
***Examining Conditions of Maṣāliḥ Mursalah fulfilling the
Higher Objectives of Islamic Law (Maqāṣid al-Sharī‘ah)
in the Modern Age***

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ABSTRACT

The Islamic world is going through a stagnancy period in developing its own philosophy in consideration with its valuable customs and past legacy. It is because the Western world is more advanced than the former in all spheres of life. Moreover, the Islamic world is always using western technology for seeking compatibility in matters related to social and financial requirements for the sake of its survival. Therefore, Islamic scholars of our time try their level best to come up with solutions in the matters that clash with the Islamic ideology or any unresolved Sharī‘ah issue to mitigate the Sharī‘ah requirements by using the ideology of survival hidden in the Islamic Jurisprudence tool of maṣāliḥ mursalah which is used under the extreme challenge of survival. Application of the tool of maṣāliḥ mursalah in the contemporary world is again subject to full filling its required conditions which are well elaborated by Imam Ghazali in his book Al-Mustasfa. The problem lies with the conditions of it whether they comply with the contemporary world where Muslims are no more in control and where the whole world is considered to be one under the concept of the global village. The article seeks to explore new horizons to make the tool of maṣāliḥ mursalah (used in Islamic Jurisprudence) more useful and workable by complying it with the objectives of Sharī‘ah known as maqāṣid al-Sharī‘ah. The work is an extension of the philosophical thought of the great scholar.

Keywords: *Sharī‘ah, Maṣlaḥah Mursalah, Maqāṣid al-Sharī‘ah, Islamic Finance.*

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1. Introduction

The establishment of the Islamic bank is considered to be a hallmark when we talk about Islamic Finance. Truly, its impact has captured the attention of global financial institutions which shows its demand is not just from the Muslim Countries. Having said that, fewer people know that the idea of Islamic banking is based on the concept of *Sharī'ah* compliance. This is for the sake of mitigating the conventional banking system to a level that is acceptable in the line and thinking of Islamic *Sharī'ah* Law. This shows how *Sharī'ah* laws are flexible when it comes to needing and necessity. Keeping in mind the concept of *maṣlaḥah mursalah*, it gives a free hand to the jurists to engineer financial products compatible with *Sharī'ah* based financial laws to cope with the situations that are apparently gone out of hand. The study emphasizes the concept, condition, and application of *maṣlaḥah mursalah* whether it is encompassing the objectives of *Sharī'ah* or not. Sometimes it is sensed that a financial transaction designed for the sake of *Sharī'ah* compliance passes the *Sharī'ah* regulations but still its implications are not promising for the community, especially the Muslim community as a whole. Therefore, it is important to understand the perimeters of *Sharī'ah* upon which the philosophical building of Islamic Banking was introduced. The excuse availed by the *Sharī'ah* scholars not be able to introduce a financial system that is purely a product of Islamic based financial laws is due to the non-availability of the resources in the Islamic World due to the prevalence of the capitalist economic system instead. Is that excuse acceptable itself? It's amazing to see how both systems are complementing each other without compromising their philosophical boundaries.

2. Definition of *Maqāṣid al-Sharī'ah*

One of the earlier scholars who came up with the idea of *maqāṣid al-Sharī'ah* was *Imām al-Juwainī*¹ who thought it to be parallel to the concept of public interest. No doubt in a broader concept of *maqāṣid al-Sharī'ah*, it is the main objective and goal of every jurist that he must attain when it comes to the solution of a unique problem never dealt with before.

However, one of his successors, *Imām Ghāzalī* elaborated *maqāṣid al-Sharī'ah*, which he placed entirely under what he called 'unrestricted interests' known as *maṣlaḥah mursalah*.² The idea is highly adored by the later jurists of Islam. This idea is more interlinked with the application side of the problem. *Al-Qarāfī* linked up *maqāṣid al-Sharī'ah* by a 'fundamental rule' that he stated as:

*"Any purpose that is not valid unless it leads to the fulfillment of some good manfa'ah or the avoidance of some mischief (mafsadah)."*³

There is another dimension of *maqāṣid al-Sharī'ah* that is interlinked with the legislation side. Among them *Fakhruddin al-Rāzī*, *Al-'Aamidī* and *Najmuddin al-Tufi* were more of this view by defining it in these words:

*"What fulfils the purpose of the legislator."*⁴

2.1 Levels of Maqāṣid al-Sharī'ah

Traditionally, *maqāṣid* are divided into three basic levels which are named as necessities (*darūriyyāt*), needs (*hājīyāt*), and luxuries (*taḥsīnīyāt*). Necessities, as per *Imām Ghāzālī*, who is the creator of the idea, further revolve around preserving *Sharī'ah* goals through the preservation of one's faith, soul, wealth, mind, and offspring. These necessities are essentials for stable human life itself. There is also a general agreement that the preservation of these necessities is the objective behind any revealed law and not just the Islamic law. Purposes at the level of needs and luxuries are considered not that compelling because of the reason that life carries out smoothly even in its absence but with some difficulties. Examples are marriage, trade, and means of transportation. Islam encourages and regulates these needs but having said that the lack of any of these needs is not a matter of life and death, especially on an individual basis. Especially at the level of luxuries, life is more cherishing and promising such as using perfume, stylish clothing, and beautiful homes. These are things that Islam encourages, but also asserts how they should take a lower priority in one's life. The levels in the hierarchy are overlapping and interrelated. In addition to the theory, each level should serve the level(s) below.⁵ *Imām Shātībī* while discussing the concept of *darūriyyāt* clearly stated that it shouldn't be considered in the areas of *'ibādah*. He stated the idea that it should be only considered in the matter of *mu'āmalāt* (worldly matters).⁶ Also, the general lack of one item from a certain level moves it to the level above. For example during the time of global economic crises, moves trade from a need level into a life necessity level and so on. That is why some jurists preferred to perceive necessities in terms of 'overlapping circles,' rather than a strict hierarchy. However, it is the level of necessity that makes the objectives of *Sharī'ah* questionable if its purpose is not served.

2.2 Principal objectives of Sharī'ah

There are five notable principal objectives of *Sharī'ah* that are discussed under the chapter of necessities (*darūrah*), unanimously accepted by the *Sharī'ah* scholars:

- Preservation of *Din* (religion)
- Preservation of *Nafs* (life)
- Preservation of *'Aql* (intellect)
- Preservation of *Nasl* (progeny)
- Preservation of *Māl* (property)

2.3 A Broader Aspect of Maqāṣid al-Sharī'ah

Maqāṣid al-Sharī'ah refers to the higher objectives of Islamic law. According to *Imām al-Juwainī*:

It refers to the goals and purposes of Sharī'ah either generally (maqāṣid al-'āmmah) or about its themes and subjects (maqāṣid al-khāṣah).⁷

This definition is based on the theory of universality related to *maqāṣid al-Sharī'ah* by the eminent *Imām Shātībī*. According to his understanding, the purposes of *Sharī'ah* can be categorized into three types:

2.3.1 *Maqāṣid al-‘āmmah* (objectives based on the general purposes) which are the objectives of *Sharī'ah* for the benefit of the people.

2.3.2 *Maqāṣid al-khāṣah* (objectives based on the specific purposes) which are the objectives of *Sharī'ah* in a specific dimension or aspect of life, such as intentions in commercial affairs, family life, or the criminal court.

2.3.3 *Maqāṣid al-juzīyah* (objectives based on the partial purposes) which are the aims or wisdom of *Sharī'ah* behind a specific activity such as family responsibility to meet the goal of marriage and avoiding continuous harm to abstain from divorce.⁸

Maqāṣid al-Sharī'ah has pivotal role in the *aḥkām* laid by the Lawgiver. It is a scientific method to observe the underlying causes for which a certain law may be commenced. Not only this, it assures that the certain benefits expected or harms repelled from a given law must be fulfilled in its true letter and spirit. In the current modern age laying down, laws that are in full conformity to Islamic law is not an easy task at all. For a *mujtahid*, it is compulsory to have a good hold on *Sharī'ah* knowledge so that it may be possible for him to deduct new *aḥkām* in the light of the objectives of *Sharī'ah*.

Maqāṣid al-Sharī'ah comes out of to root words *maqāṣad*, firstly *maqāṣid* which means objectives, and secondly *Sharī'ah* which refers to Islamic law. Thus, *maqāṣid al-Sharī'ah* takes good care of all the aspects of *Sharī'ah* that ensure wellbeing or at least meaningful survival of the human race. Hence *Sharī'ah* is a concept that welcomes its experts to have a balanced approach. From individual to society, harmony must prevail in every single aspect and circle of life. While nations are thriving for the advancements in all spheres of materialistic demands, it also faces challenges like poverty, hunger, illiteracy, diseases, immorality, religious violence, immorality, moral vices like injustice, operation and inequality, and many other unaddressed issues in human life. Human development models in which the latest model Millennium Development Goals (MDGs) has failed to cater to the problems of humanity. This failure will advocate that going through figures and collecting data for a certain problem isn't enough. It has failed to pass the ethical tests of a synthetic and inclusive approach that is well grounded in the essentials of the Islamic approach. This ethical test of a synthetic and inclusive approach is thoroughly debated under the heading of *maṣlaḥah*.

3. Understanding the terminology of *Maṣlaḥah Mursalah*

Maṣāliḥ are deducted from the underlying cause or attributes of the *aḥkām*. According to *Imām Ghāzālī* the definition of it is as follows:

“In principle, it is an expression of procuring benefit or deferring harm. By this, we do not mean procuring benefit and deferring harm

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by the objectives of the creation and their interest in attaining their objective. Relatively, what we mean (by this) is the benefits of preserving the objectives of the *Sharī'ah*; which are the preservation of religion, life, intellect, progeny, and wealth. So, all that which entails in preserving these five essentials is known to be *maṣlaḥah*."⁹

The principle of *maṣlaḥah mursalah* helps in many ways to preserve the interests of the public through securing ease of life and repulsion of unavoidable situations faced by Muslim societies as a whole. Some of the important points related to its composition are as follows:

- Fiqh in its entire composition is based on the best interests of society. What is desired is the benefit and evidence for that, and harm is forbidden, and there are many indications for that. This is a fixed origin agreed upon by *fuqahā'* (Muslim jurists). None of them claimed that the *Sharī'ah* brought anything that was not in the best interest of the people, nor did any of them say before that there is anything harmful in any law or ruling in the *Sharī'ah* that was legislated for Muslims. Although there is no disagreement on its basis, there may be an application to it.¹⁰
- The *Sharī'ah* contains an explanation of almost all the thing that results from the welfare of people. This fact is proven through the concept of analogy. Hence, any injunction present in the text can be inferred and applied to a text by analogy, and the *mujtahid* cannot discover any welfare until and unless there is no testimony to it in the *Sharī'ah*. *Imām Shafī* was the author of this opinion. Therefore, he launched an all-out attack on all those who considered that no benefit had been approved through *istiḥsān* which is considered a secondary source of legislation of *Sharī'ah* from the legislator. According to *Imām Shafī*, the basis of his opinion is based upon the fact that Allah who is the Lawgiver can't neglect the welfare; rather, Allah Almighty did not leave the believer in vain. Any existence to a benefit must be delivered to society for a larger good. Allah says in the Qur'an:

"Does man reckon he will be left to go on unimpeded?"¹¹

Life is constantly evolving. So, the *maṣāliḥ* related to life is always changing every time. If these *maṣāliḥ* are not updated and adjusted to the interest of the people, they would be in collective trouble. Avoiding it in a way that does not violates the *Sharī'ah* goal which leads to the preservation of common interest and staying away from hardships.¹²

The main goal of descending *Sharī'ah* is to provide an environment for their belief that is more beneficial and less harmful. Allah said to his Messenger in Qur'an:

﴿وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ ۗ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ ۗ بَلَّةُ أَبِيكُمْ إِبْرَاهِيمَ ۗ هُوَ سَمَّاكُمُ الْمُسْلِمِينَ﴾¹³

"And struggle for (seeking the pleasure of) Allah, a struggle that is owed to Him. He has chosen you and did not impose any hardship on you in the religion, the faith of your father Ibraheem."

- The scope of *maṣāliḥ* is wider than *qiyās* (deduction). Many historical events advocate the facts. Compilation of Qur'an from the fear of its losing, battle of Abu Bakr Siddique (May Allah be please with him) against those who violated the law and refused to pay *zakat*. All these examples and like are proof of the fact that *maṣlahah mursalah* are a legal source of law.¹⁴
- The *maṣlahah* is genuine in nature as opposed to an imaginary *maṣlahah* that is not worthy of it. Legislation-wise, there must be a reasonable possibility that the benefits may be transferred like abstaining harms it may entail otherwise. An imaginary/delusional *maṣlahah* example is the devolution of the husband's right to divorce by authorizing it completely to the court.¹⁵
- The underlying cause has variable levels from lower, parallel to higher orders. A classic example is the prohibition of wine. The underlying cause at the lower level is intoxication. While at the underlying cause at the higher level is protecting one's intellect required to perform *Ibadah* especially.

The two words *maṣlahah* and *manfa'ah* are synonyms for each other. Literally speaking, it means benefit or utility. It is defined as the seeking of benefits and repelling of *ḥarām*. In modern philosophy, this law is similar to the law of utility expounded. This law was initially discussed by Jeremy Benham, according to him it means securing the maximum human happiness.¹⁶ Although the definition is close to the meaning of *manfa'ah* it lacks the meaning of *maṣlahah*. However, the technical meaning of *maṣlahah* is different, it is seeking benefits and repelling Haram as stated by the lawgiver. Hence there may be a clash between human desire and pleasure according to the Human reasoning and commandments of Islamic Law. The clash may be because of personal gains, wrong interpretations of *Sharī'ah* that looks like all right from its outer core, avoidance of the larger scoop of the *Sharī'ah*, and likewise other reasons that couldn't be ignored. This implies the fact that mere implementation of *Sharī'ah* won't be enough rather it should be meaningful in complying with the objectives of the *Sharī'ah*. Our history is evident to it as many times exception. This elaborated fact is evident in the definition of Imam Ghazali regarding *maqāṣid al-Sharī'ah*:

“What we mean by *maṣlahah*, however, is the preservation of the ends of the *shar*.”¹⁷

Preservation of the ends of *Shar'* here refers to the *maṣlahah mu'tabarah*. *Maṣāliḥ mu'tabarah* are considerable circumstances in the eye of *Sharī'ah* because they don't clash with the objectives and principles of Islamic law. A classic example is the underlying cause of the prohibition of wine is intoxication, this can be extended to other intoxicating items and the law can execute them as *ḥarām* items. So, by generalizing the underlying cause we can preserve the life which will preserve society as a whole. So, we can say that preservation of life is one of the *maṣāliḥ mu'tabarah*. On the other hand, if any sort of clash arises while preserving the end of *Sharī'ah* then

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those *maṣāliḥ* will be considered as *maṣlaḥah* might. All of these *maṣāliḥ* are well identified and pinpointed to the extent there is less or eligible margin of error. The problem lies in identifying *ḥukam* in the newly recorded cases. This is catered in another type of *maṣlaḥah* whom *Sharī'ah* has not spoken out about and considered to be new cases confronted. These are known as *maṣlaḥah mursalah*. The word *irsāl* means to *let go*. This means that the solution for the issue being considered, the text has let go of it. Dr. Alauddin Al-Zafrani elaborates the terminology in a scholarly way saying:

”وأما المصلحة المسكوت عنها: فهي التي لم يرد في اعتبارها أو إبطالها دليل خاص من الكتاب أو السنة أو الإجماع أو القياس، لكنها لم تخل عن دليل عام كلي يدل عليها، فهي إذن لا تستند إلى دليل خاص معين، بل تستند إلى مقاصد الشريعة وعموماتها، وهذه تسمى بالمصلحة المرسلّة. وإنما قيل لها مرسلّة لإرسالها؛ أي: إطلاقها عن دليل خاص يقيد ذلك الوصف بالاعتبار أو بالإهدار ولهذا قيل أن نحكم على عمل بأنه حلال لأن فيه مصلحة، علينا أن نبحت عن نوع المصلحة؛ فإذا كانت ودائع البنوك وشهادات الاستثمار – مثلاً – تدخل تحت عقد القرض فكل زيادة على رأس المال هي من الربا النسببة المحرم، فليس لأحد أن يقول بالحل لأن فيها مصلحة كما يدعي.“¹⁸

As for the term *al-maṣlaḥah al-maskoot anha*: it is the case in which the Lawgiver didn't specify any evidence or proof from Quran, Sunnah, through consensus or analogy that may potentially specify its being right or wrong, but is abandoned, as general evidence that indicates it, then it is not based on a specific evidence, but rather it is based on the purposes and general characteristics of the law which is called *maṣlaḥah mursalah*. Rather, it was said to be *mursalah* due to its being sent; that is: specific evidence been tagged that restricted the description of its characteristic in consideration of either enforcing it or rejecting it. Therefore, before we judge a practice as *halal* because it is a *maṣlaḥah* to deem so, we have to search for the exact *maṣlaḥah*. If for example any transaction entered under the loan contract, proven to be an increase in the capital creates usury, then that is forbidden, so no one can say that it is *maṣlaḥah* because it has an amount of interest claimed.

Hence, the application of *maṣlaḥah mursalah* comes into action, once the jurist fails to find the solution to the problem directly from the primary sources of *Sharī'ah*. It is because he can't create a direct link from the text. Thus the jurist can't find the rule for the desired case through literal interpretation nor can he extend the application from a certain rule through *qiyās*. The only way to find the solution is to look up all the evidence collectively provided in the legal texts related to a certain issue. A classic example of *maṣlaḥah mursalah* is the compilation of the Quran. Although the orderly series of surah was declared by Prophet (peace be upon him) it wasn't written into book form until in the late period of the reign of Abu Bakar Siddique (may Allah be pleased with him). The decision was taken with a larger canvas and greater interest in the preservation of *dīn*. Another example with a different perspective is the ruling of Umar (may Allah be pleased with him) against a murderer. Umar (may Allah be pleased with him) abrogated the rule of *qisās*. He maintained his decision to kill all of those who planned to kill and not just one who killed the person.¹⁹ This decision was again taken in the larger canvas of preservation of life. In Quran Allah says:

“In retaliation, there is life for you.”²⁰

However, this definition of *maṣlahah* is assimilated with other attributes that directly affect its application. Say for instance Imam Ghazali’s stance about *maṣlahah mursalah* is required to fulfill any utter important need (*ḍarūrah*) to sustain the flow of life in accordance to its *maqāṣid* related to *Sharī‘ah*. These essentials that guarantee the objectives of *Sharī‘ah* are the preservation of life, *dīn*, wealth, mind and off springs. This means that the outcome of the application of *maṣlahah mursalah* will be dependent on these essentials. Imam Ibn e Taymiyyah on the other hand expanded the scope of these essentials and declared that preservation of *Sharī‘ah* is not just limited to the former essentials. Dr. Gowhar Quadir Wani talks about it in these words:

“Taqī al-Din Ibn Taymiyyah was probably the first scholar who turned away from confining the *maqāṣid* to a specific number. Extending the scope of *maqāṣid*, he added to the list such things as the fulfilment of contracts, preservation of the ties of kinship, honouring the rights of one’s neighbour, in so far as the affairs of this world are concerned, and the love of God, sincerity, trustworthiness, and moral purity, in relationship to the hereafter”²¹.

Finally, contemporary studies introduced new objectives of *Sharī‘ah* that were induced directly from the texts, not from the work of jurisprudence literature in schools of Islamic law. Significantly, this approach allowed the intentions to overcome the shortcoming of historical *fatāwá* representing the values and supreme principles of the texts. So, detailed provisions will emerge from these general principles for a more deep and more thorough understanding.

Rashid Rida, a well-renowned scholar of Islam while surveying the Qur’anic text to identify the objectives of *Sharī‘ah* came up with some variable points that were unintentionally left unnoticed by the former jurists. This includes reforming the pillars of faith and spreading awareness of Islam as a religion of pure nature, reason, knowledge, wisdom, evidence, freedom, independence, social, political and economic reform, and women's rights.

Another great scholar Al-Taher Bin Ashour suggested that the general objectives of Islamic law are the preservation of order, equality, freedom and facilitation and the preservation of purity (abundance). Here it should be noted that the purpose of the "freedom" proposed by Ibn Ashour and Many other contemporary scholars differs from the purpose of slavery. Here a contemporary sense differs from the past because nowadays Muslims are captive of the secular/ capitalistic order of the world, especially the economic world order. He debated that the main objective of *Sharī‘ah* is to secure the fundamentals of the Social System in Islam. This comes with the concept of freedom. It has many concepts like freedom of speech, freedom of belief and

disbelief, and freedom to adopt a culture. He advocates that the background of freedom comes from the concept of free will (*mashiyah*).²²

Yusef Al-Qaradawi in his Survey of the Noble Qur'an, concluded the following appealing purposes that Shari'ah suggested are preserving faith, human dignity and rights, inviting people to worship God, and purification of the soul, restoring moral values, building a righteous family, fair treatment of women, and building a strong Islamic nation, and the call to a cooperative world. However, al-Qaradawi states that it is only necessary to propose a theory for a universal purpose. It occurs after developing a level of experience with detailed texts.²³

Taha Jabir Al-Alwani indicated that in the Qur'an, the supreme and prevailing purposes him are monotheism, the purification of the soul, and the development of civilization.²⁴

This proves that although the objectives of *Sharī'ah* are unchangeable at the same time the compelling needs (*ḍarūrah*) keep on changing with effect to the time and condition that need to be addressed come forth that were either undressed or it's compelling need wasn't there. it is still hard to limit these essentials/objectives of *Sharī'ah* but one thing is for sure and that is the adaptable feature of *Sharī'ah* injunctions. It makes the religion more practical to be followed with perfection and style.

According to Imam Ghazali *maṣlahah mursalah* must hold certain conditions fulfilled:

- a) It must not conflict with the text. For example, one can't kill a human being through the desperation of hunger to fulfil his *ḍarūrat* (necessity) of eating is not an acknowledged act in the sight of *Sharī'ah*. Also, the preservation of life can't be secured by killing someone innocent.
- b) It must uphold the general preposition of Law. Therefore, all the intoxicating goods are considered *ḥarām* in conformity with the law: all that intoxicates is *ḥarām*.
- c) It must also consider the implication of the text. Any meaning coming out of the *maṣlahah* varies from the objectives of the guiding text and will not be accepted. Therefore, watching a woman for a long time with lustful eyes abrogates the meaning of *ḥadīth* that approves the first glimpse of a woman unintentionally.
- d) It should lie in the range of *ḍarūrah* (necessity). Which means that the case must confirm one of the top five purposes of the *Sharī'ah*: preservation of *din*, life, wealth, integrity and generation.
- e) It should be *qati* (definitive). That is, we must be sure about the consequences and results of it.
- f) It should be general *kulli*. This means that it should be beneficial for the entire Ummah and the general public as well.

If these conditions are not fulfilled the *maṣlahah* will not be considered as *maṣlahah mursalah* rather it will fall into the category of *gharib* (strange), that is it will be seen as an improbable case which May be accepted or denied due to uncertain results.

The word *kulli* means general. Al-Ghazali however defines it as an act beneficial for the entire *ummah*. In this sense, the scope of the meaning is limited only to *ummah*. However general public interest is also one of its mandates. This means that definition of *kulli* states its nature in a bit restricted to a specified area. Just for the sake of understanding and food for thought, one may think the circumstances of the overall outcome of the events and realm of thought at the time of Islamic civilization; out of which Imam Ghazali may have thought out the definition of *kulli* to restrict its implications to the favour of *ummah*. It is again because of the fact that at that time *Ummah* was dominant in its diverse cultural values, *Shari'ah* based economy was prevailing and strong Muslim army position in the world that was well managing the defence of ideology and borders of the Muslim World. *maṣlahah* at that time was rightly understood by Imam Ghazali because he wanted *Ummah* to be in control of the current position. However, having said that, the meaning of *kulli* in the current scenario will be a bit different as the world is considered as a global village where every single civilization is interconnected with each other in terms of cultural influence, economic activities and security related concerns. Therefore, anything concerned to be as *kulli* would not just guarantee and safeguard of Muslims but will also assure acceptance internationally and prove to be beneficial for the humanity as a whole. For instance, Banking system of the world is interconnected so good that one can use it transferring the money from anywhere in the world.

Maṣlahah also meant that a single unsolvable issue will be entertained at a time. This principle is also compromised in the current scenario as the Muslim world is strictly following the west in almost all the spheres of life. Especially when the financial system is taken into account, it is compatible with the laws and conditions to the western school of thought. This mean Muslim world is in line with the financial system that is based on the speculative economy due to the highly volatile paper currency. One can easily incur that Muslim world as it is using the paper money or any other facility equivalent to it in terms of its effect, confirms that the decision of using currency was just a mere decision to in line it with the rest of the world rather the dynamics of the whole financial system that is now managed with the financial tools that allows the authorities to manipulate the currency in accordance with the market forces. The monetary policy could be tightened by increase in the interest rate or vice versa. Hence it's a matter of time when this system is going to collapse as the bubble economy reaches to its full potential. It is beyond doubt that the financial system that is applicable right now in the world is to facilitate the capitalist mind set where the rich concedes to become richer and the poor seeks to be less prosperous due to the scarce available resources. Hence saying that adoption of the paper currency was a *maṣlahah* that never had to be let go; at least one can easily draw inference that it

doesn't fulfil the term and condition of *maṣlaḥah mursalah*. It means that *maṣlaḥah* is now more generalized than ever.

Now, taking the above discussion into consideration, at the current point of time nothing is same as past; circumstances vary in every single aspect of life and its mandates. By far, nothing is controlled by the Muslim world especially when it comes to the financial system and its governing laws. Our culture, economy and weak army can neither defend its ideology nor its borders as it is violated by the western forces every now and then. In today's world, Systems are imposed by the west on us. We live in a state where *balwa* is prevailed throughout in general. This means we are living in an environment that is totally compromised. None of the Islamic states could claim that it has established the *Sharī'ah* framework on the affairs of the state. In comparison to the past, presently certain other attributes may be missing in the derivation of *aḥkām* from the tool of *maṣlaḥah mursalah*:

i. *Maṣlaḥah Mursalāh* may not be only beneficial for the Muslim community

We live in an era, where stagnation prevails in our thoughts. Due to the reliance on the western financial system, the decision power required to deal with a particular problem seems missing and that is considered as a new and unsolved case in Islamic theology. This weakness has shuddered the belief of the public on *mujtahidin* of true conscious. A very heavy price is paid by society as a whole. Even if the *fatwá* is given on the very basic, merits and mechanics that need to be followed; *ummah* is no more interested in right and wrong. By the current prevailing situation of disbelief, Muslim *ummah* is duty-bound to abide by the rules that are set by the west to run their financial systems. There is no single state in the Muslim world that is free to set its rules that are acceptable to the rest of the world where it can trade on its rules. This shows that Muslim countries are engaged in war for their survival. Hence *maṣlaḥah* may not be a helping tool for the time being and may only serve the Muslim *ummah* to survive until its glory is again restored. This shows that in this era only that *maṣlaḥah* will be acceptable which is beneficial for all. Take a look at the financial system of the world. It is uniform and all the laws are well followed and applicable in the rest of the world. So, any *maṣlaḥah* that is catering the benefits of the Muslim world and only covers the perspective of the Muslim theology will be tantamount to isolation. The Irony is that *ummah* is not even trying to innovate any system that is beneficial for the world community. This would be too much to ask; we are unable to device a single derivative that could be declared as a patent, marked as an original work. On the other hand, the west is more concerned to build or establish a system that is a more acceptable and valuable addition to world economics.

ii. Avoidance of compromising the essentials of *maqāṣid al-Sharī'ah*

It is evident from the conditions of *maṣlaḥah mursalah* that we can only undertake derivatives of *Sharī'ah* like *istehsān*, *istislah* and others if it's not in conflict with the

objectives of *Sharī'ah*. If *maṣlahah* approves creating Islamic Banks just to facilitate some customers that are reluctant to adopt the conventional banking system; the idea may be questionable. Various Commercial banks all over the world hold Islamic Banking windows now. These Islamic banking windows work as subsidiaries of the parent conventional banks. The point of discussion is that their main goal isn't Islamization of the Banking system rather they work for the profit motive. This looks like a controlling environment that is misleading goals of *Sharī'ah* as the primary aim is to create an opportunity for those who are reluctant to use the banking system due to the discrepancies. Hence Islamization of the financial system is again compromised. Anyways, having said that, the question arises, is it the right way to think and is it according to the definition of *maṣlahah*? Are there some secular goals to be fulfilled by financial companies through their shrewd thinking? Muhammad Hudaib states the fact:

“The growth of Islamic finance to become part of mainstream global finance is not driven purely by sacred intentions of fulfilling religious obligations but also a powerful political-economic weapon for control. Over the years, Islamic finance had to undergo transformation to become accepted as part of the global finance community and in the process, the traditional sacred intentions of fulfilling religious obligations and acting as part of the act of worship became perplexed with the secular goals of modernity. Will this trend continue in the foreseeable future or will it enter another phase bringing it back to its root?”²⁵

In other words, Islamic Banks (IBs) won't make any difference in figures. Its usage is just like a tool for deriving profits from a system that's well managed by commercial banks. The principle of *maṣlahah* is again compromised as its benefit is not general *kulli*.

Moreover, deriving a *ḥukam* while maintaining all its merits, will guarantee that the causes and implications it is not under a controlled environment. This guarantee is also compromised as discussed earlier. Another example is related to the *fatāwá* that *fiqh* academies are busy issuing these days for solving questionable issues in view of *Sharī'ah* principles. Although *fiqh* academies all over the world are working out the process very efficiently some time it is difficult to justify that their work is compatible with the thoughts and circumstances of the *ummah*. This phenomenon is evident in the near past. *Fiqh* academies of ISNA, ISRA, Indian *Fiqh* Academies, and other academies of the west have given strange *fatāwá* on the mortgage, the permission of intoxication up to a certain limit, a compilation of Muslim minority laws that has its unique principles of conduct etc. All these urges clearly show the deviation from straight thinking. One thing is for sure *ummah* as a whole is not kept in the loop at all.

The issue is that mass migration of *Ummah* in the western countries has become a trap that has created interdependency and they are not able to establish a system that streamlines or at least justifies their cultural values.

iii. ***Mujtahidin must have free will to do the job and they must not be duty bound***

Several examples can be quoted that clearly show how difficult is to be on the right side. An example of the Islamic financial system is evident. *Sharī'ah* advisory working in different Islamic banks is paid by them because they work as employees. This is a clear case of conflict of interest and against *maṣlahah* as well. This status of *Sharī'ah* advisors falling under the principle of Conflict of Interest will lead to poor performance due to various causes. On one side they watch the transactions closely to confirm their workability concerning *Sharī'ah* principles and on the other hand, they face immense pressure from the Banks they are paid from. This pressure comes in different ways on them which in the end force them to compromise in their work. They may forgo an illicit transaction for the larger benefit of their organization. A report by Al-Hassan al-Aidaros was submitted on this topic which was compiled through a questionnaire. This questionnaire was conducted on the views of *Sharī'ah* auditors of different Islamic Banks in the countries. In the conclusive argument of the report it reflects facts as follows:

In order to enhance the need for *Sharī'ah* auditor independence, 95% of auditors welcomed the idea that a professional *Sharī'ah* auditing body is set up to create and streamline a common *Sharī'ah* auditing process within the Malaysian business context. Hence, to better ensure the *Sharī'ah* auditing process remains accountable to all stakeholders, the *Sharī'ah* professional affiliation would ensure the integrity and code of conduct of the *Sharī'ah* auditor to remain independent. For instance, over (77.5%) of them believed that auditors' role is to remain unbiased, and avoid committing family relationships in IBs and conflict of interest. More than half of auditors (52.5%) agreed that their high commitment to maintaining independent roles had a direct effect on the performance of ICB's operation.²⁶

iv. ***Capability and ability must be at par***

The jurists of the earlier period of the Islamic era, this phenomenon is missing badly. Although we are rich in the literature availability as compared to the past. We also may have good knowledge about the work done in the past but in the field of application, we are yet to prove our capabilities in this regard. Muslim scholars of the past were more concerned about the application of the *Sharī'ah* which made it undoubtedly a complete code of life. Take a look at the contemporary *fatāwá* given on the issue of cryptocurrency. Muslim Scholars seem to be divided on this issue related to its permissibility.

Moreover, life nowadays is more complex than before. The whole world is interdependent for carrying out the daily rules of businesses. Muslim world up till now is behaving as a market niche. We are system bound to follow the laid principles set by the west globally. The irony is that Muslim Scholars don't realize their responsibilities in the current scenario. They have confined their abilities only to defend Muslim ideology through their words befitting it to be called as *fatāwá*.

v. **A result derived through the said tool must be acceptable by all other *mujtahidin* of true conscious**

In the glorious period of the *ummah*, there was a single boundary system approach. Our shared values were so strong that no one outside the Muslim world dare to challenge us. The core saviours of the ideology were the Muslim Scholars of that time. They had a check on every minute of development in society. They enjoyed their authority at the state level. This one-unit approach saved us from foreign invasion in all spheres of life. Now due to the non-availability of state backing, Muslim scholars are experiencing this hedge of miscommunication which is letting them down to avail a single approach. Hence *maṣlahah* can't be fulfilled if the unanimity of thought is missing.

vi. ***Maṣlahah Mursalah* must deal with a specific issue**

Maṣlahah mursalah always implies that there is some unresolved issue or a new unsolved case that needs to be catered to by the *Sharī'ah* lines. This means that any issue alien to the Islamic civilization shouldn't be an issue that is accepted as a whole, or we want to mitigate the issue, not on our terms. In the current scenario, this attribute is also compromised. If we analyse the developmental process of the Islamic Banking system, it is a total substitute for the conventional banking system accepted globally. In other words, the core idea has been taken from the conventional banking system. We never say that Islamic banking is *Sharī'ah* based banking rather naming it as *Sharī'ah* compliant banking. The fact is that the core idea is copied from an alien system in which all the prohibited elements are involved as per *Sharī'ah* law is concerned. By implementing a *Sharī'ah* compliant banking system we are talking about the change of a whole system which is at par conventional banking system. Hence *maṣlahah* principle is not just applied to a specific case only; it applies to confront a system that's collapsing our values in terms of culture and finance. If the true spirit of *maṣlahah* had been followed, then proper Islamic Banking with all the values related to Islamic Finance would have been inculcated. However, it's time to see through the real boundaries of *maṣlahah* that may be workable by the today conditions. If it's not possible for whatever may be the reason then all these *maṣāliḥ* that are introduced for the sake of attaining bigger must stand corrected. The *ḥadīth* of the prophet states this fact in a very straight way:

Examining Conditions of *Maṣāliḥ Mursalah*...

((حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ، حَدَّثَنَا أَبُو عَامِرٍ الْعَقَدِيُّ، حَدَّثَنَا كَثِيرُ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ عَوْفِ بْنِ عَزْبَةَ، عَنْ أَبِيهِ، عَنْ جَدِّهِ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا أَوْ أَحَلَّ حَرَامًا " . قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ))

Kathir bin 'Amr bin 'Awf Al-Muzani narrated from his father, from his grandfather, that the Messenger of Allah ﷺ said: "Reconciliation is allowed among the Muslims, except for reconciliation that makes the lawful unlawful, or the unlawful lawful. And the Muslims will be held to their conditions, except the conditions that make the lawful unlawful, or the unlawful lawful."²⁷

vii. *Maṣlaḥah Mursalah* is applicable in times of necessities

It is an attribute applied to any case where necessity prevails for the time being. Once the necessity is fulfilled, the *ḥukm* will settle down to its original place. This attribute is again limiting the scope. It has been discussed earlier that the Islamic Banks are developed on the basis and ideology of *Shari'ah* compliance. What does this exactly mean? The answer is simple; we never had a banking system replacing the conventional system. Hence the *Shari'ah* scholars of our time looked toward this western style of the banking system and discovered a whole new style of banking compatible with the *Shari'ah* lines as well as the original system of banking. This implies that we are strengthening the western banking system because it conforms with the regulations and laws provided through it. Also that we have officially approved to give them (conventional banks) the authority to control whatever may be the benefits and harms that will arise from it; they can imply on us. The banking industry runs by the set standards. The Basel Accord serves the purpose and all the banks are regulated through their revised editions. These regulations mitigate risks, establish standards for the operations department, specify credit disbursement procedures for the credit department, liquidity limit of the banks and so on.

The point of the whole discussion is that definitions and attributes of *maṣlaḥah* have been compromised due to the current scenario. We are running the whole financial system on the principle of necessity. We even take the core attribute of necessity for granted. Necessity is no more driven by the word *ḍarūrah*. The best definition for the word necessity in the current scenario is "need of the day". This is the best Muslim scholar of our time managed to do. They have steadily replied to the western system that wills to eradicate the existence of other systems. We can also name this strategy as the "principle of last resort". This war of survival will carry on between the systems and at the end of the day, one will absorb the weaker. Islamic financial institutions must compete until they get the loins to share in the market and establish their position so well that they may dictate their term of conditions. Right now we are following the way of *rukhsah* instead of *azeemah*. It is important for the *Shari'ah* scholars that they must not forgo a futuristic approach for some current benefits. Muhammad Hudaib commented on this situation in his way:

“The divergence in the interpretations of the *Sharī‘ah*, which results in the so-called Arab and Malaysian models, is fast converging to further consolidate the power for Islamic financial institutions to compete with their conventional counterparts. *ijtihād* (juridico-ethical reasoning and argumentation) for legitimating innovation of financial products was made based on the unduly application of *maqāṣid al-Sharī‘ah* (purposes of the law) which takes into account the degree of benefits for human interests (*maṣlahah*) as opposed to harm (*mafsadah*). Other adaptive mechanisms in legitimizing the modernization of Islamic finance and financial institutions include *‘urf* (local custom) and *ḍarūrah* (necessity)²⁸. Besides deregulation of the financial sector resulting from the policies of the new world order, the greater alliance between bankers, governments and *Sharī‘ah* scholars facilitate the innovation of *Sharī‘ah*-compliant products as opposed to *Sharī‘ah*-based products (i.e. based on the sacred goal of Islamic finance). In short, over the years, the ardent sacred intentions were slowly suppressed, and secular goals promoted and the process intensified in the neo-colonial global economic and debt-peonage era.”²⁹

Other than that, Islamic finance confronts other serious challenges in its internal system as they lack human resources, governance issues in *Sharī‘ah* Councils, the presence of some less qualified scholars for the composition of the *Sharī‘ah* Council, Some members of the *Sharī‘ah* councils are with no teaching experience and are less familiar with the research methodology for Islamic *Sharī‘ah*, Most *Sharī‘ah* councils do not have economic advisors whose main purpose is to clear the mechanism of a certain transaction for which *fatwa* is required by the *Sharī‘ah* councils.

The Gresham Law advocates that fewer quality products will slowly diminish the high-quality products from the market. This phenomenon is also reflected here in Islamic financial markets as well due to the overwhelming participation of less qualified members of the *Sharī‘ah* councils advisory. They are the one responsible for the increased spread of ambiguous products, which are more sort of traditional products marketed as Islamic products for instance:

Tawarruq through multiple sales and *Salam* contracts legalize and ignores the interest-based transaction by creating a new gateway with no changes in the total results, *Ena*-based products that carry traces of interest-based transaction, Risk trading products in which losses and profits are not hedged properly or for the sake of bank to earn huge profits with taking into account the nature of the transaction like swaps, securitization of debt and cash.³⁰

The above case scenarios clearly show how much of challenges are faced by Islamic finance that poses serious questions of ethics, on the side of *Sharī‘ah*

board memberships and they being responsible for the mess conceived by the wrong placement of products that surpass qualify the basic criteria of Islamic financial engineering and due to which Islamic finance is seen sceptically by its critics. Dr. Mahbid Ali al Jahri has also referred to this problem of ethical banking in the Islamic Banks which is still to be settled down in a way that the overall banking impression is tilted toward positivity by inculcating Islamic norms.³¹

Yet another sweeping statement is given by another scholar about the Islamic Banking system in these words:

“With a meticulous analysis, it can be visible that the current practices of the Islamic banks are, in many cases, not in conformity with the *Sharī‘ah* required standards. Many Muslim economists, for example, favour equity-based instruments and place greater social welfare responsibilities and religious commitments, to realize *maqāṣid al-Sharī‘ah* for equitable distribution of wealth and promoting economic development and growth, whereas most thermic banking products range from *Bai’ Bithaman ‘Ajil* (BBA)³², *Bai’ al-Dayn*³³, Islamic credit card with *Bay’ al-‘Inah*³⁴ contract, *Tawarruq*, and many such other contracts.”³⁵

Having all said, it doesn’t refer to the cancellation of the subject or disgrace to the efforts of the Islamic Scholars that have worked their level best to mitigate the issue and come up with the *Sharī‘ah* based answers to the related issues, on the contrary, it is just an effort to see things in a way for sake of betterment. The above discussion is just based on the concept as said, there is always room for excellence or attributed as Sky is the limit. Any sort of negativity in this regard equates to enmity toward the services offered by the esteemed Islamic scholar which is an unacceptable and unavoidable offence.

4. Summary: The theory indicates that the problems solving mechanism adopted by the Islamic Scholars should not only be in conformity with the *Sharī‘ah* principles by involving the tool of *maṣlaḥah mursalah* but also it should comply with the *maqāṣid al-Sharī‘ah as well*. The combination of both ideological spheres will assure the fact that the solutions to the unresolved issues of Islamic Jurisprudence will also be beneficial for society as a whole. Its application and solution would also be beneficial for the rest of the world as well. This will assure that its application is based on an acceptable rationale and proper reasoning. Especially when we are talking about the financial issues that are related to western financial issues, it must be dealt with the idea of not just satisfying the *Sharī‘ah* demand and condition, but it should be workable, ethically sound and beneficial for the society in its very nature. One should just not go for the derivation of financial

transactions by using *Shari'ah* backed tools for the sake of profit maximization but there must prevail originality and fairness in the *Shari'ah* backed solutions. This will help the society preserve its valuable customs and rich legacy of rightful Islamic *Shari'ah* principles and related laws.



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- ¹ Dhia' ul-Dīn 'Abd al-Malik ibn Yūsuf al-Juwaynī al-Shafiī was a Persian Sunni Shafi'i jurist and mutakallim theologian. His name is commonly abbreviated as Al-Juwayni; he is also commonly referred to as Imam al Haramayn, meaning "leading master of the two holy cities", that is, Mecca and Medina. He was Born: February 17, 1028, Neyshabur, Iran and Died: August 20, 1085, Neyshabur, Iran. His Era of Middle Ages was the Islamic Golden Age.
- ² Al Ghazali, *al Mustasfa min ilm al usul*, Baghdad, 1294 A.H, vol 1, p. 172
- ³ Shihabuddin al-Qarafi, *Shihāb al-Dīn Abu 'l-Abbās Aḥmad ibn Abi 'l-'Alā' Idrīs ibn 'Abd al-Raḥmān ibn 'Abd Allāh ibn Yallīn al-Ṣanhājī al-Ṣa'īdī al-Bahfashīmī al-Būshī al-Bahnasī al-Miṣrī al-Mālikī Al-Dhakheerah* (Beirut: Dar al-Arab, 1994) vol. 5, p. 478
- ⁴ Al Tufi, *Najmuddin al-Tufi, Al-Tain Fi Sharh Al-Arbain* (Beirut: al-Rayyan, 1419 H) p. 239.
- ⁵ Ishak, Hj. Suliaman, The theory of priority of maslaha over the legitimacy of nass of the Qur'an and the Hadith: A Conceptual Discussion, Vol. 4, AL-BAYAN Journal of Al-Quran & al-Hadith, ISSN:1394-3723, (page : 79-88)
- ⁶ Al-Shatibi, *Abū Ishāq Ibrāhīm ibn Mūsā al-Shāṭibī, Kitāb al-i'tisām*, Dar Al Kutub Al Ilmiyah, volume#2, p.375-379.
- ⁷ Al Juwayni, *Abdul al-Malik Ibn Abdullah Al-Juwayni, Al-Burhan fi usul al-fiqh* (annotated by Abdul-Azim al-Deeb) (Qatar: Wazarat al-Shu'un al-Diniyyah, 1400 AH), p. 183.
- ⁸ Imam, Al-Shatibi, *Al-Muwafaqat (the Reconciliation of fundamentals of Islamic Law)*, General publishing limited, Uk, Vol. 1, page 7.
- ⁹ Abū Hameed Al-Ghazālī, *Mustasfa* p. 275
- ¹⁰ Abdulmalik Oricha Ali, *Maslaha Al Mursalah; the concept, sources, history and benefits as a source of Islamic Law*, INCEIF (Intern. Centre for Edu. in Islamic Finance) , 2013, p. 7
- ¹¹ Verse 75:36
- ¹² *Maslahah as an Islamic Source and its Application in Financial Transactions, The Validity Of Maslahah As Islamic Source*, Quest Journals Journal of Research in Humanities and Social Science, Volume#2, Issue 5 (2014) pp: 66-71, ISSN(Online) : 2321-9467, page#3,
- ¹³ Verse 22:78.
- ¹⁴ Zuhailiy, Wahbah. *Al-Wajiz fi Usl Al-Fiqh*. Damascus: Dar Al-Fikr, 2006, p. 92

- ¹⁵ Laldin, Mohammad Akram. *Islamic Law: An Introduction*, Kuala Lumpur International Islamic University of Malaysia (2006)
- ¹⁶ Bodenheimer, *Jurisprudence: the philosophy and method of the law*, p 84
- ¹⁷ Al Ghazali, *al Mustasfamin ilm al usul*, Baghdad, 1294 A.H, vol 1, Page 286.
- ¹⁸ د. علاء شعبان الزعفراني ، الأحكام الفقهية لسوق رأس المال، ج:2، ص: 324، الناشر: دار الصفوة بالقاهرة، الطبعة الأولى 1436هـ - 2015
- ¹⁹ Ibn 'Umar said: A boy was assassinated. 'Umar said, "If all the people of San'a took part in the assassination I would kill them all." Al-Mughira bin Hakim said that his father said, "Four persons killed a boy, and 'Umar said (as above)." Abu Bakr, Ibn Az-Zubair, 'Ali and Suwaid bin Muqarrin gave the judgement of Al-Qisas (equality in punishment) in cases of slapping. And 'Umar carried out Al-Qisas for a strike with a stick. And 'Ali carried out Al-Qisas for three lashes with a whip. And Shuraih carried out for one last and for scratching. *Sahih al-Bukhari* 6896, Chapter 21: If a group killed or injured one man, will all have to give Diya or be punished with Al-Qisas?, Book 87: Blood Money (Ad-Diyat)
- ²⁰ Verse : 2:179
- ²¹ Gowhar Quadir Wani, *Beyond the Five Essentials: A Study of Ibn Taymiyyah's Extension of Maqāsid al-Sharī'ah*, India International Islamic Academic Conference 8-9 October, 2016, India Islamic Cultural Centre New Delhi, India
- ²² Mohammad al-Tahir Ibn Ashur, *Usul Al-Nizam Al-Ijtima'i Fil Islam*, ed. Mohamed El-Tahir Mesawi (Amman: Dar al-Nafais, 2001) p.256, 268
- ²³ Yusuf al-Qaradawi, *Kayf Nata'amal Ma'a Al-Quran Al-'Azeem?* 1st ed. (Cairo: Dar al-Shorouk, 1999).
- ²⁴ Taha Jabir al-Alwani, *Maqasid Al-Shariah*, 1 ed. (Beirut: IIIT and Dar al-Hadi, 2001), p.25.
- ²⁵ Muhammad Hudaib & Roszaini Haniffa, *Islamic finance: from sacred intentions to secular goals?*, Bradford University School of Management, Bradford, UK, October 2010
- ²⁶ Al-Hasan Al-Aidaros, *The Need of Independent Shariah Members in Islamic Cooperative Banks: An Empirical Study of Professional Accountants in Malaysia*, international review of Management and business research, volume 4, March 2015.
- ¹³⁵² امام، الترمذي، في الأحكام باب ما ذكر عن رسول الله صلى الله عليه وسلم في الصلح، رقم
- ²⁸ Darurah allows a mitigation whereby a Muslim can commit an unlawful action, or omit an obligation or delay it. This mitigation is consistent with the objectives of shariah which aim to preserve basic human necessities namely religion, life, intellect, lineage and wealth.
- ²⁹ Muhammad Hudaib & Roszaini Haniffa, *Islamic finance: from sacred intentions to secular goals?*, Bradford University School of Management, Bradford, UK, October 2010
- ³⁰ Arthur J. Rolnick and Warren Weber, *Gresham's law or Gresham's fallacy?*, *Quarterly Review*, 1986, vol. 10, issue Win, P. 17-24
- ³¹ Dr. Mabid Ali Al-Jarhi, *Reviving the Ethics of Islamic Finance*, Munich Personal RePEc Archive (MPRA), Paper No. 66732, posted 18. September 2015 00:41 UTC
- ³² Bai Bithaman Ajil is a "deferred payment sale", which works like a *murabahah* contract, but with payment generally made on a deferred basis. In some countries *Bai Bithaman Ajil* is also known as *Bay' al Muajjal*
- ³³ Bai al dayn is essentially a contract of the sale of debt. Being a contract of sale, there must be all the elements or pillars of a sales contract such as legitimacy of contracting parties, and offer

and acceptance. Between the contracting parties there must be a subject matter of sale, a price, and delivery of the asset. The asset in this case, however, is a financial asset or a debt.

³⁴ Bay' al-'Inah: It is a sale and buy-back agreement, is a type of Islamic finance that is a banking activity that is congruent with Shariah, which are the principles of Islamic law

³⁵ Dr, Noor Muhammad Usmani, *Applications of Maqasid al-Shariah and Maslahah in the Islamic Banking Practices: An Analysis*, Conference Paper, October 2010 DOI: 10.13140/RG.2.1.3578.0644, Page # 12