then raised a sensitive issue. If the earth is filled with *haram* (prohibitions) is a Muslim required to live with (*kafaf*), or is entitled to live with *Kifayah*(sufficiency)? He did not mention the grade of luxury. He then says: “In the given circumstances a Muslim will not be commanded to live with *kafaf* otherwise the terror of Muslims will disappear or others will overcome them. They will use the sufficient value of the prohibited. The legal position of the forced man is different. He eats to live and not to satisfy. The quantity of food as per his need is legalized and the need is to be defined according to its value”.

## **2. Communication – the Aim**

I feel extremely happy to visit the brothers born in the non-Arab countries, nourished therein and they understand the Arabic language like or more than the Arabs. Here in this country I met people who know and speak Arabic language better than the Arabs. Yesterday I heard a number of lectures and I was so pleased. To realize this it is enough to know that Muhammad bin Yaqub al-Firozabadi (1339-1414) the famous scholar who compiled the first Arabic dictionary entitled as *al-Qamus al-Muhit* following the method of Arabs, was not an Arab by birth nor Sibwayh (d. 796 approximately) and Ibn Jinni (942-1002) were Arabs.

Shatibi emphasizes that the means and resources necessary to understand Islam. He means the purpose of the legislation in Shariah is to persuade and convince human beings of utility and practicability of Islam. Shariah may not be grasped without any masterly knowledge of Arabic language. The means without which an obligation might not be performed, became itself obligatory. One dimension of the ability and qualification of *ijtihad* implies the masterly knowledge of Arabic language, its rhetorics, its concepts, and its prose and poetry as Umar bin al-Khattab is reported to have said: “Learn Arabic poetry since it inherits the dictionary of the Quran”.

## **3. The Aim behind Shariah**

By legislating Shariah Allah desires to burden the human being with its requirements. This is known in fiqh as *taklif*. Imam Shatibi has discussed the issue with two dimensions of it: (i) burdening with that which is unbearable and (ii) burdening with the bearable.

Islam asks us to love one another. The human hearts are placed in between the two fingers of the Benevolent Who turns them to the direction He desires. Shariah does not aim, however, at compelling someone to love or hate anyone. No one is capable to coerce a person to love the other unwillingly. He may use the means of faith persuasion and appeal to convince him to love the others. The Quran declares:

“You will not find any people who believe in God and the Last Day, loving those who resist God and His Messenger.” (58:22)

This verse of the Quran is extremely instructive and clear. You should be loyal to your leader. You should love Allah affectionately. You should be sincere towards Allah, His *Messenger* and the faithfuls. You should hate the hypocrites and bearers of double standard. You should visit the people of faith wholeheartedly. This is the implication of the above Quranic verse. The instructions of salutation, shaking hand with the others, visiting patients all these are the means to gain desired qualities. Shariah, however does not coerce man unwillingly love to others. This was the spirit maintained by our Prophet (SAW) when he said :

“O my Allah! This is regarding my division within my purview and access”.<sup>1</sup>

The Prophet (SAW) had a number of wives in his house. He was unable to love them equally. He however, maintained equality in material things. That is why he prayed to Allah:

“This is regarding my division within my purview and access. You are requested to excuse me in matters under your control as I do not have any control over these.”<sup>2</sup>

He loved Aisha most. Amar bin al-‘Aas, after he has embraced Islam, asked once the Prophet (SAW) whom he loved the most among human beings? He said: ‘Aisha. He asked: I am questioning about men. The Prophet (SAW) replied : “Her father”. He further asked: After him whom you love the most! The Prophet replied. Umar. Amar bin al-‘Aas says: I was silent after that.<sup>3</sup>

The second dimension of the issue is burdening with the bearables (*taklif ma utaq*). It implies the tasking with bearable accompanied with difficulties. This discussion is raised by Shatibi. He means that the Legislator did not aim at putting the people to trouble and suffering:

“God intends every facility for you; He does not want to put you to difficulties”. (2:185).

A person vows to God to stand in the sun to torment himself and the Prophet (SAW) prohibits him not harm himself. A man vows to Allah to visit the holy Kabah by travelling on foot while he does not need this additional exercise. Due to this objective of Shariah the Prophet had allowed some of his wives, Ibn Abbas, Asma and some others to hitting Aqabah by stones (*ramy*) even before *fajr*(dawn) prayer, because Shariah did not aim to put people to troubles. Putting people into difficulties is itself a problem. For interest is not more important than putting them to difficulties. Shariah cannot overlook the interests framed by Allah Who does not like putting people to problems. The acquisition of knowledge, earning of livelihood all this needs hard work and difficulties. Thus the principle framed is that the objective of Shariah instead of putting to difficulties lies in tasking with the responsibilities that involve suffering. But it may not be called suffering or difficulty. A man works hard and suffers from labour but this labour is normal and part of his work. The objective lies in the benefits gained by the human beings and not in the difficulty that occurs due to his involvement in work. One of the principles of Shariah is that causing any difficulty is not permissible. A person intending to tire himself decided to fast consecutively. The Prophet (SAW) prevented him from doing so. Some faithfuls once inquired

into the schedule of the Prophetic worship. They thought their own worship comparatively less. Some of them expressed their wish to fast recurrently and some thought to perform supererogatory prayers regularly and to spend the whole night awake. The Prophet(SAW) checked them all and declared this unacceptable in Shariah.

In Shariah the elimination of hardship and difficulties is based on two considerations: (i) the human being may not entirely abandon worshipping rituals; he after having involved in the worship for 1-2 months or 1-2 years may not react against it sharply thinking it unbearable, (ii) a balance is maintained between rights and duties. When he intends to worship Allah the rights of his body, family and property should not be overlooked. One of the fundamentals of Shariah lies in making man free from following his self. It is essential for man to resist his self :

“Then see you such a one as takes as his god his own vain desire? God has, knowing (him as much), left him astray, and sealed his hearing and his heart (and understanding), and put a cover on his sight, who, then, will guide him after God(has withdrawn guidance)?”  
(45:23)

Shariah seeks to free man from his self and to relax his hardships and suffering:

“And for such as had entertained the fear of standing before their Lord’s (tribunal) and had restrained (their) soul from lower desires”. (79:40).

Shariah has prescribed fasting in order to check inordinate desire for food, anger and vain talk. The Prophet (SAW) is reported to have said:

“One who does not distance himself from telling a lie and practising it (while observing fast) Allah does not need his avoiding food and drink.”<sup>4</sup>

All the prohibitions on the eve of performing *haj* : telling a lie or any shameful word, sexual intercourse, sinful activity,

quarrelling, biting nails etc. aim at preventing evils entirely. These prohibitions enable man to distance himself from evils permanently so that he may create the desired qualities in himself and avoid doubtful as well as the explicitly forbidden things. Shariah seeks to subdue the rebellious and transgressing urges. As for the question is concerned which difficulty is relaxable, it will be assessed while considering the need and importance of a practice. Shatibi has also described various grades and ranks of difficulties. The Arab poet says :

“In the calamities our bodily disasters become the means  
in our eyes; we save our honour and our intellect  
therein.”

In such circumstances physical difficulties become insignificant in Shariah. Honour and the dignity can not be compromised. If the difficulty turns out to be unbearable Shariah while keeping in view the human nature has makes allowance for it. The Prophet has instructed in the context of jihad :

“Tomorrow you will be resisting you enemies; breaking  
fast will help you in this regard.”<sup>5</sup>

There is a novel relation between difficulty and relaxation in Shariah. Shatibi says: “The Lawgiver has implemented a severe punishment only when man becomes the slave of his own self, he commits theft, adultery, or assassination. These punishments of killing the chopping of hands and feet from the opposite sides, deporting a man from his homeland all this is a difficulty to be borne compulsorily because this is to avoid a social and collective harm. Keeping order in the interests is essential. The Lawgiver has provided with the relaxation only when worship is exaggerated. In case one fasts for too long; whole night is spent in praying entire property is devoted to the cause of Allah, Shariah has maintained balances. It instructed us to sleep at night and pray also for some time; do the fasting with the breaks, and to make testament of one-third of the property only. In these conditions Shariah has provided these relaxations. All the punishments in Shariah, likewise, are implemented to resist the excessive selfish urges and liberalism.

The concessions and relaxations in Shariah aim at checking extremism and exaggeration in religion.

Extremism and liberalism are the two extreme poles. Shariah ordinances in entirety are based on balance and moderation. These are neither liberal nor extremist. You do perform prayers, fasting, pilgrimage, marriage, and transactions. All the ordinances dealing with these aspects are balanced and moderate. The relation between difficulty and relaxation is unique. Strictness in Shariah is implemented to control liberalism and excessive selfish desires. The relaxation or concession, on the other hand, implies the check on extremism in faith and it makes the balanced and moderate. This basically relates to the issue that the aim of the Legislator by Shariah is to task man with requirements of Shariah.

### **The Aim behind prescribing Ordinances**

What is the aim of Shariah in tasking man with legal ordinances? In this perspective there are various regulations and situations in Shariah. Shariah is revealed for each and every one and it addresses every situation whether peace or war, affluence or poverty, married or unmarried life, and this world or that world. It aims at tasking man with the teachings and ordinances of Shariah in all the situations and circumstances:

Say: "O men! I am sent unto you all, as the Messenger of God, to whom belongs the dominion of the heavens and the earth." (7:158)

One of the main objectives of legislation by Allah is to get man rid of his selfish urges so that he should obey Allah in all the circumstances voluntarily as he obeys Him in all the exigencies. This helps man in two ways :

1. intentional aspect, and the
2. unintentional aspect

The unintentional aspect covers for example the beating of the hearts as the five senses act and react. Allah says that the intentional aspect of man must conform with the unintentional aspect which should be subdued totally for the sake God:

“And you should know that God comes in between man and his heart, and that it is He to Whom you shall all be gathered.” (8:24)

The success of man lies in the coordination between his exigencies and his freedom in obeying Allah. Man’s body, his intellect and his heart all should be equally subdued to Him.

Shariah objectives as related to man are of two kinds :

1. fundamental objectives, and
2. subordinate objectives.

This classification was discussed above and the following four objectives of marriage were also detailed :

1. satisfaction of the soul
2. Physical joy and sex
3. Multiplication of the race
4. social relations

As one neglecting fundamental objectives gets married, he does not conform to Shariah objectives. If he instead, giving priority to the protection of religion gets married with a beautiful and wealthy lady it is not objectionable. It is not prohibited, therefore, to eat delicious food, to wear soft clothes, to drive comfortable vehicles and to marry beautiful ladies, provided these acts do not violate the Shariah.

Shariah differentiates between the grades of *dharurah*, *hajah* and *tahsin* in its own paradigm. According to it, some objectives are fundamental and others are subordinate. Establishing daily prayers is fundamental objective. In case it was declared as the subordinate objective a man, having no access to water was not to perform the prayer. The cleansing and performing the *taharah* thus become a subordinate objective. Standing straight in prayer is, likewise, a subordinate objective. The man unable to stand is allowed to pray while sitting. The prime objective in this case is to perform prayers. In case of not performing prayer the fundamental objective is neglected. Imam Shatibi, therefore, says that the fundamental objectives are obligatory, and subordinate objectives

are the permissible. The argument in favour is the method of investigation and deduction. In all the issues which Shatibi has discussed he is unique, whether they relate to the rationalization of Shariah as the focal point, or to the four dimensions of the intention of the Legislator. He appears unparalleled and distinguished in his elaboration.

**Notes :**

1. Abu Dawud, *Kitab al-Nikah*, Hadith No. 38.
2. Abu Dawud, *Kitab al-Nikah*, Hadith No. 38 with the marginal difference in some words without having affected the meaning.
3. Bukhari, *Al-Jami al-Sahih, Kitab Fadail al-Sahabah*, Hadith Nos. 5, 3462.
4. Bukhari, *Al-Jami al-Sahih, Kitab al-Adab*, Hadith No. 6057.
5. Muslim, *Al-Jami, Kitab al-Siyam*, Hadith No. 102. (Editor).



**Imam Muhammad Tahir bin ‘Ashur  
and the Objectives’ Theory**

- Dr. Salahuddin Sultan

Imam Muhammad Tahir bin ‘Ashur is among contemporary scholars of Islam. He died in 1874. He is the nearest to us among the contemporaries who have discussed the Shariah objectives. He raised some fundamental and specific issues in which no one even Imam Shatibi could compete him.

The first merit of his lies in his invitation to lay the foundation of a new and fully-fledged discipline of knowledge that is the discipline of the Shariah objectives and the theory of objectives. He wrote books on this theme.

The second merit is that he discussed Shariah objectives in his articles and books, dealing with worshipping rituals, family affairs, and transactions. His applications are pragmatic. He urged the scholars to go into the depth of the subject as he had done. Only by this method the understanding of Shariah would be acquired. He set aside the targets of the objectives’ theory. He declared only the certain and absolute evidence as the nucleus around which all differences of the jurists should be revolved and on the basis of which preference be made. He has discussed the principle of *istinas* (becoming sociable) as a novel perspective so that a common man being a mere follower may not dare to try understand the purpose of Shariah in the light of the implementation of the ordinances.

The third merit of Ibn Ashur is that he has filled the juristic gap in the contemporary age and perspective. He says : Muslims should be helped in the objectives perspective and such rules and laws should be framed that meet their immediate and transitory interests and a legal and juristic gap might not be felt. Is there no such gap between us? Why not? There is certainly a gap. We are responsible to Allah for this gap. It is obligatory to swing into action and be dynamic. We should have the understanding of Shariah. We should unite Muslims. We should issue legal verdicts keeping in view general objectives and common perspective. Let

the people not live in suspicion and vacillation. Let not people indulge in the completely forbidden things and we then justify them or force man to take refuge in the theory of *dharurah* (necessity) and its regulations. To Muhammad Tahir bin Ashur there are certain objectives that have an ideology.

The subject of objectives' theory implies the collection of the principles required in Shariah through which the understanding of Shariah becomes accessible whether by interpretation or by rationalization and argumentation. The ordinances of Shariah are explained or rationalized in such a way that make them explicitly clear equally to the learned as well as to the common man. The sources of argumentation and rationalization are the rules and regulations of the theory of objectives in order to acquire the knowledge of required interests in Shariah. For this are employed the means and resources that spell out the required principles in Shariah. In the pragmatic application of the Shariah objectives Muahmmad Tahir bin Ashur has played a leading role and is unique in the field. Some examples of this pragmatism are given below :

Ibn 'Ashur raises the question why *tayammum* (rubbing by a piece of clay instead of washing for ablution) for cleaning is sanctioned in Islam? He responds thus: It is so because no body might think the prayer is justified without cleaning and thus in the case of the non-availability of water he might not be deprived of his intention to clean himself. This intention of physical cleaning provides a medium for the intention of spiritual and psychological cleansing. Since physical cleaning is part of faith he will be always linked to cleaning (*taharah*).

Why the timetable of regular prayers is so strictly regulated? Why is this gap between the prayers at dawn, noon, afternoon, after sunset and evening? Ibn 'Ashur says: It is because the fear of Allah should be deeply rooted in the heart and mind that his self avoids disobedience to Allah on his own and this *taqwa* turns into a permanent feature. Remembering Allah time and again will distance him from sins and will thus provide divine forgiveness. You know how much the companions were involved in the

remembrance of Allah and *dhikr*. One of the pious predecessors, used to say: I resisted my self for 20 years to perform the prayers after midnight in the small hours of the morning (*tahajjud*) and used to entertain its sweetness. When man becomes habitual of any thing it penetrates into his nature. May Allah bestow His Mercy upon my shaykh, the teacher who instructed me at my age of 16 years at my residence saying. I wish to perform ablution to make you understand ablution. For three occasions is ablution prescribed in the books of jurisprudence; for prayer, for walking around the holy Kabah seven times (*tawaf*) and for the recitation of the Quran, as ulama held different views about it”. I asked him whether he observed it with punctuality? He said, “My boy! Allah says :

“God loves those who turn to Him constantly and He loves those who keep themselves pure and clean.”  
(2:222)

If Allah loves purity and cleanliness we should observe it. This ablution washes out sins and evils. You should be habitual of being always in the state of ablution. When it breaks perform it again”. It was a difficult job in the initial stage. Fortunately I used to resist myself. Only after six months I became so habitual that I did not do any work without ablution. Reading, writing, eating, thinking, in brief every act is now performed in the state of ablution. This varying time table of prayers, the division of day and night in the schedule and the supererogatory fasting on each Monday and Thursday all these are different means to save one from sins.

Imam Muslim in his *al-Jami al Sahih* has established a chapter entitled as “the Chapter on the Virtue of Holding Fast in Ramadan and the Desirability that No Month Should be Free From a Fast.” This fasting is held for self-restraint. We wish the fear of Allah should penetrate our life entirely.

The slaughter by the people of the Book was declared as lawful in order to increase interaction with them and so that they might be called to Islam. Marriage is institutionalized in Shariah in order to strengthen family and to increase generation by sexual

satisfaction and fulfillment of the natural desire of the mates. Without sex, one cannot perpetuate his family. Sometimes while involving in intercourse the husband feels as if he was trying to swallow bitter medicine. Now Allah has created this instinct in him and he goes to bed with his wife eagerly and wholeheartedly, expecting his children to be born. This instinct was created by Allah to maintain population and to retain love and coordination between the spouses. Some relatives are declared in Shariah as forbidden in order to strengthen honour and dignity for them, to replace all kinds of suspicions and rivalries among different kith and kin. These are the objectives of Shariah considered in the Islamic legislation.

Divorce is a way out for spouses to escape harm. In the absence of this way-out both would have suffered from a psychological pressure recurrently. *iddah* (the specific waiting period for the divorced woman) was sanctioned for the sake of protecting the affinity and retaining the possibility of normalization. Ibn ‘Ashur has also described the issue of beating wife and I disagree with him in this regard. He quotes disapprovingly Ata who opposed beating the wife. He says it is permissible and the ruler is entitled to stop any permissible thing. In America it may be thought as an appropriate perspective because the law in the U.S. prohibits beating of the wife. Ibn Ashur quotes the following verse that enumerates the qualities of good women beating of whom would be inadvisable :

“Therefore the righteous women are devoutly obedient, and guard in (the husband’s) absence what God would have them guard.” (4:34).

The Quran describes another category of women:

“As to those women on whose part you fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance).” (4:34)

Ibn Ashur argues the word *allati* (on whose part) signifies the microscopic minority; and *wa*, the letter of conjunction signifies

separation. This is the opinion of Ibn ‘Ashur. The word *nushudh* (disloyalty and ill-conduct) does not imply any material damage like breaking glass or cooking tasteless food. It implies arrogance against the husband. The women annoying their husband are few. The Quran commands to admonish them. This method would correct them. Then the Quran instructed to refuse to share their beds. This will further check them and the majority of such women would be normalized. Only a microscopic number that remains will be corrected by beating. This beating, declared lawful by the Quran, signifies a slight physical correction within the Shariah purview, and not any retaliatory approach – a beating that would will not hurt the face and not betray any sort of cruelty, that might survive the spouses’ relations. This beating aims at avoiding the greater damage e.g. to cut off the spouses’ relations and to destroy children. The permissibility of lightly beating the wife bears less loss and greater interests. Islam, thus, provided security to family, to children and to wife herself. It is rationalized thus. According to a survey conducted in the US, inspite of a harsh legislation against beating wives, six million women approached court in a year with the complaints against their husbands in this regard. On the other hand two lakh eighty thousand men complained in court against their wives who had inflicted on them physical assault.

The issues of writing in transactions involving future obligations, as directed in the Quran (2:282) is also an interesting example. I agree with Ibn Ashur in this regard as opposed to the majority of the scholars. This verse to the majority of the scholars is recommendatory. I have observed the conditions in Egypt, in the Gulf countries where I lived for 3 years, and in the United States and I prefer the opinion of Ibn Ashur in this case. The authenticity of the transactions, the avoidance of any possible dispute and the removal of mistrust all this is actualized only by writing exactly and explicitly. This requires an obligatory position of writing in the transactions. The theory of Ibn ‘Ashur is based on the realization of individual, collective and social reform by regularizing the world order, and on evolving a corrective measure through the

reformation of man himself spiritually. This is the major objective of Shariah according to Shaykh Ibn ‘Ashur.

In comparison with this opinion of Ibn ‘Ashur I will discuss the general objectives, the specific objectives and then on the traits and characteristics of Islamic Shariah. Ibn ‘Ashur too, has divided the general objectives of Shariah into three categories of interests: *dharurah*, *hajah* and *tahsin*. It is regrettable that he has mentioned the protection of honour as a *hajah*-based interest. It is also surprising that he has preferred property to affinity. Is it possible for us to prefer property or intellect to our children?

Imam Ibn ‘Ashur also has discussed the rights of God as well as the rights of human beings and in the issues relating to both the specific objectives of legislation, the grades of the objectives as well as the grades of means and resources. Take, for instance, the issue of *zakah*. It consists of the help to the poor as well as a demonstration of love to God. The prayer, in contrast, is for the sake of God only. In the issue of *wasiyah* (the testament) both the aspects are included.

Ibn ‘Ashur says : Marriage is a fundamental issue which may not be equated with the issue of adultery or fiscal issues. Allah has commanded us to follow the instructions given below :

“And how could you take it when you have gone in unto each other and they have taken from you a solemn covenant?” (4:21)

This directly deals with honour and dignity. In other words, Ibn ‘Ashur says: witness in the marriage is arranged to assist it. A witness is not the fundamental issue. In case someone desiring to have marriage do not find two just witnesses and arrange it in the presence of two non-just witnesses that will be sanctioned. The witnesses may not be overlooked exclusively because hadith clearly says :

“No marriage is sanctioned without a guardian and two just witnesses”.

(Imam Bukhari (*Al-Jami al-Sahih, Kitab al-Shahadat*, Hadith No. 8) has quoted a long hadith having not sanctioned the marriage without two witnesses, and also another hadith (*Kitab al-Nikah*, No. 36) that has invalidated every marriage managed without the permission of guardian (Editor).

I know there is some dispute in the hanafid school of law. I follow it sometimes and occasionally not. In the United States some girl contacts me and expresses her intention to get married without the permission of the guardian according to hanafid school. Applying Abu Haneefah's opinion in the given circumstances, in my opinion, contradicts another saying ascribed to him. For such marriages Abu Haneefah has imposed the conditions of *kufu* (equation in social status) and dowry. Unfortunately these people misuse the hanafid *fatwa* without applying the equation between the mates and dowry. They try to justify the prevailing form of girl friendship or boy friendship similar to adultery – taking refuge behind hanafid *fatwa*. When I observe the father of the girl practising Islam is not practicing religion and desires to compel her get married with a non-practising youth, I practise in the given condition the legal verdict of Imam Abu Haneefah.

Imam Ibn Ashur has also talked of the merits and characteristics of Shariah. To him four points should be adhered to in this regard :

1. In the acquisition of truth and of the knowledge of objectives the method of natural simplicity and beauty should be followed. He, for the first time, has incorporated the role of nature in acquiring the knowledge of Shariah objectives. Actually this is a positive step he has taken. The hadith while indicating the role of natural instinct has clarified that sin is the act that does strike your mind negatively while righteousness relates to good conduct and behaviour.
2. While thinking over the Shariah ordinances meanings, and not merely the words, should be considered. For example a young man gets married, fulfilling all the Shariah requirements. He, however, requests the father of the girl with the wording of

“let me enjoy your daughter *mattini*”, it can not be declared as a *mut‘ah* (transitory marriage permissible in Shia sect) because of the words he has used. In case the marriage is managed accordingly by the guardian and the witnesses, it is a permanent agreement and not transitory. Or, for example a person expresses his intention to grant one third or half of his property as *hiba* to Islamic Fiqh Academy of India after his death, this would not be treated as *hiba* which is applied in the life of *hiba* giver only. This case will be implemented as a *wasiyah*, a testament after his death. If all the heirs agree unanimously on the testament, the half of the property may be taken. In case of any dispute or disagreement one third of the property left would be donated to the Academy.

In reality meanings, and not words, are important. Practising the same principle, after the conference in US in which Shaykh Atiq Ahmad also had participated, was concluded the Islamic companies used to collect money from the customers and hand over to them flats after being purchased. The companies make agreement with the customers in the wording of profit, agreement, interest and so forth to escape government taxes. In the possibility of this relaxation legally sanctioned it was inadvisable to pay heavy tax to government that may use it to occupy Iraq and to help the Zionist Israel, while a non-Muslim practising the same method enables himself to have relaxation from the taxes. We say the words are not so significant, instead, meanings are significant. Some of our brothers declared it as forbidden in Shariah. My brothers! Fear Allah, Thank Allah, we did not follow these *muftis*. Now these schemes are in execution by various Islamic companies. I tell you the execution of Shariah, its due respect and the avoidance of deceiving tactics is obligatory. We should try our best to work hard for the dominance of Islam and strengthening Shariah. For this the acquisition of power is obligatory.

3. Independent reasoning and applying *ijtihad* is unavoidable for the resolution of modern problems and for the defence of Shariah. In this paradigm legal relaxations may also be availed in the changing conditions. I think Ibn ‘Ashur has



discussed it forcefully. Keeping in view the contemporary situation in order to settle the disputes is maintained well by Ibn ‘Ashur with a powerful and effective voice.

4. Shariah objectives must be taken as a fully-fledged discipline in which jurists and scholars should exhaust their energy, exhibit their dynamism in the subject and try their best by their exemplary efforts to nourish this plant and to help it grow into a large tree. Imam Ibn Ashur discussed this issue very nicely but he could not satisfy this thirsty student nor he could develop this discipline up to the standard of modern methodology of research and studies. I hope our contributions to this field may probably fill this gap. Imam Tahir bin Ashur has left behind authentic arguments in his efforts to draw certain conclusions by Shariah objectives. These arguments and evidences may provide the authentic source for the future scholars and jurists to advance discipline and to popularize these Shariah objectives at a wider level. Ibn Ashur has filled the constitutional and juristic gap affecting Muslims especially, the gap of a jurisprudence dealing with the Muslim minorities. May Allah bestow on him His benevolence and reward him the best.

### **Discussions and Responses**

Fahim Akhtar Nadwi:

Shariah objectives are enumerated as five, what is the response of Shaykh Ibn ‘Ashur in this regard ?

Dr. Salahuddin Sultan :

Shaykh Ibn ‘Ashur has added two objectives namely the equality and freedom. I missed this point. Thank you to remind me. He mistakenly placed the protection of honour in the *hajah*-based interests. The Arab poet is proud of giving honour priority:

I protect my honour by wasting my property. I cannot leave my honour be polluted or disgraced. May Allah not enhance my property at the expense of my honour!

When I see survey reports and analytical studies made by different agencies I find the most prevailing trade in the world covers sex, alcohols and destructive arms. In the given situation defending honour becomes the prime issue. We should, instead, prefer it to even our life. Yesterday I had told you a sentence you might have remembered. The West desires either we live in the mischiefs and in disorders or we die out of assassination, while Allah pronounces :

“The tumult and oppression are worse than slaughter.”  
(2:191).

The West, after having exhausted its aggression against the Arab and Muslim countries by arms and canons, is now planning the media onslaught on them. It would be more dangerous and of far reaching consequences in my opinion. This should be retaliated and responded more forcefully and more effectively as well as more systematically. Against a military attack man is killed with dignity and honour and is treated as martyr by the grace of Allah. But this cultural onslaught would leave man trapped by a *fitnah* (mischiefs) which is declared by Allah as more severe and worse than slaughter. A man unfortunately sees his son dying in an accident by any vehicle. But the pain, grief and regret he feels due to this accidental death, is lesser in thousand degrees than he would feel observing his son being trapped in any *fitnah*.

In response to a question on behalf of Mustafa Abdul Quddus, the learned speaker said : *Tajdid* (reviving religion) is performed by two means: (i) masterly knowledge and enthusiasm (ii) experience and knowledge one gains from his ancestors. In this perspective you will find Imam Shabiti was influenced most by the contributions of Imam Ghazali. He frequently quotes from Ghazali who was the personality that enriched him the most. But Shatibi himself was directed by Allah to work for the perfection of faith, intellect and thought. A man who does not bear the specific qualification cannot be affected and changed by the scholars of world repute and fame.

It is not advisable to eat grapes by using forks. Shatibi has discussed the principles of jurisprudence significantly in a novel style. These principles were presented by me also because while dealing with the Shariah objectives principles may not be overlooked since they constitute the foundation of the objectives.

Maulana Asad Qasim Sanbhali :

Shabiti has described understanding as the aim of legislating Shariah. This understanding into divided into two (i) Islamic Shariah is Arabic based, and (ii) Shariah is (*ummi*) unlettered. You did not explain the second point. Please do so!

Dr. Salahuddin Sultan :

The point did not scape from me. I intentionally avoided it. I did not like Shabiti's comment that Shariah is unlettered. The society being unlettered is a different thing. As for Shariah is concerned, the revelatory word of it was *iqra* (Read and proclaim!). Another chapter of the Quran describes writing and pen :

“Nun, By the pen and by the (record) which (men) write” (68:1)

A third Quranic chapter commands :

“Read you, therefore, of the Quran, as much as may be easy for you” (73:20)

Further the Quran says :

“And recite the Quran in slow, measured rythmic tones”.  
(73:4)

The *tartil* prescribed in the above verse is technically initiated by making up the mind first but the word *qaraa* begins with reading which is realized by a book only. It is also worth-considering that the word '*ilm*(knowledge) with its derivatives is used in the Quran 765 times apart from other words like *marifah*, *fikr*, *tadabbur* and *tazakkur* implying acquiring knowledge, thinking, contemplation and learning lessons. The *ilm* (knowledge) thus became the symbol of Islam. Shariah, therefore, cannot be called an *ummi* Shariah; it is rather based on insights. It was

revealed only to awaken people and to warn them. The Prophet (SAW) announced on the eve of Badr Battle ransom for every pagan captive to teach ten Muslims reading and writing skills. He sent Utab bin Usayd to learn reading and writing. He used to practise writing before Abdullah bin Amar bin al-‘Aas. Ibn Hazm in his *Al-Ihkam*, Shatibi in his *Al-Fikr al Islami* and *Ibn Qayy in li’lam al-Muaqqiin* have described one hundred and thirty holy companions who were *mujtahid* and the best teachers in the world. They educated people, trained scholars and led the world. In the face of all this can I call Shariah the *ummi* one? I had omitted this point intentionally.

The term *ummi* basically connotes an *ummah* that acquires knowledge, preserves it and then communicates it to others. *Ummi* is not derived from *umm*; it is derived from *ummah* that is why the hadith reads :

We are an *ummah* based on *ummi* origin, we do not calculate. The month occurs like this, indicating by his fingers and stopping them in the third round, He meant to say that the month consists of 29 days and also of 30 days.

(Muslim, *Al-Jami, Kitab al-Siyam*, Hadith No. 15. Editor).

In the modern period we form the *Ummah* that is striving for seeking knowledge. It was quite surprising that a word that was spoken in the given circumstances, was declared as one of the characteristics of Shariah. One of the participants of the workshop asked why Shariah would not be declared as *ummi* whereas the people were called as *ummi*?

Dr. Salahuddin Sultan :

Yes, I differentiate between Shariah being *ummi* and the *ummi* society. Shariah is not an *ummi* Shariah. It is extremely advanced, and I am not hesitant to call it so. The holy Quran declares:

“There has come to you from God a (new) light and a perspicuous book, wherewith God guides all who seek

His good pleasure to ways of peace and safety, and leads them out of darkness, by His will, unto the light – guides them to a path that is straight”. (5:16-17).

Khalid Saifullah Rahmani :

You claim that the first scholar who combined the hanafid as well as the Shafiite principles of jurisprudence was Imam Shatibi. It contradicts the popular image that the credit in this field goes to Muzaffaruddin al-Saati. Scholars such as Tajuddin al-Subuki and Ibn al-Humam followed him later on.

Dr. Salahuddin Sultan :

These scholars were not experts unlike al-Shabiti. They tried their best and this cannot be denied. They also should be recognized well. I did not mention them due to shortage of time. Imam Shatibi was however, able to theorise this combination.

Ahmad Nadir Qasmi requested that he may kindly speak loudly. The learned speaker continued:

The best example lies in the conquest of Makkah. The first day of the journey the Prophet (SAW) and the companions retained their fasting. After that some companions used to fast while others not. Those who held the fasting could not serve themselves. Those who did not hold the fast served them voluntarily. The Prophet (SAW) appreciated them.

“Those who did not hold the fast preceded those in fasting to receive the divine reward.”

One day those fasting became senseless. How could they fight and win in the battlefield? The Prophet (SAW) preferred on that day relaxation. He called for water while standing on a hill and broke his fast publicly, and pronounced.

“There is no virtue in holding fast in the travel”.

Allah has provided relaxation for breaking fast in travel. Some brothers prefer the strong will of not practising the relaxation. It is not appropriate. Imam Shatibi has clarified that these relaxations in Shariah help man worship Allah till his death. This is

one of the objectives of Lawgiver in tasking man with legal ordinances of Islam.

Ahmad Nadir Qasmi complained that the voice of the speaker was not clear and understandable. The learned speaker went on clarifying:

The *usul al-fiqh* (jurisprudential principles) is dealing with the principles by which practical Shariah ordinances along with their detailed arguments and evidence are deducted. But the discipline of *maqasid* (objectives) interacts with the aims and objectives of the Lawgiver which He has maintained in legislation in brief and elaboratively in the detailed chapters.

*Usul al-fiqh* then deals with investigation and deduction method (*istiqla*). It is a pragmatic method applied for the acquisition of knowledge. It is a medium and a means used in the jurisprudential principles in the theory of objectives, in logic, in the resolution of family problems and in other issues. Imam Shatibi and Imam Ibn Ashur have stressed this point. The difference between objectives and means is clear.

Muhiuddin Ghazi complained interruptedly of the voice not being clear. While Dr. Salahuddin Sultan explained the difference between *tatbiq* (application) and *tanzir*(comparison as equals). The argumentation is the very application. When a jurist deduces a legal ordinance he keeps the concept of objectives clear in his mind, because the objectives of Shariah are important. It is called argumentation. But theorization is another thing not traceable in the writings of al-Juwayni nor of al-Ghazali. Al-Shatibi has, of course, dealt with it. Ibn Ashur and then Taha Jabir al-Ulwani, Ahmad Risuni and some other researchers have advanced the discipline along the lines of theorization.

Juwayni, Ghazali, Qirafi, Izzuddin bin Abdussalam, Ibn Taymiah, Ibn Qayyim all of them have talked of objectives. Shatibi has especially made the subject his area of interest and written a four-volume book entitled as *Al-Muafaqat*. Ibn Ashur succeeding him studied the discipline and wrote a book exclusively on the

subject. He made it so distinct from other discussions of *usul al-fiqh* that he turned it into a fully-fledged branch of jurisprudential principles. He called for a re-study of *usul al-fiqh* and suggested to incorporate in it *fiqh al-maqasid* (jurisprudence of the objectives). In this perspective I only fear lest some half-educated people taking refuge behind the jurisprudence of the objectives used to neglect certain legal ordinances. There must be no compromise in this regard. The Shariah of Allah is free from all contradictions. The consideration of any certain legal point will last till the day of judgement, as the jurists have formulated.

“Activating a text is better than neglecting it”.

None is authorized to cancel any legal ordinance. After the sad demise of the Prophet (SAW), *naskh* (cancellation) as per clarifications of the scholars, is a closed chapter. This is a clearly prohibited act in which we should not indulge ourselves. We oft-repeatedly pronounce our effort for the objectives’ theory must not cancel any particular juristic text.

Asad Qasim Sanbhali :

Imam Shatibi has discussed the issue of *talil* (rational justification) in detail. Is there any clear text that may justify the theory that all the ordinances of Shariah are rational and are based on reason?

Dr. Salahuddin Sultan :

The evidence of rational justification in Shariah ordinances lies in the fact that the action of Allah is free from any absurdity. Allah has explicitly stated in a number of verses that He has not created us aimlessly. He has nullified any kind of absurdity to be ascribed to Him. All of us agree on the objectives working behind the creation of the universe. As per different levels of understanding and intellect it is quite possible to trace out some reason working behind the actions while others may not be traced out. The Islamic scholars differ on the existence of rational justification (*talil*). Ibn Hazm negated the idea of rationalization as such. He wrote a number of books and treatises on the theme to prove his stand.

In the field of *ibadat* (worshipping rituals) we are required to follow the words of the text and not the meaning. The objectives and the meanings in '*ibadat*' were not so significant though these too are implied in them. These too, should be identified. Every human being is responsible for his deeds himself and the job of the mind is to think over the issues since there is no imposition of any restriction on the mind. Imam Shatibi has declared the silence of Legislator as a part of the objectives. The silence of Lawgiver in any prohibition on the thinking in these issues indicates its permissibility. Umar bin al-Khattab commanded to manage the performance of *tarawih* prayers in Ramadan in congregation while it was not so practiced under the Prophet (SAW). He managed 20 *rakats* instead of 8, in *tarawih* prayers. Uthman, the third caliph added some more to 20 *rakats* too. Muslims in future managed 36 *rakats* in *tarawih*. There was no harm in doing so. Uthman added a new call for prayer (*azan*) in the region of Zura, since the purpose of *azan* was to inform people of the timing of prayers. The later scholars included two *azans* before the prayer of Jum'ah. That was an innovation in religion. Imam Shatibi declared it a *bid'ah* (a religious innovation). We say that some of our scholars avoid any rationalization and objectives' theory in '*ibadat*' and opine that only the words and letters as such would be followed in the affairs of worship, it is incorrect. Ulama say, in case of *zakah* the price may be collected. You own the cows and the sheeps on which you have to pay *zakah*. Instead of cattle you have paid their price in cash and it is legally right and justified. According to Abu Hanefah and Malik bin Anas, in such conditions the price would be paid in cash. On the eve of Eid al-Fitr *sadaqah* also may be given in cash. The grain prevailing in the region may also be paid in *sadaqah* as well as in *zakah*. All these constitute worship (*ibadat*). I intend to write an essay on this topic. Keeping in view the modern mind I wish to express systematically that *ibadat* are not indifferent to the objectives. I have written something on the subject but I had discussed it in the faith and spiritual perspective. It will be discussed in the context of spiritual consequence of *ibadat* and the spirit and essence of the worshipping rituals, because the spirit



precedes everything. Then comes ethics and morality, then the intellect as the third in order and the body as the last in the sequence. I have done the planning on the subject in my mind according to the following order in the series :

1. Spiritual objectives of *ibadat* about a family.
2. Spiritual objectives of '*ibadat*' in the Muslim society.
3. Spiritual objectives of '*ibadat*' and the character of a Muslim
4. *ibadat*, Rulers and the Ruled and the Polity of the country.

I hope this series would come out soon.

## **Chapter Three**

### **Objectives of Shariah The Historical Perspective**

## **Objectives of Shariah The Historical Development**

- Atiq Ahmad Bastawi

There are two topics under the discussion. One topic deals with interest and the rationale implied in each and every ordinance and thus interacts with entire religion. Which interest an ordinance does carry? What rationale provides an ordinance relating to beliefs, morality, or transaction? Thus it covers secrets of faith and the logic of Shariah.

The second topic relates to reason in the purview of jurisprudential principles and especially the issue of *talil*, rationalization. Is there any scope to rationalize ordinances on the basis of wisdom and logic? The issue of *masalih mursalah* (public interests), Shariah interests in order to identify them, its classifications and divisions, the needs and requirements of faith in this context all this technical and principled discussion is related to the first topic. These two topics are separate but are interlinked also.

The secrets of Shariah imply the rationale, interests and wisdom working behind the Islamic teachings. These are human interests some of which are described in the Quran, and hadith explicitly or implicitly. Some are deduced by our commentators of the Quran, jurists, scholars of jurisprudential principles by investigating texts, assessing the general objectives of Shariah and inferring from the Quranic verses that imply the universal application.

To explain the secrets of the faith and to interpret Shariah ordinances in a style and methodology acceptable to contemporaries is a task that requires a thorough study and research. Apart from the books on the issue directly, if we assess our juristic legacy we will find that all the jurists of different schools have explained the rationale of the issue decided unanimously or the justification of their particular view held within their school. Let me explain here human interests and the rational justification provided by the hanafid school in their juristic

discussions and books, is not so marked in other schools of law. Dr. Risuni has, therefore, recognized that if the rationale and logic behind the Islamic ordinances described by the hanafid scholars while deliberating the issues in a specific method in general and preferring their view to other schools in particular, are collected that will be culminated in a bulky store that will facilitate the identification of Shariah objectives and will help provide justification of each ordinance individually. The books written by the hanafid scholars especially *Fath al-Qadeer* by Ibn al-Humam, *Badai al-Sanai* by al-Kasani and other classical works of luminaries discuss in detail the logic and wisdom working in the ordinances. Collecting this material thematically from the hanafid, shafiite, malikite and hanbalite scholars' books, classifying, and then grading it is itself a great task. Being young you may plan and work out a strategy to fulfil this task. If an academic work is accomplished in the span of 20 to 25 years your life will become successful and enriching. The topics of research, however, require hard work and enthusiasm. We should prepare ourselves for these projects.

The commentaries of the Quran especially those dealing with the legal ordinances are helpful in exploring the interests of Shariah. Al-Jassas's *Ahkam al Quran*, the books by Ibn al-Arabi, Bayhaqi, Shafii, Qurtubi, Kiyaharasi and others are important in this regard. The books on *tafsir* written later on also consist the discussions on the secrets and interests of Shariah. Some classical *tafsir* works are there which do not concentrate on the legal verses but are also useful in this field. Take for example *Tafsir Kabir* of Fakhruddin al-Razi. The learned commentator has applied a specific method. He first raises all the doubts and complications about an issue. Then he responds to them reasonably. He has elaborated the rationale of the ordinances a Quranic verse carries, their being balanced rationally and well-founded logically. All such commentaries of the Quran deal rationally with the legal connotations, and more importantly with entire faith, the concept of *tauhid* (oneness of God), *risalah* (prophethood), *akhirah* (the Last

Day) and other pillars of Islam. We should compile all these materials.

Interpreting the entire faith along with its rationale and secrets convincingly is a fully-fledged task and it is the need of the hour. Addressing the psychology and problems of people we should adopt, while preaching, a style and method that may win the hearts and capture the minds. It is *ilm al-Kalam* (scholasticism) itself. Our earlier authorities served this goal in their time.

It reminds me of Mujahid ul Islam Qasmi. He used to address the highly-qualified gatherings, having doubt about faith and teachings of religion. I found him interpreting religion in the most acceptable and convincing way. Once in a programme held in Jamia Millia Islamia New Delhi, long before the foundation of the Islamic Fiqh Academy, an important issue of social inequality and the Islamic *Kafaah* (equality in status) was hotly debated among the professors, intellectuals, teachers of Islamic studies and other categories of speakers. All were criticizing the juristic approach to *Kafaah* and declaring it to be discordant with Islamic equality. Qazi Mujahidul Islam was finally invited to speak. He beautifully expressed the issue of *Kafaah* and made the gathering fully satisfied. They were surprised to learn by that marvelous speech that *kafaah* was a system of matching introduced by Islam. Both the spouses formed the garment for each other :

“They are your garments and you are their garments”.  
(2:187)

The holy Quran interpreted the relations between the spouses with the word of garment. They fit into each other as a garment fits the body. The late Qazi quoted a number of verses in this regard. He emphasized that the issue was entirely related to garment. A man tries his utmost to seek matching in his garment, matching in colour, as well as in quality. He frequently visits market. This garment may be put off after one-two days or one or two months, a transitory garment. But if Shariah has emphasized matching in the selection of a life partner lest a vast difference in the nature, mind and understanding of man and woman culminate in

separation in future and the permanent relation of the marriage be disturbed, why is this unacceptable and objectionable? We should realize we have exaggerated the issue too much. We have mistakenly added a number of innovations to this teaching from our customs and traditions unknowingly, which have no link to Islam. The issue of *kafaah* is the right of the woman and her guardian maintained by Shariah for the sake of the interests of both the parties. In case a woman and her guardian are convinced to marry in a non-*Kufu* family it is justified. The entire family of the woman stands now in opposition. It is foolishness that has no link to the religion. Because of this stupidity committed by some people, to defame Islam itself is incorrect. After a few moments those who had raised the objections became convinced, and admitted that now they realized the rationale behind *kafaah*.

I tell you the Islamic scholars are obliged to represent religion keeping in view the contemporary situation. For this effective interpretation of religion they are required to know the secrets and interests of the Shariah, to study deeply the circumstances, the level of understanding and the impressive style of conversation and the things necessary for effective preaching. If we offer people the richest and most useful points of religion and even the text-based ordinance but the method does not consider the mentality and psychology of the addressee that may not satisfy him though he does not reject it explicitly. In order to perform this duty of preaching, ulama and those involved in this noble job should know the secrets of Shariah and interests the ordinances of the religion carry. We should collect and compile the efforts made by our ancestors and should add and enrich the objectives and interests by applying our reason and intellect gifted to us by Allah.

It reminds me of another event. We along with Khalid Saifullah Rahmani and Fahim Akhtar Nadwi visited Pakistan for some academic engagements. The Punjab University organized a programme in honour of Indian delegation. I addressed a gathering of students on the women rights in Islam. After the speech was over, a young boy raised a question. A boy after adolescence is authorized to choose his life partner accordingly without any check

on behalf of his guardian. The girl, however, is not free. If she selects a life partner from amongst the (*Kufu*) equal status it is justified. In case she selects from amongst the non-equals and her guardian disagrees with this arrangement, there are two sayings in *fiqh*. One saying invalidates marriage. The second saying justifies it but retains the right of objection for the guardians. Why is this difference on the basis of gender only?

While responding to the question a point came to my mind and clarified his doubt by arguing that the issue was interlinked to the system of maintenance and bearing daily expenses which Islam has established. When the boy became adolescent his maintenance was no more obligatory on his parents and guardians. His selection of life partner and arranging his marriage from his own becomes successful or fails, does not affect his father or guardian in terms of financial expenditure. The case of a girl is different. She will return back to her parents or guardians in case the marriage in any stage of life fails, and they are obliged to bear all the expenses of her re-marriage. Shariah, therefore, entitled her father or guardian to assess the feasibility of her marriage. Shariah has not entitled them to assess or reject the proposal in case of an adolescent boy since they are not obliged to bear his expenses.

I mean to say that the secrets of Shariah and the rationale of the faith are thus disclosed by Allah to His select slaves, to the Ulama who work hard for religion. It is not necessarily disclosed to the great and popular scholar. Sometimes a student enthusiastic for religion and interpreting faith well, represents it convincingly. According to the interpretation of the religion the discipline of the secrets of Shariah is too important. *Fiqh* in other words, interprets and represents religion. *Fiqh* originally, applies to an honest understanding of entire religion whether it be the beliefs, or worshipping rituals, or transactions. Without mastering all this no one can be called a *faqih* (expert of *fiqh*) in the true sense. In this perspective it is essential for a scholar of religion to give due weight to Shariah objectives and to study deeply and extensively the books written so far. These will be discussed with you in detail.

### Notable Books on the Secrets of Shariah

A number of books on the secrets of Shariah are written by Hakim Tirmidhi who is not so popular as a jurist. His book *Nawadir al-Usul fi Ahadith al-Rasul* consists a varieties of hadith. The books ascribed to him in the historical accounts, some of which are published, deal with these secrets. One of his works entitled as *Asrar al-Salah wa Maqasiduha* deals with the rationale of establishing prayers. His another title *I'lal al-Shariah* comes under the general discussion on the subject. Apart from the juristic literature on the legal ordinances and on discussions the books on *fiqh* imply, one should study the tafsir works by our great commentators especially the *tafsirs* relating to the verses of ordinances.

The most important work on the subject of the Shariah secrets is the one written by Abu Hamid al-Ghazali entitled as *Ihya Uloom al-Din*, that encompasses all the aspects of religion, be it worshipping rituals, beliefs, morals or legal dimensions, and discloses their secrets. Al-Ghazali is important not only in the field of jurisprudence but in a number of disciplines. *Ihya* must be constantly under the study of ulama.

The book that exclusively deals with Shariah secrets and human interests is the one written in India by the greatest scholar of 12<sup>th</sup> century hijrah entitled as *Hujjatullah al-Balighah*. He has discussed the secrets and has provided the strongest rationale for the entire Shariah including beliefs and metaphysical affairs in an unparalleled method and unprecedented way. The book is for the entire Arab world and the whole Muslim community across the globe. All those who take interest in the subject study this book. This is also the best interpretation of *ahadith*.

Ashraf Ali Thanawi being titled *Hakim al-Ummah* has written *Al-Masalih al-Aqliyah li al-Ahkam al-Naqliyah* on the pattern prescribed above, though the author has opposed the idea of seeking any interest in the ordinances. He has pointed out in the preface to the book:



“No doubt the base of the authenticity of Shariah ordinances is the existence of the texts of the Shariah, in the acceptance and following of which seeking any rationale or wisdom betrays rebellion against Allah....In brief undoubtedly the Shariah texts provide the base for particular Shariah ordinances. It is however, equally certain that these ordinances imply the secrets and interests which provide no base for them. These however, inherit the quality that helps in creating further satisfaction to some instincts in the authenticity of ordinances. The people of firm and sound faith do not need this knowledge of secrets and interests. The people of weak faith, however, find some satisfaction in that, (and in these days such people are in majority). Dealing with this methodology in the period just prior to us Shah Waliullah has written *Hujjatullah al-Balighah*.”

(*Ahkam Islam Aql Ki Nazar Mein*, pp. 13-15).

On the topic of the Shariah secrets, there is another book of Qaffal al-Shashi entitled as *Mahasin al-Shariah*, still not available to my knowledge. It touches on the interests and logic of Shariah.

Another area of interest for the young scholars lies in the study of encyclopedias, *mujams* and *fihrist*s covering the biographical accounts of authors, academicians as well as classical books. *Al-Fihrist* by Ibn al-Nadeem, *Kashf al-Zunun* by Haji Khalifah, in India *Hindustan Mein Islami Uloom wa Funun* by Abdul Hai Hasani and others should be thoroughly examined. Are there some other books on the subject of objectives and secrets of Shariah? These rare books on the subject should be found out.

I have already said elsewhere that when we read *fihrist*s like that of Ibn al-Nadeem or Haji Khalifah, we feel, little of the academic achievements made by our ancestors is available in the form of books or manuscripts; much has been destroyed by political and military revolutions and earthly or heavenly disasters. We paid little attention to preserve our academic legacy. After the Partition of our country how many libraries and book stores were damaged and are still being damaged. Muhammad Iqbal, the poet of the East

was grieved to see the Muslim rare books in the European libraries but I am pleased that, at best, the books accessed by the Westerners are preserved. If we are unable to preserve our riches it is better to be preserved by others than to be destroyed. In India in a number of personal libraries rare manuscripts are neglected because the owners lack interest and academic taste and also because they are far from any sense of the loss they suffer. They are not willing to sell these books and manuscripts because that would damage ‘ancestral dignity’, nor are they ready to donate them to any library.

There are a number of libraries whose lists of books and manuscripts are published. For example Khuda Bakhsh Library Patna, Raza Library Rampur, the libraries in Hyderabad and in other centres of learning have published their collections. These should be gone through by our ulama, graduates of our religious seminaries and the books of interest should be traced out and then should be edited and published.

In London there is an institute namely Al-Furqan. It aims at introducing rare manuscripts on Islam scattered in the libraries across the globe. It has tremendous achievements to its credit. Amongst our hanafid scholars and jurists are Jassas and Razi whose various books deal with the subject. The voluminous commentary on *Adab al-Qazi*, also the commentary on *al-Jami al-Kabeer* whose copies I have seen in Cairo and in Damascus, and other rare books that cover a large portion on Shariah secrets, need the attention and care of our scholars.

The topic around which this workshop revolves is rather different from *Asrar al-Shariah*, though somehow interlinked – that is the Shariah objectives (*maqasid al-Shariah*). All the introductory points e.g. the definition of *maqasid*, its classification into *maqasid ‘aammah* (general objectives), *maqasid Khassah* (special objectives) and *maqasid juzyiah* (particular objectives), are discussed in detail in the preamble of the paper of Dr. Risuni. The definition of these are provided by Ibn Ashur. Al-Shatibi has offered no definition as such and defining a term precisely was not so prevalent before. He has mentioned some pre-requisites to study

his magnum opus *Al-Muafaqat*. The reader should be familiar with the secrets of Shariah, the knowledge of Shariah, the holy Book and Sunnah and also Arabic grammar and composition. These prerequisites seem frightening but the book is too significant and must be carefully studied.

I would like to provide a detailed account of the dimensions of the Shariah objectives described by our scholars about the jurisprudential principles in the context of *istihsan* and *masalih mursalah*. Among these scholars the first name, to my mind, is of Abdul Malik al-Juwayni, better known as *Imam al-Haramayn*, the teacher of Abu Hamid al-Ghazali. His book on jurisprudential principles titled *Al-Burhan fi Usul al-Fiqh* is published from Qatar with the rearrangement and editing made by Dr. Abdul Azim al-Deeb into two volumes. The learned editor has introduced Al-Juwayni in the light of his life long efforts of editing, compiling, commenting and publishing the works unknown so far to the world. A number of his edited books have come out from Kuwait. In *Al-Burhan*, Al-Juwayni has touched on the issue of Shariah objectives as well as the interests of ordinances. He claims:

“One who cannot understand the inherent objectives in the Shariah orders and prohibitions, he cannot trace out the wisdom of legislating the Shariah.”

Al-Juwayni has first established the triangular division of interests in to *dharurah*, *hajah* and *tahsin*. The last category was called by him as *mukarramat*. Apparently this triangular division was originally made by him. The “five basic objectives” later on developed by Al-Ghazali may be identified, with the slight difference of the wording, though not so clear, in *Al-Burhan* also. His another title, known as *Al-Ghiyathi*, is more important to my mind. The original title reads *Ghiyath al-Umam fi Iltiyath al-Zulm*. Being a non-hanafid jurist he assumes so many suppositions for implementing Shariah in emergency situations, as the title itself reveals. He has raised pragmatic issues in the book. He, for example, has raised the question. Suppose the forbidden thing prevails a specific region and there remains no or very little way out

for lawful earning. Whether in such critical situation the availing of the forbidden in Shariah would be subjected to the conditions and prerequisites necessary for the state of *idhtirar* (being forced)? Would the Quranic *idhtirar* be applied to such circumstances? They would be justified to use the forbidden only when they fear for their survival, or suspect the damage to any bodily organ? When the severity covers the community and society and does not remain confined to any individual, to what extent a *haram* (forbidden) may be availed? What are the limits in this regard? He has repeatedly differentiated between an individual's and collective situation. When the entire society is trapped in the forbidden things the strict observance of the prerequisites of availing a *haram* to be implemented in the individual case does not conform with the Shariah objectives. To him, the common need inflicting on the entire society, provides possibilities to avail *haram* as much as the state of *idhtirar* does it in the favour of the individual.

Al-Juwayni has made other discussions also. What are the concessions provided in Shariah in respect of food, garments, marriage, house and so on? What are the justified means and sources in this context? The method, however, is rather compact and difficult while al-Ghazali has simplified these discussions. To go through *Al-Ghiyathi* it is advisable to study it seriously as text books are studied. It is not necessary to agree on each and every point he has discussed. The principles he has drawn, however, are very important and we should benefit from them.

In the field of jurisprudential principles in this context, next to al-Juwayni is the great and well known personality of al-Ghazali. Among his prominent works in this subject are *al-Mankhul* of earlier period; *Al-Mustasfa*, written in the later period, and *Shifa al-Ghalil*. The last one deals with reasoned analogy (*qiyas*), its foundations, its pre-requisites both suitable and non-suitable, rather in detail. In all these books, he along with the juristic *istislah* has also discussed *masalih mursalah*. He has defined, for the first time, the five objectives (*maqasid khamsah*) explicitly. He clarifies :

“The objective of Shariah behind the creation implies: to protect their religion, their life, their intellect, their affinity and their property.”

Al-Ghazali has provided a number of examples for each of these five objectives. He also has maintained some order in these objectives, elaborating the ordinances in line with the triangular classification of *dharurah*, *hajah* and *tahsin*. In case of a clash between two interests how order will be maintained; and how priorities will be decided? All these issues he has discussed in detail. Muhammad Sajjad used to suggest the ulama of his age to go through *al-Mustasfa* and its discussions on interests and objectives thoroughly. Al-Ghazali has raised the issue of Shariah objectives also in his *lhya Uloom al-Din*.

Al-Ghazali was succeeded amongst the experts of jurisprudential principles by Fakhruddin al-Razi (d. 606 AH). His book *Al-Mahsul* also deals with the subject as the subsidiary one, and not as the main one.

The most distinguished personality after him in this field is of Shaykh Izzuddin bin Abdussalam (d. 660 AH). In my opinion before taking up al-Shatibi, the study of the book by Shaykh Izzuddin is essential for two reasons :

- i) Shaykh Izzuddin has elaborated the issue in a simple and easily comprehensible style without philosophizing it. That will help understand Shatibi, and
- ii) I think Shatibi would have thoroughly examined and critically studied Shaykh Izzuddin. In spite of full credit to Shatibi, Shaykh Izzuddin, therefore, may not be overlooked.

*Qawaid al-Ahkam fi Masalih al-Anam* the famous book by Shaykh Izzuddin bin Abdussalam is prevalent in the academic circles and is oft-circulated. The learned author has claimed that the ordinances of Shariah are legislated either for earning human interests or for removing harms from them. He also has discussed pure interest and pure harm is very rare in this world. Almost every interest carries some harm and every harm implies some interest.

The holy Quran pronounced this reality about the alcohol and the gambling :

“They ask you concerning wine and gambling. Say: ‘In them is great sin, and some profit, for men; but the sin is grater than the profit.’ (2:219).

It means even the sinful things imply some profits also. It is only in the Hereafter that every interest and every harm would be exclusively pure. In this world all interests and harms are mixed with each other. Shariah regulated them: if harm dominated interest it prohibited it and in the *vice versa* it declared it lawful. He has discussed this in detail with examples. He says:

“Most of the objectives of the Quran are based on the acquisition of human interests and their means and on the elimination of harms and their factors”.

The Shaykh further claims :

“The entire Shariah deals with interests either by earning profits or by removing harms. When you hear the Quran addressing by the words “O ye who believe!” think over it seriously. You will find the Quran either encouraging you for good, discouraging you from bad, or applying both simultaneously. Allah has spelled out in His book the harms some things imply, to avoid them and brought out good and profits some things have, to adopt them.”

(*Qawaid al-Ahkam*, vol. 1, p. 11)

Shaykh Izzuddin has another book on the subject, not so popular in the academic circles. Shaykh Risuni has described it in his article, already in your hand, entitled as *Shajarat al-Maarif wa al-Ahwal* that was not within his access. Now it is has been published with the title *Shajarat al-Maarif wa al-Ahwal wa Salih al-Aqwal wa al-Aamal* consisting of more than 500 pages. It is a pragmatic study on Shariah objectives and secrets and profits of Islam. He has applied the objectives to the ordinances with detailed evidence. One of the concluding sections of the book deals with human interests and profits in a simple language :

Beware! Allah has legislated each and every ordinance for the sake of a profit in this world or in the Hereafter as benevolence and favour on His behalf. No human being has any right upon Him otherwise. Had He revealed all the ordinances devoid of any interest or profit it was certainly as just and justified on His part as the legislating of those along with the profits and interests was a favour and benevolence. He has described Himself as *Latif* (Gracious to His servants 42:19) and *Rauf* and *Rahim* (the Kind and the Benevolent 9:117). He has told that He intends every facility for human beings and does not want to put them to difficulties (2:185) and that He is the Beneficent, the Merciful, *al-Barr al-Rahim* (52:28), and *Tawwab* and *Hakim* (24:10) Oft-Returning, Full of Wisdom. He being Merciful, Benevolent, Full of Wisdom and so on on necessarily requires that He should not task his slaves with difficulty, resulting in no gain in this world or in the Hereafter. He has called people to each and every thing that draws them closer to Allah and increases their grades in His eyes.” (Ibid; pp. 451-452).

Shaykh Izzudin Abdussalam has raised another principled issue in both the books *Qawaid al-Ahkam* as well as *Shajarat al-Maarif*. Umar, the second caliph is reported to have said: “A person, cannot be called a jurist until he is able to realize the lesser of two evils”. Everyone recognizes good, obedience, worship easily. The jurist is tested only when he is confronted with two evils and both may not be resisted simultaneously. He should then avoid the queater evil and opt for the lesser one. The Shaykh has provided an interesting case study here.

Suppose the confrontation for power in any country goes on between the two claimants: one is habitual of financial exploitation while the other usually commits murder, and disgraces the common man. There is no third claimant to power from amongst the just people. Whether we should stand aloof and be a spectator supporting none of them? The Shaykh says, no. If we did not try our best to bring to power the man who exploits financially only,

failing which the next claimant captures the throne, we would be sinful before Allah because we did not attempt to remove the greater evil. Shaykh Izzuddin has provided other examples also.

We are trapped in the same critical situation across the globe. In our own country we are confronted with this time and again. To know our effective role in the given situation we must study these writings. We should be aware of the objectives of Shariah and the gradings of ordinances. The book is quite significant in this perspective. Shaykh Izzuddin has also prepared an abridged version of *Qawaid al-Ahkam* which has been published.

In the succeeding generation Ibn Taimiyah and Ibn al-Qayyim are very important. They did not write any book precisely on the subject but the discussions made by them in their books reveal important points concerning the general objectives of Shariah and specific objectives of legal ordinances. Studying these writings will improve our understanding. Ibn Taimiyah writes in *Majmu al-Fatawa* :

“The Shariah came to gain interests and to perfect them, and to eliminate harms and to minimize them. It prefers the best of the two good things, and avoids the least of two evils. It seeks greater profit and avoid the greater evil.”

In this *Fatawa* Ibn Taimiyah has criticized that Shariah objectives to be confined into five. Hafiz Ibn Qayyim has added some points in his *Ielam al-Muaqqin*. The legal ordinances not accessible by analogical reasoning (*qiyas*) are justified otherwise by Ibn Qayyim to create conformity with *qiyas*, sometimes inconveniently and mostly in a genuine way. We should thoroughly study all of these discussions.

Apart from some subsidiary discussions on Shariah objectives made by some scholars in the later period the most distinguished scholar in this field is Al-Shatibi. His *Al-Muafaqat* is undoubtedly the most significant and valuable book on the subject. The method applied by him is, however, sophisticated and his



writing, thus, becomes less communicative at times. Now the efforts are being made to decode it. The book by Dr. Risuni, *Nazriyat al-Maqasid Ind Al-Imam al-Shatibi*; the work by Ismail Hasani entitled as *Qawaid al-Maqasid 'Ind al-Imam al-Shatibi* and some other books represent good understanding of the subject. Al-Shatibi sometimes claims some points without any argument. He for example claim that jurisprudential principles are certain and absolute. What does he mean by these principles? What is declared as certain? There is no justification for this claim.

Al-Shatibi has specifically stressed the point that after a thorough investigation and masterly study of the texts of Shariah some universality is decuded. This universality seems to be the objective of Shariah. This investigation however, must be exhaustive. The universality derived on the basis of this investigation is called by him as certainty of the principle. In a *khabr wahed* (a hadith narrated through a single channel) there are so many possibilities about the authenticity of the narration, about the understanding of the narrator, about the channel itself. But the universal principles derived from thorough investigation of Shariah texts is certain and more satisfying. The same was claimed in *Al-Istidkar* by Ibn Abd al-Barr, of Imam Abu Haneefah who had derived a number of certain principles from the investigation of the Quran and Sunnah. In case of clash between those principles and hadith, therefore, he used to justify hadith by another interpretation because the principles were framed by a thorough investigation of various texts. Those were more forceful than the *khabr wahed* which has more possibilities. This method is applied especially in the hanafid school of law. The scholars of jurisprudential principles have however, challenged it. The principle of investigation (*istiqla*) as applied by Shatibi should be traced out in the hanafid sources.

Amongst the jurisprudential principles and rules some are based on texts and some are derived through investigation (*istiqla*) The latter too are significant. These should be ascertained. What is the role of the jurisprudential rules in independent reasoning (*ijtihad*) and the deduction (*istinbat*); whether any legal position can be derived on the basis of these? It is a debatable issue itself.

The academic taste and the intellectual enthusiasm the Academy desires to create in the youth, also requires to make a deeper study, to be habitual of hard work and to evaluate critically. We should go beyond the journalistic approach and adopt research methodology in our works. Then only we may understand Al-Shatibi's approach and line of thinking.

In the succeeding generation the discussions on the Shariah objectives are found but no precise work on the jurisprudential principles is found. A long silence prevailed. The discussions made by Shah Waliullah of Delhi in his *Hujjatullah al-Balighah* are different in nature and style though very distinguished. The rationalism to come was checked in advance by him. He interpreted entire religion argumentatively, based on reason and intellect so that Muslim scholars might not feel any difficulty in representing faith through their efforts in the coming age of rationalization.

The nineteenth and twentieth centuries made this theme very popular and also significant. Muhammad Tahir bin Ashur from Tunisia authored his magnum opus *Maqasid a-Shariah al-Islamiah* and selected like Al-Shatibi, Shariah objectives as his area of studies and research. Ibn Ashur provided a new classification. He defined *maqasid 'aammah* (general objectives) in terms of profits and interests considered by the Lawgiver as common to all or most of Shariah chapters. Next to it is *maqasid khassah* (specific objectives) taken into account in some specific chapters by the Lawgiver as concerning transaction, marriage, trade etc. The third is *maqasid juzyiah* the objectives related to every issue individually.

From Tunisia itself came another thinker and scholar, contemporary to Ibn Ashur, namely Shaykh Allal al-Fasi who wrote *Maqasid al-Shariah al-Islamiah wa Makarimuha* on the same theme. This is a thought-provoking work and open up a number of novel issues for our reflection.

The subject of Shariah objectives is deeply rooted in the two juristic principles: (i) *istislah* (finding something suitable) more popularly known as *masalih mursalah* in the malikid school of law,

and (ii) *Istihsan* (literally approval and appreciation) practised especially by the hanafid school of law.

In the modern period, a number of academic works have been done by scholars on Shariah objectives. Dr. Saeed Ramadan al-Buti, in his book entitled as *Dhawabit al-Maslihah fi al-Shariah al-Islamiah*, has discussed the kinds of interests, grades of objectives, principles of preference in case of clashes in detail. Another title *Al-Maslihah 'ind al-Tufi* by Dr. Mustafa Zayd is also notable on the subject. Apart from this, the books published by International Institute of Islamic Thought, Washington on the theme of Shariah objectives are also thought-provoking. You may disagree or even criticize some issues raised in those books, but you cannot deny that IIIT has done a tremendous job to turn Shariah objectives into an independent discipline of jurisprudence. This should not be reduced to a branch of jurisprudential principles. They have widened its scope as well as its jurisdiction. They are trying to bring entire Shariah, and not only the practical ordinances within its jurisdiction.

Al-Ghazali had divided Shariah objectives into five. Some contemporary writers have attempted to provide a new classification that may enhance the relevance and utility of these objectives more in the modern context. The Islamic jurisprudence, is reclassified and re-chapterised by some scholars in modern times. Shaykh Mustafa Zarqa, for instance, has attempted it successfully. He, in his book entitled as *al-Madkhal al-Fiqhi al-Aamm*, has rechapterised and reclassified Islamic *fiqh*. If the Shariah objectives are reclassified, it will prove useful. Shariah objectives in individual life; in family life; in transactions; in international relations and so on may be defined to facilitate the understanding of these objectives. This will not be in opposition to the five objectives in any way. All the new classifications of the objectives would be actually incorporated by the five objectives of Al-Ghazali. It is very difficult to go beyond these five. But there is no problem in classifying these objectives afresh, meeting the requirements of the modern age, and turning them comprehensible so that Islam might

be introduced and interpreted in the most effective and convincing way.

This lecture too aims at offering some new dimensions of thinking and deliberations.

### Some Arguments

- Khalid Saifullah Rahmani

*Asrar al-Shariah* (secrets of Shariah), and *Maqasid al-Shariah* (objectives of Shariah) elaborated by Atiq Ahmad Qasmi in his lecture, are the two topics correlated but different in their details. The difference between the two should be maintained in the discussions. On the theme of *asrar al-Shariah* you have heard of *Ihya Uloom al-Din* by Imam al-Ghazali; *Hujjatullah al-Balighah* by Shah Waliullah; *Qawaaid al-Ahkam fi Masalih al-Anam* by Izzuddin bin Abdussalam who has mixed objectives with interests altogether. Apart from other writers on the secrets and rationale of Shariah I feel a distinctive feature common to the writings of al-Ghazali and Shah Waliullah. Both these writers have tried to portray the Islamic way of life in a rational and logical perspective. They have not only dealt with interests of legal ordinances particularly but have discussed the entire Islamic code which is coherent and systematic as well as in conformity with nature and reason. They have contributed a new method that facilitates the understanding of Islam.

The subject of the Shariah objectives was initiated by Imam al-Haramayn al-Juwayni and that it was culminated into the writings of al-Shatibi. The formulation of the subject was however made by al-Shatibi only. He formed the rules and regulations, and determined the priorities and their gradation as clearly and expertly, not traceable to any writer on the subject elsewhere. Since he was a jurist as well as a philosopher, his method became philosophical and sometimes complicated as Atiq Ahmad Qasmi has pointed out.

*Ielām al-Muaqqiin* by Ibn Qayyim is a notable work on secrets of Shariah as the learned speaker told. It may be noted here, however, the hanafid scholars have declared some ordinances as opposed to *qiyas* and Ibn Qayyim has mistakenly understood this stand of hanafids as opposed to reason and wisdom, and having supposed this he has made a long discussion describing the rationale of various ordinances. The issue is quite different. You know very well that being an ordinance – opposed to *qiyas* is entirely different from being opposed to reason and wisdom. The opposition to *qiyas* requires, the opposition to a similar event. This opposition, however, is based on interest and on another reason. Unfortunately, the scholars in the later period misquoted Ibn Qayyim claiming that the hanafids considered a number of ordinances as opposed to reason and interest. This point also should be kept in mind.

The learned speaker has pointed out another important point raised by me also in my welcome speech. The principles derived by al-Shatibi through investigating the holy texts thoroughly (*istiqla*) are sometimes treated by him as certain and absolute. While dealing with the authenticity of the objectives also, Shatibi has based his argument on *istiqla* (investigation) of Shariah. The principles recognized as certain are of great importance. I have quoted elsewhere, as I remember, Ibn al-Arabi amongst the malikids, and al-Karkhi amongst the hanafids, have explicitly argued the *Khawab*, opposed to certain and recognized principles of religion, would be interpreted otherwise. This would be titled *nass muawwal* (the text interpreted otherwise), and not *nass muhmal* (the text neglected). This interpretation may not be called *ihmal* (neglect) or *tatil* (suspension). Imam Abu Haneefah, while adopting this method, in his dealing with the issues as touching one's penis after having performed ablution, or touching a woman in the same state, has preferred the texts which conform to the certain and recognized principles. This method implies preferring one text to the other on the basis of the support of a certain principle of religion.

Atiq Ahmad Qasmi has rightly justified the classification of the objectives according to the contemporary circumstances. The

division of the objectives into five by the classical jurists was not rational; it was based on *istiqla* (thorough investigation). That may be revised. Also there is another trend leading to an extension in the understanding of the classification made by al-Juwayni and al-Ghazali. Shaykh Abu Zahra, for example, extended the protection of life with the following implications :

- i) protection of honour, dignity and self-respect.
- ii) freedom of opinion,
- iii) innocence of man unless he is proved to be guilty, and
- iv) protection against defamation.

Both the aspects are justified; the extension of objectives as well as the extension of their understanding and application according to the requirements of contemporary circumstances.

The golden saying of Umar al-Farooq, quoted by Atiq Ahmad Qasmi is so significant. I had read that anywhere but missed it. He says :

“A person may not be called a jurist until he is able to identify lesser of the two evils”.

I remember a saying of Abu Haneefah that reads: the knowledge of evils and the selection of the priorities in them is the real *tafaqquh*, the true understanding of religion. Thus there emerged a very important point from the lecture. It will channelise our thinking in the other sessions.

### Question Hour

#### Experiencing the Objectives

Mustafa Abdul Quddus :

I would like to know about the commentators of the Quran who have elaborated Shariah objectives in their *tafsir* works since the objectives being the nucleus of Islamic teachings must be incorporated in these *tafsirs*. Another lecture presented by the

C.D.also described the need of rationalizing all Shariah teachings in order to fully satisfy the addressees about the ordinances.

Secondly, the noble jurists undoubtedly must be aware of the objectives of Shariah. There is no problem in this requirement. The hanafid jurists in particular have maintained in their *fatawa* these objectives. They usually after having cited an argument from the texts in their favour, have argued on the basis of reason in order to provide some rationale. The preachers too, in my opinion, should experience those objectives. The Quran has emphasized this in the following verse :

“Invite (all) to the way of your Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious.” (16:125).

The third point relates to include in the objectives the examination of the legal ordinances in the light of medical science. The learned speakers have emphasized the need to interpret religion and the ordinances following a methodology that may rationally convince the addressees. Khalid Rahmani has quoted a number of events and personal experiences in this regard. With the advancement of knowledge people will certainly start questioning and challenging faith. The rationalization in this perspective becomes unavoidable. A Professor from Hyderabad has published his book on Islam and Medical Science in five volumes in Urdu. I therefore, suggest to include this in the framework of the objectives.

In our literature the words like *asrar*, *maqasid* and *ilal* all are used almost interchangeably. Khalid Rahmani, however, emphasized a specific definition and consequently a suitable classification. He demarcated *maqasid* as distinct from *asrar*. I propose a triangular division into *maqasid*, *asrar* and ‘*ilal*’. The ‘*ilal*’, in other words, is called *qiyas* oft-used by jurists. They find out a reason (*illah*) in the text-based issues and apply it to the non-text-based issues. *Asrar* implies secrets, wisdom, feasibilities, as represented in *Hujjatullah al-Balighah* and *Ihya Uloom al-Din*. The *maqasid*, in contrast, signifies factors, motives, and a response to the interrogative ‘why’. The Quran, for example, says:

“I have only created jinns and men, that they may serve me!” (51:56).

These issues should come under *maqasid*.

The fifth point concerns the widening scope of *qiyas*. You heard attentively to the lecture on the characteristics of Islamic Shariah. The speaker has generalized the *talil* principle. The *qiyas*, applied by jurists, also comes under *talil*. The jurists have confined this rationalization to legal ordinances. This should be applied to all the teachings of Islam. May I propose in this regard to retain the terms as such confined to the meanings special to them. It will, otherwise, create misunderstanding in future. The term *qiyas* by the jurists for a definite meaning should be left untouched. Other terms to convey some new concepts may be coined.

**Response :**

I think some questions crossed your mind, and you sought some clarifications consequently. It is a good sign to take interest in the lecture. You are attentive to the points raised, you are therefore welcome. The success of the Workshop lies in the exchange of thoughts, in the interactive experience which would enlighten our minds.

Responding to Mustafa Abdul Qaddus, may I be allowed to say that he himself is a religious scholar having insights in Islamic learning. Amongst the *tafsir* works oft-studied and oft-circulated, the commentators of the Quran who had mainly explained the verses of ordinances are important. They have thoroughly dealt with the issue. Imam Fakhruddin Razi is not after the verses of ordinances but brings out the secrets and logic working behind the entire Shariah while explaining the Quran. Amongst the modern exegetes *Tafsir al-Manar*, *Tafsir al-Maraghi* and some others try to root out doubts and confusion out of the mind. Amongst our elders the *tafsir Bayan al-Quran* by Ashraf Ali Thanawi excels the others. It is especially for the ulama. *Maarif al-Quran* by Mufti Muhammad Shafi also sheds light on such issues occasionally.



Mustafa Abdul Quddus was right in his suggestion that the preachers along side the jurists should be aware of the objectives and secrets of Shariah. Undoubtedly it will facilitate the *dawah* work.

The third point raised by him concerned benefiting from the employment of medical sciences. It is being done by the grace of Allah. We and all Muslims believe Allah has prohibited what is bad and impure (*khabith*) and allowed what is pure and good (*tayyibat*). Only those things are prohibited which are harmful as according to hygiene, human psychology. These prohibited things betray harms and damages unimaginable before. This tendency of seeking rationale may however prove dangerous. Pork is forbidden because of the divine pronouncement. This reason should be enough for Muslims whether they know or not its rationale. In case medical science explores the issue and suggests a number of profits and benefits in eating the pork it will remain as forbidden and disliked as before. Apart from this principled stand, I think with the increasing progress and advancement in scientific studies and research, the benefiting and profitable points in the things declared by Shariah as lawful, and the harms and side effects in the things declared by Shariah as forbidden would be established day by day.

One more point was raised that the *maqasid*, *asrar* and *ilal* should be separated from each other as specific terms. This talk was an introduction to the theme and historical development. These points raised are fundamental and require deep thinking and sound study. You are also required to think over the re-classification of objectives.

One confusion is about the lecture of Dr. al-Alwani . As a I have heard, and others share this feeling, he has not rejected the place of *tabbud* (worshipping exactly in the form revealed by Allah). He has instead, claimed that *tabbud* has a limited scope though *tabbud*, in my opinion, implies to follow each and every ordinance of Shariah. The majority of or all the ordinances of Shariah are based on the rationale that may be identified.

### **Differentiating *Maqasid* from *Asrar***

Saeedur Rahman Farooqi :

There is a difference between *maqasid* (objectives of Shariah) and *asrar* (secrets of Shariah). Whatever secrets and wisdom Shah Waliullah of Delhi has explored in *Hujjatullah al-Balighah* are basically reasons and rationale of ordinances. The objectives of Shariah, he has described, basically deal with the spirit of legislation on a particular issue maintained by Allah, and on which, keeping in view the entire texts, other issues may be applied. In this sense *maqasid* and *asrar* are different from each other.

### **Why an Independent Discipline ?**

Scholars and jurists have elaborated objectives varyingly as implied in jurisprudential principles through terms like *masalih mursalah*, *istihsan*, *sadd dhariah* (checking the means leading to evil) and so on. What were the exigencies that prompted constituting this an independent discipline? I think Muslim scholars have constantly discussed Shariah objectives. Al-Shatibi in the second volume of *al-Muafaqat* has thoroughly deliberated it and we are aware of his style, method and thinking. I do not know whether he has or not declared it as an independent discipline. We should comprehend objectives in their entirety along with their limitations, and should think of their application to the newly-emerging problems.

Whatever I understand, the motive behind the knowledge of objectives is two fold: (i) deduction of the issues on the basis of independent reasoning (*ijtihad*) to the maximum, and (ii) to promote *dawah* work and to convey the message of Islam to others.

The first purpose is being achieved by the grace of Allah through the Islamic Fiqh Academy India. The contemporary issues are being debated and resolved by the scholars.

As for the second purpose is concerned, I would like to know in this regard whether reason has any limitation. Under which rule of Islamic ordinances we may ask the human mind to remain confined? Atiq Ahmad has quoted two particular events: (i) the late Qazi's interpretation of juristic *kafa'ah* in terms of matching, and (ii) his own response in Pakistan to an objection against the gender-based distinction in Islam. The interpretation of matching may satisfy Muslims but non Muslims will challenge it.

The second issue directly concerns (*Kifalah*) the financial support the guardian of a girl provides. Now the situation has turned into *vice versa*. The girls now do not need any financial support. It will be very difficult to convince a non-Muslim by this interpretation. He will say: educate your girls, make them qualified to enable themselves to earn and support others. Shaykh al-Ulwani has claimed in his lecture nothing was *tabbud* and everything constituted rationality. I am worried to think everything may be justified rationalizing otherwise. If any useful suggestion is offered in this regard I would feel obliged.

### **Response**

Both the terms of *maqasid* and *asrar* are used in the Islamic classical literature as interchangeable. But in the modern times the word *asrar* has been used to communicate logic, wisdom, and rationale working behind the entire religion, that may persuade and convince others of *din*. The word *maqasid* has a limited and specific meaning. There is no watertight compartmentalization however.

Another important point raised by Saeedur Rahman Farooqi, questions the desirability of Shariah objectives being channelised as an independent discipline and its far-reaching consequences while it constituted a subsidiary subject of jurisprudential principles so far.

May I be allowed to clarify that the Prophet of Islam sent Maadh bin Jabal as the governor to Yemen. Before dispatching him the Prophet (pbuh) asked him how will he settle a disputes? He

said : By the Book of Allah. The Prophet asked him if he did not find anything in the Book? He said: By hadith. The Prophet asked if he did not trace in hadith too? Maadh said : I will perform *ijtihad* (Abu Dawud, *Kitab al-Sunan*, *Kitab al-Aqdiyah*, Hadith No. 11, Editor).

The *ijtihad* approved by hadith, is greater than *qiyas*. We should realize the principled *qiyas* had its boundary and limitations, which gives rise to wider and more extensive *ijtihad* which is performed in the issues supported by various texts, or supported by a verse or a hadith but it implies so many aspects of meaning. Dr.Taha Jabir al-‘Ulwani has emphasized was the practice of *ijtihad* by the holy companions and not of any *qiyas*. *ijtihad* is more broader and comprehensive than *qiyas*. The *ijtihad* implied the objectives in the greater canvas.

You may be reminded of the issue of the conquered land of Iraq (*sawad*) under Umar al-Farooq, the second caliph of Islam, whether it should be distributed among the army men or be preserved by state for future generations. The discussions on the issue made by the holy companions consisted largely Shariah objectives in a broader canvas. Umar quoted a verse from the Quran in his favour and the consultation was concluded, though a number of companions disagreed in the initial stage with the inference worked but by him from the holy verse.

On the issue of the compilation of the Quran, the discussions made by Umar, Abu Bakr and Zayd bin Thabit did not apply *qiyas* in its technical meaning; the principle of *ijtihad* in the light of Shariah objectives and general interests, was employed instead. This, however, constitutes an other debatable topic.

The principle of *qiyas*, as the questioner has rightly raised, has been applied exaggeratingly sometimes. To check this exaggeration only the malikids introduced the principle of *istislah*, and the hanafids the principle of *istihsan*. Even in case of a ‘*urf*’ (commonly practiced), you know well, if it contradicts stimulated *qiyas* the former will be preferred. In the later period, a trend of applying the particulars on the similar particulars in legislation

emerged and this damaged more. In case we confronted a new situation, we did not turn to the texts seeking the objectives of Shariah. We, instead, sought a similar particular in our literature and issued a legal verdict.

In the modern period when confronted with the issue of paper currency to be sold with excess in exchange was legal or illegal there arose so many confusions and implications. A paper currency bearing the value of 100/- might be sold in exchange of another currency of the value of 1000/- was highly complicating. Ahmad Raza Khan having inferred from *Fath al-Qadeer* or some other sources issued a legal verdict hastily. He did not bother what consequences would it leave and what repercussions would it result in future. In this trend of applying some particulars on the similar particulars Shariah objectives are usually overlooked. Facing the complicated issues and challenges in the contemporary age we should apply *qiyas*, the *ijtihad* and the *maqasid* in a broader perspective with a wider canvas.

Illustrating a case does not mean to repeat the same. Talking in terms of the addressee that might convince him, is important. We should address people keeping in view their mentality as well as the situation. As for persuading the non-Muslims about Islam is concerned, it is too difficult to convince even Muslims of their faith. They also argue otherwise. We are obliged, however, to talk convincingly. A number of pious individuals as well as institutions are working among non-Muslims. This is the responsibility of a jurist, a scholastic theologian to interpret Islamic teachings in accordance with the level of understanding and mentality of the age. This is an important responsibility to be performed by them.

### **Textual or Non-textual objectives**

Asad Qasim Sambhali :

I was attentive to the lecture delivered by Atiq Ahmad Qasmi. Some points more attention :

- i) Undoubtedly objectives of Shariah have been the most important subject of interest in our books of jurisprudence. The problem lies in the inference of non-textual objectives which will create a controversy about the issue. The textual objectives are unanimously agreed, but other objectives would be varyingly interpreted by different scholars, possibly contradictory to each other. What will be the criteria to judge the authenticity of a non-textual objective?
- ii) Atiq Ahmad Qasmi has referred to a situation in which the entire society would be dominated by prohibited acts and doings (*haram*) and the whole ummah would be legally placed under an *idhtirar* (the forced and coerced exigencies). The state of *idhtirar* described in the Quran providing maximum relaxation, is specifically for the select individuals applying this very rarely. This may not be applied to the whole *ummah* numbered in crores. Whether we should be satisfied with this state of *idhtirar* or try our best to free our selves from this state of affairs This may kindly be clarified.

**Answer**

The difference in non-textual objectives may not be escaped. In case of a non-certain thing the difference of opinion is desirable. If there are stimulations and suppositions, if the scope of *ijtihad* or *istinbat* covers an area the difference is possible. In finding out a reason, in applying *qiyas* as our ancestors applied, there would emerge a number of opinions that do enhance sometimes the possibilities for the *ummah*. In such circumstances we would prefer a stand that may bring the *ummah* out of suffering. This situation is not alarming one.

The state of collective *idhtirar* was quoted from *Al-Ghiyathi*. You may not agree on it. You may disagree with Al-Juwayni and Al-Ghazali too. I do not take it as the final verdict. But the situation in which we are living, and the phenomenon that

confronts us are very dangerous. In the given circumstances we may not deny the possibility of collective *idhtirar*.

I repeat again, Al-Juwayni has applied the criteria of individual *idhtirar* to collective *idhtirar*. This criteria is about life in danger. It will be incorrect to place (*hajah*) common interests on the level of *dharurah*. The entire discussion of *Al-Ghiyathi* is interesting.

You may disagree on it. I have just referred to it.

### **Issue of Kafalah**

Zaheer Ahmad :

The right of denial and resistance awarded to the guardian of a daughter in her marriage is supported in fiqh literature by an '*illah*' (specific reason) which is not confined to *Kafalah* (the financial bearing). It is a subsidiary reason. The main reason is the guardian's feeling of meanness (*danaah*) being the custodian of a daughter. It is an explicit reason about which everyone may be convinced. By arguing with the rationale of matching only a transitory satisfaction may be provided.

I too, like others, feel unsatisfied with the division between *maqsad* and *maslihah*. We may take *maqasid* (pl. of *maqsad*) as a general term covering *masalih* (human interests) accordingly. The interests (*masalih*) are further divided into those based on *illah* (reason), and the others based on *asrar* (secrets and logic). The difference between the two will be maintained as '*illah*' (reason) of an ordinance would be exclusively one. Since *illah* is correlated to *malul* (reasoned) it may be only one at one time because a gap and distance between the two is logically impossible. The secrets, in contrast, may be numerous. The logic and rationale behind the issue of *Kafalah* may be matching as Atiq Ahmad has pointed out, and may be equally those described by the classical jurists. If we mean by the term *masalih* reasons (*ilal*) it may be covered by the term *maqasid*. Some *masalih* are textual while others are in the category of *asrar*.

## The Five Objectives

Mujibur Rahman Atiq Sambhali :

When we deal with the subject of Shariah objectives it is generally classified into five objectives on the one hand and secrets and interests on the other. These five objectives or secrets are basically an expression of a reality in Shariah. This reality is described in the Quran as under :

“He has imposed no difficulties on you in religion”  
(22:78)

The principles framed in this context by jurists, also underscore this reality. The jurists have formulated:

“The difficulties would be certainly replaced,” or

“The difficulty always leads to facilitation.”

The classification of objectives into five made by Al-Ghazali is not final. There is the possibility of modification, addition as well as deletion. The *masalih* (interests) are also divided into three (i) *masalih mutabarah*, the interests which are taken into account by Shariah (ii) *masalih mulghah*, those rejected or overlooked by Shariah, and (iii) *masalih mursalah*, those derived from the texts and not rejected by Shariah. Shariah owns the certain texts including *istislah*, *maslihah*, *masalih mursalah* as evidence, in order to resolve calamities, emergencies, new situations by applying its rules and objectives on the basis of which we may infer a new legal position. It seems rather confusing. Why do we accept an expression of a reality in Shariah as a base to resolve new problems, while all the discussions around the *maqasid mursalah* are based on the stimulations and suppositions? I may agree with Dr. Mustafa Zarqa and Maruf Dawalibi who have classified *ijtihad* into *bayani* and *istislahi*. In *ijtihad istislahi* is the role of *qiyas* and *istihsan*. In the cases where *masalih* (interests) provides the base for resolving cases, is employed *qiyas* actually in my opinion. The stand of the jurists and the experts of jurisprudential principles, of *masalih mursalah* to be employed for the resolution of new issues and problems, is questionable. To what extent may we accept these



*masalih*? And what is our base to employ them as the evidence for the new situation? What will be its legal position?

### **Response**

Zaheer Ahmad as well as Mujibur Rahman Atiq have raised the issue of *Kafalah* with their reservations. Al-Ghazali's classification is not the final one. You may come forward with another classification. I have already indicated towards the efforts being made in this direction to meet new requirements. Al-Ghazali himself had no such claims. There is no such restriction.

### **Grading Evil**

Ahmad Nadir :

Atiq Ahmad has emphasized well on the unavoidability of the knowledge of lesser of two evils and harms. It was also discussed in this august gathering that the proportion of the severity of an evil may be varying depending the circumstances. For some individuals the same evil may be proved more harmful and damaging than others. The question arises how the criteria of a proportion would be determined in the light of Shariah? How will we decide that the evil under discussion qualifies the juristic principle of "The difficulties would be certainly replaced" and "The difficulty always leads to facilitation"? Is there any universally applicable principle in this regard?

### **Response**

Deciding the lesser of the two evils is the duty of you all muftis and ulama. You will be consulted in the field of what is the lesser of the two evils. It is your responsibility to work hard, to apply your mind, to assess the prevailing situation. There is no ready made formula in this regard.

### **Understanding the *illah* and Wisdom**

Muhammad Ali Nadwi :

The base for inferring the ordinances is *hikmah*, the wisdom. Since it is not systematized the jurists have used the term *illah*, the reason in its place. This too is inferred from Shariah, as the relaxation in the worships in the state of travel, or illness is provided. There are no complications in this regard.

### **Response**

I agree with the clarification made by Muhammad Ali Nadwi. You all are aware of this.

I am thankful to all of you for taking keen interest in the lecture and sharing your valuable views with me. I hope you will be likely attentive to all the coming discussions.

### **A student from Jamia Hamdard**

The pork is scientifically proved to be the best nutrition. By the modern research a specific cream was found in pork. When it was mixed with the rice it increased the size as well as productivity. The same case is with the wine. The alcohol is used in the 99% medicines. This is the best method to survive the medicine for long. Likely the usury has become unavoidable in the modern banking system.

### **Response**

Khalid Saifullah Rahmani :

Being a student of B. Pharma you are aware of the historical development of Unani medicine. This was owned by the Greeks who had used the alcohol in the pharmacy. When this was accessed by the Muslim doctors and pharmacists they provided the alternative in the form of honey to stabilize the medicines.

The side effects of alcohols are indisputed. It damages the body, the mind, the ethics of the human being. It is the duty of you Muslim pharmacists to provide a legal and ethical alternative to alcohols. If you work hard and conduct researches seriously you will be able to provide such alternative Allah willing. Those who govern the world of scientific studies and researches are not only

unaware of but antagonist to Allah. They, therefore, present what concern the ethical values and negate them, as unavoidable for human society. Allah Himself has admitted some profits in the alcohols and gamblings but He declared that :

“But the sin is greater than the profit”. (2:219)

All the things created by Allah have some aspects of profit in their design. But we have to assess whether the tilting balance bears the profit or the harm and then to decide accordingly. We should also maintain both the aspects of body and ethics while assessing any harm. Seeing in this perspective you will be in a better position to decide.

### **Objectives of Shariah A Continuation since the Early Islamic Period**

- Dr. Taha Jabir al-Alwani

The topic of discussion in today's gathering revolves around the issue that because of the neglect of or maintaining not

the Shariah objectives in the jurisprudential issues, how was strengthened the feeling that the Shariah represented the past age only and could not resolve the issues of each and every period, since the legal verdicts being issued in connection of the contemporary problems were creating the narrowness and the sufferings.

Both the sources of Islamic Shariah, the holy Quran and the Prophetic hadith are explicitly elaborating that the ulama should issue the verdicts that conform the circumstances more, bear no narrowness, prove no more unaffordable nor overlooking the human interests.

In this age of advancement of other civilizations it was quite natural to emerge in each hour and in each second the issues and challenges if not responded well the people will have distanced from the Islamic jurisprudence and have consulted other laws outside the realm of Shariah for their satisfaction. In this situation, may Allah preserve us, the apostasy will have dominated. The people would be trapped by the movements opposed to Islam or far from Islam at least. Some dared to ascribe the short-handedness and inability to Islamic Shariah and wrongly claimed this Shariah was incapable to cope with the changing circumstances and ever-emerging problems of human being. They were either unaware of Islamic Shariah or they misunderstood the opinions and legal verdicts of the jurists taking them as Islamic Shariah itself. The short-handedness and disqualification of a jurist, thus, created a negative feeling against Islamic Shariah.

Some ignorant minds produced another thinking that the teachings and ordinances of Islamic Shariah belonged to the Hereafter, and that they constituted the worshipping rituals (*tabbud*) only, and that they do not qualify to resolve the issues in human life called in legal terminology the civil and criminal law. They forget, or try to overlook, the main objective of Islamic Shariah is to regulate the human life in a way that may fulfill the objectives of Allah towards the human being. Allah clearly pronounces :

“We sent aforetime our apostles with clear signs and sent down with them the Book and the Balance (of right and wrong), that men may stand forth in justice”. (57:25)

The holy verse quoted herein does not describe the purpose of the revelation lying in to evaluating the deeds and acts to be performed in the Hereafter. The Hereafter is the abode of reward or punishment, and not the abode of acts. The issues concerning the *tabbud* are limited and enumerable . In order to prove the feasibility of Shariah for each and every phase of life in all the parts of the world and to express its capability to face all the challenges of the age, what we need is the true understanding of the Shariah objectives, and the knowledge of the easier methods to apply them accordingly so that the jurisprudence codified in the light of these objectives might fulfill the Creator’s objectives towards the created, and might provide a suitable response to all the new problems and lead them rightly.

Some historians of the subject of the Shariah objectives have mentioned that the idea of the objectives to be formulated was first discussed by Imam al-Haramayn al-Juwayni. From him borrowed it Al-Ghazali. Then some rules and regulations were worked out by Izzuddin bin Abdussalam and Al-Shatibi better known as the theorizing personality. Some scholars have discussed the Shariah objectives as one of the sources of the Shariah and have highlighted its historical role in the process of legislation. I do not agree with these historians and scholars.

The holy Quran itself has elaborated the reasons for the ordinances. The hadith has complimented these reasons. The companions detailed these logics and rationale. If any ascription is deemed necessary it should be first ascribed to Abu Bakr and Umar bin al-Khattab. They after the sad demise of the Prophet (SAW) confronted the new issues and while dealing with them maintained the Shariah objectives. If these objectives were not fully taken in view by Abu Bakr – he, though, did not use the term *maqasid* (objectives) nor he verbally offered them in a principled way – he was not to wage jihad against those who had differentiated the

*salah* (prayer) from the *zakah* while these were the two pillars of Islam. Those who retained the adherence to the prayers, but declined to pay *zakah*, were declared by Abu Bakr as the apostates (*murtadd*) and were fought against inspite of the differences of opinion on behalf of the majority of the companions present including Umar. Because of his deep insight into the objectives of Shariah, Abu Bakr realized in case of any lenient attitude towards the apostates the *ummah* would be rooted out before having firmly grounded. And in this case the fundamental objective of Shariah – witnessing the truth by Muslim community over the world – would have disappeared and the vicegerency of the prophethood would have no more survived. In case the Muslim community does not retain its position as the witness over the nation, the falsehood, the deviation, and the polytheism would dominate the world and check the human life. Due to his clear vision of this objective of Shariah Abu Bakr stood firmly for his stand. It was the great personality of Abu Bakr who challenged publicly :

O People! You interpret the following verse otherwise:

“O Ye who believe! Guard your own souls; if you follow (right) guidance, no hurt can come to you from those who stray.” (5:108)

While I have heard the Prophet (SAW) saying :

“You must gripe the hand of oppressor and force him to the righteousness, otherwise Allah will impose upon you the others”.

(Abu Dawud, Kitab al-Malahim, Hadith No. 17, Editor)

This was basically a true understanding of the Shariah objectives and an honest realization of the aims the Shariah inherits.

During the period of Umar bin al-Khattab, the second caliph of Islam new issues and events confronted frequently, which pressed him to take refuge to the Shariah objectives and to rationalize the ordinances. Some scholars hold mistakenly Umar had suspended the 24 ordinances as they ascribed to him. Actually Umar maintained the objectives unlike most of the holy

companions. In the issue of *khums* dealing with the share of the family of the Prophet (SAW) was maintained the Shariah objective. In all the issues of the *muallafat al-Qulub* (whose hearts have been reconciled to Truth), misuse of the triple divorce in a sitting and other newly confronted issues. This maintenance was basically the actualization of the Shariah texts in to form of the principles universally applicable, though there was no partial text or was not explicitly clear the Shariah objective as a partial evidence in the mind of the *mujtahid*. It was enough the universal arguments inherited the objectives in their design, and expressed in the certain forms the reason of which was described by Umar while interacting them. It is true Al-Juwayni constituted them in the form of principles. It, however, does not mean, the idea of objectives is a product of post-companions and post-followers of the companions period.

Some experts of the jurisprudential principles have discussed the Shariah objectives in the paradigm of *qiyas* and others have touched it under the title of *maslihah*(interest). They could not describe separately the objectives as an independent discipline of arguments by which the Shariah ordinances might be inferred, and respond to the major portions of the issues, and remove the allegation that the texts are limited while the events are unlimited. They, in other words, prescribe the events as the applying qualification but replace this qualification of application from the Quranic verses. The Quranic verses are, in contrast, beyond the boundaries of the factors of time and space.

Undeniably these objectives were described by Imam al-Haramayn in his two books namely *Al-Burhan* and *Al-Ghiyathi* more important in the formulation of rules concerning the Shariah-based polity. Al-Ghazali added him in his book *Al-Mustasfa* and more elaborately he discussed these issues and also the grading of the objectives in his next work entitled as *Shifa al-Ghalil fi Bayan al-Shibh wa al-Makhil wa Masalik al-Talil*. He highlighted the consideration of the objectives while giving legal opinion and their relations with the ordinances. He emphasized the suitable meanings concern the consideration of the objective religious or worldly.

Both the kinds of objectives are to be achieved as well as to be retained. He declared everything out of the realm of the objectives as inappropriate. He also described the grades of the objectives and the methods to prove them. His another work *Inya Uloom al-Din* also contains the rationale and the logic working behind a number of ordinances. Whatever was discussed by Al-Ghazali was the brief, and the descriptions made by his ancestors were shorter. On these only the later writers based their schools in the Shariah objectives.

Shaykh Izzuddin bin Abdussalam (d. 660 AH) composed his *al-Qawaid al-Kubra*, the most appreciated book. Haji Khalifah in his *Kashf al-Dhunun* declared it as unprecedented in the history. His another title is *Maarif al-Qawaid al-Sugra*. These books are available in the printed form and are oft-circulated. His another book *Qawaid al-Ahkam fi Masalih al-Anam*, printed time and again, detailed the interests the ordinances implied and the exempted ordinances also, and pointed out the methods to access them. He also described the difference between the interests and the harms and their kinds and grades. He said the ordinances accompanied the reasons and with the replacement of the later the ordinances too are replaced.

Shaykh al-Islam Ibn Taimiyah and his student Ibn al-Qayyim also dealt with the subject. Ibrahim bin Musa Lakhmi Shatibi (d. 790 AH) wrote his magnum opus *Al-Muafaqat fi Usul al-Shariah*. This book provides an exhaustive detail and adds the ancestors extensively. This is the most important as well as the comprehensive book written so far in the subject. He in this book and also in *Al-Ietisam* discussed the Shariah objectives. He differentiated between the objectives of the Lawgiver and the objectives of the human beings. He classified the objectives of the Lawgiver in to four :

1. fundamental objectives of the Lawgiver in the legislation,
2. objectives of Legislation in terms of understanding,
3. objectives of legislation for tasking with the ordinance,
4. objectives of legislation for obeying the Shariah



In spite of our recognition of his contributions and of his precedence in the subject it is evaluated that he did not elaborate the first category up to the mark. He rather included all those objectives in the third category of complementing the interests of the human beings dividing them into three grades : (i) *dharurah* (ii) *hajah* and (iii) *tahsin*. This, however, was a major contribution that opened the door of rethinking and deliberation to the coming generation of ulama to strengthen the discipline by enriching it.

The fundamental objectives of Lawgiver by the legislation were fully attended neither by al-Shatibi nor successors. All the deliberations revolved around the three grades of *dharurah*, *hajah* and *tahsin*. The *dharurah*-based objectives were confined to five only, known to all of you. But neither al-Shatibi nor his successors could elaborate the first category of the fundamental objectives of the Lawgiver in such a way that a jurist or an expert of jurisprudential principles would have preferred them over other sources of Shariah succeeding the Quran and the hadith. This was the reason why I selected this for the further studies and research especially when the project on the *fiqh al-aqalliyat* (the jurisprudence for Muslim minorities) was started. While going through this project we realized a number of controversial arguments did not correspond the modern challenges and crises. The Quran and the sunnah, in contrast, in their purview of objectives and universally applicable principles lead us to ordinances and responses accordingly meeting the requirements of a plural society. To these Quranic objectives and universal principles the jurists are not familiar so far. We could not express them so explicitly that a jurist should turn to them in order to provide the essential answers to the abundantly emerging new issues and problems. I would be able to express better in my another lecture on the theme entitled as *al-maqasid al-Quraniah al-hakimah* (the Governing Quranic objectives), the issues relating to Muslim minorities. I think in view of the circumstances in India, you will also share our project and all of us will be able to expose the governing Quranic objectives, Allah willing.

**A Cursory Sight at the History of the Objectives**

- Dr. Salahuddin Sultan

To understand how the objectives of Shariah were maintained in the legislation under the noble Prophet of Islam (SAW) we illustrate the following :

Concerning the Shariah objectives the most important event is that of demolishing the masjid *Zirar*. The construction of mosque is amongst the objectives of Shariah. It was commanded to build a mosque in every Muslim population. In case the population of any region is reluctant to call for the prayers by the *azan*, that will be fought against though calling for prayer is desirable only and not obligatory. It is so because maintaining the mosque and heightening the words of Allah is amongst the noble objectives. The hypocrites, however, planned to continue their conspiratorial activities behind the Shariah objectives. They built the mosque and intended to accumulate all those who hated the Prophet of Islam (SAW). They tried to make the mosque inaugurated formally by the Prophet (SAW) to get the licence for all their mischievous activities, but Allah informed him in advance and revealed the following verses :

“And there are those who put up a mosque by way of mischief and infidelity to disunite the believers and in preparation for one who warned against God and His Apostle afore time. They will indeed swear that their intention is nothing but good; but God does declare that they are certainly liars. Never stand you forth therein. There is a mosque whose foundation was laid from the first day on piety; it is more worthy of you standing forth (for prayer) there in. In it are men who love to be purified; and God loves those who make themselves pure.” (9:107-108)

The Prophet (SAW) consequently burnt this mosque into ashes. This reveals if an objective is misused that will be checked anyhow. What is the objective of the Lawgiver concerning the mosque? The Prophet has pronounced :

“One who constructed a mosque to please Allah, for him Allah will build a house in the Paradise”.

The objective of constructing a mosque lies in the pleasure of Allah. The mosque constructed by the hypocrites aimed at the mischief and not the pleasure of Allah. The intention was made as opposed to the objective of the Lawgiver and the mosque, therefore, was commanded to be burnt in to the ashes.

In the second event under the Prophet (SAW) an woman was carrying secretly a letter to Makkah written by Hatib bin Abi Baltah having informed the Makkans of the urgent attack by 10 thousand Madinite Muslims. The Prophet did not intend to leak the news out. Abdullah bin Zubayr and Ali bin Abi Talib checked the woman in her way and demanded the letter but she denied. (This is perhaps a typographical error. According to Ibn Kathir (*Al-Bidayah wa al-Nihayah*, vol. 4, p. 238. 1932, Egypt.) the companion engaged in the said event was Zubayr bin al-Awwam, and not Abdullah bin Zubayr. Editor). They felt as if the letter accessed the Makkans who consequently in their defence in advance attacked Madinah thousands of Muslims would be killed, the sanctity of the city would be destroyed and the whole Arabia would have blame the Muslims to wage war even in the prohibited months. Keeping in view the greater interest they finally threatened her to be reduced to be naked. For the sake of a larger interest and to avoid a greater harm they intended to afford a shorter harm of putting the dresses of woman out to identify the letter.

In the third historic event the 10 thousand soldiers of Banu Ghitfan seiged the city of Madinah and the Jews of Banu Qurayzah too broke the agreement with the Muslims. The Prophet (SAW) was pressed by the circumstances to reconcile with Banu Ghitfan at the payment of 1/3 products of Madinah. At this moment Usayd bin Hudhayr and Sad bin Maadh, the two great chiefs intervened. They expressed their determination not to pay this to Banu Ghitfan, they did not afford this in the pre-Islamic period, and now they were graced and honoured by Islam how could they bear this insult? Before taking this firm stand they first sought a clarification from the noble Prophet (SAW). This was the most important clarification and today we are obligated to keep in view always this clarification. They asked: O Messenger of Allah! Is this a revelation we are

obligated to follow or a war strategy? The Prophet clarified that was a strategy and not a revelation. They reacted not to pay a single grain. They tore finally the agreement paper into pieces.

These events reveal how the objectives of Shariah were realized and put into practice under the Prophet (SAW) who maintained them well alongside the partial text and ordinance. Under him the objectives always specified the particular texts.

In the history of Islam the objectives theory was always worked out and accordingly implemented. A cursory description is made below.

In my view all the jurists and experts of jurisprudential principles, except the Zahirites and some Shiites, have been applying the theory of objectives. And in the pragmatic applications no jurist or school of law has ever overlooked the theory of objectives, or ever not rationalized the Shariah ordinances practically, whether this reason was based on the text directly or was inferred indirectly from the text. The difference in these jurists lies, however, in their method. Some incorporated the reason according to their natural instinct and mentality while others dealt with it as a theory.

The rationalization (*talil*), thus, was made on the two levels:

- i) application, as the case was with the Arabic poetry. Did the Arabs not compose the poetry until Khalil bin Ahmad Farahidi formulated its rules and grammar? Arab used to compose the poetry according to their natural taste. Khalil formalized this later on, and from him benefited those who employed his formulation well as well as the other poets. Every poetry inherits a coherence, a paradigm, an scanning to be followed necessarily. Reciting it with the measures and the rhythms is another matter. The objectives theory, likewise, was being incorporated by the great jurists recurrently. I, therefore, do not admit any school of law has overlooked entirely the theory of objectives. That school of law, otherwise, would be accused of

lacking any intellect as well as any thought. How did they infer the legal ordinances then? All the founders of the four schools of law employed these objectives in their inferences of legal verdicts.

- ii) Theorization, it should be traced out in the history. The theorization in the *nahv* (the Arabic grammar) and the *ilm al lughah* (the etymology) was also made later on.

In the third century hijrah for the first time we find Hakim Tirmidhi (d. 275AH) to use the terms of *maqasid* and *ilal* in his books titled *Al-Salah wa Maqasiduha* and *Al-Hajj wa Asraruh* to connote the objectives of *tabbud* (worshipping rituals) and their ordinances. He also wrote a treatise entitled as *al-Furuq*. Abu Mansur Maturidi (d. 333 AH), better known in the field of beliefs, also interacted the Shariah objectives in his book *Maakhidh al-Sharai*. Abu Bakr Qaffal al-Shashi (d. 365 AH), better known as Qaffal Kabir, has discussed the reasons and the secrets the Shariah imply, in his work *Mahasin al-Shariah*. The book of Abu Bakr Abhari (d. 375 AH) entitled as *Masalat al-Jawab wa al-Dalail wa al-Ilal* also deals with it. The subject of *Al Muqni fi Usul al-Fiqh* and *al-Ahkam wa al-Ilal* is also the same. All these were the efforts made in the subject of the secrets and interests of Shariah.

The first seed in the field of the theory of objectives historically speaking was sowed however, by Imam al-Haramayn Abdul Malik al-Juwayni (d. 478 AH). His two books are significant namely *Al-Burhan* and *Al-Ghiyathi*. The later is more important. I suggest all those desirous to understand the juristic mind and Islamic polity, to study it deeply. These were edited by Dr. Abdul Azim al-Dib. The full title of the book reads as *Ghiyath al-Umam fi Iltiyath al-Zulm*. It was also edited by Mustafa Hilmi, my teacher but the editing of Dr. al-Dib is more valuable and masterly. Al-Juwayni for the first time, divided the interests into *dharurah*, *hajah* and the one entirely different from the two as the hanafids classified the hadith in to three: *mutawatir*, *mashhur* and *khabr wahed*. Al-Juwayni described a fourth kind also and declared it very rare, whose clear rationalization and specific objective is not exposed.

For instance, why the prayer at sunset consists of three *rakats* and the prayer in the early dawn includes of two *rakats* only? Why do we kiss the Black Stone placed in the holy Kabah? These ordinances having no clear reason are however, rare.

Al-Ghazali (d. 505 A.H.) further elaborated the interests and divided clearly them into *dharurah*, *hajah* and *tahsin*. He also rationalized the *ibadat* (worshipping rituals) and discussed the rationale for *tayammum*. To Al-Juwayni the rationale for *Tayammum* is to declare the earth a means of cleansing in place of water. Ibn Ashur has discussed the objective of *tayammum* in creating the sense that a person can not perform the prayer without cleansing himself. Both the rationale emphasize on the physical make up before entering the prayers.

The seeds sowed by al-Juwayni were cultivated and nourished by al-Ghazali who turned the discussions into a science. After having classified the interests in to *dharurah*, *hajah*, and *tahsin*, he divided the objectives in to five; protection of faith, life, reason, affinity and property. The terms like *nasab*, *bidh*, *nasl* and *ird* were not so clear to Al-Ghazali. He interchangeably used them. He however was the first scholar who elaborately discussed the issue so extensively. He provided the foundation on which al-Shatibi constructed so beautiful building of the theory of objectives.

Apart from al-Ghazali and al-Shatibi, Fakhruddin Razi (d. 606 AH) too has enriched the subject. His book *Al-Mahsul* provides a summary of *al-Mutamad* by Abul Husain, of *al-Mustasfa* by al-Ghazali, and of *al-Burhan* by Dr. Taha Jabir al-Alwani. This editing bears the standard of research as well as the flowing river of knowledge. This only provided me an association with the learned scholar. Razi could not maintain the five objectives. His sequence placed the life, the property, the affinity, the faith and then the mind. In another writing of his he described the life, the mind, the faith, the property and the affinity, another order he maintained here. Saifuddin Amidi (d.631 AH), another scholar also summarized, like Razi, the above mentioned books in his work titled *Al-Ihkam fi Usul al-Ahkam*.

This was the period of summarization. These summaries, however, inherited the thought-based points also. Some novel thinking too was introduced. Some of us wrongly think the noble jurists did not maintain the Shariah objectives. We should think over the statement of Ibn Abdul Barr who says: “Nothing is more damaging to knowledge than the mentality that the ancestors did not leave any project to be complemented by the successors”. It imply there is no need to original work. The learning by heart, the summarizing is enough. By remembering the texts the issues may be refreshed but it does not suffice. It is unavoidable to think and re-think. The role of Islamic academies may not be reduced to the description of the past issues and challenges. We have heard Muhammad Rabey Nadwi, Khalid Saifullah Rahmani. Dr. Yusuf Qaradhawi all of them complaining of emerging new issues. In case all the *mujtahid* imams of the Islamic past are assembled altogether they would be surprised to see the most complicated issues in abundance, would have called the *majlis al-fatawa* time and again and then would have dared to decide the issues accordingly. Today, very unfortunately, a mufti gets up and issues a legal verdict that this is forbidden or we should treat it forbidden as a precaution. In our city four persons embraced Islam. After some time they used to claim that entire Muslims of the world except those four are *kafir* (pagan), and the faith of the fifth person is doubtful and therefore, as a precaution he should also be declared as a pagan. The whole *ummah* was reduced to four. How locked is this mind! Unfortunately we are trapped by this great disaster too!.

Aamidi, for the first time, included the priorities concerning the *qiyas* in to the objectives (*maqasid*). In case of a contradiction in the *qiyas* (analogical reasoning) how the preference will be made? He said in the given situation the Shariah objectives will provide a base for preference. He also changed the order of the five objectives in the following: the faith, the life, the affinity, the intellect and then the property in the last. The same order was maintained by almost all the coming scholars. It is, in other words, in the additions made by Aamidi.



Ibn Hajib (d. 646 AH) came after him providing some details in the priorities described already by Aamidi and thus enriching slightly the subject by his book entitled as *Muntaha al-Wasul wa al-Amal fi Ilmay al-Usul wa al Jadal*. Baydhawi (d. 685 AH) wrote *Minhaj al-Wasul ila 'Ilm al-Usul* and divided the issue into two kinds: worldly and Hereafter-oriented. He further classified the worldly interests into *dharurah*, *maslihah* and *tahsin*. He used the term *maslihah* instead of *hajah* while *maslihah* (interest) is implied in the *dharurah* and *tahsin* also. This was a new thinking in other words. This is basically a difference of terminology and nothing else. Then comes Jamaluddin al-Isnawi (d. 772 AH) who preferred the affinity over the intellect in his book *Nihayat al-Sul fi Sharh Minhaj al-Usul*. Ibn al Subki (d. 771 AH) wrote his book titled *Jama al-Jawami*. Izzuddin bin Abdussalam (d. 660 AH) compiled two works: *Qawaid al-Ahkam fi Masalih al-Anam* and *Al-Masalih wa al-Maqasid* and discussed for the first time in the history, that all the ordinances of Shariah were rationalized, whether concerned the *tabbud* (worshipping rituals) or other aspects. Some reasons are comprehended while others not. Non-comprehension does not necessarily mean non-existence, he argued. He also talked of the thinking behind legislation. He said the pure existence of the profit or the harm was rare. Both the profits and the harms are amalgamated in all the legal ordinances and in all the affairs of the life. Allah has pronounced :

“Verily We have created man in to toil and struggle.” (90:4)

The struggle is accompanied with the human being. The interests in this world are mixed with the interests in that world. Which will be preferred in case of a clash? He said replacement of the harm is preferable than earning the interest, but whether is it universally applicable? The concealable portion of a female body may be exposed for medical treatment but how would it be justified for the sake of propaganda and for improving the trade? Some interests are immediately earned while others are postponed till the day of judgement, as the divine rewards in exchange of worshipping Allah are *Akhirah*-oriented.

Shaykh Izzuddin bin Abdussalam argues all the Shariah ordinances are accompanied with reasons (*muallal*), the objective therein is important. Illustrating this he says that giving money to a person who has employed it in the forbidden things, is justified because the objective of the person who is giving the money is not to employ it in the forbidden. The Shaykh has provided two examples in this context, and the third is added by me.

The first example is that if a person attacks and may not be resisted against and it is expected that he would escape carrying the money. Now the issue involved the protection of both the life and the property. It is known the aggressor will misuse the money taken but it would be legally justified to give him money and save the life.

The second example concerns the freedom of the prisoners of war. In case they are made released in the exchange of ransom the enemy will use it certainly for the military preparation and for harming us more. The greater interest, however, lies in the release of the Muslim prisoner, which is an Islamic ordinance. The Prophet is reported to have said :

“Get the prisoner free”.

Muslims are obligated to arrange their prisoners released though their entire wealth is employed. Umar bin al-Khattab used to say: If I make a prisoner released it is valuable to me than the entire Arabian peninsula”. Due to greater interests these harms are to be afforded.

I add the third example of armoring. In case the enemy army uses a group of Muslims as armors to shield themselves from our attacks. If Muslims resist, this group of Muslim captives would be first targeted and killed. What to do in this case? In order to resist the enemy this shorter harm would be afforded.

In this methodological paradigm, Izzuddin bin Abdussalam has discussed a number of issues. All the human beings agree the objective of all the human acts is to earn some interests and to avoid some losses. He said the means of acquiring the knowledge of the

interests in this world as well as in that world was the Shariah texts and the genuine arguments. The worldly interests may be acquired by the need as well as the experience. These are the additions made by the Shaykh Izzuddin.

Imam Shihabuddin al-Qarafi (d. 685 AH), the student of Shaykh Izzuddin was the next to discuss the issue in his books *Al-Furuqi* and *Al-Anwar wa al-Qawaid al-Saniyah fi al-Asrar al-Fiqhiyah*. He added the five points to the objectives theory :

- i) The juristic rules are more important than the rules of the language since the first implies the secrets and the wisdom. This was for the first time in the history of jurisprudential principles that juristic rules were declared so important.
- ii) He for the first time added the protection of honour (*ird*) to the Shariah objectives as the sixth one.
- iii) He differentiated between various acts of the Prophet (SAW): some were performed as the Prophet, some as the human being and some others were specified to his personality as his marriages and his fasting with the argument that his Lord provides to him with the special provisions.
- iv) In the very light of the objectives the means would be assessed and then objectives would be preferred. He discussed the *dharurah* and the *sadd al-dhariah* in the perspective of the objectives and their intensities.
- v) Most of the sections in *qiyas* are based on the objectives theory to him. Is the issue of appointing a deputy, for example, correct? Whether the trade in deputation is justified? Whether the agreement in a trade may be cancelled in deputation? Whether the marriage in deputation is legally right? The involvement with other's wife in deputation may not be justified however. Performing prayer in deputation may not be sanctioned since the man himself is to stand humbly before Allah.

Al-Qarafi has also mentioned the issues in the deputation are not so clear as the issues in the fasting and the pilgrimage. In this context if a universal objective is in clash with a particular text, what to be preferred then?

Imam Bukhari has narrated a hadith. A companion died before he could complete the holding of 30 fasts which were due to him. One day 30 companions held the fast on his behalf. In another hadith a woman from Khatham asked the Prophet (SAW) to perform pilgrimage on behalf of his dead father who could not perform hajj in his life. The Prophet asked her in case her father had taken money in loan would she have dared to pay that loan? She responded in affirmation. He replied: “Do perform the hajj on his behalf. The loan of Allah deserves more to be paid”. But Imam Malik held the opinion that the deputation in the fast as well as in the hajj was incorrect.

Al-Qarafi has also mentioned the contradiction in the texts. In the given situation he has advised neither *naskh*, the cancellation of the text, nor *ihmal*, the neglect of the text by preferring the other. To him the best method is of a coordination and conciliation between the two. Al-Qarafi has maintained the theory of objectives while dealing with all the sections of *qiyas*.

Next to him is Najmuddin al-Tufi (d. 716 AH) who talked of the topic of *maslihah* (interest). His treatise on the hadith reading:

“Neither initiate any harm nor retaliate aggressively”

was published by Rashid Rida. This proved an explosion when he claimed that interest would precede the *ijma* (the consensus). To him the consensus was stronger than the text. Then the interest, according to this statement, became stronger than the text and preceded it. He declared the text and the consensus to be adhered to in the field of *ibadat* (worshipping rituals), and the interests to be observed strictly in the customs and transactions.

Shaykh Mustafa Zayd repudiated this in his M.A. dissertation entitled *al-Maslihah wa Najmuddin al-Tufi*. I did not

find this repudiation so impressive. I, therefore, wrote an essay criticizing al-Tufi. I nullified all his arguments concerning the precedence of the interests over the text. We can not accept any disobedience of the text. The text must be given its due place. The Quran precedes all the sources. Next to it comes the Sunnah of the Prophet (SAW). We can not give priority over the Quran even to Sunnah. Allah commands explicitly :

“And we have sent down unto you the message, that you may explain clearly to men what is sent for them”.  
(16:44).

This clearly reveals the Quran comes the first. The holy Quran declared :

“O ye who believe! Obey God and obey the Apostle”  
(4:59)

I wrote in response to each and every argument of al-Tufi elaborately. I discussed the channel as well as the text of the hadiths he cited in his favour. I also answered the issues he raised but did not allow the research method and the respect toward the author to escape. Tufi has distinguished the *maqasid* (objectives) from the means and mediums. He claimed that the texts help to complement the interests and that the very interests are called the objectives. He claimed the interests of being the aims, and the texts of being the means. He reversed the order to prove the precedence of the interests over the texts but we can not accept this. The text must be recognized as the precedent and the prior to the all. None can be allowed to neglect the text while it is proved certainly and argues explicitly, practicing the text to the utmost is obligatory.

Najmuddinn al-Tufi has added the protection of honour (*ird*) to the five objectives as the sixth one. Shihabuddin al Qarafi did the same. I supported in my essay forcefully this idea. The honour is distinct from the affinity. In case an woman who is unable to breed is molested and is compelled to be involved with a man. Whether this would be sanctioned only because the generation would not be affected due to her inability? The reason behind the prohibition of adultery is not confined to the mixture of breeding. An uncultivable

woman may be a sexy one or both the partners are sexy but they use the preventive method or do involve with each other in such moments when pregnancy does not take place, and there remains no scope for any mixture of breeding. The illegal involvement, inspite of that, is prohibited since it tarnishes the grace and the honour. This clarifies the protection of honour is an independent objective and is obligatory as the Prophet is reported to have said :

“One who is killed for his honour, is a martyr.”

(Tirmidhi, Kitab al-Diyat, Hadith No. 21, Editor).

Shaykhul Islam Ibn Taimiyah (d.728 AH) has criticized in his *Majmu al-Fatawa* the objectives being confined into five. This persuaded Ibn Ashur to include the freedom and the equality into the objectives and increase their number from five to seven. Whatever was enriched by al-Juwayni, al-Ghazali, al-Qarafi and others, should be improved by our contributions. We should address the circumstances we are living in. I support Ibn Ashur in this regard. The Muslim *ummah* would never progress until it gets freedom. Ibn Taimiyah has opened the door for freedom and it is still unlocked.

Ibn Taimiyah pointed out the genuine reasoning and analogy (*qiyas sahih*) was always correlated to the noble objectives. Ibn al-Qayyim (d. 751) in his works like *I'elam al-Muaqqiin* and *al-Turuq al Hukmiyah* has discussed this subject. He deepened the thoughts of his teacher and illustrated them elaborately. He also talked of the reasons behind the worships and pointed out secrets of the Lawgiver the *ibadat* imply. In case the human mind may not discover them extensively, it may access them briefly. Next to him came Ibn al-Subki (d.771 AH) who wrote *Jama al-Jawami* in which he described the affinity (*nasl*) amongst the objectives in place of *nasab* as was done by Razi and Tufi, and also added the '*ird* (honour) as the sixth objective.

This was a cursory sight at the historical development of the Shariah objectives.



## **Chapter Four**

### **Applying the Objectives of Shariah**



### Shariah Objectives and the New Issues

- Khalid Saifullah Rahmani

In resolving a newly confronted issue what is the significance of the Shariah objectives? In responding to Muslim minorities what role they can play? These two questions are correlated. The 30% of the total population of Muslims all over the world is living outside the realm of the Muslim states and government as a minority. In the pre-17<sup>th</sup> century period whenever a Muslim state was unfortunately occupied by non-Muslims the Muslim citizens used to migrate. They were not habitual to reside in a non-Muslim dominated state. The communications and transports were limited. No international law was regulated. The trade and commerce was too encircled. It was too rare that the citizens of a Muslim country had settled in a non-Muslim country in abundance as the immigrants the industrial revolution in Europe, however, created a new phenomenon. Due to the establishment of the United Nations international relations were now maintained. Now, you know, some countries in the West have Muslim immigrants in majority. The issue of Muslim minority now emerged as the most important one. Some legal ordinances are changed due to the change in the circumstances. In a number of issues the jurists in general and the hanafids in particular have differentiated between the abode of Islam and the abode of war, as in dealing with the issues like that of apostasy, embracing Islam by any one of the spouses, and the invalid business agreements, the *dar al-Islam* is distinguished from the *dar al-kufr*.

I have tried to confine this vastly extensive subject in to the question why do these contemporary issues emerge? What are the factors behind them? How the objectives of Shariah were maintained while dealing with these issues in their ages by the preceding as well as the succeeding jurists?

The new issues are generally confronted due to two reasons: the change in the circumstances, and the corruption in the age, as Shami has explained in his famous treatise entitled as *Nashr al-Urf*:

“A number of ordinances become different with the difference in time, either because of the change in the customs and interactions, or because of emerging a need, or due to corruption prevailing the society, in so much as if the previous legal position is retained it will necessary cause the harm on the facilitation and the relaxation and on the replacement of the evils and damages”.

Essentially the corruption and the changes in the circumstances, these two factors determine the change in the ordinance. The circumstantial changes may be further divided in general into three (i) the change in the political situation, (ii) change in customs and interactions, and (iii) the production of new means and medium. Thus the factors responsible for change in the legal position are four :

- i) change in the political scenario,
- ii) change in the custom and interactions,
- iii) moral decadence, and
- iv) production of new means.

The change in the economic system is also a factor, but in most of the cases the change in law occurs due to the above mentioned four factors.

### **Moral Decadence – the First Factor**

I may be allowed to mention first the moral decadence and its impact on the legislation accordingly. The cases in this regard may be found under the holy companions. Tirmidhi has cited a hadith about *luqtah* (what is picked up). The Prophet (SAW) is reported to have said : In case one finds a goods in street untouched he should pick it up and preserve it so that it may be accessed to the owner”. When he was asked about a goat lost, the Prophet responded in affirmation lest an wolf had rushed to the goat and killed it. When he was asked about camel lost he responded in negation, because the camel could survive for a log time, and could defend.

In the later period it was realized the resisting power and ability of a camel is weakened in comparison with the resistance of the man who tries to confiscate. Uthman bin Affan the third caliph, therefore issued the official ordinance pick up the wondering camels and surrender them to the official treasury. This change in the legal position was due to corruption penetrated the society later on. The Prophet (SAW) first prohibited this picking up in order to save the lost goods from the confiscating and dishonest people. The purpose of Uthman also was the same to save it from dishonesty but the ordinance was changed due to change in the circumstances and in the human behavior.

In a famous tradition ‘Aisha is reported to have said: “In case the Prophet (SAW) were alive and had seen today’s ladies he should have prohibited them to join the mosque”. Apparently ‘Aisha told this due to the corruption penetrated the society. Because of any change in the behaviour and conduct of the people the legal position is to be revised.

Another issue in this regard concerns the surety of a manufacturer (*tadhmin al-sāni*). In case the manufacturer causes some damages in the factory, the shoe maker, for example, wastes some leathers, or the washer man loses some clothes mistakenly, whether he will have to pay the surety? Will he be treated as a guarantor or as a trustee? The jurists in the later period too differed on the point. In the early period of the holy companions, however, the manufacturer was treated as a trustee and no surety was received from him. Ali bin Abi Talib, the fourth caliph, was perhaps the first to issue a legal verdict that manufacturer would be considered as guarantor since the people would not be revived to the corrective measures without *tadhmin* (making them the guarantor), and the interest required it.

Following the method accordingly, the jurists in the later period too accepted the change in their stand because of the changing manners and mentality of the people. Imam Shafii, for example, declared for a *qadi* to be just as well as *mujtahid*. This was a strict criteria. The prerequisites of a just man, as described

the early jurists, were too extreme. The shafiite jurists later realized this difficulty. They thought the main objective of these prerequisites was to ensure the justice. In case a judge is equipped with justice and the place and qualification of *ijtihad* he will ensure justice more. Imam Ghazali, however, realized :

Combining these prerequisites of justice and of *ijtihad* and others in a man is difficult in our age since the society is free from such people. Whosoever is appointed as a judge by the sovereign king his decisions would be executed though he was an ignorant”.

This was so because the objective of Shariah is the protection of the right. The justice is always based on the decision of the *qadi* as well as the honesty; the witnesses. Imam Shafii realized the prerequisites of *adl and ijtihad* necessary to ensure that. In the later period in case of employing these qualifications, the realization of justice had been difficult and the protection of the rights has been rare since the people of such qualifications were rare. Imam Ghazali, therefore, relaxed this. The same argument may be traced to hanafid jurists who thought the qualification of *ijtihad* for a *qadi* as desirable. Later jurists found it difficult as Alauddin al-Tarabulusi says : “You will not find in them the knowledge of the holy companions and of the followers of the companions qualitatively; their source of knowledge is only the books composed by the imams of their schools of law.”

According to Abu Hanifah, Muhammad bin Hasan, and Shafii the witness must be essentially the just. When Abu Yusuf was appointed as the judge , he, however, realized the witness of a sinful might not be rejected in toto; in some cases it may be accepted. Abu Yusuf himself is reported to have said :

“A sinful man may be accepted as witness provided he is known in the society as the smart and influential. He would not dare to go against the truth and avoid telling a lie due to his smartness.”

The jurists of the coming period provided more relaxation. Qadi Alauddin al-Tarabulusi writes :

“In case a man drinks secretly and is smart in the society, his witness may be acceptable to a judge”.

Qadi Thanaullah too says likely:

“In our age if a sinful man is seemed to be smart and gentleman and is expected not to tell a lie to the tilting extent, or the evidences show that he is not a liar in a particular case, his witness may be accepted.”

There is another famous difference of opinion recorded. To Imam Abu Hanifah it was enough for a witness to be apparently purified, and his inner spirituality was not to be examined, since a faithful should be treated, to him, essentially as an honest and righteous. To Muhammad bin Hasan and Abu Yusuf, the purification is an essential prerequisite both implicitly and explicitly. Some one should express that the witness is a just man and his inner condition also should be examined. This is however impracticable. The later jurists, therefore, have realized :

“Because of the domination of sinful activities the (*tazkiyah*) purification process became inapplicable. The judges, therefore, preferred - as Ibn Abi Laila did - to take oath from the witness so that the supposition tilting to truth should be available”.

This is an example that directly concerns the judiciary, in which the jurists of the later period differed from that of the earlier. The later jurists apparently realized the situation and provided some lower requisites. Both the groups based their arguments on the Shariah objectives certainly. If the earlier jurists were strict in their formulations they aimed at ensuring the justice and protecting the rights. Those who provided some relaxations, also applied the Shariah objectives. They realized in the age of moral degeneration such harsh and impracticable conditions should not be stressed on lest a case remains unresolved due to shortage of witness, the people's rights are violated and the main objective of Shariah is reduced to be operated. We may assess in the light of this example that the ordinances changed or the opinions reconstructed due to moral degeneration, are directly linked to the Shariah objectives.

I may be allowed to provide two examples more in this context. The issue of recompensing the confiscated property is important. To hanafid jurists, in case a person has confiscated the property of other, he would not be obliged to pay the compensation for the period involved in the confiscation and illegal use of the property. To hanafids, the utility of the property is not exchangeable; it is exchanged due to the deed of sale only. When a person confiscates a property no deed of sale is signed, and therefore that would not be treated as exchangeable. The compensation of a confiscated property, therefore, would not be obligated on the confiscating person. In the later period, however, especially when *Majallah al Ahkam* was codified under Ottomans, the opinion incorporated was that in case an endowment property is recovered or the property of an orphan is revived, the recompense of the period involved in confiscation and illegal occupation would be obligated on the wrong-doer. Since there is no clamant for the endowment property or the property of an orphan, none appeals in the court against the wrong-doer who exploits the situation and becomes bold. The jurists in the later period, therefore, obligated on the confiscating person to recompense for the period involved in confiscation in order to recover the damage and to warn the other potential confiscaters in future.

Another example in this context is of *ijarah* (renting or leasing) for which no specific period is prescribed because there is no restriction in this regard. A lease may be signed for 10 years, 100 years and so on. This freedom was exploited by the mischievous people who used to occupy the waqf properties or the orphans' properties on the lease but were not ready to evacuate them after the expiry of the date nor were convinced to increase the amount of the rent in proportion to the increasing value of the property. You are aware of the buildings under the premises of some mosques of endowments the monthly rent of which might be five thousand or ten thousand rupees but the occupiers are paying 10, 15 and 20 rupees per month unfortunately. The jurists in the later period, therefore, revised the stand. They now issued the legal verdict that a house or a shop from the endowment or the orphan's

property would be signed for lease only for a maximum period of one year, and in case of cultivable land this contract may be signed for a maximum period of three years. If it exceeds there will be a fresh agreement. What is the aim behind this revision? The objective is the protection of the property and let the endowments and orphans' rights not be violated. In the contemporary situation the legal position of such companies may be revised which occupy the buildings in the endowment for a long period of 50 years and 60 years on the lease. These companies are better expected to pay the amount in time honestly. It may be considered whether signing an agreement with an individual for the lesser period is beneficial and protective or contracting a company that pay more and does not occupy the building illegally is more useful.

A famous and very interesting case is that a person immersed with loan and declared by *qadi* as the bankrupt may not be prevented from the transaction according to Abu Hanifah who does not consider bankruptcy as any hindrance in the business dealings. To hanafid school of law it is opposed to the human dignity to turn a bankrupt into optionless and deprived of free will like the animals or the inorganics and this is the distinguished feature of hanafid school that it fully considers the human respect. The jurists in the later period realized the people are exploiting the hanafid flexibility. A person drowned in the loan deals with the transactions day by day. He constantly is approving something for a man and is donating something to the other and thus is destroying the rights of the creditor. The jurists, therefore, restricted such bankrupt to initiate a new transaction.

Issuing the verdict by the *qadi* on the basis of his personal knowledge is likely declared as valid in the hanafid school provided there are no other proving evidences in the case. It was sanctioned by the earlier jurists. The later jurists realized that flexibility might open the door of bias and partiality on the part of the *qadi*. They, therefore, issued the decree that a *qadi* now is not authorized to give a judgement in the cases on the basis of his personal knowledge.

The earlier jurists had opined the wife having received the bridal money if instructed by her husband to accompany with him is obligated by Shariah to follow him. The later jurists, however, realizing the worsening situation of their age declared the wife in the given circumstances would not be obligated to do so. They expressed their fear that the husband might bring his wife to the place far from their residing area wherein he might persecute her, except that the newly selected area is near to her paternal home town.

There are other examples too. The cases cited above, however, suffice to prove that the issues emerging out of the moral decadence were resolved otherwise taking a liberal stand by the holy companions and also the jurists of every school of law, and all these considerations were linked to the objectives of Shariah. A method to access the rights in a specific age, if turned unable to defend them, were reexamined by the jurists. These may also be counted in the contemporary issues or exigencies.

### **Change in the political system**

The change in the political circumstances was also considered effective in the legal matters. The modern period offers a number of examples in this regard. The case of any payment against the religious performances like calling for congregational prayers, and teaching the holy Quran, is popular. Imam Abu Hanifah held the opinion that these payments were invalid since these were received against the purely religious performances. But we should understand the point that the teachers of the Quran, and those who led the prayers in early Islam during the pious caliphate received no salary they were, instead, payed the handsome scholarship. It is reported of Umar that he had awarded heavier scholarships to teachers than others after the companions who had participated in the battle of Badr. The tradition could not continue because our ancestors did not find it better in the changed situation.

This was the miracle of Islam that its thoughts and learnings have been ever independent of the official influences of the government. How did the belief in divine Trinity develop among



the Christians? When the Greek emperors embraced the Christianity they imposed their classical hereditary belief in Trinity on the Christianity too. The Christian fathers did not oppose it and are still trapped by this belief. The history of Islam, conversely, has been very bright in this regard. A *muhaddith* frequently visiting a king was not treated as authentic and the narrations made by him were not accepted. Historically speaking, Abu Yusuf when accepted - though sincerely - the official offer of *qadi* under Abbasids, some followers of him distanced themselves from him.

This constitutes the part of the promise for the defence of the religion made by God Who kept the religious learning free from the interference of the government. Our pious ancestors faced the difficulties and persecutions on the part of the ruling elites but did not let these learnings to be associated officially with the rulers. These scholars were not paid any official scholarships. The jurists later, therefore, permitted the payment for teaching the Quran because the holy Quran and the religion were to be destroyed otherwise. The issue relates also to the change in the political situation. In case of the period under the righteous caliphs and the holy companions that *fatwa* was certainly not needed. The jurists, therefore, clarified in case. Abu Hanifah and his students were alive at that time they would have withdrawn from their stand. Both the stands aimed at the defence of the religion. Abu Hanifah prohibited from receiving any payment because of the fear of the religion being turned into the bargaining. He thought that would diminish the dignity of Islam otherwise. Those who allowed this also aimed at the defence of Islam, since that was not feasible in the changed situation.

The problem of Muslim minority on the broader level was, likewise confronted in Christian Spain probably for the first time in Muslim history. The contemporary jurists wrote that the Muslims were obligated to demand from their non-Muslim rulers to appoint for them a Muslim *amir* who could run their affairs as the issue of *qada*, of leading the Friday prayer and so on. In principle appointing an *amir* by a non-Muslim was invalid, it was to be regulated by those who were in authority from amongst the

Muslims themselves. The situation was, however, changed and the power was now shifted to the Christians. The jurists, therefore, advised legally the acceptability of the appointment of *amir* even by the pagans in order to retain the Muslim collectivity and let it not scattered entirely.

The posts of *qada* (judiciary in Islam), likewise, are not be filled up by any popular franchise; the *amir* would appoint them since he enjoys the popular delegation of power as well as the common authority and transfers this to the *qadis* under this authorization. The jurists, however, later opined that in case the Muslims elsewhere were not in agreement with the appointment of *amir* and they did not form the power, the *qadi* would be selected with their consent. Tahawi, *al-Bahr al-Raiq* and other sources of fiqh include this particular juristic issue. This was because of the change in political situation. The change in jurists' stand aimed at defending the religion. A number of Shariah ordinances for their implementation depend on the *amir* and the *qadi*. In the absence of suitable condition for appointing *amir* or *qadi* as required by Shariah the situation of lesser importance may be afforded.

Another issue of similar interest is the one quoted by Tahawi and other jurists. This *fatwa* sanctions the amount of *zakah* for Hashimites provided the head of *khums* did not survive in any given period. The hadith, conversely, prohibits it and further clarifies that "*khums* has substituted for you the *zakah* by the order of God". The intention of Abu Hanifah in issuing this *fatwa* was to protect the rights of Hashimites, if the Prophet (SAW) had prohibited them to receive *zakah* he retained one head of *Khums* for them. Now *bait al-mal* survived no more. If *zakah* also remained prohibited for them they would be deprived of their rights, as viewed by Abu Hanifah. In the near past Anwar Shah Kashmiri, the prominent scholar of Deoband had perhaps the same view. Without showing any interest in the validity of this *fatwa* – positive or negative – I only emphasize on the difference in the political scenario that persuaded to issue this. In the early period of Islam Abu Bakr and Umar, the first two Islamic caliphs used to distribute it among the family members of the Prophet (SAW). In the later

period of Umar and Uthman, Ali and Abbas were appointed as the Custodian for this project. When Ali became the caliph he himself used to distribute the *khums*. After some time this *Khums* could no longer survive. The people, however, loved affectionately the *sadat* and used to support them with all the means Abu Hanifah and other prominent scholars, therefore, assisted the *sadat* family politically. Now this affection towards the *sadat* is fading unfortunately. This *fatwa* of Imam Abu Hanifah was because of the changing political situations.

In this category comes the issue quoted by some jurists as that you have given to anyone the clothes to stretch them. He coloured them with black and returned the same to you. How this attitude should be treated in the legal perspective? The person has created some defects in the clothes or has increased their beauty? If it is treated defective, whether he has the right to return the same or is obligated to compensate the defects? The jurists took the stand in earlier Islamic history that this was the perfection in the clothes and was no more defect. This belonged to the Abbasids who had chosen the black dress for them because some narrations described Abbas' preference of the black dress. During that period the black dress was thought of the prestigious and ideal one over the globe. Today, in the towns like Hyderabad where Shia community prefers the black dress the common Muslims avoid it and the change in the colour of the clothes thus becomes defective. This directly has no link to the political situation, but the consequences of politics are always far-reaching and these affect the culture, the civilization, the life style, the dress and so on. Due to political situations the ordinances in Islam were modified and this has the access to the objectives of Shariah.

In our own age there are issues emerged out of the change in the political system. To mention is the issue of voting the representatives in a secular country and its position in Shariah. Voting is equated with the *tawkil* (appointing one's agent) too and the activity and functioning of the person voted for is ascribed to the voter also. And it is crystal that the member of parliament whom we elect does not speak always in favour of Islam and the

Muslims. The acceptance of official posts in a non-Muslim democratic country is also an issue to be resolved. In the official duties one has to perform the acts that do not correlate the spirit of Islam at least, and sometime contradict the Muslim interests. He has to accept the ministries and portfolios. He has to take the oath for the loyalty to the Constitution of the country though the Constitution of India, for example, does not reflect a complete harmony with the Quran and the Sunnah. Now the constitutions of the Muslim countries too do not completely represent Islam unfortunately.

The issue of joining the secular political parties is an important issue. A member of the party can not go against the whip issued or the directives adopted by it. He has to follow the orders even against the interests of Islam and the Muslims. These issues and others of similar nature are the outcome of the political system and the democracy. Now the question arises what does the protection of the Shariah objectives require ?

Qadi Abul Hasan al-Mawardi and other scholars have pointed out to the forcibly establishment of power state also – a state captured by (*taghallub*) force. He says this state too is binding upon the Muslims. The difference between a state by people's consent and the coercive state is that the first may not be overthrown forcibly in any case while the other may be rebelled against provided the sufficient resources for the process are available. The capture of power may be validated and following such state would be binding as the Prophet of Islam (SAW) has allowed the performance of prayers led by a sinful *imam*. This also indicates the affordability of such ruler, since these were the rulers who used to lead the regular prayers.

### **Change in the Customs and Interactions**

This is the third factor responsible for the change in Islamic ordinances. The '*urf*' (custom), be it a folklore or an usage; the interactions in practice; the method of interpretation the common people make, do help to understand their behaviour and the spirit of their sayings. And sometimes this influences the interpretation and

specification of the Shariah ordinances. The later situation is more important than the first one. That is why Imam al-Qarafi has declared that every principle and ordinance in Shariah following the customs would be changed because of the change in the custom. I would offer first few examples to explain the point and that would be followed by the new confronting issues in this regard.

It was the common practice of the Arabs in older times to pay in advance some amount of the *mahr* (bridal money) to woman at the time of the marriage. It is narrated that the Prophet (SAW) at the eve of arranging the marriage of her daughter Fatimah with Ali sold his armour. Some of the amount he disposed to meet his basic needs and the remaining one he gave to Ali with the advice to surrender it to Fatimah at the time of the intercourse. The older jurists, therefore, have the stand of not relying by the *qadi* on the woman who claims the full payment of her *mahr* from her husband and that he did not pay any amount of the *mahr* to her before that, because it formed the negation of the custom prevailed. The custom recognized all over the Muslim world was that the woman does not surrender herself to the husband unless he paid in advance some amount of her *mahr*. Now the custom has turned into reverse. At the time of marriage the husband is appeased and the woman is deprived of. The earlier jurists issued the *fatwa* of the woman being not reliable in the given case only for the sake of the protection of his monetary rights. Following this legal stand today would result in to the exploitation, and will go against the objective of the defence of the property, and the woman would be reduced to be deprived of her rights.

Popularly the word *haram* (prohibited) used by the husband for his wife is meant for divorce. The jurists later validated the divorce in the given case even without any intention on the part of the husband. The *muatad* transaction sanctioning the payment of the price in advance and receiving the commodities later on is also too important issue especially in the modern times. At the time of actual business dealing the transaction may not be categorized as legally true in the strict sense. The customer, however, receives in advance the commodity with the consent of the owner and then

pays the price. This may be sanctioned as *muataat* by justifying it otherwise.

In Islamic legislation the factor of common deterioration (*'umum al-balwa*) too is considered. The uncleanness and impurity scattered in the streets do not cause the *najasah* and therefore do not obligate the performance of the ablution – a popular stand taken by the hanafids. The unclean (*najas*) things may not be validated for commercial dealings. These things were later on included into commodities, however, and some malikid jurists sanctioned the commercial dealing of the garbage of animals. The later hanafids too issued the *fatwa* in support of it so that the garbage may be utilized for cultivating the lands. Some of the jurists disqualified it in its pure and original form. If mixed with the soil it was sanctioned by them. To hanafids, the *najis* the thing originally unclean, and the *mutanajjas* that became unclean after a due processing have the different positions in Shariah. To them, the business of unclean and dirty oil is valid because it is originally not unclean, it was made unclean after due processing.

The sale of the insects is also linked to the custom and usage. The earlier jurists prohibit the sale of the insects. The later jurists, like Shami, however, allowed the sale of the bees provided he had cultivated them. He pointed out the reason that now the people used to exploit them for their gain. The silk worms are also cultivated to produce the silk fabrics. These were considered as unexploitable to the older jurists. Due to common interactions these became the useful and also the profitable and the jurists allowed their sale. The snake's skin was also considered as unable to be tanned and therefore unclean legally. Now with the advancement of technology the snake's skin is also tanned and produced as the finest and the costly leather especially in Europe. This issue may be revised by the jurists now.

In India the scholars have taken into consideration the usage and common interaction while legislating. Renting the domestic animals is not allowed to hanafids and other jurists. Ashraf Ali Thanwi, following the hanbalite view, however allowed it seeing

the common practice of the people. The issue of dress also comes in this category. Few dress varieties and fashions were to be avoided strictly according to the verdicts of *muftis* and ulama. Now the strictness on behalf of the scholars is reduced. The use of *sarees* by the ladies, a Hindu practice originally, became a fashion now adopted by the Muslim women also in the eastern and southern regions of India. Mufti Kifayatullah of Delhi, therefore, viewed there was no more *tashabbuh* (copying other religions) in *sarees* and therefore these were lawful. The use of pantaloons by the men was an English dress. Now it became a common dress and following the phraseology of Ashraf Ali Thanwi, it is now no more a national dress (of English people); it has turned into an international dress, and the element of legal undesirability in it is minimized.

The issue of ownership (*milk*) in the light of today's usage and interaction is also an issue of discussion. What will be the position of *milk* today? Bank draft will or not be treated as the *milk* a substitute to note currency? If not, it will be treated as *riba* (usury) in some cases. Today we purchase some machines and tools with the guarantee of repair for one year for example while the conditional dealing is prohibited. Any commercial business dealing along with any condition that includes the demand of the right from any side, if necessary, is invalid (*fasid*) while in such dealings the consumer is in profit. In modern times such dealings are commonly practiced. The compilers of *Fatawa Alamgiri* have therefore, added a condition in their verdict. If any business condition is commonly practiced and remains no controversial the dealing will not be considered as invalid. All these cases, quoted above, revolve around the Shariah objectives – common or specific.

### **Emergence of New Means**

After the emergence of new means and resources - the fourth factor for the legal change - the ordinances in Shariah may be modified. A popular case in the juristic literature is the consideration and 'authenticity of a legal writing dispatched from *qadi* to the other. On what considerations that writing will be

counted as reliable to the receiving *qadi*? A number of conditions were described by the jurists as the two parties involved should be present; two witnesses are unavoidable and any of them should not leave the other in alone in the meantime and so on. Qadi Abu Yusuf is lenient to some extent in this regard. The jurists later provided some more relaxations as if the receiving *qadi* believed in its authenticity; or the writing is duly sealed; or the *qadi* might recognize and differentiate the writing of other *qadi* he was allowed to accept that. In all these cases the objective of the jurists was to ensure the justice, to minimize the scope of forgery and to protect the people's rights. Today the communication system and the postal department is highly advanced and the reliability and authenticity may be ensured by telephone, fax, internet and other means and the Shariah objectives may be obtained more easily and with more safety. Now the issue of authenticity of a writing dispatched from one *qadi* to the other may be revised.

The definitions of insanity (*junun*) made by the great jurists are varying. Some defined an insane as one who could not differentiate the earth from the sky. Some said he must have suffered from the hysteria. Today by applying the medical science it is easier to identify and diagnose the madness and provide the suitable medical treatment.

The issue of an impotent man (*innin*), its symptoms, the cancellation of the marriage in this case, and other details are provided by the jurists. The most complicated point raised by them in this regard is their clarification that : "It is quite possible the man is impotent against a woman and is conversely normal in the sex against the other; or he proves to be impotent against a virgin and normal against a matron." It's identification was too difficult. Now through the medical test all these may be masterly identified and diagnosed.

The issue of DNA test in the modern times is to be resolved by the jurists preferably. In one of the sittings with the medical doctors in South Africa I was asked about the authenticity of the DNA test. This is a serious issue and some suggestions in this



regard were offered by the Islamic Fiqh Academy Makkah, run under Muslim World League. I said being a crucial issue this can not be categorically addressed until we thoroughly discuss it with the prominent scholars of *fiqh*. This, however, must be addressed seriously. Hanafids have identified (*qarinah qatiah*) a strong and explicitly categorical evidence as one of the bases of Islamic legislation in case the basic sources of Shariah are silent in a particular issue. Probably the author of *Muin al-Hukkam* has provided an example. Suppose you have seen a person coming out of a room with a blood-soaked knife in his hand, whose body is also plunged into it and the face reading too testifies it; moreover there is no other person therein except a deadbody lying on the floor. In the given case you may or not witness in the court against the supposed killer?

In favour of a strong evidence to be accepted in legislation provided Shariah is silent in the case, the jurists have put arguments from the Islamic texts too. The historic decision of Sulayman, the Prophet about the child, and some important verdicts of Ali as well as of Qadi Shurayh are based on the *qarinah qatiah*. Now the question arises that whether DNA test may substitute or not the *qarinah qatiah* in the modern times? Obviously the general ordinances and directives of Shariah would be based on the arguments and the evidences. Are the reports of DNA test in this regard authentic in Shariah?

The issue of human transplantation in the modern world is highly debatable. The juristic interpretations do not seem in favour of the use of any human organ since they thought it against the human dignity and also because it did affect the body of the donating person. Ibn Qudamah has emphasized on the later reason sufficient to prohibit the transplantation in his book *al-Mughni*. Now the situation is changed as well as the perception is replaced because of the availability of the new advanced means.

The issue of post-mortem is too important. Through this examination of the dead body a number of crimes are traced out and the cause of death is found out. Likewise the treatment of a disease

by exploiting the *haram* (the prohibited in Shariah) is an issue of debate today. Imam Abu Hanifah did not advice it. The jurists later were, however, lenient to the treatment by employing any unclean (*najis*) or prohibited (*haram*) medicine, provided no (*halal*) permissible alternative is available. Today alcohol is frequently used in the medicine.

The sale of the land is another issue. No doubt the non-movable property may be disposed of before giving their actual possession. The property, however, must be identified lest there be no dispute later on. The jurists have provided the details in this regard. Some have pointed out that visiting the property under discussion is unavoidable. Today through the official and court papers the property is exactly identified. Now it is to think this identification is or not sufficient for any dealing? The objective is to safeguard the property and to protect the rights. Whether this method will fulfill the objective?

The Muslims who are living in minority do face the situations the Muslims world does not face. The Shariah objectives should also be protected therein both positively and negatively. The hanafids in the given situation have allowed to seek loan with the interest where it becomes unavoidable. Now the jurists are obligated to examine the scope and the limitations of this permission in India and other countries of similar status. Lest the repulsiveness of the usury is replaced from the mind and living a normal life for a man also should not be reduced to be problematic simultaneously.

The jurists should be moderate in their line of thinking. I studied yesterday night the book of Jameel Muhammad bin Mubarak entitled as *Riaayat al-Dharurah al-Sharyiah Hududuha wa Dhawabituha*. Once Qari Muhammad Tayyib of Deoband reportedly visited Egypt. After the completion of the tour when he was asked therein of his impression about this journey he spontaneously criticizing the liberality said: “I was compelled to think in this country that whether anything is prohibited in Shariah”, as I remember. The learned author Mr. Jameel seems to be

too liberal towards the issues of the usury, the slaughter of the animals and other controversial issues. This trend does not reflect the leniency; it rather represents the liberalism, and diverts our minds from the basic objective of Shariah e.g. the defence of the religion. While dealing with the Muslim minorities we must take in to active consideration the objectives of Shariah. The jurists have generally not described these objectives separately. This should not be confusing. The principles of *istihsan* and *masalih mursalah* were the permanent part of *usul al-fiqh* and correlated to the objectives.

Khurshid Anwar Azmi, a participant of this workshop, had raised the question before about the justification of an independent discipline of Shariah objectives. I think the jurists later realized the said subject was not given the due importance in the history and therefore they paid special attention to develop this discipline. Shah Waliullah of Delhi and Abu Ishaq al-Shatibi have necessitated the knowledge of Shariah objectives for performing *ijtihad* as one of the conditions. It seems they acknowledged the ancestors had considered these objectives. But applying juristic particulars on other particulars is debatable and sometimes problematic. To malikids a *qiyas* (analogy in legislation) may provide a base for another *qiyas*, as Shaykh Abu Zahrah has probably pointed out. Other jurists do not sanction it. This encourages a tendency of relying in the juristic particulars, and diverts the attention sometimes from the basic objectives of Shariah. Since the juristic particulars are based on the local and transitory conditions any reliance on them may create either excessiveness or deficiency. The legal stand about the *hammam* taken by the jurists liberally due to common interaction and usage seems today unnecessary because the Muslim society is not habitual to these now.

The discussion about visiting the moon at the eve of Ramadan as offered by Shami interestingly may be observed. How a *Khabr mustafid* would be applied? The learned scholar has finally concluded that since the negligence of religion on the public part is increased and people wish to delay the start of Ramadan the witness of two visitors of moon may suffice. Today atleast in India the

situation of moral decadence is not so worsening in my personal view, and this *fatwa* does not suit our environment.

Being scholars of jurisprudence you are aware that one kind of *istihsan* is that which is accompanied with *masliha* and Shaykh Zarqua has declared that this constitutes the original *istihsan*. In comparison with *qiyas* the text, or the consensus, or the saying of the holy companions is preferable, and the implicit *qiyas* supersedes the explicit *qiyas*. The logic behind the stand of Zarqua is convincing. The Shariah ordinances may not be founded on the straight interest (*maslihah*) and wisdom (*hikmah*). The wisdom is a hidden unregulated thing. The permission of shortening the prayer in the travel was granted to minimize the sufferings of the journey. These sufferings vary in degree as per the individuals, means of traveling as well as its nature. The jurists, therefore, did not consider the sufferings in their debates. The reason, on the contrary, is an apparent and regulated thing and therefore provided a base for legislation to ease the people. Sometimes the reason and the public interest distance from each other. In this situation the *qiyas* based reason is avoided to coordinate the legal ordinance with the public interest, and the principle of *istihsan* is applied. That was the reason when Abu Hanifah raised the debate on the issue confronted his students and research fellows joined him enthusiastically. He, however, when pronounced that he had performed *istihsan* they used to be silent, because he had an insight in the objectives and meanings of Shariah. He, therefore, had maintained the spirit in many cases instead of the apparent words, and had taken in to active consideration the objectives. The principle of *istihsan* to hanafids, and of *masalih mursalah* to malikids aim basically at creating coordination between the ordinances and the objectives and public interests.

The five objectives of Shariah are described not exhaustively. Some new classification may be made or their scope may be widened. Imam al-Ghazali has narrated the three grades namely *dharurah*, *hajah* and *tahsin*. Probably Izzuddin bin Abdussalam had described its five grades. Al-Shatibi has attached a complementary kind to each of the three as following; *dharurah*

and its complementary; *hajah* and its complimentary; and *tahsin* and its complementary. The basic kinds of these objectives are mainly the three with the same sequence and order. As per objectives, the defence of the religion would be preferred the first, even at the cost of the life, for which the jihad was sanctioned. The defence for the life would be ranked the second in the objectives even at the cost of the property. The protection of affinity is ranked the third because the protection of human dignity is attached with it. Then the protection of property and of intellect would be chosen orderly. Amongst the grades of the ordinances the *dharurah*, the *hajah* and then the *tahsin* would be preferred. In case of a clash between *dharurah* and *hajah* the first would be opted. In case of not pronouncing a word of unbelief for example, a person is threatened to be killed and his heart is fully satisfied with the belief. Now not pronouncing by him a word of an belief constitutes the grade of *hajah* for him and he is required to save his life by pronouncing the word of unbelief.

A number of sources were referred to practically the book *al-Madkhal al-Fiqhi al-Aamm* composed by Shaykh Mustafa Ahmad Zarqua is too benefiting. The author is a reputed hanafid jurist and has insight in to other schools of law and is devoutly religious. He applies the objectives and the juristic principles accordingly. His works also should be consulted in this regard.

### Interactions

#### Azad Qasim Sanbhali

The first complication is about the foundation and role of the United Nations. No doubt, the situation is changed after its foundation and we have distanced ourselves from the juristic discussions over the change of the two abodes (*ikhtilaf darayn*) and issue actively debated in the classical writings. Now the question arises what is the legal position of U.N. in Shariah – an institution established by the Zionists to fulfil their objectives; to deprive the Muslims of the *khilafat* system; which aimed at the creation of Israel and the construction of Sulayman's classical historic

worshipping place? How and to what extent can we believe in its manifesto, clarifications and assurances?

Secondly the issue of voting in favour of an individual or party is generally sanctioned by quoting Mufti Muhammad Shafi who had clarified that voting might be equated with a recommendation or a witness. He has, however, written on the same page of his book that if the candidate is in opposition of the Islamic way of life or he does not aim at establishing the Islamic system, voting in his favour is not valid. I may be allowed to clarify further. Suppose a party in a country claims to establish the government of Bhagwad Gita and Muslims are compelled to vote for that party. The question now arises whether a principle of Islam may be applied in order to establish a non-Islamic system? If we practice this to replace a harm to be inflicted on the entire community we would be, then, committing the crime of cooperation with the evil and the aggression strictly forbidden in the Quran.

Thirdly, the issue of transplantation is too complicated. Another aspect of this issue, left by the learned speaker, is the ownership of the human body by the man himself. Whether a human being is the owner of his body? Is he allowed to donate or sell any organ of his body? These should also be clarified.

### **Ahmad Nadir al-Qasmi**

While considering the objectives in Islamic legislation it should be taken into account that the ordinances are of two kinds : textual, based on the Quran and the Sunnah, non-textual derived on the basis of the reason to be applied in the texts. Whether the text-based ordinances also would be liable to change due to change in the circumstances or because of the moral decadence and whether the interest will be preferred over? In case of a positive response whether the real objective of the revelation – to correct the evil and wrong penetrating the society – would not be replaced one day? This leniency will be resulted into a negligence entirely.

The second question is related to acknowledging the power state. The stand taken by the scholar is perhaps rethinkable. I have

to seek a clarification from Badrul Hasan who has differentiated between the repulsiveness of sexual assault committed against a virgin and a married woman, while the holy Quran as well as the hadith had declared both as equally repulsive and condemnable.

One more clarification from him is related to the monks. If they are young and actively involved against Islam and the Muslims they would or not be provided any concession in the battlefield?

**Muhiuddin Ghazi Falahi :**

The objectives of Shariah framed and structured were confined to the protection and defence. The needs of the religion were exhaustively narrated as the protection of the religion as was well defined in the lecture of Badrul Hasan. The issue of the objectives was also explained in terms of the five basic needs and their accessories. The whole discussion on the objectives was relooked around the issue of Islamic punishments, the prohibitions and undesirables, the ordinances for the emergency and contingent situations, the replacement of the harms and the contradictory circumstances. A number of important issues were left untouched. Instead of introducing some new horizons this discipline seems to provide some new ways and methods. Academically the first was more significant. All the efforts of extending the discipline as discussed by Khalid Saifullah Rahmani and Atiq Ahmad Bastawi, were made within the same structure. The issue of self-respect, for example, was included in to the protection of life. The response made by Badrul Hasan in this regard seems to me irrelevant. The movement launched for the Shariah objectives basically aimed at applying the revealed texts on the newer infinite challenges and issues. But the noble project with the wider horizons and broader scopes became confined within the limited issues. I do not hope the present structure of the discipline may successfully coordinate with the new horizons which are required to Shariah.

Secondly, the difference between the objectives and the secrets (*asrar*) of Shariah should be elaborated in detail. A line of demarcation between the two should be maintained by providing the examples. I think the relation between the two is of that between

the general and the particular. Some discussions on the objectives may cover the *asrar* (the secrets). The objectives not including in *asrar*, however, may also be identified. What is the objective of performing the *salah*? And what rationale does lie in confining the regular prayers in to five times? A thorough discussion on both the issues will elaborate the difference between the objectives and the secrets of Shariah. A thirst - and that was significant - was felt in the lecture of Khalid Rahmani. He could not identify the role of the noble objectives in the entire history of the change in the ordinances in the changing circumstances.

Another issue of the difference of the two abodes in the jurisprudence did not emerge due to the foundation of U.N. It's main reason was a major change in the life itself. The life that was static due to its reliance on agriculture became entirely dynamic because of its dependence now on the industry. The whole world is now turned into a plural society or a global village.

The last question relates to the common principle that no pure interest or pure harm is found. This should be revised and that whether that principle covers the corporeal issues only or it includes the incorporeal also?

### **Zaheer Ahmad**

I have to seek four clarifications from Badr ul Hasan and one from Khalid Rahmani as per the following :

1. Khalid Rahmani has declared the spiritual purification of witness (*tazkiyah*) to be verified very difficult and that the jurists, therefore, sufficed the oath for the witness. It should be clarified that how is it difficult.
2. Badrul Hasan has claimed in his article that the things counted in the *dharurah* are not necessarily obligatory in all. I do not agree with it. Some examples should be quoted by him.
3. It should also be clarified that how a knowledge, inspite of being inductive, is to be treated as certain and positive one though the learned speaker has referred to *al-Muafaqat* ?



4. Allah has created the human being on the earth and has sanctioned the legal marriage (*nikah*) to survive and enhance the human generation; this explicitly relates to the protection of affinity and not to the protection of life as Badrul Hasan has mistakenly written.
5. If it is certain that by throwing some one into water the remnants in the ship would be safe, it may be operated following the case of Yunus, the Prophet as mentioned in the Quran. An individual may be sacrificed for the sake of the community provided the knowledge should be positively certain.

Khalid Saifullah Rahmani responding to all these questions and complications clarified his stand well :

#### **Postponing an Ordinance**

In response to Nadir al-Qasmi I would like to clarify that neglecting a text is entirely different from postponing of an ordinance for the sake of a Shariah objective or interest. Hazrat Umar has postponed the implementation of the punishment of theft in the famine year because the *hudud* (punishments defined in Shariah) are cancelled due to suspicions.

#### **Islamic *imarah***

One question is raised about the sanction of a power state to be established by an *amir* forcefully. I say the establishment of *imarah* on the basis of people's consent is an approved and unanimously agreed theory. In order to keep the system of government in operation and save it from anarchy if a ruler captures the power violently his *imarah* would be established for the sake of retaining the unity among the Muslims. You have come across to the worsening situation in Egypt. Other countries are suffering from the same situation. The jurists have discussed the issue too seriously. They have raised the question about the authenticity of the administrative decisions taken and the amount of *zakah* received by a government of the rebellious group that has captured a region temporarily. This is a pragmatic situation to be handled with.

If the status quo is not maintained it creates so many problems practically.

### **Repudiation of Adultery**

One question is raised about the difference between the repulsiveness of adultery committed against a virgin and another against a married woman as maintained in the article written by Badrul Hasan. I think in the traditions of the Prophet adultery with a married woman is condemned more severely. The punishment in this case also is more severe. More importantly a married woman committing an adultery negates the right of Allah as well as of the man because this makes the affinity suspected.

### **Dealing with the Monks**

Abu Bakr had strictly prohibited the killing of the monks. Ibn Qayyim has discussed in detail the treatment with the monk practically involved in the conspiracy differently from one who is exclusively devoted himself to the worship. I think it is a pre-mature discussion that does not suit the time.

### **Needs of Religion**

Muhiuddin Ghazi has raised the objection against the needs of the religion being confined in to five objectives. It should be clear in this regard that this division is not made exhaustively; it is rather inductive. These objectives may be enhanced according to the circumstances and the requirements. But this division itself is very extensive and almost all the needs are covered by any one of them.

The objection raised by him about the example being confined into the punishments and so on, is not appropriate. The examples offered by the great jurists regarding *dharurah*, *hajah* and *tahsin*, of course cover all the fields of worships, transactions, customs as well as the punishments.

### **Objectives and Secrets**

A clarification is sought about the difference between the objectives and the secrets. This issue is oft-repeated in the

workshop. The objectives of Shariah basically cover the general objectives – the five for which Shariah was revealed and the particular objectives – which are concerned to particular juristic chapter as the objectives in the marriage, in the transaction etc. While secrets include the rationale for example behind maintaining the difference in inheritance to man and woman, establishing guardianship for woman even after she has come of age while the man is exempted from it with the difference maintained by the jurists and so on. The knowledge of objectives is necessary for the inference of the ordinances while the knowledge of the secrets is unavoidable for a religious preacher in order to prove the coordination between Shariah and the human reason.

### **Difference of the Abodes**

The issue of the difference of the abodes is not the outcome of the foundation of U.N. This is an older issue discussed by the classical scholars. I have emphasized that today we need a jurisprudence especially for the minorities (*fiqh al-aqalliat*). There are international agreements signed to ease the immigrants. Now 30% of the total Muslims are living in the world as minorities. In the older times the Muslims did not reside eagerly in the non-Muslim countries (*dar al-Kufr*) in the bulk. This has changed the situation entirely.

### **Purification of the Witness**

Zaheer Ahmad has raised the question about ascertaining the purification of the witness. It is a particular issue. Neither the recommendation for the said is aimed at nor to adjure the witness is required; the knowledge about the just character of the witness is, instead, unavoidable. In the classical times the *tazkiyah* system was evolved for the said purpose; its principles and regulations were however, so complicated that today it can not be actualized. Qadi Alauddin d-Tarabulusi and others realized this and provided a relaxation. If the witness takes oath and the *qadi* is confident that he will not tell a lie his witness may be accepted by the court.

**Every *Dharurah* may not be Obligatory**

Some one has correctly pointed out that every *dharurah* may not be necessarily constituting the ordinance binding to the Muslims; being obligatory legally and binding Islamically requires an ordinance based on the revelation. The jurists have counted a number of ordinances into *dharurah* rank but these are no more obligatory. The call for congregational prayers (*azan*) is the symbol of the religion as well as a *dharurah*; but it is only a *sunnah* in its origin and not obligatory. It is quite possible an ordinance of lesser importance in degree than obligation is treated as *dharurah* as per the objectives of Shariah and the gradation of the ordinances.

**Accessing to Certainty**

Another question is raised about the accessibility of inference (*istiqla*) to the certainty. Imam Shatibi has argued in favour of the desirability of the five objectives by applying the method of inference and has declared them certain. This is quite right. In jurisprudence an ordinance having no text in its favour becomes certain when it is supported by a number of evidences. Take the issue of *khabr mustafidh* (a narration spread out in the public as authentic), which is stronger than *khabr wahed*. When a number of *khabr waheds* support each other they strengthen each other. Malik bin Anas and his teacher Al-Rabiah al-Rayi used to give too importance to the constant practice (*taamul*) of Madinans. While responding to a question about it he said “A practice made by a thousand people following another thousand people is better than a man following another man”. I mean to say the things individually constitute the assumption, but their collective nature and unity benefit the certainty. The principle of inference, therefore, may produce certainty in the numerous cases.

**Arguing with Pre-Shariah**

A subsidiary issue is raised about arguing with pre-Shariah events. This is not related to Islamic Shariah; it basically deals with the pre-Shariah law. There is some indication on behalf of God, however, in this event. I think it needs no more clarifications.

### **Applying Particulars on other Particulars**

One point is frequently repeated by the participants that by applying particulars upon other particulars in legislation the person deviates from the Shariah objectives. Umar on the contrary, has declared to find out the examples provided there are no texts in the case. I have to say two things in this regard :

- i) The saying of Umar means the application of an event quoted in the text on another event resembling to the said event but non-textual in nature. The jurists therefore have quoted the saying of Umar in favour of the approval of *qiyas*.
- ii) Avoiding the particulars entirely is not aimed at. There should be reliance on them however. We should be moderate in our opinions keeping always in view the objectives of Shariah.

### **Protection of Life and Property**

Mustafa Nadwi has objected against the preference of the protection of life on that of property while the jurists have sanctioned the protection of property even at the cost of one's life. I have to clarify two points here :

- i) The jurists agree that the resistance is obligatory to save one's life, but it is debatable to them that for the sake of property the resistance is obligatory or desirable. The jurists have difference of opinion in the issue. The preferable saying is in favour of its permissibility.
- ii) It does not entirely aim at sacrificing one self for the sake of his property. What is aimed at is the protection of the property. If he is killed in the process unfortunately he is declared as martyr, by the Prophet (SAW). The jurists, therefore, have sanctioned this. They also have clarified that the killing of the thief is illegal if otherwise one can protect his property and if he has killed the thief in the given case the *qisas* will be imposed on him because saving one's life is more important than saving the property.

### **Relation of the Objectives**

One principled question raised by Akhtar Imam ‘Adil has concern to the relation of the five objectives with the *dharurah* only and not to the *hajah* or *tahsin* as elaborated by al-Ghazali and al-Shatibi. I had written fourteen years back an article entitled “Consideration of public Interests in Islamic Jurisprudence and its Scope.” I was confronted with the two complications :

- i) The relation of the five basic objectives was with the *dharurah* only or with the *hajah* and *tahsin* also? Al-Shatibi and others have themselves pointed out that the *hajah* compliments the *dharurah*, and *tahsin* compliments the *hajah*. It is quite natural that both the complementing and the complimented should equally access the relevant parts and departments.
- ii) The jurists have provided the examples of the *hajah* or the *tahsin* and have clarified that these relate to the protection of life as well as to that of property. This reveals its relations with the three branches. The principled discussions in this regard made by Shaykh Mustafa Zurqua, Shaykh Abu Zahrah or Shaykh Khallaf make it abundantly clear that the five objectives are related to *dharurah*, *hajah* as well as *tahsin*.

### **Suicide Bombing**

The question raised by Ubaid Iqbal ‘Asim about the suicide bombing is too serious. But this is not the principled issue. Today we are dealing with a principled issue eg. the objectives of Shariah. On this Dr. Wahbah Zuhayli, Dr. Yusuf al-Qaradhwani and Shaykh Taskhiri have written extensively and also the resolutions of some academies of fiqh are available in this respect. You may consult all this.

### **Cleansing by the Papers**

Another question raised by him also does not directly concern to the theme. Cleansing by the papers after defecation was declared undesirable by some jurists on the basis that the paper was treated as heavy and hardly able to clean, and as a tool of writing

and therefore inappropriate for the same. Today both the reasons are extinct. The paper used in the toilet is being rough now capable of washing out all the dirty elements and may not be used for writing. Keeping in view the Shariah objectives this is reduced to be undesirable.

### **Clash between the Text and the Interest**

In case of a seemingly clash between the text and the interest what should we do? To resolve this issue we should turn to the discussions of juristic principle of '*urf*' (usage and custom). The jurists have thoroughly elaborated the situation of a clash between the general text and the '*urf*'; or clash between the special *urf* and the text. I appreciate the stand Dr. Zarqua has taken in this regard. He has classified the text into three ; certain (*qatii*) speculative (*zanni*) and one based on interest (*maslihah*).

The certain texts which are unsuspected as per the means of confirmation as well as their elaboration of the meanings, are not liable to any change due to any '*urf*' or interest.

The speculative texts which are self-contradictory; or the source of confirmation of which is not certain or their interpretation may bear a number of meanings, were treated by the jurists otherwise. On the basis of an interest sometime a text in the given situation is preferred on another text or a meaning supersedes another meaning. This is not a neglect of the text, nor is a deviation from the text to the human opinion. It basically turns a text from another text and deviates to one meaning of the text from another meaning.

The texts based on the interest of a particular period and revealing the ordinance accordingly form the third category. The ordinances issued by Umar for the first time in the history – known as *awwaliyat Umar* – may be quoted in this regard as he postponed the punishment of theft temporarily. The head of *muallafat al-qulub*- those who embraced Islam and were encouraged by the Prophet by sanctioning the amount of *zakah* for them – is not debatable. Abu Hanifah allowed the receipt of *zakah* for the *sadat*

family. All these reveal that a text based on a particular interest in case of changing the interest itself would be taken into consideration for the implementation of the Shariah objectives. This is a serious issue and requires too precautions. The individuals may not be allowed to decide about the utility of the interest incorporated in the text. This will, otherwise, open the door of arbitrary trend and misleading in legislation. The jurists, scholars and God-fearing ulama of every age have touched the issue with the due precautions and after the sincere thinking and heavy deliberations were made.



### **Problems of Muslim Minorities and the Objectives**

- Dr. Salahuddin Sultan

The theme under discussion concentrates on the jurisprudence of Muslim minorities, the Shariah Objectives and the issues related to them. I have been discussing the various aspects of this specific issue during my lectures delivered in American Islamic University. The fiqh dealing with Muslim minorities living in the West has certain methodological regulations. It is advisable to think over the factors of migration accordingly. In the present scenario there are generally three factors of migration :

1. acquisition of higher education,
2. earning the livelihood, and
3. freedom from tyranny

A number of survey reports regarding the Muslim population have been produced describing various data figures. Three reasons for this varying demography may be put forward :

1. Muslims travelling to the west unorganizedly,
2. minimizing the Muslim population in the surveys, and
3. neglecting any survey on the basis of the religion or due to the factor that the country of migrants was Muslim/Islamic.

Sister Shareefah Sayeed has produced her thesis of doctorate on the topic of the jurisprudence of Muslim minorities. She was my student – very brilliant – when I was a professor in Sultan bin Qabus University. This doctoral thesis is a distinct contribution to the issue under discussion.

This may also be important that the temporary immigrants in the West should or not be included in the surveys, when they aim at coming back to their motherlands after completing their education or complying the terms of the services they joined therein. According to the estimate made in the recent conference held in Germany the total Muslim population in Europe is 55 million, while 7.5% of the population in Europe and America lives in North

America only e.g. one million. I have visited Kinghai, China where 35 million Muslims are residing.

The term ‘Muslim minority’ should be understood in the right perspective. One of my articles may be visited on the website Islam on line. That covered a number of new areas which may not be discussed here due to shortage of time. I had delivered this lecture when I visited Egypt. Now it is available at Islam one line.

Muslim minorities may be classified into two :

- i) minority in population comprising less than 20% in numbers. Thirty percent or more would not be treated as minority.
- ii) Those who are not reduced to be minority but are not free to practice the fundamental religious teachings due to western system of government imposed thereupon.

I was extremely aggrieved to know that Jacques Chirac (b.1932), the President of France signed on the bill of Parliament banning the *hijab* (covering head with scarf) in the government schools. We should not forget France has done worse before. A Muslim woman dies standing out of the hospital and her body bleeding. The apartheid officials do not allow her enter the hospital for treatment because she is adorned with the Islamic *hijab*.

In my individual opinion, keeping in view the Shariah objectives that Muslim sister of mine should unveil herself for medical treatment. For the said purpose it is lawful for a Muslim woman to disclose even her concealable parts. Such a state granting no religious freedom may be called a Muslim state?

The most important methodological device is to deepen the sense of citizenship among the people. We are confronted with a real crisis in this regard. Once I visited France to conduct a viva on a research thesis submitted by a IVth year student in Shariah college, European Institute of Human Sciences. I asked the student of his nationality. He said he was Pakistani. He provided the detail that he was not born in Pakistan. Only three times he visited that

country for three weeks entirely. I advised him he was born in Paris, and should not hesitate, therefore, to call himself a French of Pakistani origin. He resisted me forcefully. I know the Muslim immigrants in America live therein with their bodies only. They do not make any efforts even for the betterment of their original country. Their association with the home country is confined to the telephonic talks, summer and winter hauls and enjoyments. It is incumbent upon a Muslim to consider the country wherein he resides as his homeland. Because of his residence in the host country it substitutes the home country for all the religious and social purposes.

The Jews in the West are damaging our image by declaring us the opportunists who exploit in the West its resources, knowledge and freedom with no return. The Jews try to gain the sympathy of the western nations for themselves and to create hatred for the Muslims.

When it became certain that in prophethood of Muhammad (SAW) aimed at being merciful for the entire world and Muslims were obligated to remain the active and the dynamic for the welfare of the mankind their prime duty towards the domicile required that they should be actively engaged in the country, be loyal and sincere to it and declare eagerly their association with and citizenship of it. The Quran explicitly defines the obligations of the Muslims in the following verse :

Can be who has dead, to whom we gave life, and a Light whereby he can walk amongst men, be like him who is in the depths of darkness, from which he can never come out? (The Quran, 6: 122)

If he does not declare his citizenship he is logically no more loyal to this country. A Muslim may seek the plea that his loyalty neither belongs to America nor France but to the development and welfare of that country. His loyalty lies with the land but he distances himself from the system and the unbelief prevailing that land. I think the people and the government constitute two different entities. You coordinate the people and they interact you actively in

the field. The government is, however, under pressure. The government is formed by the Zionist organizations that invested their resources and made the publicity on the larger level to enable a political party win the elections.

We are in immense need to understand the Shariah objectives in the last revelation to be universal and dynamism a distinct feature of Islam. Islam emphasizes that we travel over the globe for the propagation of Islam. In case we were not the immigrant in the West we were obligated by Shariah to dispatch the competent persons to these countries for the spread of Islam. There are scholars among us like Shaykh al-Booti who claim that the physical interaction is not necessary for Islamic *dawah*, it may be performed, instead, through the modern means of communication like internet, TV channels and others. I am not talking of such means; my emphasis lies in the physical interaction and bodily involvement actively. Shaykh al-Booti is not in favour of residing in the West; it was declared by him as a sinful step.

Islamic propagation by all the communicative means is lawful, but it does not rely on the verbal preaching only; it basically requires the practical model to be offered to the people. A Muslim family residing in Europe, pious, God-fearing, far from drugs, in which son is not supposed to be killer of his father, may offer better Islamic model to the Western people. Direct interaction and physical experience always result in the better understanding.

A film was released in America and exhibited the Muslims living in India, Pakistan and New York actively engaged in the mosques performing ablution, calling for prayer and standing unitedly in the prayers. The film aimed at proving that Muslims' only job lies in their engagement with the mosques and being confined in their houses later on. They have no concern to the planning and framing the policy and programme for the state affairs peace and security system or the trade and commerce departments. They only plan five times a day for the mosques. I evaluated the film and arranged an article that was published in America many times both in Arabic and English. The producers of the film want to

prove that Muslims constitute the worst element of the society and that their mosques are the den of terrorism and extremism. My brothers in faith! Do not convert yourselves into the Muslims performing the ablution and praying only as was portrayed in the film. If you were not alienated from the society and you were active instead that theory would find no base. Any understanding of the Shariah objectives requires that Muslims should declare themselves as the citizen of the domicile country and be proud of their being Indian, Pakistani or Arab simultaneously without feeling any guilt.

The Prophet of Islam (SAW) after the migration to Madinah once said addressing Makkah: “You are the most beloved to God amongst all the worldly places and cities. Had your people not taken me out of your land I was never to come out.” He after the migration, however, rehabilitated Madinah and turned it successfully into a civic society. It is not allowed to us to refrain from offering the reformative and developmental programme to the country where we are living in. The second methodological point, therefore, is the reformation of the citizens.

Reforming the country is a basic duty of the Muslims. The Quranic Chapter *Hud*, especially its concluding verses turned the Prophet of Islam into old-aged. It declared:

“Why were there not, among the generations before you, persons possessed of balanced good sense, prohibiting (men) from mischief in the earth except a few among them whom We saved (from harm)? But the wrong-doers pursued the enjoyment of the good things of life which were given them, and persisted in sin. Nor would thy Lord be the one to destroy communities for a single wrong-doing, if its members were likely to mend”. (The Quran, 11 : 116-117).

The reformation (*islah*), therefore, has a number of aspects to be observed. One is social reformation :

“If you fear a breach between them twain (the husband and wife), appoint two arbiters, one from his family and

the other from hers; if they wish for peace God will cause their reconciliation”. (The Quran 4:35).

Another aspect is the financial reformation :

“They ask you concerning orphans. Say: “the best thing to do is what is for their good”. (The Quran, 2:220)

In this process there is no difference between Muslim and non-Muslim. To Abu Hanifah the charity at the eve of *‘Id al-Fitr* may be given to non-Muslim also; other jurists prohibit it. All of them, however, agree that the general charities excluding zakah may be given to both the Muslims and non-Muslims. Muslims would be preferred naturally, but the non-Muslim needy people may not be discarded at all.

I visited Indian embassy in New York. I passed by the downtrodden people living below the poverty line in the neighbourhood of White House. This city has multi-storey buildings, hotels and shopping complexes streaming in the air by which the poor population sleeping in the open air on the foot path tries to receive heat in the cold season. If Muslims play their role to change this situation that will be a contribution to the reformation. Most of the Americans of old age are compelled to spend their remaining lives helplessly in the hospitals and the charitable centres for physically challenged people. Even after five years are passed, no one among the family members return to take care of them. A Muslim, instead, visits them with a flower pot or any other gift in his hand and they being impressed embrace Islam. According to hadith, a Jew neighbour of the Prophet of Islam converts to Muslim when visited by the Prophet. He used to harm the Prophet inspite of the constant good behaviour showed on behalf of the Prophet. One day when he was ill, the Prophet visited him personally and that persuaded him to embrace the new religion. The Prophet was too happy. He came out of the Jew’s house saying: “Thanks to God! He gifted this man the religion of Islam!”

We are to replace the mischief spread by the American government. We must take a stand of ours. We should demand from America to refrain from its atrocities committed against all over the

world. We in 2002 A.D. displayed two demonstrations against America on the broader level. One and half lakh people participated in one demonstration and 2 lakh persons in the other. One was organized in favour of the Palestinians and the other against the American aggression on Iraq. Before that we had organized a protest against the Russian aggression over Afghanistan with the three and half lakh people participating actively. The American people also joined these demonstrations against the American government.

We need the study of the text and of the contemporary situation simultaneously. In the words of Dr. Taha Jabir al-Alwani “The reading of the revelation and the reading of the universe should be combined”. It is impossible for Islam to live in the vacuum. It does not reflect the abstract theories of Plato; it is revelation in response to the ground realities. The Quran declares:

“There has come to you from God a (new) light and perspicuous Book.” (The Quran 5:17)

The message of reformation does exist. We should adopt a clear stand against the prevailing situation. The whole scenario should be deeply analyzed. To gain this objective in the American Islamic University we have prepared an effective system of education and a balanced curricula. This comprises the study of American history, society, constitution and the people alongwith the studies of the Quran, the hadith, the *sirah* and the *tafsir*. Our scholars here are obligated to study the Indian Constitution accordingly. In the Muslim societies are rare the scholars who are fully aware of their system of government, the Constitutions prevailing therein, the history and the changing constitutional laws of their countries.

The third methodological step to be taken in these countries by the Muslims is to conduct the surveys, to discuss the effective methods of Islamic preaching, to lay the foundation of the institutes for the said purpose and to teach masterly therein the mathematics, the sociology and the psychology and other disciplines. We should be in cognizance with the psychology of the

students we are teaching. We should have deep insight into different methods of teaching. We are too needy to all this in the field of religious propagation. One of the Shariah objectives is to communicate the message of Islam by the insight and the practical wisdom. The Quran declares :

“Say you : “This is my way : I do invite unto God, - on evidence clear as the seeing with one’s eyes, I and whoever follows me. (The Quran, 12: 108)

“Invite all to the way of your Lord with wisdom and beautiful preaching”.(The Quran, 16:125)

The Quranic *hikmah* referred to above does not mean to remember a point and communicate it to others. It rather applies that a man should be aware of the changing situation; he should preach in the suitable environment and does not express each and every point every where carelessly.

Once in the month of Ramadan I was invited to an *Iftar* party in Chicago. The American leaders, officials in the White House and the officers close to the President and the American Congress were also present. I addressed the *Iftar* party. One of the participants who was professionally a doctor told me: Dr. Salah! When I speak you Muslims you seem to be the best human beings. When I hear of a Shariah that educates jihad and violence I feel bad.” I responded him saying: “Is there any system or constitution in the world whose followers utter the word of mercy 120 times daily? See we Muslims pray daily 17 *rakats* as obligatory and 13 *rakats* atleast as supererogatory. We recite in each *rakat* as the following :

“In the name of God, Most Gracious, Most Merciful”.

Then we read the following :

“Praise be to God, the Cherisher and Sustainer of the worlds; Most Gracious, most Merciful”. (The Quran, 1:2-3)



We recite it four times in a *rakat*. After being multiplied thirty into four it is calculated as 120. More over we also recite the following :

“Be the salutation on you, God’s Mercy and His blessings!”.

“The greetings are for God and are also the prayers and the blessings.”

In order to actualize that mercy in the society, Islam rooting out all the assaults on the human dignity has pronounced the severe punishments. Shariah has prohibited likely the theft and has ordered to chop the hands of the thief. In New York only during each 27 seconds a vehicle is stolen. From the start of my lecture till its conclusion thousands of vehicles would be stolen in one American province only. A person told me that due to electricity faults for some hours in New York the goods valued the ten millions were stolen from his shop. When the electricity was supplied the goods valued one thousand only could survive. I asked him about the Islamic punishment of the theft. Whether the hands of these criminals should be chopped or their heads also be cut off? You should not seek the opinion of those sitting in the air conditioned offices about these Islamic punishments, who declare casually them as crude, harsh, symbol of backwardness, illegal and also immoral. You must consult the victim who earns his livelihood with the hard work and the honesty and becomes bankrupt in one second by the criminals.

It is essential to present before the people Islamic Shariah with this spirit, in the perspective of these survey reports and after full acquaintance with the ground realities. You make the people aware of the religion of Islam in the light of the present statistics. God bless the Bosnian President Alija Izetbegovic who composed in 1980 the book “Islam between East and West”. This was translated into English, Arabic, Urdu and other languages. He has discussed the bad impact of western culture on the women, the children and their behaviour in the light of western sources themselves. He has based his arguments on the survey reports and

statistics provided by the different study centres working in Great Britain, Germany, France, Belgium and Israel. This could not be done by the Muslims. We granted the women the freedom but the western culture according to its own resources committed atrocities against them. The only alternative is Islam. In America three thousand teen-ager girls maintain sexual relations illegally in every 24 hours and are pregnant. The increasing number of girls in this age who use contraceptive pills is alarming. The proportion of the girls victimized by sexual assaults and aggression is too high. In every 24 hours 15 thousand boys of secondary schools use the drugs and alcohols frequently. When you talk to them in the light of these surveys and offer them the Islamic alternative you will be observing the Shariah objectives.

I have delivered a lecture on Islamic fasting. I may email to you on the demand. What is *saum* (fasting)? A civilizational training camp delivering the humanity! I have pointed out in that lecture that the world is engaged in the commercial dealings of drugs, sex and arms on the largest unacceptable level. *Saum*, on the contrary, provided an effective means to resist these wrongs and to normalize the life. To refrain from the permissible temporarily habituates a man to refrain from the prohibited permanently. The philosophy of fasting is nothing but a word of *Allah Akbar* in the early morning prohibits all the permissible things and legalizes them again in the evening. If you hold fast following the divine order and are capable to avoid the permissibles, would you dare to commit a prohibited? I mean to say the permissible would distance from the prohibited due to this spiritual training. The *saum* (Islamic fasting) in Islam is an ideology and a training that may not be compared by any philosophy of the west. This is the reality of understanding the text and the situation simultaneously.

Abu Ishaq al-Shatibi emphasizing on a combination of the studies of the text and the situation confronted, declares that the text should be applied on the realization of the contemporary circumstances. The realization of the situation and the understanding of the texts may be obtained by long experiences and consecutive exercises. The application of the text on the situation,

however, is an ability that God gifts to His selected followers. One who understands the text and the situation does not necessarily resolve the issue confronted or issue the *fatwa* appropriately. Ibn Abbas, the companion is a distinct personality in Islam. Once a person asked him: O Ibn Abbas! Does the killer of a Muslim have a chance to repentance? He replied him in negative. The people asked him surprisedly: How did you refuse him entirely while the Quran says:

“God forgives not that partners should be setup with Him; but He forgives anything else, to whom He pleases.”(The Quran, 4:48)

Ibn Abbas responded: “When the person came to me his eyes seemed to me bloody. He intended to kill some one. If anyone asks me this after having committed the murder I reply him in affirmative. Ibn Abbas realized the mischief and checked it timely. This understanding is required.

While facing the common contemporary issues the collective *ijtihad* should be exercised. We are confronted with the too complicated problems and issues. If the founders of the four legal schools were alive they would not have reacted spontaneously; they, instead, tried to resolve them in the various consecutive sittings. We are unfortunately introduced with such *muftis* who are suffering from juristic indigestion. Ibn al-Qayyim on the contrary, has quoted in the start of his book entitled *Ilam al-Muaqqiin* a hadith saying :

“One who issues verdict without knowledge should take his abode in the Hell”.

(This is a hadith narrated in Muslim, Kitab al-Ilm, No. 2673, with the different words having declared the issuing legal verdict without knowledge was a job of illiterate chiefs who used to mislead others and were misled themselves. Editor)

Abu Bakr is reported to have said :

“Which heaven will cast a shadow over me and which earth will bear me if I will say anything about the Quran without knowledge or on my own behalf”?

I aim at giving due weight to the academies founded for juristic studies like Islamic Fiqh Academy India, Islamic Fiqh Academy Makkah, Fiqh Council for North America, European Council for Ifta and Research and so on. Any *fatwa* concerning the common issue should be given by these academies. A woman embraces Islam but her husband does not accept it for example. Whether she may or not afford his companionship in Shariah? On this issue a shaykh issues a verdict individually. Another sitting in an university releases the other *fatwa*. No unanimously resolved solution is offered unfortunately. A collective verdict in these issues should be given. In case an academy has fifty members, they are certainly to arrive at the better decision. This workshop in New Delhi how many time it will take to conclude? Suppose, five days are to be engaged every day manages the lectures for eight hours. After having multiplied eight into fifty, 400 would be calculated. In case these are multiplied by five it will be solved into 2000. Thus two thousand hours were spent in this collective discussion. Employing this long time into a particular issue would be wastage of time. This should be employed only in a *fatwa* of great importance that requires a collective decision.

A meeting with five persons you joined 15 minutes late; you basically were late 15 minutes and one hour. Your being late in the meeting affected all the five members. You thus deducted 15 minutes and one hour from their age. Many times the Principal in my college offered me to discuss some issues privately and thereby to avoid the lecture on that day. I told them in case I did not deliver the lecture to these two thousand students I would waste four thousand hours per day. The Principal sought to detail. I convinced him by argumentation. In the issues like this the collective interest should be maintained. Umar bin al-Khattab used to say Abu Musa Ashari: “In case you are confronted with any problem you do consult the men of knowledge and if you desire I may also give the advice. I think that seeking advice from me would be better for

you.” Umar when desired to gather the knowledgeable and God-fearing companions, he used to say: “Advise me, because the advice is the foundation of the Faith” :

“Those who hearken to their Lord, and establish regular prayer; who (conduct) their affairs by mutual consultation; who spend out of what we bestow on them for sustenance”. (The Quran, 42:38)

A choice amongst or a coordination between various schools of law, or an *ijtihad* afresh should play a crucial role in resolving the problems of Muslim minorities. We should not rely on one school while issuing the legal verdict. The founders of these schools respected each other duly. Every one of them has whatever said respectfully of the other is known and popular. The grievous mistake was committed when the blind followers demarcated around them artificially. Strange and far-fetched issues were raised. Whether a hanafid Muslim may or not be got married with a shafiite woman? The *muftis* responded in negative. Some allowed it applying on the marriage of a non-Muslim citizen (*zimmi*) woman. What is this *fiqh*? What tragedy is this? By God! If Imam Shafii resuscitates in this world he will distance himself from both the *mufti* and the one who seeks *fatwa* in this regard.

Bringing different schools nearer was well performed by Imam al-Shatibi and before him by Imam al-Subuki and Imam Abdur Rahim al-Isnawi. In view of the ideology of the Shariah objectives the great ulama aimed at a close coordination between various schools. The Quran declared :

“Verily this brotherhood of yours is a single brotherhood, and I am your Lord and Cherisher: therefore serve Me (and not other).” (The Quran, 21:92)

A jurist must be rational. He should not issue a *fatwa* that may hurt the people’s sentiments. *Fatwa* essentially should not be eastern or western, Egyptian or Indian; it should be Islamic only. Through a *fatwa*, ordinances and particulars should be arranged keeping in view the objectives, the principles and the rules of Shariah against the issues of the worship and the transactions. No

withdrawal from the Islamic rites and symbols (*shaair*) is possible. Umar bin al-Khattab does not avoid the practice of these religious rites and symbols during the performance of pilgrimage (*hajj*), as kissing the noble Black Stone, moving the shoulders while revolving around holy Kabah (*raml*), and putting the *ihram* on the left shoulder after taking it from the below of the right shoulder (*idtibaa*) and others. The Quran explicitly pronounces :

“Such (is his state): and whoever hold in honour the symbols of God, (in the sacrifice of the animals), such (honour) should come truly from piety of heart.” (The Quran, 22:32)

Umar prohibited the distribution of the conquered land in Iraq among the army members due to real understanding of the objectives only. His stand was clear. He said he would support them fully and would provide the provisions for their family members even in their absence. Their job was to extend the conquests. Had he distributed the land among them they had engaged themselves in the farming and cultivation exclusively. Umar’s stand was of far-reaching consequences and was too insightful. There are a number of issues resolved by him in the light of general principles and essential rules of Shariah. The priorities should be made keeping in view the internal resources and the external opportunities and scope. You are living in India. You must be aware of the source of power here so that it may be exploited for the betterment of the Muslims. As being Muslim we have a history, a culture, a considerable figure of 20 crores. We possess the experts and human resources, the fountains of mental and intellectual capabilities. We should realize our shortcomings also. We are disunited and dishearted. We are confronted with the poverty and the illiteracy. We face a crisis of newer legislation. As an institute of Islamic jurisprudence we should cope with the daily changes and advancements. We are living in a global crisis. Muslim image is tarnished and Islam attacked universally. We lack our T.V. channels. We have no centres and institutes that make us conscious of our sources of power and resources and capabilities available to us.

An American has written a book on the available opportunities. He has enthusiastically persuaded America to avail all the opportunities for ruling all over the world. Just after Ist World War hundreds of articles were composed and America was addressed to avail all the opportunities for the globalization. This persuasion campaign continued to 1945, 1947, 1955 and 1960. They thought over, prepared fully and trapped finally the world into the catching slogan of globalization. Shaykh Yusuf al-Qaradhawi has correlated the Islamic message to the globalization issue. His stand in this regard is clear that globalization is nothing but an unholy American effort to capture the economy, the culture, the society and the beliefs of the world. Against this so-called globalization stands Islam which qualifies a mercy for the universe. Alas! The enemies of God are availing the opportunities and the Muslims are being trapped by their plots. If the Muslims missed this opportunity they would never be in a position to avail it again. The Arab poet has well suggested :

“The man incompetent in his opinion misses the opportunities available to him. Consequently he misses the target and does curse on the Fate!”

We must be in cognizance of the threats faced by Muslims in the society. The most dangerous today are the threats concerning the media and the educational mischiefs and misleadings. I, therefore, say the media assault on the Muslims is severe than the army attacks or missiles. I hope the Muslims will awaken because a mischief is dangerous than the murder. A common Muslim is not to face any military operation against him; he is rather confronted unavoidably with the tumult and sideeffects of internet and television. In the Gulf and other Muslim countries 70% Muslim youth attend the mischievous and sexually provocative clubs as was discussed on the basis of survey reports in a conference organized in Riyadh by World Assembly of Muslim Youth (WAMY). Where are lost the pearls of purity, chastity and modesty? The modern civilization has damaged the man and his environment. How the man was trapped in drugs and alcohols, sex and sinful activities and was deprived of the dignity, the self-respect, the generosity, the

modesty and the ethical values? This is the worst degeneration of the humanity!

An important point is the realization of the priorities. Constructing a man should be preferred. The objective-based ideology of Umar bin al-Khattab should be followed sincerely. In a sitting a companion of the Prophet wished to have a house filled with gold, and to spend all this in the way of God! Another desired to have a house filled with the swords and the armours and to fight by them in the way of God! Hazrat Umar, instead, wished to have a house filled with the men like Abu Ubaidah bin al-Jarrah! Shaykh Abul Hasan Ali Nadawi in his Arabic book entitled “I like to Share the Brothers”! has said that the global change and a revolution of far-reaching consequences is based on the construction of the human being itself and not on the construction of his whereabouts. In case a hut is progressed to a huge building and an eye-catching palace; or a donkey is replaced by a valuable car, it is not a fundamental change; it is rather structural change. What is important is the change of human being itself and not the change of its whereabouts and areas. Allah has clearly pronounced :

“Verily never will God change the condition of a people until they change it themselves”. (The Quran, 13:11)

I have already described in my previous lecture some priorities in the perspective of understanding the Shariah objectives, as taking into consideration the public comfort and the gradual steps in the *fatwa*. Dr. Yusuf al-Qaradhawi too in one of his papers presented in a conference described these priorities in the following phraseology: “To facilitate in issuing the *fatwa*, and to proclaim good news while preaching”. Islamic preaching should observe strictly the extreme lines in the theorization, the facilitation in the *fatwa* and the gradation in the reformation.

Umar bin Abdul Aziz after being adorned with the caliphate under the Umayyads, received a number of complaints. He, keeping in view the gradual steps for the compensation, prepared a long-term plan. His son, who himself was a God-fearing and pious man, asked him: In case you die without properly responding to these



victims and responding to their complaints, how would you face your Lord? He answered: “My son! God has created this universe in the period of six days while he was quite capable to do it in one day only. He has prohibited the alcohols in the three phases. Had he prohibited it all at once the people, as ‘Aisha has narrated, would have responded that they would have neither avoided the alcohols nor the adultery. Do you not like your father do revive a *sunnah* everyday and replace a religious innovation? I fear if I implement all the obligations on the people immediately they will leave me alone”. The wisdom, the philosophy of the objectives all should be present in the mind of a preacher, a jurist, and a reformer. Without any insight and clarity the response to the issues confronted would be naturally inappropriate.

Another point essentially to be considered by a jurist relates to trace out the Islamic alternatives to the religiously prohibited things. If you declare a thing prohibited you should point out its alternatives also. The problems faced by the Muslim students in America offer an explicit example. The annual budget of the university is limited and confined to 15 thousand US dollars per annum for example, while the studies for law and medical disciplines require 40 thousand dollars per annum at least. If the university refuses to receive any loan on the interest how would its expenditures be met out. There is no institution that provides interest-free loan. There are some institutions, however, that may sanction loan on the easy installments even for 50 years. In case the students are not convinced to receive such loan because of the prohibition of the interest they are reduced to be illiterate and consequently unemployed. The Quran contrarily, declared :

“And never will God grant to the Unbelievers a way (to triumph) over the Believers”. (The Quran, 4:141)

Think over, a Muslim fulfilling the Quranic requirement for the domination over the pagans received the interest-based loan and finally became by profession a doctor, a lawyer, an engineer or a scientist. Whether did he replace or not a more severe danger? I do not take these issues easy and can not allow every individual to

decide in isolation. It is incumbent on the *fiqh* academies to think collectively over all these issues and trace out the alternatives. If we turn to the Muslim banks or the individuals of resources for the said purpose they are trapped in the income tax. Does any survey report indicate that a Muslim youth without a graduate degree in the professional courses, proves himself a beneficial element of the society? Would his being unemployed or idle suit him? In the light of understanding the objectives of Shariah we should provide their alternatives. Bilal bin Rabah and Ibn al-Harith, the two companions of the Prophet (SAW) purchased one *saa* (an Arabic measure of capacity) of better dates in exchange of the two *saas* of worse dates. The Prophet declared it usury and therefore unlawful. He sanctioned its alternative and said it was lawful for you to sell these two *saas* of worse dates and purchase by the income one *saa* of good dates (Bukhari, *Al-Jami al-Sahih*, Kitab al-Wikalah Hadith No. 2312. Editor). He did not prohibit that only; he provided the alternative also.

If a musician embraces Islam and desires to serve the religion by his profession and improves and upgrades the Islamic songs I see no legal problem therein. A German Muslim youth from Algerian origin opted the profession of musician and singer. Some of my friends declared his art and profession as prohibited in Shariah. I told them if he was born among the Jews they would have prepared thousands of CDs and spread them all over the globe, and his songs fascinated the Germans. I felt no problem if this young man propagates through the audio-video cassettes the Islamic teachings of Muslim brotherhood, the paternal responsibility, the maternal affection, the mutual coordination and understanding, taking care of the poor and weak sections, and encourages the Islamic glory and appreciates the Muslim enthusiasm. I advised them to copy these CDs and popularize them among the Muslim and non-Muslim Germans. Communicate the message of God to all the human beings. In order to perform it nicely constitute a committee of technicians and experts. When I visited Germany second time they told me they were highly influenced with that advice. They showed me his second CD

performing the best so far. All the Germans welcomed that CD. We should introduce our own websites, TV channels, serials, dramas, songs, discoveries and science-based programmes. We wish to create the alternatives in media and evolve the highest capabilities and proficiencies. The Muslims living in the West are confronted with the challenge of creating the alternatives. This is the requirement of Islamic preaching too. The *fiqh* offers the principle that without which an obligation in Shariah may not be performed becomes itself an obligation.

The residence in the non-Muslim countries is lawful if opted for the sake of earning the livelihood or tourism and becomes obligatory if required by Islamic *dawah*. The things are originally lawful, except the evidence for their prohibition is explicitly described. The varying stands taken in early Islam like the Prophetic attitude towards the *Masjid Dirar*; Umar's stand about the conquered land in Iraq; the difference in the residence applied in Makkah, Madinah and Ethiopia individually; migration to Ethiopia and spreading therein the message of Islam; migration being obligatory when Madinah was the only abode of Islam and the Prophetic pronouncement later on that there was no migration after the conquest of Makkah but the *jihad* and good intention would survive; Ibn Abbas' stand against the question, that was there any scope of repentance for a Muslim who had killed another Muslim – all are based on the ideology of the Shariah objectives.

The difference between an interaction with the people of the Western countries and maintaining an intimacy with them (*mualāt*) should be marked at any cost. Most of the scholars have taken an unjust stand in this regard. God has declared *mualāt* prohibited and the interaction with the unbelievers lawful. The holy Quran differentiates the two from each another :

“God forbids you not, with regard to those who fight you not for (your) Faith, now drive you out of your homes, from dealing kindly and justly with them: For God loves those who are just. God only forbids you, with regard to those who fight you for (your) Faith, and drive you out of your homes, and support (others) in driving you out, from

turn to them (for friendship and protection). It is such as turn to them (in these circumstances) that do wrong.”  
(The Quran, 60:8-9)

The Quran liberally deals with the People of the Book :

“This day are (all) things good and pure made lawful unto you. The food of the people of the Book is lawful unto you and yours is lawful unto them. (lawful unto you in marriage) are not only chaste women who are believers, but chaste women among the People of the Book, revealed before your time, when you give them their due dowers, and desire chastity, not lewdness, nor secret intrigues.” (The Quran, 5:6)

Muhammad Tahir bin ‘Ashur in his *al-Maqasid* has mentioned that this lawfulness of the food for each other among the Muslims and the People of the Book, aimed at facilitating the coordination between the two so that Muslims might attract them. In case the wife of a Muslim is non-Muslim and belongs to the people of the Book would you check him to interact with his life partner? How does it relate to the Quranic *mualat* prohibited? You are bound to deal kindly with all your non-Muslim relatives according to the teachings of Islam. Asma bint Abu Bakr reportedly asked the Prophet (SAW): O Prophet of God! My mother, who does associate with God the other partners, has come to me demanding a gift. May I be allowed to help her? The Prophet said : “Maintain good relations with your mother.” The Prophet accepted the gift of Al-Maquqas, the chief of the Egyptian Copts. He honoured Abu Sufyan, the father of Umm Habibah. This did not constitute the *mualat* that was forbidden in the Quran. The *mualat*, instead, applies a friendship with the unbelievers at the cost of the believers, and a support to them against the Muslim interest as was practiced by the Prophet in the case of Hatib bin Abu Baltaah. He forgave Hatib only because of his sincerity and loyalty to the Muslims. The hypocrisy or the prohibited *mualat* reveals a belief in un-Islamic law as the source, loyalty to the non-believers and assisting them in anti-Muslim causes.

Participation in the political process is also required by an understanding on the objectives. The Shariah rules in this regard provide us the guidance. The objectives, perception avoids any assumption-based argument. These rules are following :

1. Without which an obligation in Shariah may not be performed, becomes itself an obligation.
2. The heavier harm should be replaced by a lighter harm.
3. Precautions are observed for the sake of earning the interests and removing the evils.
4. The means should be considered in the legislation.
5. The things along with their objectives are to be taken in to account.

Sharing the political process was supported in Islamic perspective by the analogical reasoning of the ulama, the *fatwas* of Dr. Yusuf al-Qaradhawi and the grand *mufti* of al-Azhar, the resolutions passed by Ulama al-Shariah Conference, European Council for Ifta and Research and the Fiqh academies all over the Muslim world. I wish a *fatwa* on behalf of Islamic Fiqh Academy, India should also be released. The *fatwa* issued by Shaykh Abdul Karim Zaydan, Shaykh Salih al-Munajjid, Shaykh Farid Wasil the Mufti of Egypt, and Dr. Taha Jabir al-Alwani are important in this respect. The power-sharing process, however, has some rules and regulations to be observed. I have divided these rules in one of my articles on the issue under discussion, in to general rules and particular rules. The core of the discussion, however, revolves around the ideology of the objectives. The central to the thought is the clarification that the power-sharing process is essential so that the Muslims dominate the world; their economic backwardness turn into advancement and they enable themselves to decide their future as well as the future of others. We living in any part of the world, are obligated to share the power and influence the policy making process.

In the light of the objectives' perception it should also be resolved that whether a woman embracing Islam should distance herself from her non-Muslim husband. According to the survey reports in America every year thirty thousand people embrace Islam; eighteen thousand women and twelve thousand men. This has created the problem. The exceeding ratio of the women embracing Islam have practically no Muslim partners. They may not be comfortably accommodated with the Muslim immigrants who are already married. This should be seriously resolved in the objectives perspective. According to Shariah objectives every man should company one woman at least as his life partner without whom he may not get relief and relaxation required by the Quran pronouncing :

“We said : “O Adam! dwell you and your wife in the Garden; and eat of the beautiful things therein as (where and when) you will.” (The Quran, 2:35)

A man living in a royal palace may not enjoy with the mental and psychological solace and relief unless his wife provides him the company, as a dining table may not be imagined without the delicious dishes. The Quran has described the *maidah* unavoidably alongwith the food :

“O Jesus the son of Mary! Can your Lord send down to us a Table set (with viands) from heaven”? (The Quran, 5:115)

The word *maidah* – also called the *Khuwan* – is applied necessarily on the table adorned with the food. Likewise the comfort and the solace is necessary for a married life. This is the requirement of a human nature. The man requires four objectives from his wife :

1. psychological affection and mental peace,
2. physical and sexual enjoyment,
3. to enhance the generation and
4. to maintain the social relations.

You should know the western male and female are too provocative sexually. They use drugs to provoke the sexes. Sayyid Qutb, the martyr of Islam has, therefore, interpreted their provocative sexual inclination as the canine appetite. In the given situation if a woman embraces Islam in the West and she finds no life partner in the Muslim society and can not live without husband after her reversion, what should she do? How much she should wait for? An Arab woman may wait for one or two months in the absence of her husband. After that she becomes impatient. Umar bin al-Khattab while roaming in the night according to his schedule heard a woman reciting in her house the following poetic composition :

“By God! If there was no God who is Omnipresent, all the sides of this bed (that I use) were to be shaken violently.”

Umar was informed that her husband was engaged in jihad. He went to his daughter Hafsah and enquired into how much a woman may keep patient in the absence of her husband? She told that a woman was normally patient for one month; after two months her resistance started lacking, and after three months she turned into impatient. An American, European or Indian girl after having embraced Islam how much can keep patience? By God! She can not keep patience even for one month. If she is left unmarried she would be involved with a number of men and would cause the mischief for numerous people.

I found out the opinion of the scholars in the given case. I had come across with this issue as being a consensus in my childhood. I spent two years enquiring into the arguments of this consensus. I used to study and research it critically till I discovered there was no consensus; it was only the claim for a consensus. I thoroughly discussed the reality of the consensus over the issue blackening 25 pages. The scholars differed in the issue in the following lines :

1. To Abu Hanifah, the husband if refuses to embrace Islam the marriage would be cancelled and both the partners would be detached from each other.
2. According to Malik bin Anas, the marriage would be dissolved at the time of the completion of the '*iddah*' (specific period to be spent by the woman after divorce) especificated for a wife sexually involved with her husband.
3. Ibn Shibramah says that in case the wife has embraced Islam before her husband, the separation between the two will occur at once. If she has done so after the husband has reverted to Islam the marriage would be dissolved after completing her '*iddah*'.
4. According to Awzai, Zuhri, Laith, Ahmad bin Hanbal and Shafii the '*iddah*' for each of the wife and husband would be considered.
5. The opinion of Umar bin al-Khattab opted by Ibn al-Qayyim and Ibn Taymiah and recently followed by European Council for Ifta and Research and also by Fiqh Academy for North America favours the companionship of the wife with her husband and waiting for his reversion to Islam even for numerous years. When we issued *fatwa* following this juristic opinion the ulama in the Gulf countries stood against us and declared that we had deviated from the religion and that we represented the ruling elite and those who were in power.
6. Ali bin Abu Talib and Shabi say the husband is more entitled to live with her provided she was not in abroad.
7. Zuhri states both would maintain the status quo till the ruler arranges a separation between the two.
8. Dawud bin Ali and Ahmad bin Sufyan opine that the woman will accompany her husband till her death.

Dr. Abdullah al-Jadii, the distinguished Iraqi researcher currently residing in Britain has made a comprehensive research on



this issue, which was published in to three volumes by the European Council for Ifta and Research.

We originally rely on the texts in this respect lest any person accuse us for avoiding the texts and following the objectives only. When Abul Aas bin al-Rabii came to Madinah after passing the six years of migration of his wife Zaynab bint Rasul Allah, she asked the Prophet about his stay with her. The Prophet replied that he was her husband and instructed her to keep him far. He intended to persuade Abul 'Aas to embrace Islam. The Prophet, however, did not arrange any separation.

The following Quranic verse should be placed in its proper context :

“O ye who believe! When there come to you believing women refugees, examine (and test) them God knows best as to their Faith; if you ascertain that they are believers, then send them not back to the unbelievers. They are not lawful (wives) for the unbelievers, nor are the (unbelievers) lawful (husbands) for them.” (The Quran, 60:10)

This was revealed in a different situation. Muslim women married to pagan husbands in Makkah were oppressed for their faith, and some of them came to Madinah as refugees. After this they were not to be returned to the custody of their pagan husbands at Makkah. The verse would be applied on the situation as the woman embracing Islam has migrated from the country of her husband who had pressurized her to turn to her previous religion and to be apostate. This has been discussed in detail alongwith the elaborative arguments and evidences.

One point may be debated here that the texts in this regard seem to be contradictory, how a coordination between these or a preference over the other would be made? I may say in this regard that the ideology of the objectives requires a help and rescue of the woman embracing Islam. Such women in American society are in huge number. In case they are compelled to leave their husband and also the children they may be got rarely remarried and have no

guardian and care-taker. Most of these women would be apostated or would not dare to embrace Islam. Through this unrealistic *fatwa* we would be constructing the barrier in the way to God. My brothers in Islam! The harshest opinion you may form is that she would be treated as adulterous in case she prefers to accompany her pagan husband. The Muslim adulterous, however, stands better than a polytheist adulterous. But the reality is not like this. The experience testifies that if the wife is pious and adorned with good conduct and welcoming behaviour, she succeeds easily in American society in persuading her husband to embrace Islam. This has too scope for Islamic propagation. Historically speaking, Abu Sufyan bin al-Harith and Abdullah bin Umayyah embraced Islam in Makkah before their wives. The wife of Abbas bin Abdul Muttalib embraced Islam prior to her husband. In none of the situations cited above, the Prophet managed the separation between the pairs.

Ali is reported to have stated that in case the wife converts to Islam but the husband remains the polytheist, she deserves more to her husband till he is in the abode of *hijrah* according to one narration. Hani bin Qays al-Shaybani was a Christian. All his four wives embraced Islam. Umar advised them to retain the companionship with his husband. According to another narration the wife would be authorized to retain the status quo or to retain the company of her husband. In my opinion the separation may create a hatred against Islam and this stands against the Shariah rules.

The conclusion Dr. Abdullah al-Jadii arrived at after his extensive research, declares the issue firstly as speculative and not the certain; secondly disputed and not the unanimously agreed on. The third point of al-Jadii is that Sunnah does not indicate any practical example of separation between the two only because of embracing Islam by anyone. The vice versa instead, is maintained. Moreover Umar and Ali have favoured the lenient stand. The following verse:

“But hold not to the guardianship of unbelieving women”. (The Quran, 60:10)

may be properly interpreted in the light of pragmatic approach of Sunnah. The women referred to here are those residing the abode of hostility (*dar al-harb*). These may not be accommodated with the Muslims as a Muslim woman may not afford the companionship of a pagan of the abode of hostility.

The fourth point of Dr. al-Jadii's conclusion is that the marriage arranged before she embraced Islam is certain that may not be dissolved because of any doubt.

Because of all the four points Dr. al-Jadii arrived at the interaction between the two including sex too is lawful and Islamically sanctioned.

The marriage of a Muslim man with a non-Muslim woman also requires rethinking in the paradigm of the Shariah objectives. The unanimously agreed point in this regard does not allow a marriage with an idol-worshipping woman. The Quran says:

“Do not marry idolatrous women until they believe.”  
(The Quran, 2:221)

Marrying an atheist woman by a Muslim is unlawful preferably. The same verdict stands for an apostate woman. The Quran declares:

“And if any of you turn back from their faith and die in unbelief, their works will bear no fruit in this life and in the Hereafter; they will be companions of the fire and will abide therein.” (The Quran, 2:217)

The same verdict stands for the marriage with a woman of Bahai sect. Conversely according to the majority of the scholars the marriage with a *kitabiyah* (an woman belonging to the People of the Book) is lawful.

See the Quranic pronouncement in this regard :

“(Lawful unto you in marriage) are (not only) chaste women who are believers, but chaste women among the People of the Book revealed before your time.” (The Quran, 5:5).

Some scholars of independent reasoning (*mujtahid*) while arguing with the verse that reads :

“Do not marry idolatrous women until they believe.”  
(The Quran, 2:221)

declare the marriage with *kitabiyah* as unlawful. They say the woman who believes in Jesus as her Lord, is undoubtedly a pagan and a polytheist. I say did they not read the following verse :

In blasphemy indeed are those that say that God is Christ the son of Mary.” (The Quran, 5:19)

And, inspite of this declaration, the Quran pronounced :

“(Lawful unto you in marriage) are (not only) chaste women who are believers, but chaste women among the People of the Book, revealed before your time.”(The Quran, 5:5)

The jurists should also think what is the requirement of the philosophy of objectives in the present situation. In the given circumstances what legal verdict is advisable: lawfulness of this marriage or unlawfulness?

In the present scenario a huge number of Muslim youth migrated to America but they could not receive the immigration. They consequently married with the American women without taking into account they belonged to or not the permissible category of the People of the Book. They produced the children naturally. After a separation held between the pair, the children were owned by the women according to the law of the land. Due to maternal influence these children too remained the polytheist and non-Muslim while their fathers were the Muslim. Usually in America even in case the marriage relations are retained the women influence their husbands. The husbands due to their wives' pressure may not join the mosque but they do attend the church apart from they persuade their wives to join the mosque. A huge number of those who married with the Jewish or Christian women in America is confronted with this unpleasant situation. Dr. Yusuf al-Qaradhawi has, therefore declared the enquiry about woman being

*kitabiyah* as prerequisite for its lawfulness in Shariah. Today 25% American girls do not attend the church, nor they profess any religion. Their being christian is known only by the Cross to be hanged around the neck. While ascertaining her religion this can not be considered that she is registered in the government papers as the christian, or jew (e.g. *kitabiyah*) or her father had professed a specific religion. Such girls are the atheist and not the Christian or the jew, and therefore any marriage with them is not lawful for a Muslim man. This must be certainly examined she believes in christianity. Likely in Egypt the youth claim surprisingly to be communist Muslim or liberal Muslim or secular Muslim. In the eye of the Quran, Muslim signifies the following character:

“Who is better in speech than one who calls (men) to God, works righteousness, and says, “I am of those who bow in Islam”. (The Quran, 41:33)

It is also necessary to ascertain she is or not the chaste and morally high. The chastity is described in the Quran as a prerequisite for marriage with the Muslim or Christian woman. The word *ihsan* referred to in the Quran, signifies that she firmly believes in the chastity as a sound character to be observed at any cost and that no liberal attitude in this regard is permissible. But today’s American or European society is so degenerated that if a girl of 20 years of age is not involved sexually with any man illegally and has no boy friend she is treated as an abnormal. Her attitude is considered a slap in the face of the freedom and modern culture.

It is also essential to examine she is or not of crusading mentality or Zionist lest she cause a greater damage in the future. In the American/European society one should keep in mind while marrying therein that the man is the *qawwam* (protector and guardian). In case he is unable to prove his dominating position he will suffer a lot. Once I was performing *iitikaf* (keeping one self confined in the mosque for last ten days in the month of Ramadhan performing religious obligations) in the mosque of Boston. A man was beaten badly by his wife and was thrown out of the home. He

came to me 2.00 p.m. to spend the night. I cursed upon him why did he marry an American girl. Why did he not select his life partner from his tribe, family or the country lest she create any mischief? When we have Muslim girls unmarried what does compel us to marry a woman from *ahl al-kitab*?

The letter addressed to Hudhayfah bin al-Yaman, the governor of Egypt by Umar represented a model for the ideology of objectives to be understood properly. When Hudhayfah married a woman from the People of the Book, Umar addressed him saying: “You will be followed by others; think over, you are trying to put a strange woman into the family of *mujahids*. A Muslim woman in Arabian peninsula protects her dignity and chastity in the absence of her husband and waits patiently for him and you having married the woman from the People of the Book try to damage the in-house order of the *mujahids* that I can not allow at any cost. After having received this latter you do divorce that woman.” Hudhayfah divorced that woman immediately lest it cause a heavy damage to the Muslim community in future.

It should be too ensured, therefore, the *kitabiyah* women are not exploited for spying against the Muslims. According to the historical surveys and studies, the Jews successfully employed their women for spying in the family of Ottoman rulers as their wives. These women caused the mischief and anarchy in all the fields because of their conspiracies.

The last issue after having discussed briefly I would conclude my lecture relates to the inheritance. This is one of major issues the Muslim minority is confronted. A number of cases in this respect may be presented as the proof. Usually a non-Muslim ancestor of an inheriting Muslim dies leaving behind him the huge property and bank balance. If the Muslim refuses to receive the inheritance the whole property will be possessed by the church. That property will be misused to provoke and inflame the war and to enrich economically as well as strategically the Zionists. Now what to do? Should we remain the silent spectator and let the enemies exploit our resources and we use to pronounce that the

three things namely the slavery, the murder and the difference in the religion stand barrier in the way of receiving any inheritance?

While dealing with the barriers in the inheritance we are confronted with the opinion of the *mujtahid* scholars like Umar bin al-Khattab, Maadh bin Jabal, Muawiyah bin Abu Sufyan, Muhammad bin al-Hanafiyah, Ali bin al-Husayn, Sayeed bn al-Musayyib, Masruq, Abdullah bin Maqil, Shabi, Yahya bin Yamar, Ishaq, Ibn al-Qayyim and Ibn Taymiah. They opine that a Muslim may inherit from non-Muslim provided they do not constitute for each other the position of a *harbi* (a man living in an abode of hostility). The difference in the religion as a barrier in the inheritance, to these *mujtahid* scholars, means the difference in the religion between a Muslim and a pagan of a hostile country, and not a general application of the term. European Council for Ifta and Research and Fiqh Academy for North America have issued the verdict on the basis of the same opinion. Think over in the objective perspective, you will find this opinion correct. Islam enhances the resources and takes care of them. How surprising is the situation if a non-Muslim is among the heirs he enjoys with his property abundantly but his Muslim brother is deprived of it only because of his belief in Islam?

We know the opinion of Abu Hanifah and other respected jurists that the word *kafir* in the hadith prohibiting inheritance from a non-believer applies on the pagan of a hostile country (*harbi*). After having opted this opinion a complicated issue may be resolved.

A suit was filed to Yahya bin ‘Amr seeking the clarification about the issue whether a Muslim would or not inherit from his Jewish brother. He quoted the following hadiths in his judgement:

“Islam increases and does not decrease.”

(Abu Dawud, Kitab al-Fara'id, Hadith No. 10, Editor)

“Islam dominates and is not dominated by.”

(Bukhari, Kitab al-Janaiz, Hadith No. 79, Editor)

He declared that Muslim may inherit from the Jewish brother. The hadith reading: “The Muslim does not inherit from the pagan”, therefore, would be interpreted as addressing the pagan of the hostile country (*harbi*), as the hadith reciting “The Muslim would not be killed in exchange of the pagan” (a hadith quoted by Imam Bukhari in his *Al-Sahih*, Kitab al-Diyat, No. 6903; also by Abu Dawud, Kitab al-Diyat, No. 4521 but with the word *mumin* instead of *muslim*. Editor) means the pagan living in the abode of hostility. All the hanafid scholars have clarified this hadith well. It should also be noted that being inheritor here does not qualify the prohibited *mualat*; it rather qualifies a support and material assistance. In case this mutual inheriting relation is considered as *mualat*, what decision would be made about that relation to be maintained without any dispute between a Muslim and a hypocrite?

Also think over the issue of *wasiyah* (a will provided by a man dying about the property he is leaving his behind). A Muslim in favour of a pagan living in a non-hostile country, and a pagan living in a non-hostile country for a Muslim can perform *wasiyah* in Shariah. I have already written on this issue in one of my articles in Arabic entitled as “The Obligatory *wasiyah* in the Arab Laws : A Juristic Critical Study”. I have really lost my energy in preparing this discussion. What I have concluded in that is performing *wasiyah* is obligatory on each Muslim and that he may perform a *wasiyah* in favour of a non-Muslim also provided he plans to persuade him embrace Islam.

These are few important issues confronted by the Muslim minorities in Europe and America. In resolving them the ideology of Shariah objectives may play a crucial role.



## **Chapter Five**

### **The Worksop Impressions, Conclusions**

### **No Rigidity in Knowledge**

- Wazih Rasheed Nadwi

I feel great honour and pleasure to attend this august gathering. It is pleasing to me that the useful researches and valuable contributions of Ulama and intellectuals are presented and evaluated. This is unexpected somehow. We had no schedule to attend this programme. We, however, agreed spontaneously with the organizers of the workshop. Nadwatul Ulama is fully engaged nowadays in conducting the students' examinations. But the news of the participation of some Arab intellectuals and also of the Indian dignitaries attracted us to travel immediately to New Delhi. We feel pleasure to participate in the workshop though for a short time.

Two-three days before I got an opportunity to join a programme in Patna conducted by Imarah Sharyiah. I was honoured to share my views with the students and teachers in al-M'ahad al-'Aali, the department of jurisprudence and judiciary therein. I was pleased to know a new trend has emerged in India from which a lot of expectations can be made. Today I repeat in this learned gathering what I had said in Patna. So far we were engaged in the discussions on the traditional sciences following the traditional methods. Now the new institutions are being established and in this process Qazi Mujahid-ul Islam Qasmi played a crucial role which should be whole heartedly acknowledged by us. The late founder of Islamic Fiqh Academy has turned the subject of Islamic jurisprudence into a living discipline. The *fiqh* as signifies the understanding of the texts, the commentaries and the works done in the past, was confined into the past studies and inferring the legal position from these only. It is however required to think over afresh, to reflect on seriously and to do research and analysis masterly over all the issues confronted with. The theme of the workshop itself reveals a deep understanding of the Shariah objectives.

A study of hadiths themselves reveals the Prophet of Islam has considered these objectives in various ordinances and has applied them in the different events. The main point is to realize the objectives. The texts should be studied afresh; a fresh evaluation

and research should be made; and a novel perspective should be sought. This will create a movement and an advancement in the knowledge. There should be no rigidity in the knowledge to avoid a rigidity in the people. The nations advance with the advancement of knowledge. If their stand about knowledge is dynamic and advanced they will turn into dynamic and advanced and in the vice versa they will be reduced to the static and the backward.

Now Khalid Saifullah Rahmani, after the sad demise of Qazi Sahab is taking the leading part in strengthening all these institutions. A new spirit and enthusiasm of research and discussion is now emerging in the youth. This is a good sign; it should be enhanced. In our educational institutions all over the country such research departments should be established in order to create a taste of research in the students. We feel our students in the *madrrasah* system of education lack the thinking and reflection on. In their efforts and urge for knowledge, therefore, there is no enthusiasm, no dynamism that is exhibited in the educational institutions of Europe. These new institutions, however, will play their role in strengthening this spirit also. I was pleased to see al-Mahad al-'Aali in Patna and I came to know there that some other institutions of similar interest are established by Khalid Rahmani. Today we attended this workshop and felt an honour and gratitude for the same. We thank him to provide an opportunity to express ourselves.

### **Role of Ulama in the Changing World**

- Prof. Muhammad Ijtiba Nadwi

I feel happy and fortunate to attend the workshop on the jurisprudence; to share you few words and to learn from the jurists and the scholars. I benefited myself a lot. I was a student of Islamic jurisprudence and have degree in Islamic Shariah. By chance I turned to Arabic language and literature but the background and the earlier perception always accompanied me. Let me inform you keeping humbleness aside that I used to secure the highest marks in *fiqh* when I was a student in Shariah College Damascus. Dr. Zaki

Abdul Barr, my teacher who edited *Tuhfat al-Fuqaha* of Imam al-Samarqandi and published it for the first time, was very strict in marking in the examinations. He, however, used to award me 85% marks in the examination. Due to this background I have been in touch with the discipline of Islamic jurisprudence. I took keen interest however, in the juristic movement founded and the research environment created by Mujahidul Islam Qasmi though I could not join it physically. Qazi Mujahidul Islam loved me too. He was a man who recognized the human talents as well as created them also. He used to consult me frequently by the telephone asking about a new book produced in the market, or a word to be traced in the dictionaries applying his method of making one closer to him. Consequently I used to attend him. In case there was a long gap I was disturbed. I have a diverse engagements; I have been in association with the universities, the *madrasah*, the elders as well as the common people. I suffer, therefore, from the paucity of the time. The late founder, however, created a taste in me. I could not imagine I would join the dais and act as secretary in one of the *fiqh* seminars held at Jamia Sayyid Ahmad Shaheed Katauli, Uttar Pradesh. This increased my interest with the noble project initiated by Qazi Mujahidul Islam. When I meet the Muslim youth I intend to share them our issues : the problems faced by the Muslims the situation they are living in whether in their homelands, or abroad. These situations and problems for their resolution are in wait for you people-the jurists and the ulama. A jurist well-versed in the sources of Islam and master in Arabic language may resolve the issues better than a preacher having no deep understanding of Islam, or worker of the Islamic movement with no direct access to Islam. I have some experiences with the Muslim world. I have visited the dignitaries of Islam by the grace of God. I feel we lack the direct access to the sources of Islam. For a better understanding of the objectives of Shariah a deep understanding of the sources is required.

I have rich experiences with the Arabic language and literature as well as the Islamic studies. Speaking to the students and teachers of Arabic language I use to say them: well, you do

speak the language and write in it but it does not mean that you know the language. The knowledge of the Arabic language signifies you have insight into Arabic sources; you know how a word is differently used to convey a variety of meanings and the word was used by the Arabs. The Laureates of Arabic language – Jahiz (775-868), Abu Ubaid and others - have worked hard and traveled extensively in search of the words and their meanings like the scholars of hadith have done. These masters of the language by travelling on their feet, having suffered from the hardships and troubles, arranging the surveys to each and every remote village in Basrah have traced out how a particular word was employed and what does it signify today. Without realizing it you may not appreciate the spirit and nature of Arabic language, and naturally you will be unable to understand the Shariah.

Hazrat Umar used to insist repeatedly on the need of a thorough study of pre-Islamic poetry in order to understand properly the Quran. The words of the Quran, its meanings and implications and its interpretation all is directly linked to the classical Arabic language. Unless we understand these Arab classics with their cores we are unable to resolve the difficulties faced in the understanding of the Quran. ‘Aisha Abdur Rahman Bint al-Shati reportedly came India to attend a Quran conference held probably in 1981 or 1982 that I could not join. One of the participants talked to her that he was translating the Quran in English. She asked about his knowledge of Arabic and was surprised to know that he had no knowledge of Arabic. The man under discussion was Hashim Ameer Ali from Hyderabad, the then director of the Institute of Rural Studies in Jamia Millia Islamia. This trend hammered the *ummah* in its intellectual life.

We likewise insist repeatedly in our universities on turning to the original sources of Islam and argue genuinely. The scholars declare the consultation of the original sources in all the branches of humanities and sciences as unavoidable. Without a masterly knowledge of English one can not understand nor can he interpret any drama of Shakespeare (1564-1616) for example. Then how can a man understand the Quran without any expertised knowledge of

Arabic? Unfortunately due to lack of a deep knowledge of and insight into the sources of Islam, severe mistakes and deviations were committed by our universities in particular and the *madrasahs* in general. I have heavily debated with the professors of Islamic studies in various universities like Aligarh Muslim University, Jamia Millia Islamia New Delhi and Osmania University Hyderabad. I have been in close touch with them. In the same Jamia Hamdard I was once involved in a hard talk with Prof. Anwar Muazzam and Asghar Ali Engineer on the issue.

It is unavoidable to have access to original sources of Islam. You make a survey of those who deviated from the Islamic teachings and hurted the Islamic values, you will find all or most of them having no deep knowledge of the Quran and no more command over the hadith and *sirah* literature. They have interpreted the sources in their own way rationally. The reason, the intelligence, the memory is undoubtedly important but they alone do not suffice to guide. Our ancestors who interpreted the religion, thought it necessary to study seriously the sources of the Quran, the hadith and the *sirah* of the Prophet (SAW); and to command over them.

You are young-aged and have a great scope to work in the field. God bless your age and health. You do the best. You may not do any higher job by opting the easier shortcuts. You concentrate on the acquisition of the deep knowledge, insightful thinking and broader studies. The books of the great jurists referred to in the lectures should be frequently consulted by you.

Muslim *ummah* needs your services – the services of the *madrasahs* both in this country and abroad. In Syria and the Arab world there are the private *madrasahs* in large numbers. There are the difference in the *madrasahs* working here and the one working abroad. I say by the grace of God in our *madrasahs* the sincerity, the religiosity, the fear of God and the practice of Shariah are performed better than the Arab world excluding Syria. Egypt too lacks this. The syllabus taught in these *madrasahs* is too useful. Those who belong to the secular universities desire a change in the

syllabus of the *madrasahs* and I too agree with them. But the change should be made within the frame work and paradigm of *madrasahs*. Does any change of the discipline in the social and natural sciences substitute that discipline? Would any replacement of physics with the chemistry, or the maths with the psychology be useful in respect of those disciplines changed? They demand us to replace hadith with the social science and expect from us impossibly the same results! The present syllabus for the noble purpose of the *madrasahs* is useful. By the same syllabus were graduated the ancestors and the pious elders after having studied whose books we are astonished. Keeping in view the changing circumstances and the age some modifications are, however, unavoidable so that the ulama are aware of the world. A jurist is essentially in cognizance of the world and its recurring changes; of the revolutions; of the human psychology and of the human nature. Then he succeeds in resolving the issues and releasing an appropriate verdict in the situation confronted with. On the basis of the syllabus taught in the *madrasahs* the posts in civil services too were occupied; the reputed employments were obtained and the religious functions of *imam* (one who leads the prayer) and *khatib* (one who delivers the religious sermons) were also performed. The human encyclopedias, available in the medieval times, may also be produced today observing all the principles, values, methods and perspectives of the same *madrasah* system of education.

You, the scholars and the jurists, are therefore advised to train yourselves as more useful, more contributing and more enriching the humanity keeping in view all the points. You only can contribute to the human being the solace, the deliverance and the peace. You only can replace the accusations of fundamentalism and terrorism by your knowledge. Be attentive! If your knowledge is sound, committed with and dignified as well as convincing the addressees no one can discredit you. The knowledge is too weighty in all the circumstances whatsoever your position is, as the Arab poet says :

“If the dignity of a man is not polluted with the meanness,  
every dress he puts on seems beautiful!”

No one can think you insignificant because you are a bearded man and are adorned with *Sherwani* and the trouser – a simple dress used by the clergies, provided you are equipped with the weight and dignity of knowledge and have good insight into the sources. You will surely convince others and persuade them to recognize you. No one can check you to move a head. The living examples are there. The important personalities produced by the *madrasah* system of education in abundance, may not be equated with those of the modern education. The whole Muslim world has been guided by the ulama and all the political, economic movements and the humane trends and projects working therein are attributed to them. All the leaders of forefront in the freedom struggle all over the Islamic world, belonged to the ulama community, sitting proudly on the rough mats in the *madrasahs*.

Keeping in mind all this, try to frame your life in the same structure. You may guide the Muslim community in all the unfortunate circumstances it is passing by, and the boat of ummah will, God willing, arrive at its goal.

I am thankful to all the organizers, to the general secretary, to Atiq Ahmad Qasmi, Burhanuddin Sanbhali and others to provide this opportunity to express myself though my scattered knowledge might not suit this gathering. I benefited from Dr. Salahuddin Sultan though I could not hear all his ins and outs. This leads us to a bright future. I hope we will do the best and the most useful through the Islamic Fiqh Academy of India and will open some novel ways for the development.



### **Need for Juristic Insight**

- Some Participant

We feel obliged to benefit a lot from the instructions provided by Dr. Salahuddin Sultan, Atiq Ahmad Qasmi, Khalid Saifullah Rahmani and other teachers. We hope we would be more energetic, more enthusiastic and daring to resolve the issues committedly by applying the Islamic jurisprudence as our ancestors did. The complexities of life, the siege and the blockage we face today may be dissolved only by the jurist of the day. He may offer a true guidance to the people in the light of the Quran, the hadith and the Shariah. All those who are troubled and trapped by the modern crises, are looking at the institutions we are associated with; the dignitaries who can provide them the solution, the solace and the satisfaction to their mind as well. This is your's responsibility. If it is not complied by your juristic insight you would be treated accountable to God.

This workshop is a golden opportunity for you as well as for me to train ourselves for resolving the issues by benefiting from it, discussing them mutually and noting all the important points in our note books as well as in our minds. The legacy produced by our ancestors, our ulama and the jurists as well pointed out by the learned people in their lectures, is very rich, and constitutes a best guide to us. This legacy forms a torch in the way by which we can replace the darkness of the modern civilization – the civilization that has endangered our religion, our identity and our Shariah – and can offer a model for a peaceful, prosperous life and can resolve the issues of the life in the best way, as was done by our ancestors.

With these few words I thank all of you and pray God from the core of my heart to grant this workshop a great success!

### **Juristic Movement – Few Words**

-Prof. Muhsin Uthmani Nadwi

It is a great honour for India that the book like *Hujjatullah al-Balighah* was written herein that deals with the secrets and the objectives of Shariah. The theme is too important for a true and balanced interpretation of Islam. In case the objectives are not realized truly, the particulars and the details are rarely maintained as balanced and moderate, and a deviation and extremism would be suspected. It is pleasing that our 'ulama are not unconscious of the problems of a routine life, and more satisfying is that they are capable to join and accompany all the different schools of thought. This workshop on the Shariah objectives and the participation of ulama from the varying schools of thought is the clear proof in this respect, and is a symbol of the bright future of the *ummah*. Let the situation worsening; if the vehicle of thinking is lubricated properly we need not to be harassed and troubled.

I feel gratitude to participate in this workshop on the Shariah objectives. You have heard of Mujahidul Islam Qasmi, his attributes, proficiencies and his-founded Islamic Fiqh Academy. Sometimes I realize Mujahidul Islam launched the movement of jurisprudence as Imam Abu Hanifah in his age had mobilized for a collective endeavour and as some ulama in the history instead of performing the juristic job individually had turned this noble project in to a collective struggle. The jurists and the ulama had performed tremendous job on the discipline of Islamic jurisprudence earlier. The fortune and the greatness, however, was pre-granted by God to these scholars of the country, who made the economic and social issues of the Muslims the subject of the jurisprudence, trained the ulama for this holy job and performed the collective *ijtihad*. Consequently a seminar had been continuously organized every year and the scholars and the jurists of the country used to participate therein uninterruptedly with the full preparation and homework and the detailed studies keeping in view the original sources of Shariah. This has rarely any precedent in the Indian history except the compilation of *Fatawa Alamgiri*.

The approach of Qazi Mujahid was too significant. The Muslim unity is a text-based obligation clearly defined. It has been unavoidable in each and every age. How it has become essential in the contemporary situation, is known to every conscious and sincere Muslim. The Qazi did not invite the hanafid ulama only in these seminars; he called, instead the shafiites, the ahl-Hadith and other ulama and organizations and their leading personalities too; heard their varying deliberations attentively and tried to incorporate them in the proceedings. His approach and method was unifying the different schools, in the absence of which peoples are trapped in the clashes and violent fightings. The whole community is consequently hurt, as Iqbal recites :

“Some defected from the caravan and others were trapped in the mistrust and the suspicion because the leader of the caravan was deprived of the quality of winning the hearts!”

Qazi Mujahid was habitual to win the minds and the hearts. He accommodated masterly the Muslim leaders and scholars of all the varying schools, and made this unity and the different outlooks of Muslim community the part and partial of juristic *ijtihad*.

The symbol of the living peoples is to complement the legacy of the ancestors and to continue successfully the projects initiated by them. This is a great responsibility of ours, and our ulama especially those associated with the Islamic Fiqh Academy to complement the works left by Qazi Mujahidul Islam, and to continue the journey of the caravan till it arrives at its goal.

### **Shariah Objectives - A New Series of Thinking**

- Asrarul Haq Qasmi

In this assembly of today we possess all the unavoidable except the light – the personality of Mujahidul Islam Qasmi. A big vacuum is felt. God had bestowed on him the inclusive and all-pervading qualities. He was granted the capability to work in all the fields. Islamic jurisprudence, issuing of legal verdicts and deciding

the issues in the light of Shariah were, however, the area of his interest. He had a perspective that was elaborated by Khalid Saifullah Rahmani in his welcome address. He wished to train the workers in all the fields. I too have an honour to work under his patronage. I realized he was keenly interested in preparing the workers of all the grades in the row so that the second line may fill the gap created unfortunately by the first line. For the same he laid the foundation of Islamic Fiqh Academy. In the span of these 13 years, by the Grace of God and the sincerity of the late founder, the topic that was reduced to be rigid and static having created no interest in the scholars, is now revived. A considerable number of young ‘ulama are now trained by the Academy, who are awarded by God the capability to deliberate all the issues in the Islamic perspective.

A new series of thinking in the Shariah objectives is today started. I pleased to hear from Khalid Saifullah Rahmani and Atiq Ahmad Qasmi. I too realized Qazi Mujahid has trained some responsible personalities as Khalid Rahmani, Atiq Qasmi, Ubaidullah Asadi and others. Today I acknowledge, Qazi Mujahid was no more among us; his academic perception, his intellectual height, his maturity in understanding the jurisprudence and judicial issues as well as the Islamic Shariah and his planning to lead them all this, however, is now to be accomplished by the capable scholars. I hope Islamic Fiqh Academy will succeed in its objectives, and the thinking and the approach concerning the *fiqh* and the Shariah, structured by the late Qazi would be complemented by this Academy and its associates. I pray God to grant it a great success.

### **Human Civilization and the Objectives**

- Abdur Rahim Quraishi Advocate

The foundation of Islamic Fiqh Academy in India is the demonstration of the farsightedness inherited in Qazi Mujahidul Islam Qasmi. He possessed a number of qualities. The distinguished

one was his being an independent thinker. The majority is habitual to see the present and is unable to visualize what is going to be resulted in future. The late Qazi was gifted by God this attribute. The contributions made by the Academy during the short period of 13 years are in your eyes. Qazi tried and planned to continue the noble job like a river is flowing uninterruptedly. Khalid Saifullah Rahmani and his associates are thus complementing the holy project. This should be appreciated.

The entire world is oriented to an ambiguous target and undefined goal. The culture and the civilization dominating the world, being equipped with all the resources, educates and trains the human being for the sake of this material world only so that they should enjoy all the opportunities of joy and happiness and should bother nothing beyond. This culture dominates India too. The Arab world is also moving towards this culture slowly. The German educationists are in Hyderabad nowadays to attend two programmes. Their main focus is on channelling in the youth the desire of acquiring the high ranks in the society and possessing all the means of progress in a way that leads to happiness. These means have no proper limitations nor any definitions. Today's culture plans to give the human being all the means of prosperity and worldly gains. How is the human being treated like the animals? Islam tries to upgrade the human being which is created as the best of the creatures in the best of moulds (*ahsan taqwim*, The Quran, 95:4). Bringing the human being back to this position is the goal of our efforts, the objective of the religion and the Shariah. The objectives will include obviously the elements that should construct the society and the state through building up the pressure against it. Every society provides human being the specific orientation. Islam desires to construct a society free from the every mischief, in which freedom of conscience is guaranteed but the human feelings and sentiments are expressed within the Islamic purview. Islam does not prohibit any lawful sentiment and feeling because it does not educate any cloistral life. Every sentiment, however, is not necessarily right. These things are proved a challenge to us. The Muslim society is moving towards this direction unfortunately.

It is important to decide the true target in the contemporary age for the human individual and society only on the basis of humanity, and to choose the right way for it. This should be clarified, and the minds should be made up in this perspective. The efforts made by Islamic Fiqh Academy in this respect are commendable. God bless us to work on this project! This is the age of unbelief and atheism. We should try to address the religious issues by applying such methods that can revive the human position of *ahsan taqwim* (creating the man in the best of moulds); continue the goods and check the wrongs. The society should evolve a moral pressure without any compulsion and violence. All these noble efforts are, however, appreciable. I congratulate Khalid Saifullah Rahmani and his colleagues to struggle towards this direction.

### **Participants Speak**

#### **Academic Preparation**

- Muhammad Ali Nadvi

The workshop is too useful. We benefited a lot from this programme on the Shariah objectives. By the debates and discussions various aspects and dimensions are disclosed to the participants. Some of us did not prepare themselves in advance through the systematic studies before joining the workshop. We were to cover the theme by our studies and then stand up in the programme to present a systematic and compact talk. We only criticized the speakers and were trapped into subsidiary and particular points. The facilities we enjoyed during our stay here were quite satisfactory.

#### **Specifying the Theme**

- Atiqur Rahman Nadwi

Availing the opportunity provided to us by the organizers in this 5-day workshop on the juristic issues, I wish to express some of my experiences and individual feelings in this concluding session. I may kindly be allowed to say that our knowledge lacks the

concentration as well as the maturity especially in comparison to the guest speakers. We are generally not habitual to study thoroughly and understand deeply. Addressing my ownself, and not the others, I feel in the words of Atiq Ahmad Qasmi that our knowledge is either journalistic or shallow. I realized most of the discussions on our part were literal. We lacked the application of the events and their adaptation in the modern age.

Summarizing my talk I come to the theme. This was a significant one in my opinion. For future if the theme is specified more it may be proved more useful as “understanding the objectives under the Holy Companions”, or “Understanding the objectives in the Prophetic Traditions” or “Understanding the Objectives under Umar” or any specific companion, “Understanding the Objectives in the Family System” and so on. Concentrating on a specific theme would be more benefiting and significant.

### **Tauhid, Tazkiyah and ‘Umran**

- Sabahuddin Malik Qasmi

This marks the session of impressions we have about the workshop. The area of expression is demarcated. I have to add few points instead. The theme of the workshop raises the basic question that how this ideology of the Shariah objectives is included and accommodated to the Islamic sciences. The knowledge has a system and we are to ascertain how this is adjusted in the entire structure of Islam. The discussion offered by Dr. Taha Jabir al-‘Alwani has defined it to some extent. It should be clarified more. Generally it is treated as an issue of the principles of the jurisprudence. All the classical scholars who worked on the theme though as a subsidiary issue, considered it in the perspective of *usul al-fiqh*. Now it seems to me that the theme is being projected afresh. Dr. al-‘Alwani has heightened the status of the theme by emphasizing on the key concepts of *tauhid*, *tazkiyah* and *‘umran* as the objectives of life. I think the Islamic thought – that is still included in the traditional Islamic sciences – needs a reconstruction and the entire issue

revolves around it.

One of the major factors of the jurisprudence being reduced to rigid and static is its distance from the governance system. When Islamic system of *khilafah* was in operation the jurisprudence was a living and dynamic force because it was in power and was governing the society. To resolve the issues of the society the Islamic jurisprudence was to interact constantly and the jurist was to lead a living jurisprudence. When the jurisprudence withdrew from the power and became secluded of the law of land it became necessarily rigid. The jurists survived the alternate system of jurisprudence appreciably through the ideology of objectives. These objectives are being penetrated in Islamic legal system as a concept and ideology. This provides a significant alternative to the jurisprudence to survive, even in the absence of Islamic governance because it provides an objective for the revival of Muslim Ummah. The concepts of *tauhid*, *tazkiyah* and *umran* determine the objective for the existence of *Ummah*. If this spirit penetrate the body of jurisprudence it will be regularly directing it to gain the objectives of Shariah, and thus a permanent dynamism will prevail over the *fiqh*.

A strong movement of rigid imitation was launched in our history as you know well. By overlooking the original arguments and evidences only the particulars were taken into consideration in the process of individual legislation. Now after a long struggles were made, our minds are clear and we refer to the original sources in issuing the legal verdict (*fatwa*) instead of standardizing the second grade sources like that of Shami. Referring to Shami for example is sometimes a practical need. Referring to any hadith it is essential to quote the scholars who have already applied that hadith with the same meaning in their discussions. The spirit of Islamic jurisprudence, however, lies in maintaining the sovereignty of God. Referring to the original source a *fatwa* forcefully persuades the man to follow sincerely. This is the distinction of Islam.

Dr. Taha Jabir al-‘Alwani and his colleagues have now moved to the next step of theorizing the Shariah objectives



commendably in order to take in to active consideration of the civilizational issues in Islamic perspective. We must appreciate this progress in the right direction.

It is oft-repeated here that the Islamic ordinances are changed due to change in time and space. This has basically two interpretations :

- a) The change in the culture and civilization that occurs normally as a routine is the law of nature and we are helpless in this regard.
- b) The change due to our negligence of the duty assigned to us by God – to make the religion dominating the world and to convince the society about its practicability – is a different situation. Issuing a legal verdict on the basis of this change comes under the relaxation (*rukhsat*) and not the determination (*azimat*).

The ordinances correlating the *azimat* provide an standard – the Islamic standard that should be observed strictly by the Muslims as required by God. You know well the efforts made by the noble Prophet (SAW) and the holy companions aimed at advancing the civilization and enabling it to accept eagerly the *Shariah* so the standard should be executed in its purity. This means the ordinance made due to any change in the situation comes under relaxation (*rukhsat*), and this requires the two kinds of *fatwas* simultaneously: one according to the standard to be observed desirably; and the other meeting the transitory requirement due to any change in the circumstances that are to be replaced one day or the other by the Muslims.

The noble struggle launched by International Institute of Islamic Thought is tremendous. It will help to replace the rigidity and to acquire our aims in reviving the *ummah* and reinstating the *khilafah* in this world. The rich legacy of the principles of the jurisprudence that ensures the resolution of the problems till the Last Day would be activated only when it would be aimed at certain targets.

One clarification is to be sought about the orderly functions of the ideology of the objectives. Some were highlighted by Dr. al-‘Alwani as *tauhid*, *tazkiyah* and *‘umran*; some has indicated its correlation to the jurisprudence of the minorities. Other functions are yet to be defined and that will ease the common man to understand this ideology and that how this is being incorporated in the academic structure of Shariah.

### **Research on the Principled Issues**

- Mufti Junaid Alam Nadwi Qasmi

I got an opportunity to join this workshop. I participated in each and every session. I was benefited a lot. I felt an immense desire to do research on the principled issues and create an urge among others to move ahead and join this caravan. I wish and request to hold such programmes in the different states of the country so that all the ulama are awakened intellectually.

## Conclusions

### *Ijtihad and Fiqh al-Maqasid*

- Dr. Salahuddin Sultan

The theme of our discussion is the ideology of *maqasid* (objectives of *Shariah*) that implies the use of intellect in understanding the situation for the realization of the Godly objectives because the Quran is a book that calls the people to think over :

“Do they not then earnestly seek to understand the Quran,  
or are their hearts locked up by them? (The Quran, 47:24)

In case a person does not realize the rationale of a legal ordinance in Islam he has no justification to check others from the realization of it. One who acquired the knowledge stands against the one who did not acquire it. Is it not appropriate for any person to argue otherwise only on the basis that it was not quoted from our ancestors. The holy Quran, as Ali bin Abu Talib says, bears varying dimensions and interpretations. Jalaluddin al-Suyuti composed undoubtedly an encyclopedia on the various classes and grades of the Quranic commentators. Can this stand as a barrier in the way of including in the list the later commentators of the Quran who provided and are still providing the best interpretations?

An Islamic scholar claimed well: All the commentaries of the Quran do interpret it well. A novel commentary that we face, however, interprets the real life through the Quran and that is *Fi Zilal al-Quran*. This explains the life since it elaborates the Islamic system of government and Islamic *khilafah*. Coping with life is needed more today than the past. We require today only a living commentary. When *khilafah* was degenerated and the power was captured by the means and the ignorants we needed the reconstruction of life in the light of Islam. In the given circumstances, Sayyid Qutb composed the *Fi Zilal al-Quran* and spent all his energies to make it excellent and most effective. His words turned into the spirit that passes from the east to the west and from the north to the south in the Muslim world. Was any Quranic

commentary like *Fi Zilal al-Quran* written in the past? No. None of the commentators have attempted this. I do not want to say that the ancestors were unable to do that. They undoubtedly contributed beyond their capability and capacity. I only want to emphasize that we should try to reform our own age and not the past centuries.

I visited a student in the pharmacy college of Cairo University. He introducing himself boasted: I have written a book in the nullification of the *Jahmiyah* sect. I asked him; do you know the figure of the pharmacists? In Egypt are 80% of the pharmacists the Christians who illegally mix in the medicines such chemicals that cause the abortion and annihilation of the Muslim generation. Is it not incumbent upon you for the survival of human lives to be an expert in pharmacy and to devote yourself for performing this duty which is treated in Islam a *Kifayah* obligation (in the non-performance of which the entire society is deemed as sinful)? If you devote yourself to this noble job it will turn into an individual obligation (*fard'ayn*). How is it appropriate for you to make an enquiry or accounting about the people who were already taken into account by God and are passed away and entered either Paradise or Hell? We are not created as the police man. How was he stupid who initiated to prosecute the *jahmiyah* of the past centuries having left his specialized field of pharmacy? Why are we unable to face the present and use to ruminate the past? Why do we not acknowledge our inability and backwardness and that we have left the world for other speedy nations? One who falls asleep, why does he desire from others to sleep also? We are to awaken the *ummah*, this is what the Quran repeats :

“O you folded in garments! Stand (for prayer) by night but not all night.” (The Quran, 73:1-2)

“O you wrapped up (in a mantle)! Arise and deliver your warning ! And your Lord do you magnify”! (The Quran, 74: 1-3)

“Say: I do admonish you on one point: that you do stand up before God, (it may be) in pairs, or (it may be) singly!” (The Quran, 34:46)

In Islam is the movement and the advancement. When a person stands up he should stand up for a job that is immediately necessary, and should not lose himself in the past thinking ruminating it and avoiding the presently running life. Some intellectuals theorized the ideology of objectives, while others applied them without referring to this ideology, just like as some compose poetry in the natural way and others compose it after experiencing with the poetic measures. None of them is inferior than the other. The issue of superiority and preference among the 'Ulama should be left to the Lord of the universe. The Prophet of Islam has prohibited us to prefer any apostle over the others. What I am emphasizing is that we should be adorned with the Islamic argumentation along with the God-fearing quality so that we may face the challenges of the time and guide the Muslim community in the right direction.

*Fiqh al-Maqasid* (understanding the Shariah objectives), therefore, should be given its due place. It should not be treated as a religious innovation in which any thinking is unlawful, or as untouchable to the Muslims. The intellect always flourishes by employing the thinking and the reflection. The Quran declares :

“Do they not then earnestly seek to understand the Quran, or are their hearts locked up by them!” (The Quran, 47:24)

“And we have indeed made the Quran easy to understand and remember: Then is there any that will receive admonition?” (The Quran, 54:16-17)

Grammatically speaking, the derivative of *muddakir* referred to above, is adorned with the *tashdid* (the doubled letter) and this signifies a need for thinking deeply in the Quranic verses and the Prophetic *Sunnah* as well as this style reflects the force and the assertion.

The Prophet of Islam provided at the eve of Banu Qurayzah, the instructions which were certain in the interpretation as well as in their authenticity. The Muslim society was, however, equipped with the thinking deeply in the issues and therefore the text and its objectives were implemented and a thinking in its context was also

applied simultaneously.

While deliberating the objectives in the presence of a text I advise you not to avoid any particular text in any particular issue. Al-Ghazali and Al-Shatibi, the teachers of the Shariah objectives theory, have themselves clarified that some interests are explicitly null and void in Shariah. An example in this respect was provided by al-Ghazali. A religious scholar released a *fatwa* of holding the fast for two consecutive months for a king who had committed the sexual intercourse in the day light of Ramadhan. The mufti was asked violently why did he not release the *fatwa* for freeing a slave instead while the king was capable to do so because he was too wealthy? The *mufti* answered that the other *fatwa* would have resulted in the excessively boldness of the king who for the sex had found himself comfortable to free a slave. The interest of Shariah, therefore, required to declare the holding of fasts compulsory and check him from having committed a prohibited act.

Al-Ghazali says : This is null and void and goes against the very text of the Book. In case it is sanctioned all the texts in Shariah and the ordinances would be treated as subject to change taking refuge to the change in the situation. When the people will know this attitude of ulama and the jurists they will lose their confidence in the piety and honesty of them, and will guess every *fatwa* released by them is based on their individual opinion and is a distortion of the religion. Al-Shatibi while explaining this *fatwa* in detail has pronounced it wrong though the *fatwa* claimed the priority of the Shariah objectives. The scholars in this respect have opted either the opinion of order and sequence to be maintained or an independent option between the two; none of them has obligated the holding of fast instead of freeing the slave taking into account the resources of the guilt. Al-Shatibi has declared this interest-based *fatwa* as opposed to the consensus (*ijma*).

This opinion of Al-Shatibi is, however, incorrect. According to Dr. Mustafa Zayd in the given situation the said *fatwa* is correct. In case an *ijtihad* is based on an interest it should also be realized how the interest is to be actualized. The interest in the given case

lies in obligating the fasts. Freeing the slave is no more inconvenient to him. He will enjoy the sex every day and free the slave consequently.

The principle of *kaffarah* (an Islamic obligation to compensate the sin committed by) against the sexual involvement in the day light of the month of Ramadhan is described in the Prophetic saying known as the *hadith muhtariq*. Reportedly a companion came to the Prophet and said: O Prophet! I am burnt with fire. According to another narration he said: I am destroyed! The Prophet enquired into what did he do. He said : I committed the sex in the day light of Ramadhan. The Prophet ordered: Free a slave! He expressed his inability to free any slave. The Prophet instructed: Hold the fast (in compensation) for two consecutive months! He requested : O Messenger of God! I could not keep patience even for one day. How I will hold fast for two months! The Prophet said: Feed the sixty poors. He said he has nothing to feed. The Prophet gifted him something to feed the poors. He said: O Messenger of God! Is there any one more needy than me? The Prophet smiled and said: “Take it and feed it your family and never repeat it in future.”

Does the hadith quoted above not reflect on the convenience to be maintained while issuing a *fatwa*? Does it not reveal the facilitation a salient feature of Islam? Al-Ghazali in his book *al-Mustasfa* has clarified that the *mufti* under discussion released the *fatwa* in opposition to the Book of God. I tried my best to enquire into the Prophetic traditions concerning the *kaffarah* of this guilt. I used to collect them, evaluate and estimate them continuously. I never aimed at releasing any verdict against the verdict. In the mean time I was guided by God to an argument one day in the midnight. The argument was in favour of an option in the case of *kaffarah* and that the order in the punishments is not to be maintained. I was satisfied with this proof. The argument was derived from hadith in the *al-Jami al-Sahih* by Imam Muslim which reads in partial as : “Hold the fast or free the slave”. According to another narration the hadith reads as “Free a neck (from slavery) or hold the fast for two consecutive months or feed the sixty poors”. I said if this

interpretation of providing the option between the three punishments is approved, the ruler, the *qadi* and the mufti are obligated to take into account the ideology of the objectives. Unfortunately most of the *muftis* issuing the verdict in opposition to the hadith say that the order in the compensatory obligation (*kaffarah*) is to be maintained and there is no independent option in the case of committing a sex in the day light of the moth of Ramadhan.

The ideology of objectives, for which I am arguing, means the need to think of what is aimed at by the punishment in the case of a *kaffarah*. The aim is to warn the culprit and check him from repeating the sin. Keeping in view this aim the mufti issued the verdict that the king should hold the fast for two consecutive moths because he could not refrain himself from committing the sin without a punishment to be imposed on him. In my opinion al-Ghazali and al-Shatibi could not consider the objectives in this respect. Shaykh Mustafa Zayd who have extensively written on the *Kitab al-Maslihah* of Shaykh Najmuddin Tufi, while approving the *fatwa* in this regard has clarified that he could not dare to go against the text, however. By the grace of God I was able to trace the evidence that verified the approving stand of Shaykh Mustafa Zayd. I say you Islamic Shariah is too fertile. Do not initiate your journey by refusing any text or opposing it. You should, instead, do research; collect all the sayings in any issue and evaluate them. In case your stand goes against the opinion of al-Ghazali or al-Shatibi it will be accompanied with the arguments.

A consensus of opinion in the given case was claimed. How it was claimed after Yahya bin Kathir issued the verdict of holding the fasts for sixty days, a stand that opposed the consensus? Ishaq bin Ibrahim followed Yahya and Ibn Bashkawal released the *fatwa* on the basis of that opinion. Where is consensus then? It became debatable. If one hadith reveals the order as the ulama say, the next hadith offers an option between freeing the slave, holding the fasts and feeding the poors. The third hadith, conversely, neither describes the freeing a slave, nor holding the fasts and feeding the



poor. This strengthens the opinion of option and not that of order. The entire discussion revolves around the situation that is not realized so far. After the realization is made the objective working behind an ordinance is to be maintained at any cost. The objective of imposing the *kaffarah* is to warn the consequences of the defamation of Ramadhan, made through a sexual intercourse lawful in other months. Keeping in view the Shariah objectives if some *muftis*, after having realized the situation, have issued *fatwa* for king culprits to hold fasts for two consecutive months it should be treated as acceptable and be appreciated. In my opinion this *fatwa* is better than that of freeing a slave or feeding the poor. Yahya bin Kathir has explained this preference by arguing that if the door is left open the wealthy people will defame the holy month of Ramadhan conveniently and will use to feed the poor or free the slave.

The problem lies in the claim for consensus. We should not claim for consensus in each and every issue. One may say instead I did not find any difference in the issue. If we say any thing on the basis of a text in the Quran we should utter the thing is approved by the *tawatur* (in succession). If we raise any point on the basis of a hadith we should try to know its authenticity. As for consensus (*ijma*) is concerned Ibn al-Qayyim says: "When the post of *ifta* was occupied by the men of immature knowledge they for the sake of silencing the others used to claim the consensus". I made an enquiry into 20 issues having the claims of consensus. I found after deep studies none of them as having the rank of consensus. The issues of consensus are only those which are certain in the Quran and hadith both in approval as well as in the meaning, and are unanimously agreed by the entire *ummah*.

Imam al-Shatibi declared the *fatwa* as in opposition to the consensus while there was no consensus. Imam al-Ghazali pronounced it as contradictory to the Book of God that has no description of it. What did it mean? Imam Raghīb Isfahani unveiling the secret says : "I never found an author who had not modified his book after some time. It verifies the reality that human

efforts are no more sacrosanct. Excluding the holy Book no work on this earth is safe from the mistake and error. We will think over all the things and compare them to the Quran, the final arbitrator. Hazrat ‘Aaisha was no more hesitant to compare the hadith narrated by Umar with the Quran and reject it outrightly. The hadith read :

“The dead body is persecuted due to weeping over it by its family members.”

Aisha refused the hadith because of its clash with the following Quranic verses :

“Every soul draws the meed of its acts on none but itself.”  
(The Quran, 6:164)

“That man can have nothing but what he strives for; that (the fruit of) his striving will soon come in sight.” (The Quran, 52: 39-40)

### **Some Practical Points**

In the paradigm of *fiqh al-maqasid* we should realize the aims and objectives of the Quran and put them as the focal point for the life of *ummah*. I think we should launch a verbal and practical jihad for acquiring the independence. Without getting ourselves free we can do nothing. By achieving freedom Islam may dominate. All our proposals and resolutions are useless without independence. Some barriers can be fixed between us and our brothers scattered over the globe :

“And between them and their desires is placed a barrier, as was done in the past with their partisans: for they were indeed in suspicious (disquieting) doubt.” (The Quran, 34:54)

The Prophet of Islam is reported to have said :

“Let me interact the people directly.”

The people have the power of intellect and understanding. If we got an opportunity to convey any peoples the great message of Islam, a revolution will emerge by the grace of God and the appealing force the Quran and the Sunnah imply. Unfortunately the

barriers are placed between us and the people by pressurizing them and curtailing their freedom.

Taking into account the Shariah objectives, the jurists are, in case, differed it marks no *bidah* (religious innovation). The difference in the minds marks a rich legacy but the difference in the hearts proves to be a chronic disease. If a person thinks all the Shariah ordinances as non-interpretable and considers them with their literal meanings we should welcome him. If the Prophet of Islam did not blame the companions for their different opinions we too have no right to defame each other on the basis of the difference of opinion. Our hearts should be broader and specious for such differences always.

We should concentrate on the women issues especially nowadays. Their education and training should be the focal point in our discussions and plannings. We should not forget in this respect the greatness and the historic role of Umm-e Salmah, the mother of the faithfuls. At the eve of Hudaibiyah Treaty when the companions were unmoved for the first time in the history to follow the Prophet and were not convinced with his instruction wholeheartedly, it was Umm-e Salmah who came ahead as the angel of mercy for the Muslims. She advised the Prophet to move a head, shave his hair and sacrifice the animal (in compliance with the religious rites) himself; they would follow him automatically. And it was experienced. Due to a right thinking of the pious, sound-minded lady a crisis was replaced. We need likely the intelligence and the sharp mind applied by Aisha Humayra in understanding the texts and the narrations matchlessly. We require the intellectual ability of Umm-e Sulaym. We are in immense need of the powerful ladies like Umm-e Sulaym. We are to save the cradles from carelessness in which the genius babies flourish. For the sake of the noble objectives we should concentrate our attention on the women. Every Muslim should think and plan for their education and betterment and to awaken their sleeping abilities. We are to take into account the Shariah objectives while issuing any *fatwa* on the women.

The financial position of Muslims is also of our special attention in the objectives perspective. We should aim at persuading every Muslim who has the least energy to work, to be involved in the lawful earnings. Every Muslim must enlarge the means of his income and spend it in the way of betterment. We must persuade the Muslims to acquire the knowledge of the means of livelihood by learning the English language and using the information technology. God loves the skilful persons. We must initiate the heavy projects in India, Egypt and other Muslim and non-Muslim countries. We need a jurisprudence that helps to resolve our economic problems. We should bring the jurisprudence out of its narrow scope. Ibn Qudamah al-Maqdisi has described a varieties of financial and profitable jobs, their kinds and means. He has likewise covered the area of a varieties of financial companies working now in modern times. The shortcoming inherits our own society. We are scattered and disunited, divided into various blocks. Every one of us is egoistic. If they work unitedly or atleast in coordination with each other they would be more results-producing and more beneficial to humanity. If the two persons invest their resources individually in any project their profits would be naturally less than if they would have invested jointly and done all the dealings collectively. The Jews practice this well. Two Jews having possessed one thousand dollars each invest their money collectively in a business and multiply it into tens of crores within few years by their joint efforts. We, the Muslims, inspite of having invested ten thousand dollars each do lose our capital after few years' engagement in the business and break our normal relations too. Why? Because we have no mutual trust; we lack the truth and we are far from honesty and integrity in the financial dealings, while the first hadith of *Kitab al-Kifalah* quoted by al-Bukhari in his *al-Jami al-Sahih* reveals the obligatory instruction of preparing officially the deed paper in case of lending a loan and observing strictly the witness and the guarantor. The hadith says in detail that a person takes the loan. The lender demands to offer a witness. The person is unable to offer any witness and expresses his belief in God as the only witness. The lender requires a guarantor and the person expresses his excuse

because he has no guarantor except God. The person, however, receives the loan and takes his way. When the due date of returning the loan comes the lender is waiting for the boat by which the person is supposed to cross the river and fulfill the promise. The lender prays his God who was observed as the witness and the guarantor in the deed papers. He was then helped by God. The person having packed a bag with the required money keeps it in a wooden box and puts it into the river. The lender sees the box swimming in the river and takes it out. After he arrives at home, gives the box to his wife to put it into fire. The wife was to follow the instruction of her husband but a slip inside the box was exhibited by her by chance. She gives the box to him back. In the meantime the person arrives at the lender and enquires into the situation. The lender responds well and verifies that he has received his trust back. The person thanks God that He helped him to refund the trust to the lender. Verily God suffices as the witness and as the Guarantor.

The Shariah objectives require the witness should be recorded in the transactions and financial agreements and these should be confirmed by the writing. The Muslim jurists should come forward and lead the *ummah* in this respect. The lazy, dull and sleeping Muslim must be awakened. I too was to drive the taxi for earning after having obtained the degree of higher education from the university. Due to plotting by some elements I was not appointed in the University. For that I was compelled to move the court and for meeting the unavoidable needs of my family during the transitory period I sought refuge to driving the taxi on the rent till the matter was decided in my favour. The police seeing my driving licence was very much surprised. The officer asked me that driving the taxi after being a university professor, does it suit me? I answered: yes, by the lawful earning I meet the daily needs of mine and of the family. I told him: we are not unable to resist the situation.

I am reminded a hadith. A healthy man came to the Prophet (SAW) asking some charity. The Prophet replied that it was not lawful to give charity to any healthy man. He advised the man to

sell his mean goods; purchase an axe, cut the woods from the jungle and sell it in the open market and not to come back to him for fifteen days. The man was thus habituated to work hard and meet his needs. We should not be overcome by the poverty. This should be one of the objectives to replace the illiteracy and the poverty and to offer to the world a distinguished society following the Islamic model.

We must possess a novel media and should have a specific planning in this field. We should own a team of experts who can talk effectively, deliberate convincingly and lead a dialogue successfully; produce the original novels, drama, short stories and recreational literature of high standard. The Prophet has reportedly said :

“There is magic in some statements.”

The Prophet used to encourage Hassan bin Thabit saying :

“Attack with satires. With you is the Holy Spirit”.

Kab bin Malik is reported to have composed the following poetic line :

“Verily the Messenger is a power house from which the light is sought;

he is the Indian sword unsheathed by God.”

The best of the swords were manufactured in India. When it was used by the hands of the Prophet it turned into the sword of God and was no more the Indian sword now. We need the literary people as well as the media experts so that they express their views explicitly on the issues of the freedom and the rights. In case we concentrate on the issues like freedom, finance and women and pay special attention to media we would certainly march towards the domination of the religion over the globe speedily.

We should offer the best model of tolerance, knowledge, dynamism and thought. We must be aware of the world and should cope with it. We should possess the questioning tongue and the thinking mind like that of Ibn Abbas. When asked how did he

acquire the highest status of knowledge, Ibn Abbas responded. “By the questioning tongue and the thinking mind. When I am addressed I listen him carefully. When I address I talk in the best way. And when I am provided an option between the two I select the easier one”. Due to this attitude only Ibn Abbas became the source for all the scholars as well as the common men not only in his age but for all the ages. We own the valuable traditions and values irresistible in the entire world. The final authority lies with the Book of God and the Sunnah of the Prophet. By my juristic specialization I have tried to offer a blue print for reformation and construction not for Delhi or India only but for the whole world. This universality is appreciated in the Quran :

“Blessed is He Who sent down the Criterion to His  
Servant, that it may be an admonition to all creatures”.  
(The Quran, 25:1)

I think all of you to take pain for a long time to hear my lectures, discussions and deliberations during this workshop. I am highly obliged for offering this invitation to me to all my friends and elders. In case my talk has dishearted any one I offer my apology to him because he is part and partial of my existence. Thanks God that He bestowed on us to assemble here for the noble cause. God accept your efforts and reward you the best on my behalf.

### **Taste of Research and Academic Urge**

- Atiq Ahmad Qasmi

Our young ulama and researchers who attended the workshop in Delhi!

I acknowledge I benefited a lot from the working system of this workshop academically as well as spiritually. It is too valuable and appreciable to God to assemble for the cause of the religion and to think over to resolve the confronting issues of Muslim community. I got an impression from this workshop, the discussions made and the lectures delivered therein that we need earnestly to enhance our study and research deeply and thoroughly. I am reminded a Persian poetic composition made by Muhammad Iqbal. He said :

Huma (the mysterious bird) of the knowledge would be trapped by you provided you are not certain in the academic journey but are suspicious always.

If you wish to practice the good deeds strengthen your faith! See individually: Know individually and be individually!

This mystic statement requires a continuous research and an uninterrupted enquiry in the field of knowledge. The dependence and reliance on the ancestors' books and studies and keeping oneself aloof from further enquiry is a temperament that goes against the furtherance of knowledge. We should be habitual to enquire into what is reality, what is the source and then to access the original sources. The original sources are the texts of the Quran and the hadith. Our great jurists have consulted these sources. We should not be casual in the learning process and should not take for granted each and every written thing. If we urge to advance in the knowledge we should be doubtful in order to produce a novel research.

I, being senior in the age as well as in the process of learning, advise the young generation to make an enquiry before taking any point of knowledge for granted. Al-Shatibi, al-Razi and



other highly respected scholars are attributed a statement wrongly and mistakenly. After a deep enquiry was made the misunderstanding was replaced. You have gone through *Sharh Uqud*, *Rasm al-Mufti* as well as *Radd al-Muhtar* and are aware of the fact that Shami has corrected in his books a number of misperceptions quoted continuously from the ancestors till his time. When Shami enquired into these issues he found them otherwise.

I have earlier pointed out and today I emphasize that we lack the mental and intellectual exercise and training and we are unable to be inflamed with the knowledge, to surrender ourselves to mortality for studies and researches. In comparison with the density and intensity of the issues we face in the contemporary age, the increase in our hard work, our devotion to and commitment with the research and studies is proportionally degenerating day by day. The heavy engagement of our ancestors with the knowledge is now decaying. Anwar Shah of Kashmir, the great modern scholar was once severely ill. In the night his death was rumoured abruptly. Shabbir Ahmad Uthmani, his contemporary, a great scholar himself rushed to his house immediately. He found the news wrong and was happy. Anwar Shah of Kashmir was visited by him studying a book even in that severe illness. Shabbir Ahmad Uthmani asked him what was the issue unknown to him or unreminded. He should have ordered any one of his numerous students present they would have helped him in all the respects. Anwar Shah smiled and responded: This itself (reading the book) is an illness.”

We could not nourish this illness so far. We must be in trouble in the absence of a book. All of us have visited and experienced Qazi Mujahidul Islam. He was always accompanied with the bundle of the books in all his travels whether near or far. Wherever he found himself free, he used to debate and deliberate, read and take the necessary notes. Because of this habit he was able to do the tremendous jobs, though he was too engaged in a varieties of projects. His life was multi-dimensional and all-pervading covering the political aspects and community-welfare programmes. The persons with all these engagements have usually no link to the knowledge. The late Qazi was seriously involved with the books

and this involvement lasted till his last breath, and due to this God employed him for His noble job. This illness (of studying the book) is needed to be created among ourselves. One objective of this workshop lies in making in our youth the aptitude of research alive and the culture of reading strong and sound.

The third point I present before you relates to the theme of the Shariah objectives. You have heard a lot and deliberated extensively. This discipline had some preliminaries in the past and now the efforts are being made to turn it into an independent discipline. In this age of specialization if a discipline is further divided into various sub-disciplines it is not a point of criticism. In case the jurisprudence is further divided into ten independent sciences: the science of inheritance is already independent; the family law is further channelised; the transaction is developed independently; the issues concerning the *istislah*, *masalih mursalah* and *istihsan* are evolved separately, there is nothing to be criticized.

The stage is however of codification and construction and this requires the farsightedness, the deep thinking and minute observation and careful examination. I say you must not be apologetic and dumb founded against all the big scholars and researchers if you find anything incorrect or inappropriate. Naturally in this stage of codification we are fully entitled to evaluate all the efforts and criticize in case of any deviation. We should play our due role in this process. After the codification process is completed and a new discipline is produced and prevails the world your criticism and evaluation will be reduced to be fruitful. During the process your participation, enlightening and discussion will certainly enrich the codification process.

Due to paucity of time I suffice these words. Since I share the management of this workshop I may have not given to some people the opportunity to speak, and may have checked others exercising my authority. I apologize to all such participants. Due to any shortcoming on my behalf I personally excuse to all my young brothers. All of us aim at heightening the words of God. We are to deal with the two situations simultaneously as oft-repeated in the

workshop. In case a mischief is popularized and the corruption is recognized as the normalcy. The original commandment of Shariah is rarely practiced. The Jurists and the scholars are obligated in the given situation to assess the density of the corruption and find out a relaxation in Shariah. Simultaneously they are also responsible to revive the pure and clean environment in order to implement the original Islamic straight stand of *azimat*.

I am reminded I was to travel to America to participate in a seminar oft-described here by Dr. Salah. Before I leave the country I visited Abul Hasan Ali Nadwi in Lucknow. He urged to communicate his pray to the Muslims in American that God bring them out of the stage of *rukhsat* (relaxation) to the stage of *azimat*. How juristic statement is this! When I communicated them his prayer they were surprisingly cheerful. *Azimat* should be our target. We should aim at achieving the desired goal. We should provide for that the arguments from Shariah. In case our youth are thinking in this direction God willing the way will be open and the means channelised. He is absolutely powerful. In the worst situations we should be neither harassed nor demoralized. You have heard from Dr. Salahuddin Sultan saying that the situation in the U.S. is too painful and the Muslims are very much in trouble. He, however, declared it the victory of Islam and the persecution of Muslims. Turning to Islam in the U.S. as well as in Europe and the entire world is a miracle of Islam itself. The depression turns into unbelief. We are to put the strategy for the *Ummah* boldly taking into full consideration of the Shariah objectives experiencing directly the Quran and the Sunnah with the conscious realization of the contemporary situation.

### **Study of the Secrets of Shariah and the Principles of Fiqh**

- Khalid Saifullah Rahmani

Before the presidential address is delivered, I would like to put before you few points for your active consideration. About the importance of knowledge and the study you have heard from both the elders. Anwar Shah of Kashmir had reportedly also said to Shabbir Ahmad Uthmani : God inflict on you the bookish disease!.

The first point I need to emphasize is that we do study the ordinances of Shariah but we neglect the study of the secrets and mysteries implied therein. The Shariah ordinances are mostly linked to those who have embraced Islam and form the Ummah. Those who are far from the belief so far are not addressed by the particular issues. The secrets and mysteries of Shariah (*asrar*) are, however linked to those who have embraced Islam as well as those who are far from the religion. Why did the Prophet of Islam emphasize saying :

“The ink flowing from the pens of the ulama would be equated on the Day of Judgement with the blood of the martyrs.”

This is so because a martyr defends the geographical boundaries of an Islamic state and a scholar defends the intellectual boundaries as well. The later may be performed only when we have insight in the secrets and mysteries of Shariah, public interest implied in the legal ordinances and their coordination with the reason and the nature simultaneously. God fill up the grave of Shah Waliullah of Delhi with the divine light! With the passage of time and age our faith in his farsightedness has been increasing. How did he produce the rational literature even before the advent of rationalism! The ulama should also keep in their mind this important aspect. It was disclosed in the workshop.

Secondly, we should realize our superficial knowledge of the principles of jurisprudence. The books taught in the *madrasahs* aim at creating in the students a familiarity with the discipline, and do not aim at any cost to provide an expertise in the discipline. We

possess the books on the principles of each and every Islamic science like the tafsir, the hadith as well as the fiqh. We do study the works dealing with the jurisprudence in the *madrasahs* and in our practical life too, but we lack the study of the principles of the jurisprudence. In this regard we may take into account the following points :

We should decide our own to study in future thoroughly the original sources of Islamic legislation: the Book of God, the Sunnah of the Prophet, *qiyas* (the analogical reasoning) and *ijma* (the consensus); as well as the sources directly linked to the solution of modern problems like *istihsan*; *masalih mursalah* and the *dhariah* whether applied to open or to check. The last three sources at least should be studied by us thoroughly. The books on each source individually are available now. The difficult as well as the easily comprehensible works are composed by the authors. The books following the method of *al-Quduri* and *Nur al-Iidhah* are also available in the libraries. We should fix the target of studying the three sources thoroughly.

Thirdly, we study *Kitab al-Hidayah* well. This is perhaps unmatched in its compact and rational approach. It does introduce us not only the hanafid school of jurisprudence but familiarizes us with all the four schools. The case of juristic principles is different. The books on the principles of jurisprudence included in the syllabus of *madrasah* system of education are mainly based on the hanafid school. The study of various schools relating to *ahl al-sunnah* should also be managed however. A number of books in this field are composed by our ancestors. In the modern period *Irshad al-Fuhul* of al-Shaukani may suffice us. Excluding his Zahirite trend the book is comprehensive, compact, easily understandable and orderly arranged. We may have then an insight in all the sunni schools of law. The two methods applied in the principles of jurisprudence by the jurists and the scholastic experts and the method adopted for coordinating them, do not represent any difference in the principles; but they reflect varying interpretations basically. I am talking here the very principles in the jurisprudence. We should study all the four schools in this regard.

The fourth point that I would like to share you relates to the gradation of the authors into the classical, medieval and modern. The period of the first two grades is debatable. It is however a relative thing. The books written by the classical authors are generally more authentic and reveal exactly the attribution of any statement to a scholar. These consult in their discussions the original sources more as the books by Imam Muhammad mostly do. The books written in the medieval period concentrate on the interpretation and clarification, the explanation of the examples, the reconciliation in case of a clash between the two, and the correction and the preference. You have heard in the lectures delivered here that a statement was misquoted due to any factor and this was frequently repeated again and again, or a case was misperceived and this was repeated without any enquiry. When we study Shami amongst the medieval writers we are fully-satisfied with him. The books composed by the modern writers reflect the intellectual changes, the practical changes in the social life as well as the applications on the contemporary situation. These should also be experienced with.

You have experienced with the lectures delivered by Dr. Salah. Due to paucity of knowledge I too had considered the issue raised by him in his talk yesterday night as that of consensus. After having benefited from him I came to know that the issue was debatable. It is upon us to agree or disagree with the stand taken by a contemporary scholar who is involved in the issue and makes a deeper enquiry into it and highlights the otherwise interpretation and varying aspect. While studying any issue we should try to consult all the classical, medieval and modern scholars.

The fifth point I want to share you all is related to the method of teaching. The text books included in the syllabus of Indian *madrasahs* can not be claimed as the deficient one. These represent the sound and well-arranged texts. Ijtiba Nadwi has pointed out one more distinction the Indian *madrasahs* inherit. The role played by Indian Ulama in the religious revival, defence of Shariah and demonstration of Islamic zeal and fervour is untraceable at least in the part two and half centuries in any part of

the world. We need, however, to correct our teaching method. We do not use entirely the modern means and current techniques. Can we not use these means of communication to teach the students? Did our Prophet not mark a line on the earth to teach what did the 'straight path' mean. Does this not provide an example to use the technical means?

The sixth point of mine deals with the two approaches of study: textual and thematic. The textual study of the book requires reading it line by line and letter by letter. It prevails our country. This is too useful and provides a broad-based study. The thematic study however has its own place. Take for example the theme of *istihsan*. If we have gone through *Husami*, its commentary named *Nizami* and its marginal notes entitled as *Nami* and have resolved the difficulties in the text and described them to the students, it does not suffice at all. A thematic study should be arranged. We should study systematically all the writings on the issue whether classical or modern. If we select some topics in every year for thematic studies, we go through them ourselves and offer them to the students it would be too beneficial to us as well as to our students equally.

The seventh point that I like to share you, is related to the applied education. Our ancestors especially the hanafids are distinguished in this field. The main feature of hanafid school of law is that the theorization (*tasil*) and the dividing a principle into branches (*tafrii*) go side by side. The principle is first described and then its branches and precedents are quoted. This reveals a method of education and an approach of application. This has been useful in each and every age. In the *madrasah* system of education we initiate applying an example and quote the same in all the books and the students thus treat it a theoretical principle and not an applied example. It is our own shortcoming that I realize. We should use the applied methods of education in our teaching profession.

In the last, we should avoid relying on the transitory studies. For example on the Shariah objectives you read few books on this

occasion. You delivered a good lecture on that, discussed the issue thoroughly or wrote an article nicely. This too is appreciable. The excellence, however, lies in an ever-ready knowledge on the theme; in already familiarity with the basics of the topic and an extempore talk on the issue though he had no time to prepare the discussion in advance. We have observed our teacher habitual to this. The books like *Ihya al-Uloom*, *Qawaid al-Ahkam*, *al-Muafaqat*, the book composed by Tahir bin Ashur and the books on the principles of jurisprudence should be studied by us thoroughly avoiding their immediate profit so that the whereabouts of this discipline are preserved in our memory.

One more point I would like to share you is related to this Academy on whose invitation you have graced the workshop. The Academy aims at achieving the three goals :

- a) channelising a collective thinking by the seminar, symposium or study circles,
- b) training and education and
- c) providing field for academic contacts and intellectual interactions.

By the grace of God a number of institutions and their teachers belonging to various schools of law are assembled. We are now in active contact with an Arab scholar. All this requires a mutual cooperation. I hope your living association with the Academy will continue. We are the organs of a body as Atiq Ahmad Qasmi has well elaborated. We are the spokesman of each other. We are accountable for all the deficiencies in the management. We will try to replace them in future programmes God willing. All the merits in the workshop are from God. We pray God to accept the merits of this programme and to protect you and us from all the demerits.



### Experiencing the Ancestors' Researches

- Burhanuddin Sanbhali

God has explicitly described :

“But teach (your Message): for teaching benefits the believers”. (The Quran, 51:56)

Any of the points raised so far can not be in any way devalued. Every point deserves full attention and honestly implementation in the life. I aim at neither an evaluation of what is said here nor a reminder of it. I like to put before you two points already described. I think appropriate to explain them.

We including myself lack the hard work and the exhaustive labour in our studies and research. We remember our ancestors, refer to them and recognize them at least verbally as the model for our life. We should feel shame to attribute ourselves to them. I remind you only two events here.

You are aware of Shaykh Abu Zahrah. How broad-minded, insightful and deeply rooted scholar was he! In the modern times no other scholar may be equated with him. He has written books on the founders of various schools of Islamic law entitling them with their names, as *Abu Hanifah*, *Ahmad bin Hanbal*, *Al-Shafii* and *Malik bin Anas*. In his *Al-Shafii*, he has described a number of events of our interest. If you have gone through the book you would be fully familiar with his method of analysis and evaluation. According to the author, Imam Shafii was in search of any evidence in the support of *ijma* (consensus) as the authentic source. The event is too interesting and lesson productive. Abu Zahrah, the most responsible, God-fearing and ultra-conscious author says Imam al-Shafii recited the holy Quran three hundred times finding out any verse in his support. Any one amongst us all would have perhaps not recited the Quran three hundred times in his whole life. Then he came a cross to the following verse which is oft-repeated in this context :

“If anyone contends with the Apostle even after Guidance has been plainly conveyed to him, and follows a path other

than that becoming to men of faith, We shall leave him in the path he has chosen, and land him in Hell, what an evil refuge!” (The Quran, 4:115)

The verse marks the most clear evidence on the authenticity of *ijma* as the source of Islamic law.

The second event is related to Imam Muhammad, the teacher of Imam Shafii as well as his foster-father and the guardian – some how. The scholars like al-Shafii used to learn from everyone. Possibly he had learnt the habit of hard work and rigorous labour from Imam Muhammad who used to engage himself day and night in resolving the issues confronted the society. This was the period of the interference of the two cultures. The pre-Islamic culture was now extinct. The Arab culture was in a threat posed by the non-Arab one. This interference of the two cultures had created a specific situation. The *ijtihad*-based verdicts and judgements were needed in resolving the newer issues. Some one asked Imam Muhammad why did he not sleep in the night comfortably, and why was he so rigorously working. He answered that Muhammad was awaking so that his community sleep comfortably. The Ummah was contented Muhammad will guide it in the situation confronted. This feeling that the community should not be disturbed in the issues faced whether civilizational or social, political or economic because Muhammad is consciously working hard for the same, should be possessed by each of us. I do not say you should turn into Muhammad or al-Shafii and spend the whole night awakened caring exclusively the Muslim community. You should, however, keep your target higher. If the target itself is maintained lower our failure is unavoidable.

The hard work and the rigorous labour should be made in the right direction. Working in the wrong direction will isolate us from the target. The struggle in the right direction requires the following of the ancestors by us as the only model and make the academic journey in the light provided therein. The exclusive independence from our ancestors is not required. Atiq Ahmad Qasmi has pointed out the useful things. It, however, does not mean

we take for granted what we understand independently and initiate issuing legal verdicts consequently. We should start our journey in the light of the contributions made by our ancestors. In case we understand something from the texts and the original sources directly we do not take it as the final judgement. We should try, instead, to evaluate it in the light of the ancestral statements. Possibly a coordination between the two resolves the problem conveniently. In case the ancestors are silent in the issue we should consult the scholars amongst the contemporaries on whose knowledge and piety, understanding and insight, prudence and Godliness you mostly rely. The claim that a particular issue was not entirely discussed by the ancestors, is rarely true; some remote links may be ascertained positively. You are, however, not advised to issue verdict on the basis of your independent thinking and try to invite others to your individual opinion. It will otherwise lead to the deviations and anarchy in the thought as is observed today. In the given circumstances the crisis is perhaps not in the lack of thought; it is rather in the plentiful unsystematic studies made and in the publication of the newer books according to which a person builds up his understanding and starts issuing the legal verdicts and initiates a public call to it and this culminates into combating intellectually the others.

Our aim should be seeking the pleasure of God; the accountability to Him on the Day of Judgement should be our moto. Suppose we did force others to recognize our wrong stand by the pen or otherwise and created a popular following but that was not acceptable to God, it will be a curse on us on the Day of Judgement undoubtedly.

## **Chapter Six**

### **Objectives of Shariah Introducing the New Books**

## **Human Interests – The Objectives of Shariah**

- Muhammad Fahim Akhtar Nadwi

*Al-Maqasid al ‘Aammah li al Shariah al-Islamiah*

By Dr. Yusuf Hamid al-‘Alim

Published by International Institute of Islamic Thought,  
U.S., 614 pp.

### **Rationale of the Objectives**

All the ordinances of Islamic Shariah imply the human interests and social betterment. They ensure the implementation of justice, peace, truthfulness and welfare in all the corners of life; and replacement of injustice, violence, violation of rights, inequality and corruption as well. The Shariah aims at the immortal success in the Hereafter by following sincerely God and serving the humanity selflessly.

The Islamic ordinances cover the entire life. All these teachings inherit the human welfare. Around this axis all the prevailing ordinances revolve and according to this spirit the new ordinances for the issues recently faced are inferred. After the scholars have thoroughly examined the classical heritage of the Shariah ordinances they have framed the objectives and the interests the Shariah imply. By framing these objectives they have enlightened the image of Shariah and made the consideration of the spirit of Shariah while legislating in the newer situations, more comfortable and convenient.

The consideration of the Shariah objectives were maintained since the earlier period of Islamic history. The holy companions while legislating for the new situations and novel circumstances observed these objectives always. The later generations of *mujtahids*, ulama and jurists also contributed to the inference of the ordinances within the same paradigm. The consideration of the objectives was made while framing the principles, methods and regulations of inferring the ordinances as was equally maintained in the particular ordinances. Consequently in the areas where the

objectives were not being accomplished by some principles to the extent required or they lacked these principles, some new principles as well as the methods and regulations were framed for the acquisition of the very objectives. The principles of *istihsan*, *istislah* and *sadd al-dhai'ah* may be studied in the same perspective.

The compilation on the theme of the Shariah objectives in a cursory way was confined in the early period to some marks and signals. The writings on the subject were gradually systematized. Passing by Imam al-Haramayn al-Juwayni and al-Ghazali the discipline was elaborated in detail by al-Shatibi. This advanced more in the later period and came across to criticism, evaluation, and application. Now it is in the final process of codification, which is correlated to the principles of jurisprudence and is equally an independent discipline too. In the twentieth century a number of scholars chose the theme as their area of interest and numerous books covering the various aspects were produced. Amongst these the works of Muhammad Tahir bin 'Ashur and Allal al-Fasi are notable.

#### **Dr. Yusuf Hamid al-'Alim**

Dr. Yusuf was fortunate to select the theme of the Shariah objectives for his research. The book under review was thus produced. In fact it is an elaborate and conclusive work on the theme, as well as argumentative and intellectual. The author was born in Sudan in 1937; after having memorized the holy Quran and completed the primary education in the country he got his higher education in Cairo. He obtained his Ph.D. on the principles of the jurisprudence from Azhar University under the supervision of Dr. Abdul Ghani Abdul Khaliq, the famous scholar in 1971. The book under discussion is the same Ph.D. thesis submitted in Azhar. After having occupied the various key positions and closely associated with the academic, research, teaching and writing projects he died in 1988. His publications include : *Tafsir Surah al-Nur*, and *Al-Nizam al-Siyasi wa al-Iqtisadi fi al-Islam*.

### Common Objectives of Islamic Shariah

The Arabic title *Al-Maqasid al-'Aammah li al-Shariah al-Islamiah*, as evident from its name, elaborates the common objectives of Shariah. The book was published by the International Institute of Islamic Thought in 1991 after 20 years of its compilation and four years of the author's demise were passed. The then chairman of IIIT and famous researcher Dr. Taha Jabir al-Nazriyah has contributed a brief preface to the book highlighting a brief history of the theory and emphasizing on its publication due to its significance.

The book is mainly divided into two chapters. The first chapter deals with the introduction. Covering 125 pages this basically discusses in full length the lingual, legal and juristic implications of the two words in Arabic namely *ahdaf* the plural of *hadaf* and *masalih*, the plural of *maslihah*. These two terms were elaborated individually in the separate sections.

The second chapter covers a detailed study and analysis of the Shariah objectives, the basic theme. The author using the word *masalih* as a term has elaborated the five interests : the interest of religion, the interest of life, the interest of intellect, the interest of affinity and the interest of property. These five human interests are the objectives of Shariah. The author has devoted an independent section to each and has discussed the protection of these interests both in positive and negative terms. He has elaborated how the Shariah has framed the ordinances to ensure these interests and to replace the barriers in the way of accomplishing these interests. The author has also defined well all the five human interests. This chapter dealing with the central theme of the book covers 360 pages.

Prior to the two chapters the author has provided an introduction to the book very rich and valuable. Covering approximately 60 pages this introduction offers an scholarly presentation of the meaning, significance, main features and arguments of the Shariah. In the beginning of the book he in his brief preface has introduced the significance of the theme as well as the method applied by him.

After this preamble we are to see how the valuable pearls are spread throughout the book; how the five objectives are implied in the all-pervading ordinances of Islam; and how the balance, the moderation and the full consideration of the human nature is maintained. Undoubtedly the due consideration of these objectives ensures all the societies the realization of their welfare and prosperity, peace and justice.

### **Valuable Introduction**

The valuable introduction of the book consists the three discussions. The first elaborates that the word *Shariah* in Arabic means the watering-place in the dictionary, and the collection of practical ordinances in the term. The author has explained the religion (*din*) has been one in spirit but the *Shariah* varies in terms of some ordinances. The *Shariah* ordinances always have been compatible to the human bearing and potentiality. The ordinances that seem difficult do not require any inconvenience at all.

The second discussion highlights the common attributes and characteristics of *Shariah*. The author has explained that all the human beings are equal in the eye of *Shariah*. This does not divide them into classes. This considers the human interests in this world and that world too. It inherits both the permanence and the flexibility. All the ordinances of the *Shariah* are linked to the accountability on the Last Day. It is likewise safe from all human errors and falsehood.

The third discussion introduces the basic sources of *Shariah*. The author after having defined the Quran, its authenticity as the most reliable source, its dividing the verses into Makkan and Madinan and the style of the Quranic ordinances, has introduced the Sunnah, its being source in legislation and its relation to the Quran. The third source, the *ijma* (consensus) is too introduced and the difference of opinion about its feasibility and authenticity as the source along with the arguments is elaborated. The discussion also deals with the fourth source of legislation, the *qiyas*, its definition, its elements and components as well as its authenticity as the source. The author does not need even to describe the subsidiary



sources of legislation in Islam.

### Meaning of the Objectives

The first of the two sections in the first chapter of the book is entitled as *ahdaf* e.g. the interpretation of the objectives. The word *hadaf*, according to the author, signifies an aim to be achieved. The *ahdaf* of *Shariah* signifies the objectives the ordinances are revealed to accomplish, and these objectives mean the human interests to be obtained in this world and in that world also. These interests are ensured by furthering the goals as well as by checking the wrongs.

The author has classified the objectives in to two: (a) the objectives of God in respect of the human beings; (b) the objectives relating to the rationale of the ordinances. God desires the men worship Him alone and do not associate the others with Him. The massive Quranic verses define this objective clearly. The second category of the objectives deals with the theme under discussion. What are the secrets, mysteries and aims behind the *Shariah* ordinances, is the focal point. A number of the Quranic verses reveal that the ordinances were not framed abruptly in vain; these instead, aim at achieving some objectives. The author has defined in the light of the Quranic verses, several prophetic traditions, and a detailed study of the ordinances that these imply necessarily some objectives which must be taken into account accordingly.

Any intention or move against the *Shariah* objectives would be treated invalid. In case some one applies the *Shariah* ordinances in compliance with his personal desire; he performs *salah* and *zakah* for the sake of popularity and recognition; he goes thus against the *Shariah* objective implied in any law, his urge and action will be treated as null and void to God as well as in this society since these actions and performances would be resulted in nothing.

It is also incumbent on a jurist to observe strictly the *Shariah* objectives while performing an *ijtihad*. Talking of the various methods of the realization of the objectives, he says that the

wisdom and rationale is sometimes clearly defined in the ordinance itself and sometimes it is inferred from a detailed study and examination of the ordinances that some ordinances of specific nature are framed for the sake of specific aims and objectives.

### **Meaning of *Masalih***

The second section of the first chapter especially deals with the meaning and significance of the *masalih* (human interests). He has emphasized that the majority of the scholars view that the *Shariah* ordinances imply necessarily the reasons and the causes and wherever those reasons are available the same ordinances would be implemented therein. In the parts this is reflected in the institution of *qiyas* and as a whole this is represented by the principles of *istihsan* and *masalih mursalah*.

The word *maslihah* in Arabic according to the author, has two-fold meaning: (a) an act carrying with it the betterment and the profit, the figurative expression, (b) the profit and the good itself, the real meaning. According to Al-Ghazali :

“The word *maslihah* signifies the acquisition of good and the replacement of harm. The word *maslihah*, however, aims at protecting the objective of *Shariah*. These objectives required from the human being are five in number: protection of the religion, the life, the intellect, the affinity and the property. Everything that helps the protection of these five is *maslihah*; and everything affecting these five is a *fasad* (mischief) the replacement of which is *maslihah*”.

The learned author while defining the *masalih* and their various kinds alongside their meanings has quoted Khawarizmi, Izzuddin bin Abdussalam, Safiuddin Hindi, and Najmuddin al-Tufi and has marked the difference in their thought in this regard. According to the author, the fountain of the human interests in *Shariah* is the divine guidance. It's scope covers this world as well as that world since the reward of every human action will be received in the Hereafter. This interest is not confined in the worldly enjoyment; it is extended rather to the spiritual training, and

the purification of mind and soul. The interest in *Shariah* likewise provides a base for other interests also. Due to this fact for the sake of *Shariah* interests the sacrifices are made.

The author explains, the interest is basically classified in to three:

The first classification is based on the issue of authenticity of the interest in *Shariah*. According to al-Ghazali and al-Shatibi, the authentic interest is one the argument for which is discussed in *Shariah*. The interests declared as unauthentic by *Shariah* are null and void. The interests left by *Shariah* untouched are called *masalih mursalah*.

The second classification is based on the changing or non-changing nature of the interests. Some are permanent and may not be changed as the prohibition of aggression, murder, adultery and theft. The interest always rests with their unlawfulness. Some interests are ever-changing like the traditions, the customs and the life style. These are changed in the changing circumstances.

The third classification of interests is based on their soundness or weakness. This two affects the ordinances seriously. After narrating various grades in this regard the author has finally emphasised on the *dharurah*, *hajah* and *tahsin*, and has pointed out that the sequential order is to be maintained in their preferences. The interests may also be classified on the basis of their generality or particularity and that how many individuals are to be covered by an interest because the interest of the community is always preferable to the interests of the individuals.

These classifications result in some important points for example the ordinances are changed due to any change in the interests. The ordinances concerning the prayers and worships may not be changed at any cost. The ordinances dealing with the customs, however, are subject to change. The prayers and the worships are governed by the divine order only and nothing else, while in the customs and traditions the rationale is also taken into account.

Another point resulting from the classification of the

interests requires the preference of one on the others in case of a clash between them. This preference is made on the basis of three considerations: (a) what is the value of the interest itself; (b) the scope of the interest is general or particular; and (c) the interest is certainly attainable or is based on the suppositions.

### **Focal Point**

The second chapter of the book is related to the focal point of the discussions and is therefore too lengthy, argumentative and useful. The five objectives of the *Shariah* are the protection of the religion, the life, the intellect, the affinity and the property. Each objective is discussed under a separate section. Thus the chapter is extended us to five sections.

### **Protection of Religion**

The first section deals with the protection of the religion, the first and the prime objective of *Shariah*. The author has defined the word *din* with its literal and legal meanings. In the dictionary the *din* signifies, the kingdom, the force, the power, the authority, the official law, the submission, the following etc. All this indicates a correlation between the two commonly. To the Ulama, the word *din* is the divine system of life revealed by God to be chosen freely by the people of pure and safe nature which aims at ensuring the worldly welfare and the success in the Hereafter. As per this definition, *din* signifies the divine rules sent by God to His apostles in order to guide the humanity to the true beliefs and good conduct and behaviour. Entering the jurisdiction of these rules one may obtain the prosperity in this world and that world by a sincere following of the Godly orders and prohibitions.

The author further details that the complete religion reveals a combination of the *iman* and *Islam* as well as of the faith and the practice. Some scholars have equated *iman* with *Islam* because the verse 35 of the Quranic chapter *al-Dhariat* and the famous Hadith Jibril convey the same. Some quoting the verse 14 of the Quranic chapter *al-Hujurat* have differentiated the first from the second. Others have declared the two terms as complementary to each other

because hadith reveals Islam as the most virtuous act and *iman* as the highest degree of Islam. To the author the complete religion acceptable to God is one that represents a combination of both the *iman* and the practice. The tree is a collection of the roots and the stem. The root reflects in *iman* and the apparently green stem is the practice. If the stems are sound and green the roots would be treated as firmly-grounded in. And when the roots are firmly-grounded in, the stems also are verdant. The reliable *iman* (faith) is that which is based on the required practices without which no Islam is acceptable. An apparent ordinance is executed on the apparent practice only; it does not affect the inner reality.

The author has established in a logical way and alongside the testimonies on the part of the non-Muslim historians that the religion is an unavoidable need for a man, by which he strongly faces the hardships and challenges of life. The man is otherwise victimized by the frustration, the defeatedness and mental diseases. A true faith protects him against all these mental problems; it carries him to the physical and spiritual heights; it grants him the sociability and connects him to his Creator. To Ibn al-Qayyim, therefore, the need of religion supersedes all other human needs. (*Miftah al-Saadah*, Vol. 2, p. 2).

The author after having highlighted the significance of the religion emphasized on its due protection. In order to protect it the faith in God and the Last Day is obligated. The Quran and the Hadith have, consequently necessitated the faith (*iman*) argumentatively and convincingly. After asserting the need for *iman* the *Shariah* provided the ordinances for the prayers like *salah*, *zakah*, *saum* and *hajj* which constitute the rights of God on the human beings but their profits and interests are credited with the men themselves. These prayers adorn the human being with the truthfulness, honesty, justice, loyalty and other good manners and etiquettes.

It was also instructed by God to replace all the elements that may harm the *iman*. For this four instructions were provided :

a) Waging jihad in the way of God was obligated. The author has

well explained that the Muslim community constitutes the best Ummah and is bound to order the good and forbid the wrong; and jihad is its highest stage. The purpose of jihad is not the realization of the worldly gain or personal interests. It is waged instead to heighten the words of God. The author does not sanction jihad against the paganism unless it initiates any mischief. The reason behind the commandment of fighting is to check the aggression and disorder. That is the reason why Islam prohibited to target the elders, children, women, monks and handicapped, and banned the cutting of the productive and fruitful trees, burning the gardens and demolishing the populations even in the state of war. Even the camels and the goats were checked to be slaughtered except for eating. (Abu Dawud; *Nayl al-Awtar*, Vol. 7, p. 260; *Sharh Zurqani ala al-Muatta*, Vol. 3, p. 10; *al-Mudawwanah al-Kubra*, Vol. 3, p. 69).

- b) The apostates were sentenced to death so that after having entered the fold of Islam truthfully and sincerely the simple-minded people might not be suspicious of Islam's authenticity and feasibility.
- c) The spread of religious innovation was banned and any novel thing in the faith was restricted.
- d) The sinful activities and the crimes were prohibited and those who commit them were declared liable to punishments so that the religion is fully protected by applying these negative methods too.

### **Protection of Life**

The second section of the second chapter deals with the protection of life, the second objective in the order. For the sake of religion the life may be sacrificed but the protection of life supersedes other objectives. The author has described both the positive and negative steps to be taken for saving the life.

In order to save the life God has created the universe and managed it masterly. The holy angels-nearer to the divine Throne –

also are to serve the human being. The entire heavenly system, the earthly resources all is employed for the protection of man. The man himself was equipped with the consciousness and the intellect in order to save his life. The embryo was protected and all its expenses were to be met out by its owner. To meet the expenses of the pregnant wife was also declared as the responsibility of the husband. After her delivery all the legal implications of sucking and bringing up were explicitly defined. The protection of his life upto his adolescence was ensured by the law and the society was obligated to play its role in this regard. The environment of mutual love and affection was developed. To protect his life all the necessary and useful things were declared as lawful and all the harmful and superfluous things were prohibited. This lawfulness and prohibition was authorized by God alone.

The man has three stages for the protection of his life :

The first stage is related to the normalcy and convenience. In this stage all the pure and lawful things are used by man. The second stage covers the situation of sufferings and difficulties, and is called the *hajah*. For the sake of protecting man's life a number of relaxations were provided in this stage and the ordinances were made convenient and easily-practicable. The third stage, called as *dharurah*, is the toughest and most inconvenient one in which the life itself is endangered. For this stage a prohibited thing also is declared as lawful in the specific situation if it is unavoidable for saving the life. All these stages ensure positively the protection of life.

On the other side all the ways to the danger of life were blocked. For the sake of life only a murder or injury was treated as crime liable to punishment. The equality of law (*qisas*) in case of an undue killing was implemented. The Quran very eloquently described the *qisas* as the survival of the humanity. The author explicitly mentioned a patient can not be killed even in the worst situation and most troubled condition. The human life is too precious and can not be sacrificed at any cost. Islam has, instead, treated the illness as a *kaffarah* (compensation to sins unconsciously

committed) and a step to spiritual height, and declared the act of visiting the patients as rewarding.

### **Protection of Intellect**

The third section deals with the protection of the mind and the intellect. The author has described that only because of the intellect God has created man as a superior entity. The interests of this world and that world require the *Shariah* and the *Shariah* is based on the reason. Due to reason only the man is addressed for the execution of the ordinances.

The author has explained logically that the knowledge has three circles :

The first is the circle of the senses. It forms the narrowest one. Man acknowledges the things by his five senses. The second is the circle of the intellect, bigger than the first because it realizes the things without any help of the senses. The third is the circle of revelation, the biggest and the widest one. All the three circles are correlated. Every first circle in order provides the base and the preface for the later and every succeeding circle constitutes the ruler and care-taker for the earlier. Without senses no intellect exists, and in the absence of the circle of intellect the man is no more addressee of the revelation.

After having introduced the five senses and the specific role to be played by each sense, the author has narrated that a man acquires the knowledge by his intellect as well as his senses and that there is no contradiction between the two. The intellect, however, dominates the senses. The eye some times sees the remote thing as the water but the intellect realizes that it is a mirage only. Verily the senses convey the knowledge to the intellect but where the jurisdiction of the intellect is extinct, the intellect starts its functioning.

After an eye-opening discussion on the correlation between the senses and the intellect, the author has criticized the tragic attitude of the West that started its scientific journey distancing from the Spanish Islamic thought and being troubled with the



resistance of the church tried its worst to escape entirely the religious teachings of the church and became consequently the victim of atheism and disbelief. The West then rejected every thing excluding the matter that was approved by the observation and human experience. This trend opened the door of heavy damages to the humanity. On the other side the reliance on the mind exclusively enlarged the list of the sufferings. It was instead the need of the time to understand the correlation of the intellect and the senses accordingly and let them function in their own jurisdictions.

The third was the circle of revelation. As the intellect supersedes the senses, the revelation supersedes the intellect. The circumference of the circle of revelation is known to God only. The mind can follow the guidance of the revelation only in the jurisdiction of unseen. One point of coordination between the intellect and the revelation concerns their circles. According to the second point the reason and intellect only provides a base for the revelation, since in the process of understanding the revelation the intellect forms the foundation. The third point of coordination requires the revelation should be in a governing process and the intellect governed. Both however constitute the need for the man and both complement each other. In the unseen affairs as well as in the legislation and morality the revelation stands the final and the certain.

The author has discussed the intellect, its due place and its association with the senses and the revelation and has explained that the *Shariah* for the sake of protecting the intellect has established both the positive and negative ordinances. Amid the positive teachings for the same the education was declared essential because it refines the intellect and saves it from the superstitions. Learning some teachings is unavoidable for every person while others are obligated according to the need and role of each individual. To meet the requirements of this world there are various fields and disciplines of education separately.

All the harmful things for the intellect are prohibited. The alcohol and other intoxicating drugs are banned, because these

damage both the property and the intellect. According to a German doctor,” If half of the wine shops in the world are closed I assure you half of the hospitals, refugee camps and jails in the world would be shut down”.

### **Protection of Affinity**

The fourth section elaborates the protection of affinity as the Shariah objective. This is ensured in Islam by both the positive and negative means. Amongst the positive means the marriage system was introduced. This meets the natural call of the man and provides dignified means for the continuation of the human generation. The system of marriage prevails since the start of the human generation. In case any deviation from the marriage system was introduced it resulted in demolishing the entire family system in the history. Islam too emphasized on the *nikah* (the marriage), declared it as the practice of Sunnah and treated the unmarried life as the Satan’s life. *Shariah* instructed to ease the process of marriage, and to make it durable and lasting Islam established the rights and duties of both the spouses. The survival of human generation was declared as the basic aim of the marriage, and a well-defined system of education and training was executed for the betterment of the generation. The subsidiary targets of the marriage likewise included the protection of the sight from shameful things and the chastity, homely comfort and solace, love and affection and the spiritual training. For the sake of protecting the affinity on the other side the corruptions affecting the affinity were replaced. The adultery was banned and declared as liable to the severe punishment. Unnatural sex was prohibited. Defamation was declared as a punishable crime. All the means and ways to adultery were checked. Visiting a strange woman alone was disapproved. Both the men and the women were instructed to lower their sight in the streets. Any demonstration of physical beauties and other provocatives were checked. The unmarried life was discouraged and the timely marriage was encouraged. The bachelors of all the ages were obligated to be got married. Those unable to marry were directed to be patient and contented and hold the fasts in order to refrain from the sexual anarchy.

### **Protection of Property**

The last section of this chapter relates to the protection of the property as the *Shariah* objective. The author has first defined the property saying the thing whose personal value is recognized in *Shariah* is treated as the property that has the price. Benefiting from this by all the lawful means is valid and it is respectable and should be treated as safe and no exploitation of it is justified. The author says that the property is not the aim, it is only a means. It should be therefore utilized either to meet one's worldly lawful needs or in the way to the prosperity in the Hereafter. In case the resources are employed in the sinful activities, or one tries to earn them by lawful and unlawful means to meet his lust for luxuries, or they put the man in the total negligence from God, they carry with these the destruction and degeneration. Islam recognizes the individual ownership in law and simultaneously creates a moral sense in the human mind that the property originally belongs to God who has granted it for the benefits of men and has made them His deputy to exercise it. The man thus becomes responsible in connection to his property. He feels himself accountable in his income towards the betterment of others in the society.

Amid the methods of earning the wealth Islam gives to the work and labour its due importance and orders strictly to pay in full the labourer. In respect of the property *Shariah* aims at fulfilling the four requirements:

- a) The wealth should be in circulation lawfully. Islam prohibits to freeze the currency since it is mode of exchange. It bans the usury because it is the injustice. Usury roots out all the passions of affection and sympathy. It produces a gulf between the rich and the poor and that causes the hatred and enmity against each other. The damages of usury are economic, social and ethical. Islam also checks the hoarding of goods because it affects the financial activities. It forbids all the forms of gambling in order to keep the wealth in circulation and takes into account the wealth lest be

circulating among the rich class only. It encourages the lawful trade and commerce well.

- b) Islam instructs to keep all the business dealings neat and clean and well-defined. It commands therefore to keep in writing all the dealings and establish the witness against these to avoid all the disputes. It elaborates the principle of *rahn* (depositing as security) accordingly to make the dealings clean.
- c) Islam educates the moderation in the financial matters also. It orders to spend the wealth in the good deeds and forbids the greed and misery on the one side and the extravagance and wasting on the other.
- d) Islam furthers the value of spending money to meet the individual needs as well as the needs of the relatives. It obligates the payment of *zakah* and to help financially the poor and needy section of the society.

For the protection of wealth *Shariah* has established some negative commandments also. It forbids strictly the financial exploitation and declares it a punishable crime. It pronounced the punishment for theft, robbery and other methods and means of confiscation and misuse. It checks the bribery and financial corruption to retain the benefits of wealth and to maintain the justice.

## **Conclusion**

The author has explicitly defined the objectives of *Shariah* by providing a detailed account of the protection of the religion, the life, the intellect, the affinity and the property in the five sections of the second chapter. In the concluding part the author has well written that the success and the deliverance of the Muslims is entirely associated with their unconditional surrender to Islam both in theory and practice. In the shadow of Islamic principles and teachings only the life is comfortable and convenient. Practicing some parts of *Shariah* and avoiding others is not acceptable to God

and in this world also this attitude results in nothing but humiliation, frustration, disunity, anarchy and valuelessness. By the full commitment with the *Shariah* only Muslims can play their divinely assigned role.

### **Principles of Objectives as Conceived by Al-Shatibi**

- Muhammad Hishamul Haq Nadwi

*Qawaid al-Maqasid 'Ind al-Imam al-Shatibi 'Ardhan  
wa Dirasatan wa Tahlilan*

By Dr. Abdur Rahman Ibrahim Kilani

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The author, Dr. Abdur Rahman Ibrahim Zayd Kilani, belonging to Jordan, is the assistant professor in the Department of Jurisprudence and the Principles of Jurisprudence, Shariah College, Muta University. He had produced earlier the following books in his area of specialization :

1. *Al-Aamm wa Takhsisuhu bain al-Shatibi wa al-Usuliyyin*
2. *Hujjiyat al-Qaidah al-Fiqhiyah*
3. *Mabda al-Istihsan wa Tatbiqatuhu al-Tibbiyah al-Muasirah*
4. *Maalim al-Maqasid fi Fiqh al-Shaykh Muhammad Rahid Rida*

The book under discussion is a study and analysis of the principles and rules described by al-Shatibi in his writings that deal with the correlation of the ordinances and the objectives of *Shariah*. The book consists of two chapters. The first chapter is divided into two sections while the second into three sections; every section is further divided in to a number of discussions. The titles are as follows :

Chapter One : Objectives : Their Meaning and Grades

Section I : Significance of the Principles of Objectives.

Section II : Kinds of the Principles of the Objectives and Their Place in the Islamic Legislation.

Chapter Two : Study of the Objectives Principles in the Light of their Themes.

Section I: The Objectives Principles concerning the

Interest and the Harm (*Fasad*)

Section II : Principles of Objectives and Removing the Hardships

Section III : Principles of Objectives and the Results of Human Deeds and Objectives

At the end of the book the author has summarised the discussion into 18 points and invited the scholars to think further over the issue in the light of the ancestors works. The preface of the book is written by Dr. Ahmad Risuni Marakashi who himself has compiled a book on the theory of objectives as advocated by al-Shatibi. Dr. Ahmad has highlighted the phase-wise-development of the theory of objectives in Islamic history. He has described how the theory attracted the Arab and the Muslim world within one century and how the books were composed, the journals on the theory were released and various dimensions of the theory were chosen for Ph.D. theses in the universities and all this produced an awakening and a revolution towards the theory in the Muslim society.

In the presence of valuable and elaborate books on the *Shariah* objectives why a new contribution was needed, this was explained by the author in detail in the introduction. Tahir bin Ashur, Dr. Yusuf al-Alim, Dr. Wahbah Zuhayli, Dr. Ahmad al-Risuni, Ismail Hasani, Dr. Khalifah Ba Bikr al-Hasan, Dr. Hammadi al-Abidi and others have composed independently on the theme and have evaluated it in the different dimensions. The principles and the rules of the objectives as perceived by al-Shatibi, however, were not studied and analysed so far, and that how these principles may be applied alongside performing the *ijtihad* in the modern world.

Initiating the discussion on the theme, the author has first described in detail the meanings of *qaidah* (the rule or principle) and the *maqasid*.

**Literal Meaning of *Qaidah***

The author says all the dictionaries are unanimously agreed with the origin and the basis as the meaning of *qaidah*. (Zubaydi, Taj al-‘Urus, Vol. 9, p.60; Ibn Manzur, *Lisan al-Arab*, Vol. 3, p. 128; Jauhari, *al-Sihah*, Vol. 2, p. 525). He has quoted the two verses of the Quran (*al-Baqarah*: 127; *al-Nahl*:26) in this regard. Also has narrated he the Arabic proverb reading the *qawaid al-hawdaj* (the wooden pillars of howdah). (See Ibn Manzur *Lisan al-Arab*, Vol. 3, p. 138; Raghīb Isfahani, *Mufradat Alfaz al-Quran*). The author says the word *qawaid* sometimes signifies the material foundation as the *qawaid al-bayt* means to the foundation of the house, and *qawaid al-hawdaj* is referred to above. It is also applied to the incorporeal meaning like *qawaid al-fiqh* that means the pillars of the jurisprudence; *qawaid al-mantiq* that signifies the bases of the logic; and *qawaid al-maqasid* that connotes the rules and principles of the objectives. He has also pointed out that the word *qawaid* alongside the meaning of origin and foundation implies the soundness and the stability too.

**Terminological Meaning**

In order to define the terminological meaning the author has cited Jurjani, Kafawi, Tufi, Taftazani, Maqqari, Subuki and Hamawi from their books, have analysed them and discussed in detail the points of difference in their definitions. He then defines the *qaidah* in his own words :

“A term by which is interpreted a general ordinance under which are enrolled massive particulars whose legal positions are derived from that general ordinance”.

This definition is preferable on the following grounds :

- a) This is so general that it includes the implications of other similar words like *qadhiyah*, *amr* and *kull*. This is nearer to the definition provided by Subuki, also.
- b) This demonstrates *qaidah* as the general ordinance because the *qaidah* is not an ordinance; it reflects, instead, a means of the expression of the ordinance only.



- c) This describes the universal quality of the ordinance because one of the characteristics of *qaidah* is its universality, which is not affected even by the exceptions penetrating to some juristic rules. The universality in the juristic principles and rules is relative and not comprehensive since some particulars inherit the anomalies (Al-Nadwi, *al-Qawaid al-Fiqhiyah*, p. 45).
- d) This definition has added the word ‘massive’ to the juristic particulars to explain the exemption that occurs occasionally in the universal ordinance and this never hammers its universality. This situation occurs only when the *qaidah* does not apply with its full meaning on the specific juristic particular or the *qaidah* itself is more relevant to the specifying particular than the one under operation.
- e) The last part of the definition clarifies in fact that the process of *qaidah* elaborates the legal position of the particulars that imply the general meaning of the *qaidah*.

#### **Literal Meaning of *Maqasid***

*Maqasid* the plural form of *maqsad* is derived from the root *qsd*. The Arabic dictionaries apply it on various meanings. Sometimes the word *qasd* means the clear and straight path as the Quran says :

“And unto God leads straight the way”. (The Quran, 16:9)

The *qasd* also signifies the justice. The Arab poet uses the word for the same scanning in the following lines :

It is the duty of the arbiter, when he is approached, to do justice and be not unjust”.

The *qasd* also signifies to move toward a direction and to intend a point. In the conversation and also to the jurists the word applies the same meaning. The jurists for example use the following idioms :

“The *maqasid* changes the ordinances of the disposals and the behaviour.”

(Ibn Nujaym, *al-Ashbah*; Ibn al-Qayyim, *lilam al-Muaqqiin*, Vol 3, p. 98.)

“The *maqasid* are to be considered in the disposals and the behaviour.”

(Al-Shatibi, *al-Muafaqat*, Vol. 2, p. 323)

The *maqasid* in all these idioms means the intention of a man while performing a job.

### **Terminological Meaning**

To the author the word does not define any specific meaning in the writings of the classical jurists and the experts of the juristic principles. They also use it for its literal meaning. See the following principles of the jurisprudence :

“The things are associated with their *maqasid*”. (Ibn Nujaym, *al-Ashbah*, p. 8)

Imam al-Ghazali says :

The *maqsad* of Lawgiver by the creation are five ; to protect one’s religion, life, intellect, affinity and property”. (*Al-Mustasfa*, Vol.1 p. 287)

Aamidi pronounces :

“The *maqsad* of legislation is either to earn the human interest, to replace a harm or both the things.” (*Al-Ihkam*, Vol. 3, p. 371)

Al-Shatibi says :

“The *maqsad* of lawgiving is to establish the human interests in this world and that world.” (*Al-Muafaqat*, Vol. 2, p. 37)

After all these citations were made the author concluded that these jurists apart from specifying any meaning had described various forms of the human interests that were the products of practicing the ordinances. These definitions like wise do not escape the scope of the literal meanings of the *qasid*. To the author, the better terminological interpretation of the word was made by the

contemporary scholars and ulama. (See *Maqasid al-Shariah al-Islamiah*, p. 51; *Maqasid al-Shariah wa Makarimuha*, p. 3; *Al-Maqasid al-Aammah li al-Shariah al-Islamiah*, p. 79).

The author has criticized in this context the termly definitions given by Muhammad Tahir bin Ashur, Shaykh Allal al-Fasi, Dr. Yusuf al-Alim, and others. He has then put his own definition as the following :

“The objective-based meanings intended by the Lawgiver through the execution of His ordinances”.

The author has also analyzed his definition in two three following points :

1. The objectives were interpreted as the ‘meanings’ so that all the universal meanings which are the axis of the *Shariah* ordinances may be covered by the definition as the consideration of the human interest; and the objectives of due importance derived from the universal objective like the protection of life, property and affinity should be also included. This also consists of the particular meanings intended by the *Shariah* like the continuation of the marriage and its strengthening; and the purification of the heart from the greed and the creation of the brotherhood among the Muslims by sanctioning the *hibah* (granting the free gift).
2. The part of the definition reads “intended by the Law-giver” and it strictly maintains the *Shariah* meaning of the word *qasd* as well as its literal meaning.
3. The concluding words that read “through the execution of His ordinances” clarify that the ordinances stand as the means to realize the objectives. Through these means the aims and objectives of *Shariah* are observed. While indicating this point al-Shatibi writes :

Because the *Shariah* deeds themselves are not required; whatever is required is different, and these are their meanings and the interests for which these deeds were sanctioned.” (*Al-Muafaqat*, Vol. 2, p. 385).

After the two terms namely the *qaidah* and the *maqsad* were defined separately in detail, the author has discussed the novel term *al-qaidah al-maqsadiyah* in the following lines :

“It is the term that interprets a universal meaning derived from the various arguments of *Shariah*, the Lawgiver desires to establish through the ordinances implied in that.”

The author has then discussed the difference and unity between the objectives-oriented *qaidah* and the juristic *qaidah* in terms of their authenticity, significance and reliability as well as their connotations. He has also described the unity and disunity between the objectives-oriented *qaidah* and the principles-based *qaidah* in terms of the reality, theme, content and sources, and has concluded the objectives-oriented *qaidah* is different from both the juristic *qaidah* and the principles-based *qaidah* in terms of its nature and scope, sources and grade. It is however not necessary that the objectives-oriented *qaidah* be excluded from the scope of juristic principles as a science, because the science of the juristic principles does not only mean the knowledge of the rules and the regulations but it also signifies the methods of application as well. One who does not have the masterly knowledge of the objectives-oriented rules he can not apply the principles-based rules and *qaidahs* as is required. A *mujtahid*, therefore in the process of deriving the desired ordinance in *Shariah*, needs the objectives-oriented *qaidah* as needs the principles-based *qaidah*.

At the end of this discussion the author opines al-Shatibi has given the principles-based *qaidah* the orientation of the objectives so that it should not be confined into literal and scholastic discussions. It may be extended, instead, to the legislation and its universal grades.

After the heavy discussions were made on the definitions of *qaidah*, *maqasid* and objectives-oriented *qaidah*, the learned scholar has initiated the status and authenticity of the objectives-oriented *qaidah*. In his opinion, al-Shatibi in his *al-Muafaqat* has concentrated on the two axes in this respect :

Axis I : Following the objectives-oriented universal *qaidahs* with the *Shariah* particulars and their branches.

Axis II : Possibility of Abrogation in these universal *qaidahs*.

Referring to al-Shatibi while dealing with the axis I the author says that the consideration of the universal rules while thinking over the juristic particulars is essential. These universal rules imply the objectives-oriented *qaidah* too. To the author, if a jurist avoids the universal rules while thinking over the particulars he will essentially issue the verdicts that will go against the logic and spirit of *Shariah*. He has cited Imam Abu Hanifah in this regard. According to Abu Hanifah if a man has killed some one by striking a heavy wood or stone there will be no *qisas* to be implemented against the killer because that will not be treated a murder committed intentionally though it was based on aggression. To him the murder intentionally committed would be treated in the court only when the assault is made by any recognized weapon like the sword, the spear, or by a thing that substitutes the weapon like a well-sharpened wooden arc or a fire arm. The word '*amd*' signifies the *qasd* and the later means an intention traceable only by an evidence and that signifies a tool liable to killing a person (Qazi Zadah, *Takmilah Fath al-Qadeer*, Vol. 9, p. 138; al-Khawarizmi, *al-Kifayah ala al-Hidayah*, Vol. 9, p. 139).

According to the author, Abu Hanifah has established this opinion on the basis of some Prophetic traditions (See *Nasb a-Rayah*, Vol.4, p. 3333; *Musnad Ahmad*, Vol. 9, 139). Al Sarkhasi has provided its rationale (See *al-Mabsut*, Vol. 26, p. 122) To Muhammad and Abu Yusuf, to malikids, shafiites, and hanbalites the *qisas* will be imposed on the killer in the given situation.

According to the author, the opinion of Abu Hanifah in this case contradicts some universal *qaidahs* of the objectives. Keeping in view the results of a verdict is a consolidated principle of *Shariah* for example. Protecting the human life by replacing the harming factors is also an agreed principle of *Shariah*. In case a murder by a heavy thing is not treated an intentionally-committed murder and the killer is not obligated by the court to face the *qisas* while it is

committed in aggression, it will certainly open the door of murder. The killer will then kill the man unhesitatingly by any heavy thing without taking any care of *qisas*. Is this not initiating the destruction of humanity, the protection of which is a prime objective of *Shariah* and which is unavoidably amongst the basic needs of life.

The author has then pursued the individual opinions of the *mujtahids* and founders of the schools in respect of the juristic particulars and branches and concluded that these dignitaries while inferring the issues always maintained the general and universal objectives of *Shariah*. To strengthen his point of view he has offered the following examples :

1. According to a general rule the trustee will not be held responsible and liable to pay in case of any damage or destruction in the trust provided the trustee is not involved in the damage by his negligence or aggression and the man who claims an injustice or negligence on the part of the trustee would be forced to offer the evidence in his favour. In spite of this general rule in operation a number of companion scholars issued the legal verdict otherwise, and obligated to pay as guarantor the workers and operating officials in the factories who damage others goods deposited to them for repair or improvement and could not present any proof for their claim of non-negligence or being innocent in the process of damage. (Ibn Qudama, *Al-Mughni*, Vol.6, p. 106; Ibn Hazm, *al-Muhalla*, Vol.8, p. 202; Bayhaqi, *al-Sunan*, Vol.6, p. 132).

According to the author, the verdict of companion scholars was based on the three rules of the objectives :

- a) A comparison between a general interest and a specific interest is essential. In case of a clash between the two the general interest will be preferred. (*Al-Mustasfa*, Vol. 1, p. 313; Ibn Nujaym, *al-Ashbah*, p. 87; al-Zarqua, *Sharh al-Qawaid*, p. 143).
- b) Keeping in view the result is necessary this verdict of the companions has maintained the compensation for the damage

inflicted on the goods of the owners, otherwise the operating workers and labourers would claim a damage without producing any proof. The wealth will be destroyed thus and it will violate an agreed principle of *Shariah*.

- c) It is essential to remove the suffering and the hardship. In case the labourers are not treated as the guarantor legally no one will invest his goods in any project for improvement and commercial purpose and this will hammer their trade. (Al-Baji has pointed out this in *al-Muntaqa*, Vol. 6, p. 71).

2. Al-Juwayni, al-Gazali and al-Shatibi have clarified that in case the official treasury is unable to meet the necessary expenses, the needs are intensified and the government is bound to enhance the military personnel for the defence of the state, a just ruler is authorized to consider the seriousness of the situation and impose some extra taxes on the rich section of the society to meet the requirements of the state. (See *al-Ghiyathi*, p. 277; *Shifa al-Ghalil*, p. 237; *al-Mustasfa*, Vol. 1, p. 304; *al-Itisam*, Vol. 2, pp. 121-122).

To the author, this verdict of al-Juwayni, al-Ghazali, and al-Shatibi copes with the objectives of *Shariah*, since the protection of religion, property and life depends on the protection of the state.

3. Al-Ghazali has taken into account the objectives-oriented *qaidah* while dealing with the torture of the accused for the sake of conviction in case of a theft or murder and has declared it unlawful. In his opinion, the jurists while preferring the common interest over the specific interest have sanctioned the torture for the sake of conviction, but it is not advisable. This rule contradicts a more significant rule e.g. the protection of human life. The jurists argue in favour of the torture of the accused saying he would not convict his crime otherwise and it is too difficult to provide normally the evidence against the crimes committed in the night or tactfully and in case it is not operated the rights of the people would be violated. Al-Ghazali says it would be opening the gate of another evil. Possibly the culprit is innocent and torturing him on the basis of some assumptions is violating his fundamental right to life. If it is sanctioned this will be often misused and frequently politicized or

motivated by personal grudge. If the interest of the owner requires the torture of the accused his own interest demands not to harm him without any due process of law and no interest of both is preferable to other (*Shifa al-Ghalil*, p. 230).

The author keeping in view the objective-oriented rule has sanctioned the human transplantation because the protection of life is preferable. He has cited in this regard as a precedent the classical stand of the jurists who had justified a surgical operation of the stomach to save the embryo in case the pregnancy is moving in the womb of a dead woman (Ibn Nujaym, *al-Ashbah wa al-Nazair*, p. 88; *al-Fatawa a-Hindiyah*, Vol.5, p. 360; Al-Nawawi, *al-Majmu*, Vol.5, p. 301). To the author this applies the popular juristic rule of opting the lesser harm in order to escape the greater harm. Those who interpret otherwise the following hadith are incorrect in their stand. The hadith reads :

“Breaking the bone of a dead is like breaking the bone of a living man.”

(Ibn Hibban, No 3167; Abu Dawud No. 3208; Ibn Majah No. 1616, Editor).

These jurists do not weight the *Shariah* objectives. To the author the hadith signifies as breaking the bone of a living man means violating his dignity; the same applies on a dead body too. Breaking any bone of a dead is humiliating it likely (Al-Tahawi, *Sharh Mushkil al-Athar*, Vol. 3, p. 310). The hadith aims at expressing that persecuting any man by breaking his bones is prohibited as is equally forbidden injuring a dead body by breaking its bones. In order to save a life any transplantation from a dead body does not cause any harm or pain because the objective is to save a life and not to humiliate the dead.

Providing a detailed account of the axis II, the author referring to al-Shatibi says that the rules and principles of the objectives are too sound and never be abrogated. These reflect the universal rules and cannot be changed e.g. establishment of justice, ordering good and forbidding evils, replacement of atrocities, protection of life, property, intellect and dignity etc.



The author while talking of the value and status of the objectives-oriented rules and principles, has evaluated the role of these rules in the newly-confronting issues where the jurists may need to perform an *ijtihad*.

Referring to al-Shatibi frequently in this context the author has discussed that these rules will provide a base for the newer issues too and would be consulted if needed provided the issues come under the jurisdiction of the theme of *Shariah* and its universal application and are taken into consideration for guidance by the argumentation of *Shariah* as a whole. The author says that a cursory study of the *ijtihad*-based verdicts of classical scholars in the non-textual issues reveals these rules had penetrated their thinking and approach.

The author has clarified his claim by the examples. The majority of the jurists have explained that in case a group is involved in the murder of a person the entire group will be killed in implementation of the *qisas*. They have cited, besides the saying of a companion and analogical reasoning, the objectives of *Shariah* in their support. Ibn al-Arabi, while describing the danger in case of not killing the group involved in the murder of a person, has said :

“God has ordered the murderer should be killed in exchange to save the life. In case the enemies are aware of the relaxation if they kill a man in group they will commit it collectively. God has therefore obligated on all of them the *qisas* in order to check the enemies from such crimes and stop the door of murder.”

(Ibn al-Arabi, *Ahkam al-Quran*, Vol. 2, p. 624)

Chapter two of the book in all its sections and discussions consists of the thematic division of the objectives-based *qaidah*. As per the theme the author has classified these *qaidahs* (rules) into three :

1. Objectives-based rules concerning the interest and the harm.
2. Objectives-based rules regarding the replacement of the sufferings.

3. Objectives-based rules in respect of the results of the deeds and the human interests.

The first kind of rules covers 150 pages of the book and is discussed in detail in the context of various deliberations. Some important points of this topic are as follows :

1. The relation between the intention of legislator and the establishment of the interests.
2. Objectives-based rules specifying the regulations of the interest which is authentic in *Shariah*.
3. Objectives-based rules clarifying the kinds of the interests, their significance and role in implementing the interests.
4. Objectives-based rules relating to the compliment of the three popular grades of the objectives.
5. Objectives-based rules regulating the correlation of the three grades.
6. Various aspects of considering the rationale of the ordinances according to the defined principles in the light of the objectives-based rules.
7. Objectives-based rules obligating a *mujtahid* to think over the meanings and the objectives.

In most of these discussions the author has cited a number of rules from the *al-Muwafaqat* of al-Shatibi.

In the first discussion the objectives-based rules are five in number.

The second discussion carries two rules.

The third discussion deals with the three popular kinds of the *maqasid* (objectives) namely *dharurah*, *hajah* and *tahsin*.

The fourth discussion covers the two rules concerning the compliment to the three kinds of the objectives.

In the fifth discussion are the five rules in respect of regulating the mutual relations between the three kinds.

The sixth discussion covers the two rules that are related to various dimensions of rationale at work behind the ordinances in accordance with the principles defined in the light of the objectives-based rules.

The seventh discussion consists of the two rules that emphasise on the consideration of the meanings in all the verdicts of independent judgement (*ijtihad*).

The second thematic division of the objectives-based rules (relating to removing the sufferings) is described in to 86 pages. The author has detailed it into five discussions :

In the first discussion are described the six objectives-based rules that clarify the relation between the intention of the legislator and removing the sufferings and their factors.

The second discussion narrates the two rules that regulate the principle of removing the sufferings and the intention of the man accountable in *Shariah*.

The third discussion is made over the three rules that concern the regulations of the suffering considerable in *Shariah*.

The fourth discussion provides a detail about the correlation of the intention of the Legislator and the factors of comfort in the light of objectives-based rules.

The fifth discussion deals with the correlation of the intention of the man accountable in *Shariah* and the factors of relaxation. In this respect the following rule alongside the examples is cited.

“It is not justified for an accountable person to produce the factors of relaxation in order to free himself from the firm stands”.

The last section of chapter two deals with the third thematic division of the objectives-based rules and is extended upto 103 pages of the book. This is extended upto three discussions :

The first discussion consists of the two rules that declare a *mujtahid* to be bound to keep in mind the results of the deeds.

The second discussion mentions the six rules that regulate a coordination between the intention of the man and the intention of the Legislator.

The third discussion aims at elaborating the four rules that deal with the role of the people's objectives and the results of their actions and deeds in deciding the legal position of their deeds.

Now we elaborate the above-mentioned three thematic divisions alongside their examples.

### **Objectives-Based Rules for Interest and Harm**

- (a) The *Shariah* is framed for the sake of the interests at work in this world as well as in that world together. (*Al-Muwafaqat*, Vol.2, p.6)
- (b) Accountability on the part of the *Shariah* is either for the replacement of the evils or for earning the interests or for both. (*Al-Muwafaqāt*, Vol. 1, p. 199).
- (c) The prohibited factors are the factors for the harms and not for the interests, and the lawful factors are for the interests and not for the harms.

To the author, these rules reflect the foundation of the *Shariah* ordinances. The following rules determine the regulations of the interests and their authenticity:

- (a) The interest in *Shariah* signifies the thing which is taken into consideration by the Legislator and on which He has arranged its requirements.
- (b) Though *Shariah* is constituted for the welfare of the human beings but this legislation is made according to the will of God and is bound to follow the limits marked by Him, and not the desires and wishes of the people.

The author has also mentioned the role of *mujtahid* in maintaining the welfare and interest as well as removing the evils and the harms. He has described the two rules in this connection :

1. It is essential to pay attention to the meanings of the

ordinance and not to the ordinance itself only.

2. Practicing the apparent with excessiveness and extremism distances the objectives of *Shariah* as well as neglecting them leads to the extravagance.

### **Objectives-Based Rules for Removing the Suffering**

- (a) The Law-Giver does not aim at inconvenience or suffering.
- (b) *Shariah* has well maintained the moderation and the justice and is safe from all kinds of extremism and deviation, the following of which is in the purview of the man who is neither left in the troubles nor in liberality. (*Al-Muwafaqat*, Vol. 2, p. 163)

To the author, these rules clarify *Shariah* does not aim at binding the human being by the deeds and the performances that are beyond their purview and capabilities or which might be performed after an unusual struggle was made.

The author has then described the regulations of the troubles and their limits that ease the human beings. Imam al-Shatibi, for instance, narrates the following rule :

“If the trouble is out of the familiarity to the extent that it carries with it a worldly or religious harm the objective of *Shariah* in the given situation requires the replacement of the trouble in the entirety.”

(*Al-Muwafaqat*, Vol. 3, p. 156)

### **Objectives-Based Rules dealing with the Results of the Deeds and the Human Objectives**

- (a) The consideration of the results and the consequences is aimed at and desirable in *Shariah*.
- (b) It is incumbent upon the *mujtahids* to think over the ordinances’ causes and factors because these provide the rationale for the ordinances.

These rules are related to the results and consequences of the human deeds. The author has then described the rules that are

connected to the human objectives.

- (a) The Law-Giver intends the intention of man in practice should cope with His intention in legislation, and that he must not aim at going against what He had intended. (*Al-Muwafaqat*, Vol. 2, p. 231).
- (b) The objectives are considerable in the disposals.
- (c) In case paying the attention to the factors causes to complement, to strengthen and to encourage the accomplishment in respect of the factors and causes, it becomes obligatory to pay full attention to them.
- (d) One who intended in *Shariah* obligations whatever was not sanctioned he opposed in fact the *Shariah* itself.
- (e) The human beings are not liable to intend the troubles for the sake of some divine rewards; they are however justified to intend a good practice that bears higher rewards due to the troubles involved therein.

This portion of the book is too argumentative as well as elaborative. We may not provide all these details here. Some important and summarized points are described above.

In the concluding parts some detailed suggestions and recommendations are provided to lead the carvan of the objectives-based rules. The author desires the ancestors books should be studied in the light of the research method followed by him in this book and the objectives-based rules at work therein should be traced out. He has specially pointed out the following books for a systematic study in the objectives paradigm :

- *Kitab al-Furuq* by al-Qarafi
- *Qawaid al-Ahkam* by Izzuddin bin Abdussalam
- The books by Ibn Taymiah and Ibn al-Qayyim
- The books by al-Juwayni and al-Ghazali

The author has emphasized on the significance and need of regulating the sciences by the specific rules and has cited al-Zarkashi in this regard who says :

“Verily regulating the scattered and disorganized things by the specific laws and rules is more convenient to learn and memorize them accordingly.”

(*Al-Manthur fi al-Qawaid*, vol. I, p. 65).

### **Activating the Shariah Objectives**

- Muhammad Hishamul Haq Nadwi

*Nahwa Tafyil Maqasid al-Shariah*

By Dr. Jamaluddin Atiyah

Published by International Institute of Islamic Thought, US,  
248 pp.

The book is written by Dr. Jamaluddin Atiyah, the famous jurist, the Shariah adviser in Banking and the Finance, Govt. of Egypt. He has obtained L.L.B and Diploma in Islamic Shariah from Cairo University, and Ph.D. in Law from Geneva University in 1959. He has been a law practitioner in Egypt as well as in Kuwait. He has also served in various positions as the academic adviser in International Institute of Islamic Thought U.S., and the professor and head of the Department in Law, Shariah College, Qatar University. He was also the executive chairman of the Institute of International Islamic Banking, Luxembourg, and the Secretary General in the Fiqh Encyclopedia Project, under the Ministry of Waqf, Govt. of Kuwait. He has contributed in his specialized field a number of books and research papers in Arabic, English and French. He is currently the editor of the famous journal *Majallah al-Muslim al-Muasir*.

The book under discussion as his recent contribution deals with the contemporary relevance and dynamism of the *Shariah* objectives, as the title itself reveals.

The preface is written by Dr. Ali Muhammad Jumuah, the grand *mufti* of Egypt and the professor in the principles of Jurisprudence in Azhar University. The scholar, well-recognised in the discipline, has introduced the theme briefly and concisely. To Jumuah, the perfection, universality and infinite status of Islamic Shariah requires a flexibility, balance, moderation, broader horizon and comprehensiveness. In this ideological perspective when a Muslim thinks over the Shariah he finds therein the magnificent



wisdom and the most valuable objectives at work, and by this thinking he realizes the aim of the creation.

To Dr. Jumuah God aims by the creation two objectives :

1. “I have only created Jinns and men, that they may worship me”. (The Quran, 51:56).
2. ‘It is He who has produced you from the earth and settled you therein’. (The Quran, 11:61)

Dr. Jumuah has acknowledged the contributions made by the jurists and the experts of the principles of the jurisprudence too. To him the scholars like al-Ghazali, Izzuddin bin Abdussalam, al-Shatibi, al-Qarafi, Ibn Daqiq al-Eid and Inb Taimiyah have not only mentioned the great objectives of Shariah but have considered them well in inferring and deriving the ordinances and have constituted a general structure of the understanding and the execution of Shariah accordingly, that stands as the source. He, however, thinks the topic was in immense need to be rearranged, refined and introduced as a full-fledged discipline. To him, for a better contribution to the discipline and to distinguish its applied forms it is essential to add the useful points of other sciences too. This was fulfilled to a great extent by the writings of Tahir bin Ashur, Allal al-Fasi, Muhammad al-Ghazali, Dr. Ahmad al-Risuni and Dr. Ismail Hasani. The scholar has introduced in a realistic way the multi-dimensional personality of the author of this book, Dr. Jamaluddin Atiyah and has declared him the most distinguished scholar in the field due to his knowledge, research, thought and experience. He expressed in the concluding part of his preface his pain and grief over the situation of the Muslims who are plunged into intellectual and practical crises nowadays. This critical situation requires the ideology of objectives should be taken into account as the focal point in all the fields of jurisprudence, principles of jurisprudence, thought and intellectual efforts, and this should be propagated the most. To Jumuah, the book is a starting point of the reconstruction of the ideology of the Shariah objectives.

The book consists of the three chapters :

Chapter one : Pivotal issues

Chapter Two : Modern Concept of the Objectives

Chapter Three : Activism of the objectives

These three chapters are arranged in the various discussions and subsidiary topics.

The first chapter deals with the four fundamental issues under the four following topics :

1. Role of Intellect, Nature and Experience in the Identification and approval of the Objectives.
2. Internal Order of the Objectives.
3. Arrangement of the Means and Sources of Each Objective, and the Grades of *Dharurah*, *Hajah* and *Tahsin*.
4. Relative Classification of the Means of Various Grades.

The second chapter discusses the modern concept of the objectives under the three topics :

1. The Issue of the Objectives to be Confined into Five Numbers.
2. Kinds of the Objectives and their Grades
3. Four Circles of the Five Universal Objectives

The third chapter covers the five topics :

1. The Contemporary Situation of Utilising the Objectives.
2. Objectives-Oriented *Ijtihad*
3. Juristic Theorisation
4. Objectives-Oriented Mentality of the Individual and the Group.
5. Scope of the Objectives: Is it an independent science or is it placed between the jurisprudence and the principles of jurisprudence or is it an advanced form of the juristic principles?

Under the heading of *khatimah* (conclusion) the author has

offered some useful academic suggestions followed by the list of the sources consulted in the book.

## **Chapter One – Pivotal Issues**

### **First Topic**

This deals with the role of intellect, nature and experience in identifying the objectives and approving them in the light of the writings of the ancestors like al-Juwayni, Izzuddin bin Abdussalam, Ibn Taymiah, Ibn al-Qayyim and al-Shatibi, and also of the contemporary scholars like Allal al-Fasi, Tahir bin Ashur, Dr. Ahmad al-Risuni, Dr. Ismail Hasani, and Dr. Nuruddin Khadimi.

The author has first raised the question that what are the means to identify the objectives and before answering it properly he has criticized the scholars of post al-Shatibi period in the field. He has evaluated the writings and concluded that these jurists and scholars could not advance the discussions made by al-Shatibi. They are reduced to summarise al-Shatibi's thought or rearrange it. (See comparatively the following references: *al-Muwafaqat*. pp. 168-169, 313, 316, 391-399; Ibn Ashur, pp. 20-22; Dr. Yusuf al-Alim, pp. 112-122; Dr. Hammadi al-Abidi, pp. 124-129; Dr. Ahmad al-Risuni, pp. 241-256).

In view of the author, following sources are emphasized to interpret the Shariah objectives:

1. The texts in the Quran and the hadith explicitly describing the rationale.
2. Examination of the disposals of the Legislator dividing them in to two:
  - a) Examination of the ordinances whose rationale is derived by the approaches of reasoning, and not by any explicit text.
  - b) Examination of the arguments at work commonly in the

objective and the reason.

3. Following the footsteps of the holy companions in understanding the ordinances of the Quran and the hadith.

The author evaluates the post- al-Satibi writings and says that these scholars have overlooked the role of the reason and the nature in recognizing the interests and the harms in the absence of the explicit text while it was fully appreciated by the predecessors of al-Shatibi. The author then elaborates the role of the intellect, the nature and the experience in identifying the objectives and referring to Ibn 'Ashur he quotes the opinion of Ibn Sina from his *Kitab al-Nijah* about the human nature, nature of the power, nature of the mentality, requirements of nature and the truthfulness and dishonesty of the nature.

The author holds the opinion that those who disapprove the role of the reason, the nature and the experience in the absence of any text or consensus, they are in fact not in opposition of these sources. They have been waging, instead, an imaginary battle – the battle of a rational interpretation of the good or bad in the classical paradigm that claims the divine consideration of the human betterment as obligatory on God by whom no violation is justified (See al-Risuni, pp. 216, 137, 44-229).

### **Second Topic**

This deals with the internal order of the five objectives e.g. the protection of religion, life, intellect, affinity and property. The author has cited in this context the scholar like al-Ghazali (505 AH), al-Razi (606 AH), al-Aamidi (631 AH), Ibn al-Hajib (646 AH), Izzuddin bin Abdussalam (660 AH), al-Qarafi (684 AH), al-Baydhawi (685 AH), Ibn Taimiyah (728 AH), Isnawi (772 AH), Ibn al-Subuki (771 AH), al-Shatibi (790 AH), al-Zarkashi (794 AH), al-Badakhshi (10<sup>th</sup> century), Ibn Farhun (799 AH), Ibn Ashur (1393 AH/1973 AD), Dr. Wahbah Zuhayli, Dr. Yusuf al-Alim, Dr. al-Risuni and others.

### Third Topic

#### Internal Arrangement of the Sources of Each Objective

This topic is detailed by the author under the five titles :

1. The first title mentions the motives related to the instinct, the religion and the power.
2. The grades of *dharurah*, *hajah* and *tahsin* belong to the sources and means and not to the objectives.
3. The three grades are appended by two more; one grade is ranked as below to *dharurah* and the other as above the *tahsin*.
4. It discusses how the three grades are reliable.
5. It illustrates the theme by a few applied examples.

#### First Title

According to the author, Ibn Ashur has discussed the execution of *Shariah* and opted the motives of the instinct, the religion and the power.

The *Shariah* in respect of the benefits urged by the human beings, employs first the motives of the instinct and nature. The *Shariah* likewise relies on the natural instinct in presenting the evils and harms that are inherited in them by their nature. The first may be illustrated with the human urge for food, clothing and protecting the affinity. The *Shariah* has paid attention to the protection of the children in case the negligence is committed as the example of the girls being buried alive. The implementation of most of the *Shariah* ordinances is however, associated with the religious motive. The true faith that has two aspects of hope and fear, is applied here.

Whenever the religious motive was faded in any people of any country and it was realized that the violation of *Shariah* had superseded the religious fervor, the motives of power and state were employed as was explained well by Uthman, the third caliph of Islam that God does check by the power what He does not check by the Quran.(Ibn Ashur, pp. 126-129).

To the author, Ibn Ashur has elaborated the motive of instinct well and has entitled it as the ordinances at work for the human profits and has concluded certain results in this respect.

### **Second Title**

The author has cited the experts of the principles of the jurisprudence to the effect that the basic objectives are related to the *dharurah*; and the *hajah* and the *tahsin* are only the subsidiary (*Al-Muwafaqat*, Vol. 2, pp. 2, 13, 16, 24, 101).

He has also mentioned the stand of the experts of the juristic principles to the effect that all the *dharurah*, *hajah* and *tahsin* have a complementary or subsidiary grade. (*Al-Muwafaqat*, Vol.2, p 364; Al-Alim, pp. 155, 163; Al-Hasani, p. 46, Dr. al-Alim however says on the page 165 that most of the experts of the juristic principles do not mention any complement to the *tahsin*, nor they divide it into the basic and the subsidiary grade). The author has criticized this division made by the experts of the juristic principles because this creates more confusion and ambiguity.

### **Third Title**

According to the author the three grades of the objectives - *dharurah*, *hajah* and *tahsin* are lawful and sanctioned but the other two are not sanctioned; one grade is placed below the *dharurah* and the other above the *tahsin*. To the author, al-Shatibi has elaborated well the division of the objectives in to three, its approval and certainty by examining the Shariah thoroughly and its universal and particular arguments deeply. This thorough examination needs no comment. (*Al-Muwafaqat*, Vol.2, pp.49-52). The two extra grades need however a discussion. One grade is under the *dharurah* all the requirements of which are not fulfilled and the other is above the *tahsin* in which an exaggeration and extravagance is employed. He says that while presenting his paper on the theme in a seminar held in Azhar University he was informed by Dr. Ali Jumuah that these five grades of the objectives are reflected from a statement of Jalaluddin al-Suyuti who has explained the five grades of *dharurah*, *hajah*, *manfaah*, *zinah* and *fudhul*.

#### Fourth Title

What will be the criteria for the authenticity of the three grades of *dharurah*, *hajah* and *tahsin* ? Whether a structural and formal criterion is to be followed? And in case of an extreme emphasis on the obligation or prohibition of a building ordinance it will be treated as *dharurah* in case of desirability or undesirability an ordinance implied the *hajah* will be applied; and if the ordinance bears the permissibility in the lowest degree it will be counted amid the *tahsin*? Or a thematic criterion to judge the reliability of the grades of the objectives would be followed? And the rank of the interest and harm, a binding ordinance inherits, would be taken into consideration and consequently the one placed as the most important would be treated as *dharurah*; the lesser important as the *tahsin*; and the one in between the two as the *hajah*? Or both the criteria should be applied together? All these were raised by the author systematically.

The author, after elaborating the stands taken by the experts of the juristic principles, concludes the following:

- (a) Izzuddin bin Abdussalam has opted the structural criterion for some time and the thematic one in other places. Sometimes he has combined the two. He has declared the thematic criterion as the main and dominating for sometime specially in the cases wherein the text, the consensus or any specific *qiyas* is untraceable.
- (b) Al-Shatibi agrees with Shaykh Izzuddin bin Abdussalam to the effect that the construction grammatically does not signify itself any obligation, desirability or permissibility. He rejects the structural criterion but does not accept unlike Izzuddin bin Abdussalam the thematic criterion unconditionally. He establishes, instead, another method to think over it. He differentiates the main objective from the subsidiary one implied in the ordinance. If the ordinance is based on the main objective it will be placed in the higher grade, and if it is based on the subsidiary objective it will be placed in the lower grade.

- (c) Al-Shatibi sometimes mention the obligation as the result of the main objective and desirability as that of the subsidiary one, a stand against his previous viewpoint.
- (d) Al-Shatibi thinks over the prescribed punishment on account of a negligence as the criterion of the importance of the interest or harm.
- (e) Al-Shatibi also discusses that is an ordinance associated with the universal form of *dharurah* grade or the universal form of complimentary grade? (This too was criticized by the author).
- (f) Al-Shatibi divides the *dharurah* in to two parts: first which is linked to an immediate profit and the second which is not. He places the first category in a desirability or permissibility and the second in an individual obligation or collective obligation. (To the author al-Shatibi has thus contradicted his previous stand of an unavoidable relation between the obligation and the *dharurah*).
- (g) Ibn ‘Ashur has opted the thematic criterion.
- (h) The author on the basis of his evaluation has opted the thematic criterion in the issues that have no consensus, or text or a specific *qiyas*, a stand in support of Shaykh Izzuddin bin Abdussalam.

### **Fifth Title**

Under this heading the author has selected some topics and about their gradation has cited the views of some experts of Shariah with an evaluation on his own part. The selected topics and the relevant examples are as follows :

#### **(a) Issue of Cleansing**

According to the author the *taharah* (cleansing the body) is unconditionally placed in to the *tahsin* grade in most of the books. (See *Al-Burhan*, Vol.2, pp. 924-925, 938-941; *al-Muwafaqat*, Vol. 2, p. 11). To him, al-Juwayni does not support the permissibility of applying *qiyas* in the matter of *tahsin* grade. Al-Shatibi has,



however, included the issues like removing the uncleanness, every kind of cleansing, and covering the private parts of the body, in the grade of *tahsin*. Al-Shatibi has not differentiated the ablution – a prerequisite for the prayer – from the general cleansing. He has, however, clarified this difference while talking on the relation of the sources with the objectives. He has put the example of cleansing alongside the prayer. In case a demand of performing the prayer is replaced the demand of cleansing is also replaced except where exists a strong evidence in support of retaining the order of cleansing. It is quite possible the ablution is aimed at even in the absence of prayer. There is no contradiction, therefore, in the combination of the objective and the source altogether, as the two different positions for the same thing. (Ibid, Vol. 2, p. 19-20 alongwith the commentary provided by Abdullah Daraz).

**(b) Issue of Obligatory Prayers**

Dr. Yusuf al-‘Alim, while talking on the interest of protecting the religion in the perspective of the existence, has described the faith in God and the Hereafter in the *dharurah* grade, the obligatory prayers like *salah*, *saum*, *zakah* and *hajj* in the *hajjah* grade, and supererogatory prayers in the *tahsin* grade, the author observes. (See Al-‘Alim, pp. 226-227). To the author, the obligatory prayers alongside the faith are also to be placed in the grade of *dharurah* because these constitute the pillars of Islam and the faith and the practice are inseparable in Islamic belief. (The author has clarified in a marginal note that this aspect was not overlooked even by Dr al-Alim himself because he has mentioned it explicitly in the book on page no. 245). To the author the obligatory *sunnahs* are placed in the *hajjah* grade and the supererogatory prayers in the *tahsin* grade.

**(c) Issue of Prohibition of Killing the Women, Children and Monks in the Jihad**

To the author, Dr. Yusuf al-Alim has strictly prohibited the killing of women, children, and monks in the battlefield, and has declared this prohibition as to be placed in the *tahsin* grade. (Al-Alim, pp. 234-236).

The author has criticized this gradation on the basis that protecting a human life is an objective defined by Shariah in respect of a Muslim as well as a non-Muslim. The text is explicit in this regard :

“Take not life, which God has made sacred except by way of justice and law.” (The Quran, 6:151)

The author opines this sanctity of human life and punishing the criminals and aggressors should be placed in the grade of *dharurah* and not of *tahsin*.

#### **(d) Spread of Knowledge and the Medical and Judicial Assistance**

According to the author, Dr. Ismail Hasani has counted the spread of knowledge, preaching and giving advise, duly educating the minds, helping the refugees by providing the accommodation; the fine kitchen; the park; the bathrooms; and the medical and judicial assistance all this in the general interests.(Al-Hasani, p. 300).

The author is surprised to see how Dr. al-Hasani, inspite of maintaining the general interests in the above-defined jobs, has treated them as to be placed in the *tahsin* grade!

The author views these applied examples illustrating the rules and principles of *Shariah* are needed to be revised so that the *Shariah* objectives may be activated by adopting the structural criterion or the thematic criterion or by combining the both.

#### **Fourth Topic : Relativity of the Classification of the Grades**

This is the last topic of the first chapter. The author has opined in this topic that the three grades of the *dharurah*, *hajah* and *tahsin* are approved. The arrangement of the universalities within this is, however, relative, and may be changed according to the time, space and the individuals. He has discussed the issue both in the theoretical and applied contexts.

## **Chapter Two : Modern Concept of Objectives**

This chapter contains the three topics :

First Topic : Confining the *dharurah* objectives into five.

Second Topic : Kinds of objectives and their Grades

Third Topic : Four circles of the Five Shariah objectives

### **First Topic : Confining the Objectives into Five**

The author has opted the stand both in theory and practice that the objectives are not confined into five.

### **Second Topic : Kinds of Objectives and Their Grades**

The aim of the author in this topic is to remove the ambiguity and confusion produced out of the massive divisions and terminologies. He has divided the topic into six aims and *maqsads* :

1. Aim of the creation
2. High aims of the high *Shariah*
3. Universal aims of the universal *Shariah*
4. Specific aims of the *Shariah*
5. Particular aims of the *Shariah*
6. Aims of the human beings

According to the author, the fundamental aims and objectives are only two :

1. The aims and objectives of the *Shariah*
2. The objectives and aims of the creation

In the context of the aims of creation are the main aims and the subsidiary aims that constitute the aims of human beings. As a supplement to the aims of the *Shariah* are the high aims (to some are the general aims) that constitute the following aims :

1. Universal aims (or general aims to some scholars)
2. Specific aims (the aims relating to the kinds of Shariah and

the sciences)

3. Particular aims (rationale of the particular ordinances)
4. Earning the interests and replacing the evils as some scholars assert.

### **Third Topic : Four Circles of the Five Objectives**

The author has increased the number of five famous objectives upto the twenty four and has divided them in to four circles :

Subject I : Circle of the individuals

Subject II : Circle of the family

Subject III : Circle of the *Ummah*

Subject IV : Circle of the humanity

### **Objectives Relating to Individuals**

#### **Objective No. I – Protection of Life**

The author says that this requires a protection from the entirely destruction as well as from damaging any part of the body that may result in the missing of the benefit of life.(Ibn ‘Ashur, *Maqasid al-Shariah*, p. 80). In the modern terminology it may be called the right of life and dignity.

#### **Objective No. 2 – Protection of Intellect**

The author opines the intellect signifies a deed and not an organ of the body. The mind, the senses, and others means that provide knowledge to the intellect should be duly protected therefore. This should be saved from all the damaging things as the intoxicatives and so on.

#### **Objective No. 3 – Protection of Religiosity**

According to the author, apart from the faith, the religiosity should also be protected. The man should be educated the true belief and thought. He should be saved from the severe sins like associating with God the others, the hypocrisy, the religious

innovations, and the formalism. The rites of the obligatory prayers should be established. The basic ethics of Islam; truth, sincerity, faithfulness, and the good deeds should be observed.

#### **Objective No.4 – Protection of Dignity**

To the author, this is more significant and broader than the sexual dimension. The man should be saved from all kinds of defamations that may have affected his personality, his ancestors' repute, affinity and family's fame. This complements the protection of life.

#### **Objective No.5 – Protection of Property**

The author claims the wealth is owned by God in Islamic perspective and the man is His deputy therein (Dr. al-Alim, pp. 488-490). This aims at the settlement and inhabitation in the earth. Shariah has specific commandments over the enhancement of the wealth.

#### **Objectives Relating to Family**

##### **Objective No. 1 – Regulating the Sex between the Two Genders**

The author defines Islam including all the revealed religions and human laws approves unlike the liberals as well as the animals only one form for sexual relations. It provides the detailed ordinances in this regard and explains accordingly all the rights and duties.

##### **Objective No. 2 – Protection of Affinity**

The Shariah has approved the sex between the two genders for the sake of increasing the generation. This may not be achieved by homosexuality. This is the divine way prevailing the human beings, the animals and the plants. God has, therefore, forbidden the homosexuality and the lesbianism.

##### **Objective No. 3 – Obtaining the Love and Peace**

In order to check the sexual relations that are reduced to the physical intercourse, *Shariah* clarified the objective of the marriage is to obtain the mutual love, solace and peace.

#### **Objective No 4 – Protection of Affinity**

Protecting the affinity and kinship is a different *Shariah* objective from protecting the generation. To achieve this *Shariah* has prohibited the adultery and the adaption.

#### **Objective No. 5 – Protection of Religiosity in the Family**

The author declares addressing the relatives and the intimates by Islamic *dawah* and praying for their guidance to the straight path as the *sunnah* (way) of the prophets. He has illustrated the claim by offering the examples of the prophets Ibrahim and Yaqub. He has portrayed Nuh and Lut, the two prophets as the role model though they apparently could not succeed in this regard. They performed well their duties as the guardian of their family. The success and failure is linked to the principle of the individual responsibility of the addressees.

#### **Objective No. 6 – Organizing Family as an Institution**

The family is a permanent and lasting institution the guardian of which is the husband who is bound to be a caretaker (*qawwam*). He will consult his wife in all the family matters. In case of a dispute between the spouses it will be settled by the principle of arbitration. All the parties have the rights as well as the responsibilities.

#### **Objective No.7 – Regulating the Finance of Family**

To the author, Islamic *Shariah* supersedes all the systems and laws in this respect. He means the Islamic ordinances relating to *mahr* of wife and all the expenses of the wife, the children, the divorced woman, the breast feeding, the relatives; ordinance of inheritance; commandment of a dying man for his relatives; managing the *waqf* property of the family; bearing the expenses of blood-money imposed legally on the paternal relatives, and the legal position of the financial guardianship etc.

### **Objectives Relating to Ummah**

According to the author Ibn Ashur was the first writer who clarified that the five famous objectives of Shariah have duly considered the interests of *ummah* alongside the interests of the individuals. He has explained this in all the three grades of *dharurah*, *hajah* and *tahsin*. The seven objectives elaborated by the author in this context are given below :

#### **Objective No. 1 – Institutional Organisation of *Ummah***

The Muslim *ummah* should be considered as an entity of distinguished and novel characteristics. The very concept has retained the community alive inspite of all the political conversions and lobbying. *Shariah* was not contended to define a hypothetically incorporeal entity of *ummah*. It established the principle of independent financial responsibility in the specific circumstances like the concept of *bayt al-mal*, the institutions of the mosque and the *waqf* (endowments) etc.

#### **Objective No.2 – Protection of Peace**

This is the fundamental and compulsory objective of this organization. God has described it as his blessing for the Quraysh tribe :

“Who provided them with food against hunger, and with security against fear (of danger).” (The Quran, 106:4)

This includes both the internal and external peace and security.

#### **Objective No. 3 – Establishing the Justice**

The justice has various layers: ensuring justice by a man with his Lord, with his entity, his family, relatives and other human beings; justice in the court judgement; in the system of governance etc. Here a justice in the judicial proceedings and the government policies is meant. (Allal al-Fasi, pp.45-56, 209-213, 266-269).

Justice in the eye of the Quran is a fundamental objective :

“And sent down with them the Book and the Balance (of

Right and Wrong), that men may stand forth in justice.”  
(The Quran, 57:25)

The holy Quran has instructed this on various occasions  
(See the Quran, 7: 29; 16:90; 4:58; 42:15).

#### **Objective No. 4 – Safeguarding the Religion and Ethics**

Unlike the secularism Islamic Shariah does not believe in religion and ethics as the private matter of the individuals, it treats it instead, as closely associated with the society and state. That is why Islam - as Ibn ‘Ashur illustrates – removes all the defects in the certain and ever-lasting principles of the religion.

#### **Objective No. 5 – Cooperation and Reciprocity**

These words have inter-relations of general and specific nature, and cover all the socio-political financial and civilizational dimensions. These are more elaborative in the financial forms. These cannot be executed by the law and power only. These are rooted in the faithfully fountains like human brotherhood and the fraternity among the believers. The Quran says :

“The believers are but a single brotherhood.”

(The Quran, 49:10)

The hadith pronounces explicitly :

“All of you are from Adam.”

#### **Objective No. 6 – Spread of Knowledge and Protecting the Intellect of *Ummah***

Ibn ‘Ashur treats the dangers inflicted on the intellect of the community more alarming then that of the individuals. To him Islamic Shariah has therefore, banned all kinds of damaging drugs and intoxicatives for the Muslims.(Ibn Ashur, p. 80).

#### **Objective No. 7 – Rehabilitation and Safeguarding the Resources of *Ummah***

According to the author, this objective deals with the settlement and inhabitation of the earthly planet which is under the



control of Muslim community. The wealth is owned likely by God and the man is deputed in it as His deputy. Islam declares the wealth as the resource of *Ummah* and instructs to safeguard it :

“To those weak of understanding, make not over your property which God has made a means of support for you”. (The Quran, 4:5)

The verse reveals the property and resources of those weak of understanding and the men of incapacity is treated as the property of the community. To the author, this verse applies to the modern concept of progress. In order to realize these objectives the obligatory *zakah* alongside the charities was emphasized. The commandment of a will in one-third property and the instructions relating to endowments were implemented. The financial activities were not confined to the government-sponsored facilities but the entire community was made involved. We find unaccountable *madrasahs*, centres of wisdom, universities, observatories, hospitals, public restaurants and water-supply managements in Islamic history.

### **Objectives Relating to Humanity**

All the issues relating to the abode of disbelief and the abode of Islam, to the community subject to Islamic preaching as well as the community embracing Islam are elaborated in *Shariah* but importantly the universal ordinances of Islam are not limited to a call to the faith. These do not only emphasise on addressing the humanity for Islamic blessings. Some non-faith issues are also addressed in the Quran. The Quranic style of address using the phraseology like

“O mankind!” (The Quran, 2:21)

“O human being!” (The Quran, 82:6)

is based on the reason and the logic. These verses calling the human nature emphasise on the principles in which are implied the teachings of human progress and prosperity.

### **Chapter Three : Activating the Objectives**

#### **First Topic – Contemporary Utilization of the Objectives**

The author has enlightened us with the contemporary utilization of the objectives in the light of the classical and modern works on the theme. To him no modification or addition in the traditional methods is made so far. The modern dimensions of these methods are elaborated in the next topic.

#### **Second Topic – Objectives – Oriented *Ijtihad***

The author in the beginning has raised the question about the reality of this term. Is this a novel topic that needs coining a term? Or is it a new term used to express a classical meaning or argument? To him, Dr. Nuruddin Khadimi has not recognized it an argument independent from Shariah arguments, nor has he pointed out any reason for coining this new term. Dr. Ahmad al-Risuni has, however, tried to describe some features of it. To Dr. al-Risuni, this constitutes an uncomfortable and uneasy journey but we are to manage it unavoidably.

#### **Third Topic – Juristic Theorisation**

As the starting point the author has cited Dr. Yahya Muhammad saying: “The ideology of objectives was constructed to sanction the ordinances defacto and was entitled as the *maqsad or hikmah*. It was not theorized to construct the ordinances”. According to the author, the comment of Dr. Yahya may be justified in respect of the early period of its formation. The objectives were later on brought out of its particular and partial scope, and the contemporary issues confronting the Muslim societies were appreciably resolved by the universal outlook of this ideology.

The author has also criticized the misperception that Islamic *Shariah* does not reflect the general principles and it is merely a collection of particular juristic ordinances relating to various fields. This is outrightly rejected through a survey of the contributions made by the ancestral jurists in the legislation. To the author, a legal

verdict released by a *mufti* relating to a specific event, or a decision of a *qadi* in any dispute does not form the juristic theorization; it rather reflects the application of Shariah on a particular event.

#### **Fourth Topic – Objective-Based Mentality of Individuals and Groups**

Under this topic the author has opined that the objectives may not be limited to the juristic *ijtihad*; it is needed rather to be extended to other practical aspects. The author has highlighted the role of the individual and the group in this perspective, and has emphasized on correlating the individual and collective planning and strategy to the Shariah objectives. To the author this may be performed better by the private sectors as well as the public sectors. For the sake of economic, educational and health prosperity and advancement effective, time-bound programmes may be launched.

#### **Fifth Topic – Scope of Objectives**

The author claims the researches made in the Shariah objectives have been raising the question about the nature and scope of the discipline. Some researchers declare it as a novel and independent discipline of knowledge. Some treat it a subject to be placed between jurisprudence and the juristic principles. Some others view this is the reconstruction of the classical juristic principles.

The author says Ibn Ashur first called to reorganize it as an independent discipline. Among the predecessors al-Qarafi, Ibn Taymiah and Ibn al-Qayyim have emphasized on the significance of the objectives but not as any independent discipline. Al-Shatibi has tried likewise to arrive at the certain principles of Shariah by the objectives in his books like *al-Muwafaqat* and *al-Itisam*. He has included the objectives into the juristic principles and has not clarified them as the independent discipline. The author has referred to Ibn 'Ashur's book *Maqasid al-Shariah* p.8. Shaykh Abdullah Daraz in this context says that inferring the ordinances requires two things: knowledge of Arabic language and of the secrets, mysteries and objectives of *Shariah*. On the basis of these two things the

discipline of juristic principles is built. The objectives, therefore, constitute the knowledge as well as its foundation too. The only considerable thing is the named and not the name; the objectives and not the sources. (Ahmad al-Risuni, p. 315).

The author has declared as absurd the idea that the discipline of the objectives may be placed between the jurisprudence and the juristic principles. In his opinion the relations between the objectives and the juristic principles are too significant and that the two should be developed within one paradigm.

The author has criticized Ibn Ashur's stand that the Shariah objectives should be developed as the independent discipline and the science of juristic principles should not be touched in this regard. According to the author, this stand will hit the discipline of the objectives as well as the science of juristic principles, because this will freeze the later and deprive it of the spirit of the objectives. This will also distance the ideology of objectives from its contemporary role which needs conversely further advancement and nutrition.

In the concluding part of the book the learned scholar has called the researchers and the students to do further studies and research in the following topics :

1. Theory of objectives as viewed by al-Ghazali
2. Theory of Objectives as viewed by Ibn Taymiah
3. Theory of objectives as perceived by Ibn al-Qayyim
4. Theory of objectives as discussed by Izzuddin bin Abdussalam
5. Theory of objectives as advanced by Shah Waliullah of Delhi
6. The High Objectives and the Fundamental Concepts
7. The objectives relating to every branch of Fiqh and to every discipline of human, social and Natural Sciences
8. Research studies to be made in each of the four circles of the universal objectives, e.g. individual family, *ummah* and humanity. (At least four research papers are required).

### **Shatibi's Theory of Objectives**

- Imtiaz Ahmad Qasmi

*Nazriyah al-Maqasid 'ind al-Imam al-Shatibi*

By Dr Ahmad al-Risuni

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The book under discussion is the work of Dr. Ahmad al-Risuni al-Marakashi. He obtained his degree in Shariah science in 1978 from the Qarwiyn University, Fas, Morocco. He completed his higher education in 1986 from the Faculty of Arts and Humanities, Muhammad Vth University, Rabat. In 1989 he received the Diploma in Education on the topic of *Nazriyah al-Maqasid 'ind al-Imam al-Shatibi*. In 1994 he obtained his Ph.D. on the *Nazriyah al-Taqrif wa al-Taghlib wa Tatbiqatuha fi al-Uloom al-Islamiah*. He wrote a number of articles and research papers presented in various seminars in the country and abroad. His works include *Madkhal ila Maqasid al-Shariah* which is translated into French and German also. He is currently the teacher in the Faculty of Arts and Humanities, Muhammad Vth University, Rabat.

The author has eased all the dimensions of the theory of objectives – historical, applied or renovative - constructed first by Abu Ishaq al-Shatibi. He has discussed its relevance in the modern times too. The book consists of the preface, four chapters and the conclusion. “The first chapter is divided into two parts, the second chapter in to three, the third chapter also into three and the fourth chapter in to two parts.

The first chapter deals with the researches made in the pre-Shatibi period while the second discusses the life of al-Shatibi, his academic contribution and his theory of objectives. The third chapter describes in detail the fundamental issues of the theory of al-Shatibi. The conclusion calls the scholars to further their research and studies in the theory of objectives; to rethink in the methods of

inferring the Shariah ordinances; and to revise their stand of confining the unavoids of the religion in to five objectives.

Before entering the main theme of the book the author has introduced the meaning of *maqsad* (the objective); its three kinds of the general objectives, the specific objectives and the particular objectives; the subsidiary issues implied therein; the rationale of the objectives; and finally the implications of the theory of objectives. Due to its significance and direct relation with the theme under discussion, we will detail the meaning and the kinds of *maqsad* and as well as the theory of objectives.

### **Defining the *Maqsad***

The author says all the terms of *maqasid al-Shari'* *maqasid al-Shariah* and *al-maqasid al-Sharyiah* signify the same.

*Maqasid* Shariah are the objectives well maintained in Shariah for the sake of human interests. Al-Shatibi, however, has not defined the term nor his predecessors did. The successors like Shaykh Ibn 'Ashur and 'Allal al-Fasi, however, have defined it in their writings (*Maqasid al-Shariah al-Islamiah*, p. 50).

The author has classified the *maqasid* (objectives) into three to explain it more: the general objectives, the specific objectives, and the particular objectives.

The general objectives are those maintained by *Shariah* in all or most of its chapters and the *Shariah* orders to obtain them. Most of the scholars at work in the field mean the same kind which is too important due to its general nature.

The specific objectives mean the targets that are to be arrived at in the specified or few chapters of legislation.

The particular objectives signify the things which are aimed at every Shariah ordinance like the obligation, the prohibition, the desirability, the permissibility, the undesirability and the stipulation etc.

## **Defining the Theory of Objectives**

*Nazriah* (the theory) is defined by Dr. Murad Wahbah as an equivalent to the word *nasq* which signifies a set of issues regulated under a specific system. (Murad Wahbah, *al-Mujam al-Falsafi*, Vol. 7, p. 4444).

The author says since the juristic ordinances mean the confirmed ordinances along with the detailed arguments, the theory of objectives is applied to the universal structure that offers a complete concept, a deep thinking and an accurate aim to the theory of objectives after it has systematized it and arranged accordingly its miscellanies and particulars.

### **First Part**

#### **First Chapter**

In the first part of this chapter the author says his main concern is the theory of objectives as perceived by al-Shatibi. He has, however, highlighted some historical accounts that are useful to the main theme and that will tell also the historical roots of Shatibi's thought and also those ancestors and their methods who selected the subject as their area of interest, and that from whose thoughts and contributions al-Shatibi has benefited. He has discussed the issue under two heads: (i) theory of objectives as propounded by the experts of the juristic principles, (ii) the theory of objectives as discussed in the malikid school of law.

#### **Theory of Objectives by the Experts of Juristic Principles**

Before discussing al-Juwayni, al-Ghazali, Ibn al-Subuki and others the author has described the famous experts of juristic principles who have first focused on the objectives, and whose contributions in the jurisprudence and its principles are valuable. The first among them is Hakim Tirmidhi (Abu Abdullah Muhammad bin Ali, the sufi-philosopher of the third century hijrah. He played the attention most in rationalising the ordinances and searching the mysteries of Shariah well. He was the scholar who used first the term of *maqasid* in his book entitled *Al-Salat wa*

*Maqasiduha*. Another book written by him is *Al-Hajj wa Asraruh*. The magnum opus of his is entitled as *al-Ilal* (or '*Ilal al-Shariah* or '*Ilal al-Ubudiyyah*). Muhammad Uthman al-Khasht has commented that the author has described the rationale of the religious obligations. His another title *al-Furuq* is an unmatched book in the field, as al-Subuki has narrated.

The author has described some other experts of *usul al-fiqh* also like Abu Mansur al-Maturidi (d.332 AH), Abu Bakr al-Qaffal al-Shasi (d.365 AH), Abu Bakr Abhari (d.375 AH), and al-Baqillani (d.403 AH). The last has valuable contributions in the juristic principles as *al-Irshad al-Sagheer*, *al-Muqni fi Usul al-Fiqh*, *al-Ahkam wa al-'Ilal*, *Kitab al-Bayan 'an Faraid al-Din wa Sharai al-Islam*.

Imam al-Haramayn al-Juwayni has in his credit the distinguished contribution to the principles of jurisprudence. To prove his expertised knowledge his book *al-Burhan* suffices. He may not be neglected in the discipline of the *Shariah* objectives. He has used to word *maqasid* many times in *al-Burhan* and has elaborated the reason and the wisdom at work in the ordinances relating to cleansing and *tayammum*. He mostly interprets the objectives in the words of *ghard* and *aghrad* that literally mean the aim.

The author has narrated the five kinds of objectives first described by al-Juwayni :

1. The objectives relating to *dharurah* like *qisas* (equality of law in a murder case) whose objectives lies in protecting the life.
2. Those relating to *hajah* as the issues concerning the renting, leasing etc.
3. The issues which are neither related to *dharurah* or *hajah*; these are, instead, linked to the virtues and the merits like cleanliness, purification and manners etc.
4. Those related to the desirables.
5. Those objectives the rationale of which is not defined, nor has



it any specified aim and are not associated with the above-mentioned kinds. These are rare in Shariah.

Since these five objectives are interlinked and intervenient, al-Juwayni and the later experts in the discipline have confined them in to three :

- a) either the objective would be linked to *dharurah*, and this constitutes the first kind.
- b) Or that will be associated with *hajah*, and this forms the second kind.
- c) Or that will be addressed by the *tahsin*, and this is the third kind.

It is also notable that al-Juwayni was the first writer who described the great *dharurahs* e.g. protection of the religion, the life, the intellect, the affinity and the property.

The author then describes al-Ghazali who benefited a lot from his teacher. Though his interpretation and approach was borrowed to some extent from his teacher but he did not rely on him completely. He examined critically the principles of jurisprudence in general and the Shariah objectives in particular and added to it. It's clear reflection may be sought in his books like *Al-Manhul min Taliqat al-Usul*, *al-Mustasfa min 'Ilm al-Usul* and *Shifa al-Ghalil*. In the last two books he has narrated the main objectives of Shariah on which every interest and aim of Islam relies. He while retaining the three divisions – *dharurah*, *hajah* and *tahsin* – made by his teacher has added one compliment to each division.

The author has also orderly described the later scholars like Fakhruddin al-Razi (d. 606AH), Saifuddin Aamidi (d.631AH), Ibn al-Hajib (d.646 AH), Baydhawi (d. 685 AH), Isnani (d. 772 AH), Ibn al-Subuki (d. 771 AH), Izzuddin bin Abdussalam (d. 660 AH) and Ibn Taymiah (d. 728 AH).

## **Second Part**

Under the title of the theory of objectives as addressed by malikids, the author says this chapter too is useful in understanding the theory of objectives that was initiated by al-Shatibi. The malikids have fully paid the attention to this theory. Other schools can not supersede them in this respect. The malikid school is therefore also entitled as “the school of the objectives”.

It seems appropriate to provide some details about the juristic principles and the objectives as viewed by the malikid scholars.

### **Malikid Principles and the Objectives**

The author has discussed under this title the malikid principles and rules that are closely linked to the objectives of Shariah. The consideration of *masalih mursalah*, for example, is traced out in the later scholars’ sayings, legal verdicts and official law but the holy companions themselves have cited them in their sayings and verdicts. Umar bin al-Khattab for the first time adopted this as the argument. Al-Ghazali has well clarified: The reliance of the companions on the interests is a model for the Muslim community, as their practices of the *qiyas* are authentic and binding (*Al-Manhul*, p. 353).

It may be generally derived from thinking over the Islamic teachings that the main objective of the Legislator is to earn the interests and replace the harms and this spirit is maintained in the entire *Shariah* especially in the customs, rituals and transactions. It is evident here that *istislah* may not be overlooked in the juristic *ijtihad*, and that the basis of understanding the Shariah texts and inferring ordinances from them should be acquiring the interests and replacing the harms, and this basis should be taken into account while performing the analogical reasoning. This is what implied in malikids’ consideration of the interests in legislation and not treating it confined in the cases where a text or analogical reasoning is missing. In fact consideration of the interests and of the justice in all the issues of *ijtihad* is the spirit *istihsan* inherits.

The second malikid principle in legislation is entitled as *sadd*

*al-dhariah* (checking all the means leading to an evil). This also is based on the principle that all the ordinances of the Legislator mean the realization of the objectives – obtaining the interests and distancing the harms. The malikids utilize this in the fields of the transactions, punishments and marriages.

Taking into account the human interests, is also a malikid principle like that of *sadd al-dhariah*. It is, however, common than the later. It affects universally all the dealings and disposals.

## **Second Chapter – Shatibi's Theory of Objectives**

This is the main theme of the book. The first part of this chapter is further divided into three sections :

1. A summary of Imam al-Shatibi's life
2. Autobiography of Shatibi
3. Correspondence of Shatibi

Under the first heading the author has introduced the readers his ancestral links, his academic achievements, and his works on the theory of objectives. His full name is Ibrahim bin Musa bin Muhammad al-Lakhmi al-Gharnati Abu Ishaq, but is popularly known as al-Shatibi. He was a great scholar, researcher and *mujtahid*. According to Shaykh Abu al-Ajfan, al-Shatibi was born in Granada wherein he was flourished and educated. Among his teachers Ibn al-Fajar al-Biri, Abu Jafar al-Shaquri, Abu Saeed bin Lubb, Abu Abdullah al-Balansi, Abu Abdullah al-Tilmissani, Abu Abdullah al-Maqri, Abul Qasim al-Sibt, Abu Ali al-Zawawi, Ibn Marzooq al Khatib are prominent. Al-Tanbakti has mentioned his three students namely Abu Yahya bin Asim, Abu Bakr bin Asim the author of *Tuhfat al-Hukkam*, and Abu Abdullah al-Bayani. Shaykh Abul Ajfan had added two more students namely Abu Jafar al-Qassar and Abu Abdullah al-Majari.

Among his published works the most important one is *al-Muwafaqat* whose third chapter deals with the Shariah objectives and related ordinances, and caused its popularity. The second book

*al-Itisam* is into two volumes. The third work is *al-Ifadat wa al-Inshadat*.

Among the unpublished works is *Kitab al-Majalis* a commentary of the chapter on business transactions, a part of *al-Jami al-Sahih* by al-Bukhari. Another work is *Sharh al-Alfiyah* in the Arabic grammar. A number of books were destroyed. He released and compiled so many *fatawa* also. According to al-Tanbakti, he died in the month of Shaban, 790 AH./1388 AD.

The second part provides an autobiographical sketch. Shatibi is quoted to have said :

“I used to listen Shaykh Abu Ali al-Zawawi saying: No one may be pronounced as a scholar in any field unless he possessed the following prerequisites :

1. he has digested the principles of that discipline,
2. he is capable to interpret that discipline,
3. he is fully aware of its requirements, and
4. he may resolve the problems and complications of that discipline.”

Undoubtedly al-Shatibi observed strictly this commandment of his teacher. He fulfilled no doubt this criterion and while implementing the Shariah principles duly executed these conditions. He has talked on this point in his introduction to *al-Ii'tisam*. The practical dimensions of these conditions may be clearly seen in *al-Muwafaqat*. Before entering the arrangement of a book he used to manage two things :

- a) before initiating the writing he use to search and examine exhaustively, and
- b) used to consult his friends, scholars and the students accordingly.

Like other scholars al-Shatibi was to face the severe trials and tumults. His personality was criticized and defamed. All these

accusations were enumerated orderly by himself. He did not, however, withdraw from propagating the truth.

Under the third topic the correspondence of al-Shatibi was arranged. He had addressed his contemporary scholars, *imams* and *ulama* by his letters on the complicated issues. He debated with them and challenged them intellectually. These were not only the letters addressed to but these contained the pearls of knowledge and deserved to be studied by the scholars. These reflect the personality of the writer as well as the nature of the issues addressed therein.

### **Third Part**

It discusses the theory of objectives which is the central theme of the book. Al-Shatibi has talked on the issue of rationalization and its legal position in the introduction before initiating the main theme. This discussion will be summarized in the first part of the third chapter.

### **Objectives of Legislator**

Imam al-Shatibi has divided the objectives in to two : intention of the Legislator and intention of the human being. The intention of the Legislator is further divided into four kinds :

1. Objective of Legislator in legislation
2. Objective of Legislator in legislation for communication.
3. Objective of Legislator in legislating for the sake of making human being accountable as required by Shariah.
4. Objective of Legislator towards accepting the ordinances by the human being.

The first kind requires all the orders and prohibitions of Shariah maintain the spirit of safeguarding the interests and the objectives framed by Shariah for the betterment of the human being. These objectives are divided into three: *dharurah*, *hajah* and *tahsin*.

The *dharurah* objectives signify those objectives without which no interests in this world and in that world can be realized and overlooking which may result in the harm in this world and in the Hereafter.

*Hajah* brings the life of human beings out of the narrowness and troubles and causes the comfort and spaciousness.

The *tahsin* requires a complement to both of the above and turns them into a refined and desirable form.

It is approved by an examination of Shariah that the objectives based on *dharurah* are five: protecting the religion, the life, the affinity, the property and the intellect. This protection process would be either positive or negative. These five provide the base for the Shariah objectives; the *hajah* and the *tahsin* are only the subsidiary and the complementary to the *dharurah* objectives.

The second kind elaborates that in order to realize the Shariah and its objectives a safe and sound mind is essential. It is possible only when the Shariah is to be understood in its original language. Unless we understand the addressees and their requirements we are unable to trace out their interests which are aimed at by the Wise Legislator.

The third kind explains the Wise Legislator does not command His slaves the things beyond their capabilities. In case an inconvenience or being beyond the human bearing is felt it should be turned to its similar case, or its dependencies or its proper context to ease the problem because how the Legislator who provides convenience, comfort and relaxation in the legislation and in the realization of the Shariah objectives can put His creatures into troubles and difficulties!

The fourth kind emphasizes on the divine intention from the human beings that they enter the fold of Shariah surrendering all their desires and wishes to God and devotedly serving Him.

### **Objectives of Human Beings**

The author has reflected al-Shatibi's high thinking and deep insight into the topic under discussion. According to Shatibi, unless the objectives of human beings are thoroughly grasped, the objectives of Shariah would not be appreciated. The correlation

between the human objectives and the Shariah objectives positively as well as negatively are, therefore, to be comprehended. The learned scholar has well maintained this in his *al-Muwafaqat*.

The concluding part of the book provides the following contents :

### **Means of Acquiring the Knowledge of Legislator's Objectives**

Al-Shatibi has not repeated in the concluding part the previous discussions of the book. He has rather described the means, sources and the principles to know conveniently the objectives of the Legislator. He has divided the human being according to their knowledge of the Legislator's objectives in to three group:

To the first group, the only way to know the objectives of the Legislator is the divine clarification. This is held by the Zahirites.

The second group went against the first group in entirety. This was advocated by Batinites.

The third group opted the middle way. This was the group of the sound scholars. Keeping in view this group the formulations were made to know the Legislator's objectives. These are four rules:

1. The divine commands reveal in the very initial stage the objectives of the Legislator.
2. The reasons at work in the divine commands reveal the objective of the Legislator.
3. The subsidiary and complementary objectives reveal the objective of the Legislator.
4. The silence of the Legislator inspite of the need of His expression elaborates what is aimed at by Him. This would be more clarified in the third topic of the third chapter.

### **Fourth Part**

The author has tried to express some other aspects of the theory of objectives in this part. A book does not suffice to

elaborate all the dimensions and consequences of the theory in discussion. The author has, therefore, tried to know these dimensions by his writings in other books and titles. He while talking on the five *dharurahs* has approved them through the arguments from the Quran and the hadith. He has also discussed the issues of permissibility, of the causes and the effects and the correlation between the Legislator's objectives and the human being's objectives.

### **Third Chapter**

#### **Fundamental Issues of Shatibi's Theory**

According to the author it is inconvenient to evaluate critically and examine thoroughly the ideas and impressions of Shatibi's theory of objectives. He has however tried to analyze deeply some of the areas of significant issues. He has chosen for this analysis the three issues.

#### **Issue of Rational Justification**

The author has raised the question of rational justification of the entire legal ordinances of Shariah. There are two opinions in this regard :

- a) All the ordinances are rationally justified, a stand unanimously taken by the Mutazilites, and most of the later jurists. This was advocated by Imam Shatibi too.
- b) The Shariah ordinances need not justification, a stand taken by al-Razi, the earlier jurists and some later scholars.

The first group claims all the prayers as rationally justified and their rationalization as textual. The Quran declares:

“And establish regular prayer for celebrating My praise”.  
(The Quran, 20:14)

“O ye who believe! Fasting is prescribed to you as it was prescribed to those before you, that you may (learn) self-restraint.” (The Quran, 2:183).

“And proclaim the Pilgrimage among men: they will come



to you on foot and (mounted) on every kind of camel, lean on account of journeys through deep and distant mountain highways; that they may witness the benefits (provided) for them, and celebrate the name of God, through the Days appointed over the cattle which He has provided for them (for sacrifice).” (The Quran, 22:28).

“Of their goods take alms, that so you may purify and sanctify them.” (The Quran, 9:103)

This group has cited the *sunnah* also in their favour.

This second group says God has created as being the sovereign the human beings as the accountable without any seemingly reason and that the human interests at work in the ordinances are subsidiary. They have quoted the following verse in their arguments:

“It is He who has created for you all things that are on earth.” (The Quran, 2:29).

They say God does not do any work for the sake of any interest, otherwise He will be hypothetically supposed to do that work in order to fulfill that interest and will be defective and incomplete in His Entity, and attributing any defect to the divine Entity is impossible. This approves God instructs or performs without any reason or interest.

## **Second Part**

What do mean the terms ‘interest’ and ‘harm’ if pronounced absolutely? What do the experts of the juristic principles mean by these two terms? The different kinds of the interest and of the harm; the conditions that determine the suitability or non-suitability of an interest; realisation of the interests by the intellect; role of reason in defining the interests; specifying the changing interests as well as the contradicting interests; the rules of preference at work in case of a clash between the contradicting interests and the contradicting harms; defining the undefined interests etc. are elaborated in this part.

### **Fifth Part**

The issue in hand was discussed secondarily in the second part of the second chapter. Those fundamental principles are elaborated here alongside the examples.

1. According to the requirements of Arabic language only the objectives may be understood accordingly. The language of Shariah and the literary well-known style of Arabs only can be helpful in this regard. The Arabs commonly mean the generality by speaking a specifying word and the vice versa. Al-Shatibi has duly emphasized on the strict following of the rules and regulations of Arabic Language in understanding the aims and objectives at work in the texts, because only the Arabic language represents the objectives of the Legislator. (*Al-Muwafaqat*, Vol. 4, p. 324).
2. The objectives of the Legislator may be known by the apparent divine commands or by their rationale.
3. The objectives are divided into two: main and subsidiary. The main objectives provide the foundation while the subsidiary objectives testify and strengthen the main objectives as defined in the following verse :  

“O ye who believe! When the call is proclaimed to prayer on Friday (the Day of Assembly), hasten earnestly to the remembrance of God, and leave off business (and traffic)”.  
 (The Quran, 62:9)
4. Silence of the Legislator inspite of the need of divine expression, is a proof that the Legislator desires to maintain the status quo. This happens especially in the religious performances.
5. Examination and scrutiny is a strong source to approve and recognize the objectives and to define a certain or assumed objective of the Legislator in the texts or ordinances. Al-Shatibi has, therefore, elaborated this scrutiny (*istiqra*) too much in the preface of the book *al-Muwafaqat* (vol.1, p. 23).

#### Fourth Chapter

This chapter is divided into two parts. The first part deals with the traditional and reviving aspects of the theory of objectives advocated by al-Shatibi. The second part consists of the discussions on “the objectives and the *ijtihad*.”

The first part explains Imam Shatibi was not the first scholar to discuss these issues. The earlier experts of the principles of jurisprudence, especially the malikids, have performed the academic, technical and codifying contributions to the discipline. Al-Shatibi has reorganized it masterly having benefited from the ancestors, resuscitated it and added to it occasionally. This was detailed in the first chapter.

As for as the renovating dimension of the theory of al-Shatibi is concerned, he was undoubtedly the revivalist thinker of the eighteenth century in his intellectual height, broad mindedness, and deep understanding of Shariah. His works, academic contributions and his noble struggle to break the intellectual rigidity prevailing the Muslim world; to access the spirit of Shariah; and to cope the ordinances and religious performances with the reason do suffice to declare him as the revivalist. The feature that distinguished al-Shatibi from others was his broad-mindedness. The previous jurists and the experts of the principles of jurisprudence used to talk on the theme in few words and allusions only. This was a hidden secret, an implied mystery that was explicitly clarified by al-Shatibi. He explained the theory elaborately and turned it into an alive subject that became later on the area of interest for the sound ulama of Shariah. They benefited from it a lot in their learning and reasoning. Today it has become more significant and more relevant.

The second distinguishing feature is his due emphasis on understanding the intentions of the human beings as unavoidable for a clear understanding of the Shariah objectives. He has also specified the means and sources to understand the objectives and has formulated the rules in this respect.

## **Sixth Part**

This explains the thorough cognizance of the *mujtahid* with the Shariah objectives for a reliable understanding of Shariah and for an ability to infer the legal ordinances accordingly. The author has also explained that this pre-requisite of *ijtihad* is described only by al-Shatibi and not by others.

When a *mujtahid* realizes this accordingly he understands the objective of the Legislator in each and every legislation, and acquires a characteristic that will lead him to the post of deputy of the Prophet in imparting education, releasing the legal verdicts and inferring the ordinance, and this is the highest rank and the final goal a *mujtahid* intends to arrive at.

All the deviations in the religion and in the Shariah were backed by this negligence or ignorance with the Shariah objectives, or because the scholars relied on the texts without reflecting in the interests and objectives of the texts and the ordinances.

The author says further, we need today to go ahead in the applied field, specificate the demarcations of this discipline and find out the goal in this direction.

## **Conclusion**

Dr. Ahmad al-Risuni has called the researchers and devoted scholars to concentrate on the following:

1. We should try seriously to widen the ways of the discipline of the Shariah objectives opened already by al-Juwayni, al-Shatibi, and Ibn Ashur. We should broaden it more.
2. More legal ordinances and their rationale be inferred so that the scope of the objectives be more accommodative.
3. The great five kinds of the *dharurah* should be revised.
4. More detailed studies on the *dharurah*, the *hajah* and the *tahsin* should be made.
5. The ideology of objectives as advanced by the jurist companions, the four *imams* and the great scholars should be ascertained and examined thoroughly.

6. The objectives maintained in Islamic jurisprudence and unanimously agreed as the Shariah objectives should be searched and specificated.
7. Applied efforts should be made to formulate the objective-based *ijtihad*.

In the last the author has appended a list of the sources he has consulted in the book.

### **Ibn Ashur's Theory of Objectives**

- Ahmad Nadir al-Qasmi

*Nazriyah al-Maqasid 'ind al-Imam Muhammad al-Tahir bin 'Ashur* by Dr. Ismail Hasani

Published by International Institute of Islamic Thought, U.S.,  
in 1416 AH/1995 AD. 464 pp.

The author of the book under discussion is Ismail al-Hasani al-Marakashi born in (1963AD/1382 AH) who completed his graduation in the Deptt. of Islamic Studies, Faculty of Arts and Humanities, Muhammad bin Abdullah University, Fas, Morocco. He also obtained in 1990 the degree of specialization in Jurisprudence and the principles of jurisprudence from the Faculty of Arts and Social Sciences. Muhammad Vth University. From the same university a acquired the diploma in Higher Education in 1993. His thesis was entitled as '*Nazriyah al-Maqasid 'ind al-Imam Muhammad al-Tahir bin 'Ashur*'. The thesis was published and is now under discussion. The author is currently a professor in the reconstruction of Islamic Thought in Arts College, Al-Qazi "Eyadh University, Morocco.

The author has offered in the book the secrets of Shariah, the rationale of the ordinances, the maintenance of the Shariah objectives in inferring the issues as were discussed by Ibn 'Ashur. The author has divided the book into three lengthy chapters, describing the issues under the subsidiary titles of part and topic. The preface is written by Dr. Taha Jabir al-Nazriyah, the sound contemporary scholar of the principles of jurisprudence, in which, he has presented the gist of the book. The introduction is written by the author himself. The discussions in the book are arranged in the following way.

#### **Chapter One**

This deals with the Shariah objectives and that how it has gradually developed into a discipline through varying stages.

## First Part

Under the first issue of the first topic of this part those places and points are located which inherit the objective theory e.g. textual meanings or the meanings based on the rationale. Al-Ghazali and al-Juwayni have implied these places and points. To the author, the theory of objectives have two sources; the most important is the rules and regulations framed by the experts of the juristic principles and the other source is the writings of the experts of the jurisprudence.

The second issue points out the discussions made in the writings of the scholars in the post-Ghazali period like al-Razi and Saifuddin al-Aamidi.

The first issue of the second topic deals with the thought in the theme developed by Shaykh Izzuddin bin Abdussalam, al Qarafi and al-Tufi.

In the theory of objectives al-Qarafi has added a new aspect that reveals a difference to be maintained in dealing with various situations of performances and observations in Shariah, so that the objectives of various texts concerning the ordinances may be adhered to. This for example may be grasped that the religious preaching and releasing the legal verdict is quite different from the legislation and leading the *ummah*.

Najmuddin al-Tufi stands for realization of the interests of human beings in the business, financial transactions and other matters because the Shariah aims at earning the human interests and removing the harms, though this realization goes against the text of Shariah and the consensus, because the human interest is stronger evidence than the consensus and is consequently the strongest of all the arguments of Shariah. Al-Tufi cites the hadith in his favour. The Prophet is reported to have said.

“Do not inflict harm any one nor do tolerate it.”

According to the Arabic grammar ‘*la*’ is in the hadith used to negate a thing. This implies the least harm and evil that should be

removed from the human beings. The Shariah is not tolerative even of the least harm to be inflicted on any man or woman. The interest, therefore, would supersede all other arguments of Shariah.

In the second issue the author describes the significance of the theory of objectives to the jurists and has elaborated Ibn Taymiah, Ibn al-Qayyim and al-Shatibi in this context. Ibn Taymiah thinks: “No ordinance in Shariah is there that has not maintained the wisdom of earning the interests and replacing the harms because the Shariah is revealed for the very purpose of acquiring the interests and replacing the wrongs.” (See *Fatawa Ibn Taymiah*, Maktabah al-Maarif, Rabat Vol. 20, p. 48).

Ibn Taymiah has criticized those scholars who limit the scope of the objectives to the five and has extended its scope to all the issues that are linked in whatsoever to the interest of this world or that world. He has cited the argument that a true *qiyas* may stand in no way against a true text because the base of a true *qiyas* is provided only for the sake of the Shariah objectives. (cited in *Al-Qiyas fi al-Shara al-Islami*, p. 55).

The stand of Ibn al-Qayyim is too famous in this regard. He opines Shariah is founded on the interests of the human beings. Laying the foundation of Shariah on the human interests and wisdom is approving its rationale. The merits of Shariah and its ordinances are therefore rooted in human intellect (*Iilam al-Muaqqiin*, edited by Muhiuddin Abdul Hameed, Vol. 3, p. 14). Ibn al-Qayyim, however, views the real understanding and true *fiqh* being implied in defining the intention of the Legislator in the texts and specifying the objectives (*Iilam al-Muaqqiin*, Vol. 2, p. 68). He has declared the juristic material and the legal ordinances guiding the human mind and reason as a “living *fiqh*”. He says: “This is the living *fiqh* that penetrates the hearts without seeking any permission” (*Iilam al-Muaqqiin*, Vol. 1, p. 218).

The book of Abu Ishaq al-Shatibi entitled as *Al-Muwafaqat fi Usul al-Shariah* is the famous work on the objectives. The scholars have written a lot on the book. Briefly stating the very book opened a new chapter in the science of the juristic principles.



In the concluding part the author has summarized the various aspects of *al-Muwafaqat* and the mysteries of Shariah as depicted by him, like the objectives of the Legislator as well as the objectives of the human beings.

According to the author, al-Shatibi has declared the examination of the Shariah arguments as the basis for the principles of the jurisprudence. He says :

“The principles of jurisprudence signify the examination and scrutiny of the principles of arguments so that the *mujtahid* may have a target and an aim and the seekers of knowledge may be equipped with the comfort.” (Cited in Ahmad al-Risuni, *Nazriyah al-Maqasid ‘ind al-Imam al-Shatibi pp. 313-323*).

## **Second Part**

This consists of two central themes :

1. Complete Introduction of the Personality of Ibn Ashur.
2. Introduction to Ibn Ashur’s Theory of Objectives.

## **First Theme**

This analyses the two phases of Ibn Ashur’s life in historical perspective: the first phase covers the French colonization in Tunisia (1881-1956 AD), while the second deals with the freedom struggle.

Ibn Ashur was born in al-Marsa, a prephery of Northern Tunisia in 1879 AD. He was brought up by his maternal grandfather Shaykh Abdul Aziz Buathur. In the sixth years of his age he initiated reading the holy Quran and then he memorized it and also learned the French language. He was admitted in Zaytunah University in 1310 AH wherein he was taught by the prominent scholars in Arabic-Islamic studies like the grand minister of Tunisia Shaykh Muhammad al-Aziz Buathur (d. 1325AH); a distinguished member of Majlis al-Shura of nanafid school in Tunisia, Shaykhul Islam Mahmud bin al-Khuja (d. 1329 AH); a significant member of Majlis al-Shura of malikid School, Shaykhul Islam Salim bin Hajib

(d. 1342 AH); and the Tunisian mufti of malikid School, Shaykh Umar bin Ahmad known as Ibn al-Shaykh (d. 1329 AH). He also experienced with Shaykh Habib Ibn al-Khujah, Muhammad al-Nakhli, Muhammad Salih al-Sharif, Muhammad al-Arabi al-Darii, Ahmad Jamaluddin, Muhammad Tahir Jafar and Ahmad bin Wanas al-Mahmood. The author also has introduced the first four teachers of Ibn ‘Ashur. (See Ibn Ashur, pp. 82-86).

### **Significant Contributions of Ibn ‘Ashur**

According to the author, Ibn ‘Ashur contributed a lot in the four dimensions: (a) administration (b) reformation (c) education and (d) writing.

1. He served the manuscripts department, Zaytunah University as the care-taker (1905-1960). He was deputed on behalf of the government as a member of the directorate of education in the same university in 1907. He was also assigned by the reformatory committee at work in the University in 1328 AH to prepare an exhaustive report on the educational progress of the university. In the Awqaf department he was appointed on the judicial post in 1329 AH, and only after two years he was promoted to the post of *qadi* for the malikid followers. In 1341 AH he was appointed as *mufti*, in 1343 AH. was promoted to the deputy to *Basha mufti* and in 1351 AH. finally to the post of advisor in the religious affairs, Govt. of Tunisia. During this period he was honoured with the titles of *Shaykh al-Islam al-Maliki* and *Shaykh al-Jami al-Azam*. (p. 89).

2. His reformist contributions also are valuable (p. 88).

3. His teaching was started in 1317 AH, and his proficiency in teaching gradually increased. He delivered lectures in Madrasa Sadiqiah and for some time in Jamiyah Khalduniyah also. He revived some Arabic sciences and himself delivered lectures on some of the classical works like Jurjani’s *Dalail al-lijaz*, *Sharh al-Muhalla li Jam al-Jawami*, Qarafi’s *Tanqih al-Fusul*, Ibn Khaldun’s *al-Muqaddamah*. He also left some significant writings on these books.

At the end of this discussion, the author has traced out the intellectual legacy left by the great reformist scholar. Some of these are given below :

1. *Tahrir al-Mana al-Sadid wa Tanwir al-Aql al-Jadeed min Tafsir al-Kitab al-Majeed* deals with the interests in this world and that world, sources of knowledge, and the rhetorics of the holy Quran.
2. *Maqasid al-Shariah al-Islamiah*. The author has discussed the application of the Shariah objectives in understanding the Shariah.
3. *Hashiah al-Tawdhih wa al-Tashih li Mushkilat, al-Tanqih 'ala Sharh Tanqih al-Fusul fi al-Usul* is a collection of explanatory lectures delivered by Ibn Ashur to interpret al-Qarafi's *Tanqih al-Fusul*.
4. *Usul al-Nizam al-Ijtima'i fi al-Islam*. The author has elaborated the factors responsible for the progress and downfall of Islamic society and also the due course and means of reformation.
5. *A Laisa al-Subhu bi Qareeb*. This provides a base and documentation in Islamic reformism in Tunisia that analyses the educational reforms in the Zaytunah University.
6. *Kashf al-Mughatta min al-Maani wa al-Alfaz al-Waqiah fi al-Muatta*. This precedes *al-Tahrir wa al-Tanwir* in writing. This tries to explain the difficult words, and the complicated implications of the meanings and connotations of *al-Muatta*, not accessible by the common scholars.
7. *Naqd Ilmi li Kitab al-Islam Wa Usul al-Hukm* critically evaluates the book of Ali Abdul Raziq on the state and government in Islam.
8. *Risalah Fiqhiyah Hawla al-Fatwa al-Taransfaliyah* deals in legal perspective with the issue of using the hat by the Muslims and also the position of the animals slaughtered by the Ahl al-Kitab.

9. *Al-Nazr al-Faseeh ‘ind Madhaiq al-Anzar fi al-Jami al-Sahih*. The author has expressed his view point about various interpreters of Bukhari.
10. *Qissah al-Maulid* is a treatise on the biography of the Prophet that deals with his genealogical accounts, his personality, character and other features.
11. *Usul al-Insha wa al-Khitabah* consists of Arabic grammar and composition and deals with the methods of thinking, writing and speech.
12. *Usul al-Taquddum wa al-Madniyah fi al-Islam*. This is the title of a lecture delivered in Khalduniya University.
13. *Mujiz al-Balaghah*. This was included in its syllabus by the directorate of education, Zaytunah University.
14. *Sharh wa Tahqiq al-Muqaddamah Al-Adabiyah li al-Marzuqi*

Ibn Ashur has in his credit some researches on *Qasidah al-Aasha al-Akbar*, Bashshar bin Burd and Nabighah al-Zubayni.

### **Second Theme**

The author opines under this theme that the theory of objectives is linked to a methodological issue of the science of juristic principles and that is the certainty and uncertainty of the science of the principles. Under the second topic of the same theme the author has defined the theory of objectives in its literal and legal sense, and that how al-Shatibi has introduced it in terms of earning the profits and removing the harms, as well as the modern scholars have discussed it. For example Imam Ibn Ashur says :

“The general objectives of Shariah signify the connotations and underlying wisdom maintained by Shariah in all the cases or most of the cases of legislation as the observation of these is not specified to any special or particular kind.” (p. 117).

The specific objectives are defined on the next page of the book as follows :

It signifies the situations aimed at in the Shariah for the sake of earning the profitable objectives of the people or protecting their common interests in their particular dealings”.(p.118).

The summary and analysis of the aims and objectives of the Shariah, kinds of meanings intended in the divine address, the targets of the objectives, the theme of the theory and its method and approach is elaborated in the pages 119 to 128.

## **Chapter Two**

### **Theory of Objectives to Ibn Ashur**

The entire chapter is divided into three parts. In the subsidiary sections of the first part are described what does the legal ordinances like religious prayers, cleansing, *tayammum*, *salah*, fasting, pilgrimage and others aim at. The second section narrates the objectives underlying in the ordinances relating to slaughtering the animals, the lawful and unlawful things in the food, the slaughtering without pronouncing God, and so on.

The third section highlights the divine objectives in the family law: the marriage, the divorce, the will, and the *ila* (annulment of a marriage after the husband’s sworn testimony to have refrained from marital intercourse for a period of at least four months).

The fourth section elaborates these noble objectives at work in physical and financial dealings and transactions.

The second part deals with the questions like why and how the objectives are argued in favour.

The first section of this part discusses the religious performances like cleansing, *zakah*, fasting and pilgrimage. Ibn Ashur is liberal in this section. He for example describing the ransom of the fasting of behalf on an exhausted old man or woman says: “The hardship is duly considered here. The labour class e.g.

the carpenter, the worker in the factories, the porters, the carriers, the labour at work in the farms and so on may benefit from this relaxation like the elder man and the wet nurse (p. 198).

In the second section is the deliberation over the lawful and unlawful things in the food and drinking material and that what does the Quran mean by using the term *tayyib* to interpret a lawful and the term *khabith* to signify an unlawful.

The third section explains the family law in the given perspective. The fourth section covers the issues like physical and financial matters as well as the donations particularly the issues that create the dispute among the people, and the wisdom underlying the ordinances therein. For example the rationale at work in the ordinance of dealing the loan in writing, the connotation of the word *riba* (usury), the issues relating to physical performances, share-cropping contract over the lease of a plantation, observing witness for the donations, donating a part of the body by a patient, is discussed in detail.

The core aspect of the theory of objectives as discussed by Ibn ‘Ashur is elaborated in the third part e.g. the reform of individual, group and community. This is realized only when the world order is regulated by reforming the individuals. This objective to be obtained by the three following means dominates the other objectives :

1. Examination and scrutiny
2. The clear arguments of the Quran that declares explicitly :  
“God intends every facility for you; He does not want to put you to difficulties.” (The Quran, 2:185)
3. The Sunnah in succession (*tawatur*).

According to the author since the objectives help understand the Shariah and the general objectives and particular objectives provide the methodological foundation for this theory, the issue in hand has been elaborated in to two issues :

1. General objectives of Shariah.

2. Particular objectives of Shariah relating to financial dealings.

The first section of this part specifies the general objectives, the second section explains the general objective of legislation and the third section portrays the image of Shariah as well.

The second part deals with the particular objectives implied in the ordinances of transactions and explains what is the nature of the intention of the Legislator in protecting the profitable interests and useful objectives, and what are those aspects of reason maintained by Shariah and what is the rationale inherited in them.

The author has divided the regulations of the family law and ordinances of dealings into two grades: (a) the objectives and (b) the means and sources.

### **Chapter Three**

#### **An Analysis of Ibn ‘Ashur’s Theory of Objectives**

This chapter comprises the three parts. The first part has emphasized on the need of knowledge about the foundation of the theory. To elaborate it the author has established the three titles of nature, interest and rational justification (*talil*) as the foundation of the objectives.

To Ibn Ashur, nature plays the most significant role in laying the foundation of the theory of objectives, and this constitutes the axis for all the Shariah objectives. He says :

“The nature embodied a large universal foundation on which all the Shariah objectives rest.”

The second title deals with the definition of interest *maslihah*, its specification, its significance in the perspective of general and particular, combination of interest, with the harm, earning the interests and removing the harms in the dealings and transactions. (See. p. 281 cf. *Usul al-Nizam al-Ijtima‘i fi al-Islam*; also p. 281 cf. *Maqasid al-Shariah* p. 66).

The third title talks of the rational justification (*talil*). This

signifies the reason at work in the ordinances. The reason forms the basis in the legislation or analogical deduction. This part consists the definition of reason, the importance of reason in the legislation and Ibn Ashur's stand in this regard, as well as the stand of the opponents and then his response etc.

The second part too consists of the three titles. The first discusses the scope and methodological means of the theory of objectives, the principles of specifying the objective in the divine address and its place in Ibn Ashur's theory.

The second title elaborates the examination and scrutiny method, the meaning of *istiqla* and its role in the theory of Ibn Ashur.

The third title explains the difference between the objectives and the means while ordinances are applied, utilization of the objectives in the jurisprudence, and the approval of the general objectives and the particular objectives.

In the conclusion the author has summarized the entire discussions of the book systematically.

### **Opinion of the Reviewer**

This book is an advanced contribution to understand the mysteries of Shariah in the modern academic and jurisprudential revolutions. It offers a systematic study made by Ibn Ashur in the discipline of the Shariah objectives. The author has cited Ibn Ashur in the context of some novel points and modern terms never discussed so far by the ancestors or rarely indicated in the writings of the scholars like al-Juwayni and al-Razi.

The author has tried to persuade the jurists, the scholars of the principles of jurisprudence and those who do perform *ijtihad* to take into account the universal interests of the *ummah* as well as the speedy development in the modern age in their process of both the legislation and the application. The Shariah would not be interpreted truly otherwise nor the divine objectives towards the human beings and the real factor for the revelation would be



projected.

The legislation process should be orientated toward the universality. Freezing in the jurisprudence and insisting on a rigid inference and deduction of legal positions; overlooking the contemporary application of Shariah; and a total reliance on the particularities of the ancestors mean undoubtedly an escape from the responsibility of preaching the religion and spread of the message of the Prophet (SAW).

The book offers the nice discussions no doubt. It's language and style and the terminologies used therein are however complicated in the eye of this humble reviewer.

Imam Ibn Ashur has tried to introduce the theory of objectives in his writings as a principle and an argument in Shariah. He is however conscious to pronounce it an independent Shariah argument. He has, instead, insisted on the consideration of the objectives in performing *ijtihad* and applying the ordinances in the very light of the four sources of argument in Shariah. He has tried to clarify it in the different perspectives in all the discussions. As a whole, the thoughts of Imam Ibn Ashur in this field are the valuable additions undoubtedly.