



AL-KULLIYYAT AL-DARURIYYAH BETWEEN
LIMITATION AND OPEN-ENDEDNESS: A CRITICAL
ANALYTICAL STUDY

BY

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ABSTRACT

According to most classical Muslim legal theorists (*uṣūliyyūn*), religion, life, intellect, progeny, and property constitute the five necessary universals (*Kulliyāt Ḍarūriyyah*) for the protection of which the *Sharī‘ah* rules and commands have been enacted throughout the different spheres of Islamic legislation. However, the limitation of the *Sharī‘ah* necessary higher goals to these five values has been questioned and objected by an increasing number of scholars and writers, especially in modern times, including both formally trained jurists and intellectuals from different academic backgrounds. Two main positions have emerged from the ongoing intellectual debate on the issue that has gained much momentum over the last four to five decades. On the one side, there are those who defend the classical and medieval view that holds the *Kulliyāt Ḍarūriyyah* to be limited to the abovementioned five higher goals. On the other side, there are those who advocate a revisionist view maintaining the open-endedness-cum-expansion of the *Sharī‘ah* necessary universals and their non-limitation to a specific number to the effect of including new necessary and universal values. The present study examines arguments and views of both the exponents and opponents as to the limitation of the *Sharī‘ah* necessary universals to a specific number as held by most of the earlier legal theorists. It critically probes the underlying premises upon which both groups have based their positions. In line with the criteria on which past legal theorists based their view of limiting the necessary universals of the *Sharī‘ah* to the established five values, the study looks into the proposed new universals to assess their merit. Findings of the study have revealed that the limitation of the necessary universals to the five values mentioned above is intimately connected with the *ḥadd* punishments which the Lawgiver has instituted to ensure their protection against violation, which consequently shows their overwhelming importance. Moreover, it has been demonstrated that all the proposed new necessary universals are either complements (*mukammilāt*) or means (*wasā‘il*) which serve to enhance the realization of the classically established five necessary universals of the *Sharī‘ah*. Thus, rather than debating on whether or not the necessary universals of the *Sharī‘ah* are limited to a specific set, it would be more appropriate that researches be shifted to these two important aspects, namely complements and means. Correct understanding and exploring how they can serve to promote each of the five necessary universal objectives of the *Sharī‘ah* will lead to their practical realization in concrete terms.

خلاصة البحث

يعتبر جمهور علماء أصول الفقه القدامى الدين والنفس والعقل والنسل والمال الكليات الضرورية الخمسة التي إنما وضعت أحكام الشريعة وقواعدها في كل مجالات التشريع من أجل حفظها وصيانتها. إلا أن حصر المقاصد الضرورية العليا للشريعة في هذه القيم الخمس لم يسلم من مساءلة واعتراض من قبل عدد متزايد من العلماء والكتاب، خاصة في العصر الحديث، بما في ذلك فقهاء متخصصون ومفكرون ذوو تخصصات علمية. وقد برز من خلال الجدل الفكري الذي دار حول هذه المسألة خلال العقود الخمسة الأخيرة موقفان رئيسان: هناك من جهة أولئك الذين يدافعون عن رؤية علماء الأصول القدامى التي تحصر الكليات الضرورية في خمسة الأمور المذكورة آنفًا، ومن جهة ثانية أولئك الذين يدعون إلى المراجعة وإعادة النظر في تلك الرؤية من منطلق قابلية الكليات الشرعية الضرورية للانفتاح والزيادة وعدم انحصارها في عدد معين، بحيث يمكن أن تضاف إليها كليات ضرورية جديدة. وهذه الدراسة تنظر في الحجج والآراء المتقابلة التي يقدمها كل من المؤيدين والمعارضين. وكذلك تفحص الدراسة فحصًا نقديًا الأسس التي بنى عليها كل من الفريقين موقفه. ومن خلال المعايير التي أقام عليها الأصوليون القدامى نظرهم في حصر الكليات الضرورية للشريعة في القيم الخمس المعروفة، تنظر الدراسة في المقترحات الجديدة التي جاء بها المعترضون على الحصر باعتبارها أمورًا ضرورية كلية لتقدر مدى جدارتها لتكون كذلك. وقد أظهرت نتائج الدراسة أن حصر الكليات الضرورية للشريعة في تلك الخمسة المشهورة مرتبط ارتباطًا وثيقًا بالعقوبات الحدية التي وضعها الشارع على من تعدي عليها وأخلّ بها، وكل هذا مما يُظهر أهميتها القصوى. كما بينت الدراسة أن المقترحات الجديدة لم تصلح أن تكون كليات ضرورية، وهي إما مكملات لتلك الضروريات الخمسة أو وسائل مساعدة على تحقيقها بصورة أفضل. وبناء على ذلك خلصت الدراسة إلى أنه من الأفضل تركيز الاهتمام بهذين الجانبين، أي مكملات تلك الضروريات ووسائل تحقيقها، بدل الجدل حول انحصار الكليات الضرورية للشريعة في مجموعة محددة أو عدمها. لأن الفهم السليم للمكملات والنظر في الوسائل المناسبة من شأنه أن يقود إلى تحقيق تلك الضروريات تحقيقًا عمليًا في أرض الواقع.

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DECLARATION

I hereby declare that this is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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Signature.....

Date.....

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***AL-KULLIYYĀT AL-ḌARŪRIYYAH BETWEEN LIMITATION AND OPEN-
ENDEDNESS: A CRITICAL ANALYTICAL STUDY***

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*Truly, my prayer and my service of sacrifice, my life and my death, are (all) for Allah,
the Cherisher of the Worlds*

(Q6:162)

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND TO THE STUDY

The theory of *maqāṣid al-sharī'ah* is a very important subject in Islamic legal theory. It deals with the ultimate objectives which the Almighty Lawgiver aims to realize in all His commands and prohibitions, in connection with the existence of legally responsible individuals, the family institution, society and the entire Ummah in all spheres of life.¹ Underscoring the theory of *maqāṣid al-sharī'ah* is the valid assumption that commands nor sanctions issued by the Lawgiver are not in vain. Rather, as a Wise Creator His main purpose behind every rule is the realization of the interests of humankind who happens to be the subject of divine law. In all its ramifications, human interest is technically referred to as *maṣlaḥah*. As the interpreter of the *sharī'ah*, the Prophet (SAW) was very much concerned with the necessity to ensure human interests in all his verdicts. After him, his noble companions, especially those with outstanding knowledge and understanding of Islamic teachings like the second Caliph 'Umar and others, were ever mindful of realizing human interests in their various legal pronouncements. They were very much concerned with the spirit rather than the letters of the *sharī'ah* precepts. This concern can be observed in all their *fatāwā*, i.e. legal verdicts, on various issues of life.²

¹ Yusuf Al- Qaradawi, *Dirāsah fī Maqāṣid al-Sharī'ah*, (Cairo: Dār al-Shurūq, 1st edn.,1427/1996), p. 20.

² For detailed expositions on how the Companions always took cognizance of *maqāṣid* in their *fatāwā*, see Mohammad al-Tahir Ibn Ashur, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, ed. Mohamad El-Tahir El-Mesawi, (Amman: Dār al-Nafāi's, 2nd edn., 1421/2001), pp. 197-202, 312-313; Hasan Khalifah Ba Bakr, *Falsafat Maqāṣid al-Tashrī' fī al-Fiqh al-Islāmī*, (Cairo: Maktabat Wahbah, 1st edn., 1421 /2000), pp. 29-32.

After their period and that of their successors, scholars of succeeding centuries were also very much concerned about purposes and intents behind every *sharī‘ah* rule relating to the aspects of worship and transactions. The desire to unearth underlining wise purposes of the *sharī‘ah* rules prompted many of them to produce voluminous books and treatises of high standard across the centuries.³

Conceptually, the theory of *maqāṣid al-sharī‘ah* evolved from the science of *uṣūl al-fiqh* under *qiyās* (analogy), and more specifically in connection with the issues of *‘illah* (*ratio legis*), *munāṣabah* (suitability, appropriateness), and *maṣlaḥah mursalah* (unregulated interest).⁴ Apart from the important pioneering efforts of al-Qaffāl al-Shāshī as regards writing on *maqāṣid al-sharī‘ah*, it is on record that Imām al-Juwaynī discussed the objectives of the law in the section of his chapter on analogy under the title: “Categories of Reasons and Principles” (*taqāṣīm al-‘ilal wa al-uṣūl*).⁵ Building on the efforts of al-Juwaynī who was his teacher, al-Ghazālī later refined the idea of *maqāṣid* and developed it in his works of Islamic legal theory, most notably *shifā al-ghalīl* and *al-mustasfā*.⁶ He categorized the objectives of the

³ It is important here to mention that writing on *maqāṣid al-sharī‘ah* commenced as early as the fourth century of hijrah calendar. Notable among pioneer scholars-writers on *maqāṣid* are al-Ḥakīm al-Tirmidhī (d.296/908) who wrote *al-Ṣalāh wa Maqāṣiduhā*, and Abūbakar al-Shāshī (d. 365/975) who wrote *Maḥāsīn al-Sharī‘ah*. See Ahmad al-Raysuni, *Naḥariyyat al-Maqāṣid ‘inda al-Imām al-Shāṭibī*, (Herndon: International Institute of Islamic Thought, 4th edn., 1416/1995), pp. 40-43; ‘Abdullah Muḥammad al-Amin al-Na‘im and Jamal al-Din ‘Abdul‘Aziz Sharif, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*, (Khartoun: Ma‘had Islām al-Ma‘rifah, 2nd edn., 2007), p. 48.

⁴ Mohamad El-Tahir El-Mesawi, “al-Ta‘līl wa al-Munāṣabah wa al-Maṣlaḥah: Baḥth fī Ba‘ḍ al-Mafāhīm al-Ta‘ṣīsiyyah li Maqāṣid al-Sharī‘ah”, *Islāmiyyat al-Ma‘rifah*, vol. 13, no. 52, (1429 /2008): p. 24, where the author discusses fundamental principles from which the theory of *Maqāṣid* evolved.

⁵ Abū al-Ma‘ālī Al-Juwaynī, *al-Burhānī fī Uṣūl al-Fiqh*, ed. AbdulAzim al-Deeb, (Cairo: Dār al-Anṣārī, 2nd edn.,1400), pp. 923-964. Quoted in Ahmad al-Raysuni, *Imam al-Shāṭibī’s Theory of the Higher Objectives and Intents of Islamic Law*, translated from Arabic by Nancy Roberts, (Kuala Lumpur: Islamic Book Trust, 1427/2006), p. 13; al-Raysuni, *Naḥariyyat al-Maqāṣid ‘inda al-Imām al-Shāṭibī*, pp. 195-196.

⁶ In both *Shifā al-Ghalīl* and *al-Mustasfā*, al-Ghazālī spells out for us the central objectives of Islamic Law around which all legitimate intents and interests revolve". However, the second book contains his mature conception of *maqāṣid* as regards issues, e.g. his division of *maqāṣid* into two, namely religious and worldly in the first book, which he later in the second book compressed to one category "perhaps because he senses the possibility that all of the objectives of the Lawgiver are at once worldly and religious". Also, it was in the second book that he made a categorical claim that preservation of the five

sharī‘ah into three things, namely, *ḍarūriyyah* (necessity), *ḥājīyyah* (need) and *taḥsīniyyah* (enhancement). While these three categories are measures to determine importance of human interests, the first level otherwise termed as *kulliyyāt ḍarūriyyāh* (the necessary universal objectives) assumes a greater degree of importance. This is due to the fact that it boils down to the five necessary universals (*al-kulliyyāt al-ḍarūriyyah al-khams*) which include the preservation of religion (*dīn*), life (*nafs*), intellect (‘*aql*), progeny (*nasl*) and property (*māl*). These values must be preserved and protected in order to realize human interests in this world. They are basic and inalienable human interests whose abuse most likely will lead mankind to wanton destruction and total annihilation. To articulate their significance, al-Ghazālī strongly argued that all belief and legal systems are primarily put in place for their protection and preservation.⁷

After al-Juwaynī, al-Ghazālī and other notable scholars, the study of *maqāṣid* flourished especially in the eighth century, thanks to the remarkable efforts of Abū Ishāq al-Shāṭibī (d. 790 AH). It is true, though, that al-Shāṭibī was preceded by a number of notable scholars such as al-Rāzī (d.606 /1209) al-Āmidī (d.631 / 1233), Ibn al-Ḥājjib (d. 646/1248), ‘Izz al-Dīn ‘Abd al-Salām (d.660/1261), al-Qarāfi (d.684/1286), Ibn Taymiyah (d. 728 /1327) and Ibn al-Qayyim (d. 751 /1350). Yet, al-Shāṭibī has been widely credited with the standardization of the theory of *maqāṣid al-*

essentials is important in all previous laws. He had exercised some caution in making such a claim in the first book, obviously due to its connection with the Mu‘tazilites' belief in "the human mind's ability to distinguish between good and evil". See Abū Ḥāmid al-Ghazālī, *Shifā al-Ghalīl fī Bayān al-Shabah wa al-Mukhīl wa Masālik al-Ta‘līl*, ed. Hamad al-Kubaysi, (Baghdad: Maṭba‘at al-Irshād, 1971), and *al-Mustasfā min ‘ilm al-Uṣūl*, ed. Najwa Dhou, (Beirut: Dār Iḥyā‘i al-Turāth al-‘Arabī, 1st edn.,1418 /1998); al-Raysuni *Imam al-Shāṭibī’s Theory of the Higher Objectives*, pp. 18-21.

⁷ Al-Ghazālī, *al-Mustasfā*, vol. 1, p. 217.

sharī‘ah through the means of his magnum opus entitled: *al-Muwāfaqāt*.⁸ In the book, he argued that a proper *ijtihād* that yields a correct result must be based on two indispensable pillars, namely a complete knowledge of Arabic grammar which includes syntax, morphology, rhetoric and other branches of Arabic language. The second pillar is the knowledge of *maqāṣid al-sharī‘ah*. Abdullah Draz, perhaps the most famous editor of the book, observed in the introduction aspect that the first pillar of *ijtihād* enjoyed a considerable attention by scholars who came before al-Shāṭibī, while the second pillar was apparently neglected. Obviously, this development was what prompted al-Shāṭibī’s decision to devote his entire book to the study of *maqāṣid al-sharī‘ah*, the second pillar of *ijtihād* that did not enjoy much attention before him.⁹

But despite the significance of the book generally and its unique discussion of *maqāṣid* particularly, it is believed that the theory of *maqāṣid* was virtually forced into a state of oblivion from the time of its author (eighth century) until the twentieth century when reform-minded scholars like Mohammad ‘Abduh emphasized its importance and function, regarding it as a genuine framework for *ijtihād* and *tajdīd*.¹ Consequent upon this cognizance, the contemporary period has been witnessing a growing scholarly interest in the theory of *maqāṣid*. In addition to that, Ibn Ashur (b.1879/ d.1973) who can be regarded as the most notable contemporary exponent of *maqāṣid*, has also made a huge contribution through his invaluable book, *maqāṣid al-*

⁸ On significance of the book and the author as highlighted by both classical and modern scholars, see Muhammad Khalid Masud, *Shāṭibī’s Philosophy of Islamic Law*, (Kuala Lumpur: Islamic Book Trust, 1995), pp. 108-110.

⁹ Abū Ishāq Ibrāhīm ibn Mūsā ibn Muḥammad al-Lakhmī al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī‘ah*, ed. ‘Abdullah Draz, (Cairo: al-Maktabah al-Tijāriyyah al-Kubrā, n.d.), vol. 1, p. 6.; Taha Jabir al-Alwani, *The Source Methodology in Islamic Jurisprudence*, translated from Arabic by Yusuf Talal Delorenzo & Anas S. Al-Shaikh-Ali, (Herndon: International Institute of Islamic Thought, 3rd edn., 2003), pp. 58-59; Ahcene Lahsasna, *al-Fiqh al-Maqāṣidī ‘inda al-Imām al-Shāṭibī*, (Cairo: Dār al-Salām, 1st edn, 1429 /2008), p. 27.

¹ Ahmad al-Raysuni, “Maqāṣid al-Sharī‘ah” in *Maqāṣid al-Sharī‘ah: Āfāq al-Tajdīd*, edited by AbdulJabbar al-Rifa’i, (Beirut: Dār al-Fikr al-Muāṣir- Damascus: Dār al-Fikr, 1st edn, 1422 / 2002), p. 199.

sharī'ah al-islāmiyyah, which has been instrumental in stimulating scholarly interest in the theory of *maqāṣid* over the last five to six decades. It was in view of far-reaching importance of *maqāṣid* that this Tunisian jurist made a very strong case for the theory considering it as an autonomous branch of knowledge, independent of science of *uṣūl al-fiqh*. This is because he considered the latter insufficient to be the final arbiter whose verdict would be accepted by those scholars disagreeing on matters of *fiqh*.¹

1

However, more contentious than the issue of autonomy of *maqāṣid*, is the issue of limiting the necessary universals of the *sharī'ah* to the five values enumerated by al-Ghazālī, and upheld by many other scholars. This has been the subject of an ongoing debate among scholars and students of Islamic legal theory generally, and the theory of *maqāṣid al-sharī'ah* in particular. Along with other issues in the theory of *maqāṣid*, the ensuing debate has seen writing of many books and articles. In addition, many conferences, symposia and workshops have also been held in order to discuss the theory of *maqāṣid al-sharī'ah* theoretically and practically from different perspectives.¹

2

¹ Muḥammad al-Tahir Ibn Āshur, *Treatise on Maqāṣid al-Sharī'ah*, translated from Arabic by Mohamed El-Tahir El-Mesawi, (Herndon: International Institute of Islamic Thought, 1427 /2006), pp. xvii & xxii.; Fahmi Mohammad 'Alwan, *al-Qiyam al-Ḍarūriyyah wa Maqāṣid al-Tashrī' al-Islāmī*, (Cairo: al-Hay'ah al-Miṣriyyah al-Āmmah li al-Kuttāb, 1989), pp. 37-51, where the author emphasized the fact that Imām al-Shāṭibī concerned himself with the elaboration of Maqāṣid al-Sharī'ah with the primary purpose of closing gap of disagreement among various scholars, consequent upon their difference in theories like *qiyās*, *maṣlaḥah mursalah* etc.

¹ For instance, the Department of Fiqh and Uṣūl al-Fiqh at International Islamic University Malaysia organized an International Conference themed: "Maqāṣid al-Sharī'ah and Its Realization in Contemporary Societies", between 8-10- August 2006/ 14-16 Rajab 1427. Many papers were presented in Arabic, English and Malay on different issues vis-a-vis *Maqāṣid*. Also in Cairo, the Supreme Council for Islamic Affairs, Ministry of Endowments, organized an International Conference with the theme: "Maqāṣid al-Sharī'ah and the Contemporary Issues", between 8-11/ Rabī' al-Awwal/1431- 22-25/February/2010.

1.2 STATEMENT OF THE PROBLEM

The classification of the necessary universal objectives of the *sharī'ah* into five primary values (i.e. religion, life, intellect, progeny and property) by al-Ghazālī has generated a debate among both classical and contemporary scholars. In scholarly circles the question remains recurrent: should the necessary universals of the *sharī'ah* be limited to those five values or should they be opened as to accommodate more necessary values?

It bears noting, however, that al-Ghazālī did not state categorically that his classification is final and unalterable. Rather, it was al-Āmidī who came almost a century after al-Ghazālī that boldly claimed and justified their limitation to those five things.¹ However, this claim of limitation was challenged for the first time in the seventh century when the preservation of dignity (*irḍ*) was purportedly added as the sixth necessary universal of the *sharī'ah*.¹ Cosequent to this, many⁴ other values have been added as necessary universals of the *sharī'ah* by classical and contemporary scholars, thereby contesting the claim of limitation on many grounds. For instance, Ibn Taymiyyah rejected the claim of limitation on the ground that the existing necessary universals are essentially based on material and worldly considerations at the expense of inner and outer dimensions of worship.¹

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¹ Al-Āmidī argued that: "the limitation of the essentials to these five categories is based on the observation of reality and the awareness that there is, for most part, no essential aim beyond them". See 'Alī bn Muḥammad Al-Āmidī, *al-Iḥkām fī Uṣūl al-Aḥkām*, ed. AbdulRazzāq Afīfī (Riyadh: Dār al-Ṣumay'ī, 1423/2003), vol. 3, p. 343; al-Raysuni, *Imam al-Shāṭibī's Theory of the Higher Objectives*, p. 24.

¹ Al-Qarāfī (d. 689) reported⁴ that dignity had been added as the sixth essential of the *sharī'ah*. However, given the context, it does not seem that he approved of this addition. He just mentioned it as being coterminous with material wealth mentioned earlier. But al-Ṭūfī (d.716) and Ibn al-Subkī (d.771) especially the latter appeared more convinced about dignity as being part of the essentials. See al-Raysuni, *Naẓariyyat al-Maqāṣid 'inda al-Imām al-Shāṭibī*, pp. 62-64.

¹ Yusuf Ahmad Muhammad Ḃadawi, *Maqāṣid al-Sharī'ah 'inda Ibn Taymiyyah*, (Amman: Dār al-Nafā'is, 2000), p. 251.

As for some contemporary scholars, limitation of the necessary universals to five is faulty. It has been argued that those five necessary universals are too narrow as they do not include detailed purposes of rules that concern certain topics or ‘chapters’ of *fiqh*. In addition to this, it has been contested that those values are exclusively focused on individuals rather than families, society, and humanity in general.¹ Broadly speaking, contemporary scholars may be classified into three distinct groups as regards the issue at hand. The first group holds that the universals of the *sharī‘ah* need not be limited to the five known values. So, scholars belonging to this group introduce new values as necessary universals of the *sharī‘ah*. The second group approves of the limitation albeit with some wider application and interpretation. Yet, a third group is not satisfied altogether with the well-known enumeration of the universals. Instead, this group proposes a different set of universals.¹

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Against this background, the present study seeks to make a plea for the limitation of the necessary universals to the five values which have been enumerated by classical scholars. To do this, it shall present divergent views that have emerged regarding the continuing controversy. Based on the present writer’s understanding of the available arguments, it shall reconstruct and evaluate opinions of those who oppose the limitation of the necessary universals to five. In addition to that, the evaluation shall be based on criteria that determine necessary universals of the *sharī‘ah*. This becomes necessary because a closer assessment of the debate will

¹ Jasser Auda, *Maqāṣid al-Sharī‘ah as Philosophy of Islamic Law: A Systems Approach*, (London-Washington: International Institute of Islamic Thought, 1429 /2008), p. 4.

¹ This group seems to be exceptional in its approach to the limitation of *ḍarūriyyāt*. Unlike the first and second groups who uphold the limitation as it is and with wider application respectively, this third group does not consider the classical classification as a viable framework especially for the purpose of *tajdīd*. Instead it proposes a new set of *ḍarūriyyāt*. Taha Jabir Alwani seems to be the leading scholar belonging to this group. His ideas shall be considered later.

reveal that the fundamental factor which is responsible for the varied opinions on the matter is the criteria underlying that enumeration.¹

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1.3 RESEARCH QUESTIONS

In view of the foregoing, this study seeks to address the following important questions:

1. What is meant by *al-kulliyāt al-ḍarūriyyah* i.e. the necessary universal objectives of the *sharī'ah*?
2. What are the criteria by which they can be established?
3. What are the arguments and viewpoints of those scholars that oppose their limitation to five values?
4. How can their viewpoints be reconstructed and evaluated based on my understanding and in line with a set of criteria?
5. Are the newly proposed objectives related with the five existing necessary universals?

¹ For instance al-Ghazālī sought to justify why those five universals are so necessary by referring to *ḥadd* punishments prescribed for their violation: "...for example, the Lawgiver has legislated that unbeliever be killed, and so is the penalty of the innovator who calls to his innovation, because, this will jeopardize people religiosity" al-Ghazālī, *al-Mustasfā*, p. 217. Subsequent scholars who adopted this punishment criterion explicitly or implicitly include al-Rāzī (d. 606 /1209) al-Āmidī (d.631 /1233), al-Bayḍāwī (d. 646 /1248), among others. In fact, scholars like al-Shawkānī who defended *ird* (honor) as the sixth *ḍarūrī* also based their argument on the punishment criterion. See al-Raysuni, *Imam al-Shāṭibī's Theory of the Higher Objectives*, p. 28. But Ibn Ashur has rejected this punishment criterion arguing against the existence of any correlation between what is necessary indispensable (*ḍarūrī*) and that whose violation incurs the *ḥadd* (punishment). Hence, he does not consider *ird* (dignity) as one of the necessary universal objectives of the *sharī'ah*. See Ibn Ashur, *Treatise on Maqāṣid al-Sharī'ah*, p. 119.

1.4 RESEARCH OBJECTIVES

Based on the above questions, this study seeks to achieve the following objectives:

1. To explain what is meant by the necessary universal objectives of the *sharī'ah*.
2. To examine the criteria by which they can be established.
3. To present arguments and viewpoints of those scholars who oppose their limitation to five values.
4. To reconstruct and evaluate their viewpoints based on my understanding and in line with a set of criteria.
5. To explain the relationship of the newly proposed objectives with the five existing necessary universals.

1.5 SIGNIFICANCE AND JUSTIFICATION OF THE STUDY

Generally speaking, the task of identifying the objectives of the *sharī'ah* is of great significance. Once identified, the objective in question shall affect many legal rules in different branches of Islamic law. Thus it is incumbent upon the jurist who is qualified to undertake this onerous task to exert his utmost efforts in his attempt to arrive at an objective of the *sharī'ah*. At the same time, he should be very meticulous in deciding where such an objective belongs among the three categories, namely, necessity, need, and enhancement. As such, he must establish the objective of the *sharī'ah* with certainty or highest level of probability in accordance with sound criteria, because any errors in the process will lead to grave consequences.¹ The error in the process shall lead to a great damage especially if the objective so identified is claimed to belong to

¹ AbdelMajid al-Najjar, *Maqāṣid al-Sharī'ah bi Ab'ād Jadīdah*, (Beirut: Dār al-Garb al-Islāmī, 2006), p. 25.

the category of necessity. This is because the Lawgiver often provides for *rukḥṣah* (legal license) and sanctions stringent measures regarding whatever is concerned with the necessary universals of the *sharī‘ah* as in the case of religion, life, intellect, progeny, and property. So it is quite necessary to be very careful in determining what a necessary universal of the *sharī‘ah* is.

More than in the previous periods, the contemporary time has witnessed a large number of new values being proposed as objectives of the *sharī‘ah*. Human rights, justice, equity, protection of environment, etc. are some examples of new objectives that have been proposed by many contemporary scholars. Some of these values have been regarded as equally necessary and universal as religion, life, intellect, progeny, and property. In view of their far reaching impacts on social, political and economic life, it is only necessary to examine the validity of those new values in the light of criteria establishing the five existing necessary universals. Among other benefits, this examination will assist greatly in safeguarding the whole theory of *maqāṣid* against methodological and practical imbroglio, which could render it redundant and ineffective in playing a pivotal role in the process of legal rule derivation, i.e. *ijtihād*.

Moreover, the growing intellectual interest in the theory of *maqāṣid* in contemporary time is to a large extent informed by the designation of *maqāṣid* as a framework within which serious reform agenda can be successfully undertaken. Truly, the revival and renewal of Islamic Civilization with respect to socio-economic and political aspects of life is a huge task that has been long over due. And if the theory of

maqāṣid is utilized in a proper way, the overall result will be a practical confirmation of the adaptability and relevancy of the *sharī‘ah* to every time and space.²

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The five values (religion, life, intellect, progeny, and property) that have been identified as necessary universals of the *sharī‘ah* are of great importance. Their importance becomes evident in view of text, reality and experience which show that no other values, save these ones, well describe the basic human needs that ensure a happy life.

Given the plethora of newly proposed objectives of the *sharī‘ah* in the contemporary time, this current research is significant. It is significant in order to make a plea for the limitation of necessary universals to those five values, by reconstructing and evaluating arguments of those scholars who have opposed their limitation to those five values. By this, we hope to show the great importance of those five values and their relevance to the necessary needs of human beings.

1.6 SCOPE OF THE STUDY

Based on its importance, legal theorists have divided *maṣlaḥah* (human interest to be realized) into three distinct categories, namely, necessary (*ḍarūrīyyah*), need (*ḥājīyyah*), and enhancement (*taḥsīnīyyah*). The first category is superior to other categories because it is comprised of five primary values which the *sharī‘ah* seeks to preserve; these include religion, life, intellect, progeny and property. It is with this first category that this present study is mainly concerned, as regards its limitation to the above mentioned five values. It shall present arguments advanced by scholars in

² ‘Abdul‘Aziz ibn ‘Uthman al-Tuwaijiri, “al-Tajdīd fī al-Maqāṣid al-Shar‘īyyah fī al-Ru‘yah al-Islāmiyyah al-Ḥaqāriyyah”, Conference Proceedings of the 22nd Conference organized by the Supreme Council for Islamic Affairs, Ministry of Endowments, Egypt with the theme: “Maqāṣid al-Sharī‘ah And the Contemporary Issues”, between 8-11/ Rabī‘ al-Awwal/1431 - 22-25/February/ 2010, p. 1.

both classical and contemporary periods, to criticize their limitation to the five values. Viewpoints of those scholars shall be reconstructed and evaluated based on my understanding and according to a set of criteria which shall be gleaned from the works of pioneer and living scholars of *maqāṣid*. The purpose is to assert the primacy of the necessary universals of the *sharī‘ah* and to make a plea for their limitation to those five values as enumerated by al-Ghazālī and others.

1.7 RESEARCH METHODOLOGY

Three different methods shall be used in this study; these include inductive, analytical and critical. Inductive method is required in order to engage in a comprehensive survey of various forms of argument with regards to the limitation or openendedness of the necessary universals of the *sharī‘ah* which is the main focus of the research. It shall also be used to appraise works of leading scholars of *maqāṣid* in order to garner different criteria by which the necessary universal objectives of the *sharī‘ah* (*al-kulliyāt al-darūriyyah*) can be determined. The analytical method will be employed in analyzing all the proposed new objectives of the *sharī‘ah*. Finally, the critical method will be needed to reconstruct and evaluate viewpoints of those who oppose the limitation of necessary universals to five, using the set of available criteria that shall be arrived at through the means of inductive method.

Furthermore, classical works on Islamic legal theory will constitute the primary source of this study. This is due to the fact that the debate on the limitation of necessary universal objectives of Islamic law dates back to the early centuries of Islam, the time when Islamic law and other branches of Islamic science evolved and flourished greatly. Works by contemporary scholars/writers will only be used as secondary source. From both sources, detailed arguments of classical and

contemporary scholars on the subject-matter shall be presented respectively. Then, their viewpoints shall be reconstructed and evaluated according to my frame of reference and a set of criteria. This is to make a plea for the limitation of the necessary universals to the five values (i.e. religion, life, intellect, progeny, and property).

1.8 LITERATURE REVIEW

Generally speaking, many scholarly works have been produced on the theory of *maqāṣid al-sharī‘ah*. Some of those works, especially those written by contemporary authors, feature the debate on the limitation of the necessary universals to the five values. Having criticized the claim of limitation, most authors attempted to propose a new set of necessary universals based on socio-political realities of the contemporary time. Their works will form the nucleus of this research because of the new set of universal objectives proposed in those works, which will be studied and analyzed in order to unearth their bases and probe into their validity. On the other hand, there also exist some other works by contemporary scholars who have argued in favour of the five universals as conceived by the classical scholars e.g. al-Ghazālī. Some of these works that belong to the opposing perspectives will be selected among the literatures to be reviewed in the following paragraphs.

To begin with, Ibn Ashur has made an important contribution to the debate in his seminal book, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*. He does not explicitly condemn the notion of limiting the necessary universals to five as do many contemporary scholars. Rather, his main concern is to broaden the scope of the