THE INTERPLAY OF *IJTIHĀD* AND *MAQĀṢID AL-SHARĪ'AH* IN PRE-MODERN LEGAL THOUGHT: EXAMINING THE CONTRIBUTIONS OF AL-GHAZALI AND AL-SHATIBI

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Abstract

The debate of *ijtihād* - its meanings, theorization and application, is one of the most noticeable debates in the modern Muslim intellectual space. In the contested backdrop of 'closure of the gates of *ijtihād'*, the process of reproduction of *Shārīah'* knowledge, civilizational renewal and forming a critical engagement with the socio-intellectual context of contemporary times through *ijtihād* gained coinage among different strata of Muslim scholarship, developing intra-Muslim conversations between traditionalists, modernists and progressives. In this debate, *maqāṣid al-Sharī'ah* as a concept, theory and philosophy has been repeatedly invoked by all three points of views, explaining it from their distinct positions. In this context, this paper attempts to offer an analysis of the pre-modern dialogue between *ijtihād* and *maqāṣid al-Sharī'ah*, revisions of the traditionally more predominant method of extension of law, *qiyās*, in context of Shāfi'īte four-source theory and employment of relatively more utilitarian tool, *maṣlahah*. Hence, the paper investigates the concepts of *munāsabah* and *taḥqiq al-manāṭ* vis-à-vis *maqasid al-Shari'ah*, employed by two most prominent advocates of *maqāṣid* thought in pre-modern scholarship, al-Ghazali (d. 1111 C.E) and al-Shatibi (d. 1388 C.E). Finally, the study attempts to locate the common ground between traditional theory of *ijtihād* and *maqāṣid al-Sharī'ah*, to explain the possibility of *maqāṣid* based *ijtihād* model.

Keywords: *Islamic Legal theory, uṣūl al-fiqh, maqāṣid al-Sharī'ah, ijtihād , munāsabah, 'illah, ratio-legis.*

1. Introduction

Uṣūl al-fiqh discerns the framework to deduce the legal rulings from the source material, primary and secondary, regarding the practical life. The examination of legal evidences yield knowledge of *Sharī'ah* rulings in the category of certitude or at least in the category of reasonable assumption.[1] The principal sources of Islamic law do not communicate much about the methodology part in clear terms, but is more concerned with the source material for the legal judgements and left the methodology part for the human rationale to discern and develop. So, *uṣūl al-fiqh* states the rational procedures of legal reasoning such as *qiyās* (analogical reasoning), *istiḥsān* (juristic preference) etc. and the linguistic rules for interpretation of the text (*dalālāt*) and inference making[2] to formulate a system of interpretation to read into the meanings intended by the Law-giver from the primary legal texts and extend those meanings and intents to the post-Prophetic times, generally termed as the theory of *ijtihād*. Classically, *uṣūl al-fiqh* proposes a theory or a set of theories which regulate the method of exercising *ijtihād* to address the new issues and their legal status in view of the primary source material, in addition to the rules of interpretation to ensure the correct reading of the source material.[3] The pre-modern models of *uṣūl al-fiqh*, of which the four-source theory of al-Shāfi'ī emerged as the imperial and reference theory, inclined more towards literalistic reading of the text, reduced the inclusive concept of *ijtihād* to *qiyās*, discouraged the usage of more nuanced and utilitarian tools like *istiḥsan* and most importantly abandoned the idea of *maqāṣid al-Sharī'ah* or at least pushed it to the fringes of the legal discourse. Furthermore, the problem of organic evolution of legal discourse vis-à-vis developments in Muslim societies and cultures was compounded by the development of the institution of *taqlīd* vis-à-vis the controversial idea of the 'closure of the gate of *ijtihād'*.[4] Arguably, with all these limitations in the pre-modern models and changing socio-political and economic dynamics vis-à-vis the advancements in the intellectual arena, the potential of *uṣūl al-fiqh* to translate the revelation into the general well-being of humanity was halted. Hence, a call for reform in the *uṣūl* theory, and therefore *maqāṣid al-Sharī'ah* has been argued as the most persuasive reform model. Secondly, in the debate of natural law in Islam, between the two major persuasions of hard natural law and soft natural law, contended between the ethical rationalists and ethical voluntarists, *maqāṣid al-Sharī'ah* plays a key role for the evolution of soft natural law theory.[5] Moreover, as the *maqāṣid al-Sharī'ah* restores the paradigm of original thinking, a fresh perspective of the correlation between legal theory and legal change is desirable. In this context, the paper endeavours to look into two authoritative voices of pre-modern *maqāṣid al-Sharī'ah* thought – al-Ghazali and al-Shatibi, their engagement with the traditional

theory of *ijtihād* (equated with *qiyās*) and the development of *maṣlaha*-based theory of *ijtihād*.

2. Statement of Problem

As *ijtihād* is the principal instrument to facilitate the continuous evolution of Islamic law with respect to legal change, it shapes the connect between the primary sources of the *Sharī'ah* and the novel issues of the changing world, and invokes a harmonious relationship between the revelation and reason.[6] *Ijtihād* is exercised in variety of ways, such as *qiyās, maṣlahah mursalah, istiḥsān* etc, with their own specific set of regulations. In other words, there is no single unanimous method for exercising *ijtihād*.[7] In this process, the textual evidences of the holy Qur'ān and the Sunnah take precedence over all other evidences and is the primary consideration for a jurist. If there is no *naṣ* (an unequivocal text in need of no interpretation) available, one may interpret the manifest text (*ẓāhir*) of the holy Qur'ān and the Hadīth using the principles of the general (*'ām*) and specific (*khāṣ*), the absolute and the qualified, and other considerations as appropriate. The *mujtahid* may turn to the actual (*fi'lī*) and tacitly endorsed (*taqrīrī*) *Sunnah* if there is no manifest text available, including the holy Qur'ān and the verbal *Sunnah*. if no, the judgement is grounded in *ijmā'* or *qiyās* founded in jurisprudential literature. In absence of such jurisprudential record, an original *ijtihād* in the mode of *qiyās* is exercised, turning back to the Qur'ān, the hadith, or the *ijmā'* for a precedent that has an *'illah* identical to that of the *far*' (i.e., the situation for which a resolution is required). Henceforth, the principle of *qiyās* is employed to determine the necessary ruling.[8] In the Shāfi'īte methodology, the jurist first examines the *nuṣūṣ* of the Qur'ān, then *mutawātir* hadīths and finally the solitary hadīths. Still deficient in necessary instructions, he should hold off on using *qiyās* until exhausting the Quran's manifest (*ẓāhir*) text. If he comes across a general manifest text, he must decide whether it may be made specific using hadith or *qiyās*.[9] However, if there is nothing that would limit the manifest text; he can use it as it is. In addition, the opinions of the *madhāhib* should be looked into in absence of manifest texts of holy Qur'ān and Sunnah. If there exists a consensus among *madhāhib*, he must implement it; if not, *qiyās* is employed with respect to the fundamentals of the *Sharī'ah* than to its supplementary details. If this is not practicable and all other attempts fail, he may use the concept of 'original absence of culpability' (*al-bara'ah al-aṣliyyah*). This process takes place realizing the norms that govern the conflict of evidence (*al-ta'āruḍ bayn al-adillah*), which requires the mujtahid's familiarity with the strategies used to resolve such disputes or, in the event where it is necessary, to eliminate one in favour of the other. The ruling so arrived at falls under one of the categories of obligatory, forbidden, reprehensible or

recommended.[10] It is an expression of the theory of *bayān*, summarized in five steps moving from *naṣ* to *ijtihād* (*qiyās*).[11]

Regarding the principal of *qiyās,*[12] the most significant of all the conditions is effective reason (*ʻillah*).[13] The effective reason for a ruling may be expressly stated, hinted at by the text, or established by consensus (*ijmāʻ*). There is no room for debate when the *ʻillah* is specifically mentioned in the primary source material. Only when the *ʻillah* is not mentioned in the sources do differences of opinion occur,[14] and hence consensus in invoked to determine the *ʻillah*. In absence of explicitly declared *ʻillah, ijtihād* is the sole method exercised to determine it. The jurist thus considers the characteristic of the *aṣl* qualified as appropriate (*munāsib*) is identified as the *ʻillah*. The *mujtahid's* method of deductive reasoning under these circumstances is referred to as *tanqīḥ al-manāṭ*, which is to be distinguished from two additional approaches known as *takhrīj al-manāṭ* (extracting the *ʻillah*) and *taḥqīq al-manāṭ* (ascertaining the *ʻillah*). This process of inquiry is generally tantamount to what is meant by some scholars of *uṣūl* as *al-ṣabr wa al-taqsīm* (elimination of the improper and assignment of the proper *ʻillah* to the *ḥukm*). *Tanqīḥ al-manāṭ* suggests that there may be multiple reasons for a judgement, and a jurist must determine the correct one (*munāsib*).[15]

In this debate on models of *ijtihād*, employment of *qiyās* as a tool for extension of law, within the concept of *qiyās* the debate regarding the discernment of '*illah*; the intersection of the theories of *munāsabah*, *manāt* and *maqāṣid al-Sharīʻah* registered a watershed moment in *uṣūl* history. Meanwhile, Ghazali and Shatibi being the champions of this thought process warranted a study to record and analyse this conversation between classical four-source theory, Ghazali and Shatibi, highlighting the common grounds and departures.

2. Objectives:

In this study the major objective is to highlight the theory of *ijtihād* as the methodical way to realize the contemporaneous nature of the *Sharīʻah* pointing towards its relevance to changing contexts. Henceforth, in this *uṣūli* debate *ijtihād* as a diverse system of interpretation and not a monolith has been introduced. In its evolution, the distinct methods and definition of the epistemes of exercising *ijtihād* are highlighted with special reference to the contributions of al-Ghazali and al-Shatibi. These two distinct approaches towards *ijtihād* have contributed in totality towards the development of the theory of *maqāṣid al-Sharīʻah* and acts as the pre-modern foundational sources for the modern *uṣūli* reform, for which Ghazali and Shatibi remain indispensable influences. This study charts the shift from conservative understanding of extension and

application of the *Sharī'ah* towards a libertarian one giving due recognition to the realization of public good (*maṣlaḥah*); marks the distinction and common points in this conversation between Ghazali and Shatibi vis-à-vis *ijtihād.*

3. Literature Review:

Ghazali and Shatibi have been studied in contemporary academy in which Ghazali is more popular as a sufi-philosopher and ethicist while Shatibi is popular as the master architect of *maqāṣid al-Sharī'ah*. Ghazali is yet to get his due as a master *uṣūli* and jurist in contemporary academy, only Hallaq in *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh*, Nyazee in *Theories of Islamic Law: The Methodology of Ijtihad*, Opwis in *Maslaha and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century*, Moosa in *Ghazali and the Poetics of Imagination* and few more have examined Ghazali – the legal theoretician. While in case of Shatibi, the major studies of the likes of Masud in *Islamic Legal Philosophy-A Study of Abu Ishaq al-Shatibi's Life and Thought*, Raysuni in *Imam al-Shatibi's Theory of Higher Objectives and Intents of Islamic Law* and Opwis in *Maslaha and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* are focussed on the greater project of Shatibi, *maqāṣid al-Sharī'ah*. In this perspective, this paper attempts to put forward the *uṣūli* intricate debate revolving around the concept of *ijtihād* and its philosophical undercurrents with reference to *maqāṣid al-Sharī'ah*, highlighting the contribution of Ghazali and Shatibi with special reference to *munāsabah* and *manāt* models. Consequently, the reception of this debate in modern times is evolving into a reformative model and distinct method of interpretation and extension of Islamic law, other than the imperial traditional *qiyās*-based *ijtihād*.

5. Methodology:

The discussion in this study primarily employs content analysis of the primary sources to highlight their perspectives regarding their models of *ijtihād*. Secondly, it employs historical analysis to locate the milieu and context in which the models of Ghazali and Shatibi evolved with reference to imperial four-source theory; followed by deciphering the conceptual frameworks and the origination of the fundamental concepts. In highlighting the shift from four-source theory to objectives theory, the methodological tools employed are explanatory and analytical, and at some places the method of comparison is exercised with respect to a specific conceptual problem faced by the two master *uṣūlis*. The primary and secondary sources are employed to build the argument and contemporary academic scholarship is invoked to record the

relevance for ongoing debate on *uṣūl* theory and reform project. The study develops the argument by locating *ijtihād-qiyās* equation in traditional *uṣūl* theory, investigates the identification of ratio-legis as the most important debate in *uṣūli* scholarship vis-a-vis *munāsabah* and *taḥqīq al-manāt* employed by Ghazali and Shatibi respectively; placing these procedures in their greater intellectual projects of reform, and finally concluding the relevance for modern reform project.

6. Research Outcomes/ Result/ Findings:

6.1 Identification of *'Illah* through *Munāsabah* and *Taḥqīq al-Manāṭ* (*Masālik al-'Illah*):

Since, the *Sharī'ah* rulings are causal (*mu'allal*) in their nature, both the directive and the legal cause ('*illah*) share the *Sharī'ah* value, hence seek an evidential validity. The evidences are invoked to prove the validity of '*illah* and the methods through which the legal cause is determined, is studied under *masālik al-'illah*. The methods are divided into major groups: valid/ certain (*saḥīḥah/ aṣl*) and probable (*zanniyyah*/ *mutawahimmah/ istinbāṭ*). The valid methods are further subdivided into *naṣ* (the text) and *ijmā'*(consensus), and the *naṣ* has further two sub-categories of explicit and implicit; to mean the ratio-legis (*'illah)* is underscored by the textual evidence, either explicitly or is inferred from the implicit textual evidence, and a third type of ratio-legis is decided by consensus; such a ratio was initially assumed; therefore, it has probability. However, it ceases to be contingent on consensus and becomes as certain as a ratio specified in the texts.[16] The probable methods are classified into five: *munāsabah* (suitability), *shabāh* (resemblance), *tard* (co-extensiveness), *dawrān* (rotation) and *ṣabr wa taqsīm* (observation and classification). As regards the process of *tanqīḥ al manāṭ - taḥqīq al manāṭ - takhrīj al manāṭ*, Ghazali treats them under a separate heading *ijtihād fìl 'illah*, while others treat it as another category under probable methods of *masālik al-'illah*.[17] The *uṣūlis* acknowledge the variety of modes of legal reasoning, some of which fall under the umbrella-word *qiyās* and others discussed under debatable categories like *istidlāl, istiḥsān*, and *istiṣlāh*.[18] The discernment of '*illah* or *ḥikmah* is core concern of these methods in a process towards establishing *Sharī'ah* value for a new case. Out of these probable methods we are here concerned with *munāsabah* and *tanqīḥ al-manāṭ*.

Munāsabah (suitability) is considered by many as the single most important method, also termed as *maṣlaḥah, ri'āyah al-maqāṣid* and *takhrīj al-manāṭ*. Ghazali championed this method and used it extensively to establish ratio-legis - the method which argues for determining of an '*illah* by undisputed rational means. Since,

suitability is a rational concept and stems neither from the explicit nor implicit meaning of the revealed writings, it cannot be universally applied to the law. In other words, reason and its outcomes may not always align with legal principles and their conclusions. Since the law isn't always interpretable and understandable in rational terms, suitability may occasionally be relevant to the law (*malā'im*) and occasionally be irrelevant to the law (*gharīb*). No ratio-legis may be deemed suitable if it is not relevant, and whichever irrelevant ratio is automatically rendered unsuitable, is not subject to further legal analysis.[19] Therefore, safeguarding public interest (*maṣlaḥah*) in line with fundamental legal principles is the primary objective of suitability. However, because the ratio isn't strictly textual, legists determine it through suitability, and is consequential of reasoning faculties vis-à-vis the spirit of Islamic law. The law is known to prohibit harm and to safeguard and enhance what is beneficial. The consistent pursuit of benefit and avoidance of harm are the objectives (*maqṣūd*) of the law, and it is to these objectives that the rational argument of suitability must adhere. But the law has many different objectives, some of which are more essential than others. Ghazali devised a tri-layered hierarchical classification; the first of these goals includes the essential and indispensable ones (*ḍarūrāt*), entailing the protection of religion, mind, life, property and progeny. It is complemented by a group of auxiliary goals that try to uphold and improve the primary goals. Any ratio-legis that is determined by suitability and falls under this category of legislation must be treated with corresponding rules. The second level, which consists of the necessary aims (*ḥajīyyāt*), are distinctive for the severe damage to *darurat* if left unattended; whereas their consideration maintains an orderly and law-abiding society. The third and least significant level, referred by Ghazali as improvements (*taḥṣīn, tawsi'a*) enhances the application of the *maqasid*.[20]

In conclusion, while suitability is a reasonable principle in itself, it must also adhere to the spirit of the law, which establishes the conditions and hence probability for 'suitability' to be accepted or rejected. The distinction between *malā'im* (relevant) and *gharib* (irrelevant) suitability is explained with reference to this consistency, since *gharib* is also a rational conclusion but irreconcilable with the spirit, and hence letter, of the law.[21] *Ijtihād* in terms of discernment of '*illah* implies employment of the rational faculties to investigate the basis (*manāṭ*) of the rule. Ghazali, most probably for the first time, divided the rational method to explore the '*illah* into three types: verification of the basis of the rule (*taḥqīq al-manāṭ*), refinement of the basis of the rule (*tanqīḥ al-manāṭ*) and derivation of the basis of the rule (*takhrīj al-manāṭ*); priorly the standard method to explore the *'illah* was through employment of textual implications (*dalālāt al-naṣ*), reasoning by literal interpretation (*istidlāl*) and analogy.[22]

6.2 *Maqāṣid al-Sharī'ah*[23] as a Soft Theory of Interpretation: Ghazali's Revisions

The four mainstream schools of law represent four different persuasions to interpret the legal content of Islam. These four methodologies emerged from two trends of classical times, namely *ahl al-ḥadīth* manifested in the methods of the schools of Malik, Shāfi'ī and Ahmad and *ahl al-rā'y,* the method of the school of Abu Hanifa; generally categorized into two broader theoretical models of interpretation, viz. *manhāj al-mutakalimūn* and *manhāj al-fuqaha',* respectively. The major distinctive feature between the two methods is that the model of *ahl al-rā'y* is founded on the use of general principles while as *ahl al- ḥadīth* focused on the literal interpretation of the texts. The model of *ahl al- ḥadīth* was championed by the four-source theory of al-Shāfi'ī.[24] In the process, the legal theory of al-Shāfi'ī dominated the school of *ahl al-ḥadīth*. Some trends within this school, of which the standard position of the literal interpretation of the text remains its distinguishing feature, pushed towards the extreme literalism by the extinct school of Dawud al-Zahiri by-passing the middle course taken by al-Shāfi'ī, and to some extent this literalistic tendency survived in the Hanbali school. It is this stated literalism and the allied problems of interpretation of this persuasion from where *maqāṣid al-Sharī'ah* model of thinking emerged.[25] It served two purposes for this school, firstly it defined the role and scope of human reason in lawmaking process and secondly, it contributed towards this school the potential to stay live, avoiding formalism and not letting it loose the sight of the emerging issues and challenges vis-à-vis the spirit of the law. It was by fifth century that the Shāfi'īte *uṣūli*-philosopher al-Ghazali came forth with this theory.

The theory of al-Shāfi'ī is generally typified as a 'strict theory of interpretation' for its emphasis on the methods of strictly literal interpretation. From the time of al-Shāfi'ī until the fifth century, the major contributions towards the *uṣūl* studies in the school of *mutakalimūn*, came in the shape of annotations and explanations upon the work of Shāfi'ī. By the fifth century, al-Ghazali emerged within this school with a greater project of revival of the Islamic sciences including the legal theory. Al-Ghazali, building upon the views of his teacher al-Juwayni, proposed a 'soft theory of interpretation' known as *maqāṣid al-Sharī'ah* or the theory of the purposes of the law. This theory of interpretation does not follow al-Shāfi'ī's theory in its totality, but is an original effort to construct a model characterised by flexibility, inclusivity and is intricately nuanced (against the simple reading of the texts and the issues at hand) than the former.[26] Nyazee highlights the contribution of al-Ghazali in these words:

The only way that the law found in the texts can be extended to all areas of human activity is through the general principles of Islamic law. These are found in abundance in the Qur'ān as well as the *Sunnah* of the Prophet. Al-Ghazali not only laid down methods for the identification of the principles of the Qur'ān and *Sunnah*, principles that ultimately point to the purposes of the law, but he also gave a detailed methodology to be used by the jurists for deriving the law from these general principles. All this could have been a part of al-Ghazali's grand scheme for the revival of religious sciences.[27]

The method used for the extension of the law to the various areas of human activity was *qiyās*, a strict syllogistic procedure practiced by the school of *mutakalimūn*. Ghazali opened the idea of strict analogy and introduced the concepts of *maṣlaḥah* and *maqāṣid* into the procedure of *qiyās.* In the illustration of his legal thinking, al-Ghazali authored some significant works like *al-Manqūl, Shifā al-Ghalīl, al-Mūstasfā and Tahdhīb al-Ūṣūl. Al-Manqūl* represents the thought processes of younger Ghazali overwhelmed by his teacher al-Juwayni. *Shifā al-Ghalīl* and *al-Mūstasfā* are representative of Ghazali's engagement with *uṣūl* theory and maps the evolution of his thought process; while as *Tahdhīb al-Uṣūl* was lost.[28] For the project of stating a interpretative theory, he argues in two of his seminal works *Shifā al-Ghalīl fi Bayān al-Shubh wa al-Mukhayyal wa Masālik al-Ta'līl* and *al-Mūstasfā min 'Ilm al-Ūṣūl*, the last one being one of the most important works of the *uṣūl* studies ever. Mapping the progression in legal theory of Ghazali, Hallaq opines existence of substantial differences on the theory of *ta'līl* and other aspects of his *uṣūl* theory in these works.[29]

Ghazali espouses the concept of *munāsabah*[30] in his system of legal reasoning to arrive at the legal cause. By *munāsabah*, it means a rationale, an inner meaning or an idea (*ma'na*) evidently intelligible to the intellect (*ma'qūl ẓāhirān fil 'aql*), that can be established clearly against the opponent by logical reasoning for the attribute of unreasonableness in his expression.[31] The suitable reason (*al-ma'āni al-munāsibah*) are those which point to the various aspects of public interest (*maṣāliḥ*) and to their emblems. The word *maṣlaḥah* is ambiguous since it can mean both seeking benefit (*jalb manfa'ah*) and avoiding harm (*daf' madarrah*), whereas the word *munāsabah* means taking into account an issue intended to achieve (*amr maqṣūd*). The two categories of the objective (*maqṣūd*) are religious (*dīni*) and worldly (*dunyāwi*), and within each category there are two dimensions of acquisition (*taḥṣīl*) and preservation (*ibqā*). A thing's discontinuity (*inqitā'*) is harm, and its preservation (*ibqā*) is to prevent harm. Acquisition is something that is referred to as seeking utility, and preservation is something that is referred to averting harm. As a result, the comprehensive phrase 'consideration of goals'

(*ri'āyah al-maqāṣid*) includes preservation (*ibqā*), avoidance of harm (*daf' al-qawāti'*) and acquisition (*taḥṣīl*).

All kinds of suitability return to the consideration of goals. *Munāsib* is something which refers to a goal; hence detachment from a goal excludes from being *munāsib*.[32] He then makes a connection between *munāsib* and the five fundamental principles (*kulliyāt khams*) that are taken into account in every religio-legal system. According to the argument, there must be objective of lawmaker, and its consideration falls under *munāsabah* in the context of the *Sharī'ah*. He continues that it is undeniable that the objectives of the *Sharī'ah* encompass the preservation of life, reason, off springs, property and religion.[33] In *Shifā*, Ghazali distinguishes *maṣlaḥah* from *munāsabah*. The former connoting seeking something beneficial, and eliminating what is harmful; while as the latter referring to the preservation of an objective. However, he recognizes *maṣlaḥah* with *munāsib* in *al-Mūstasfā*. He remarks:

Originally *maṣlaḥah* is seeking utility and removing harm, but we do not mean by that by it, for seeking utility and removing harm are the objectives of people, and their good lies in the acquisition of their objectives. By *maṣlaḥah* we mean preservation of the objectives of the *Sharī'ah* , and the objectives of the *Sharī'ah* are five-fold. Anything which involves preservation of these five principles (*uṣūl khamsah*) is *maṣlaḥah*, and that which causes the loss of these principles is *mafsadah*, and removing it is *maṣlaḥah*. When we apply the phrase *alma'na al-mukhil wa'l munāsib* in the chapter of *qiyās*, we mean by it this kind.[34]

Ghazali is not confusing *maṣlaḥah* with *munāsabah*. He clearly differentiates them by stating a sort of ambiguity attached to *maṣlaḥah*. In *al-Mūstasfā*, he reveals the kernel of *maṣlaḥah* and offers a definition in likeness with *munāsib,* probably his expression is either figurative or is compelled by the degree of likeness between the two.[35] In Hallaq's estimate, Ghazali's theory of *munāsabah* in *Shifā* and *al-Mūstasfā* differ significantly from one another. In *al-Mūstasfā*, he is noticeably less creative and more orthodox, and this conservatism appears to permeate every aspect of legal philosophy in this work. It is noteworthy that in *Shifā* he provides a thorough examination of the theme of *maṣlaḥah* and *ri'āyah al-maqāṣid* under the category of *munāsabah*, adopting *maṣlaḥah* as a formally acceptable premise. On the other hand, in *al-Mūstasfā* he drops reason as an important factor in defining *maṣlaḥah* by refusing to discuss it under *munāsabah* and shifts it to the chapter on *istiṣlāḥ*, where this principle is viewed as controversial, and reduced a significant avenue of reasoning to the realm of dubious legitimacy.[36]

In the methodological part of his theory, the major thesis for discernment and extension of the law is the method of *munāsabah*.[37] The concept of *munāsabah* is equated with the broader concept of *maṣlaḥah,* to mean accomplishing the good (*jalb al-manfaʿah*) and repulsion of evil (*daf' al-maḍarra*).[38] *Munāsabah* as a method advocates reasoning from general principles of law and is subdivided into two authentic processes of extension of law, *munāsib muʾathir* and *munāsib mulāʿim*, and a disputed one – *gharībah*.[39] *Munāsib muʾathir* is the principle stated explicitly in the text,[40] employed through *qiyās al-maʿani* and *qiyās al-ʿillah*. This part of the theory of *munāsabah* is accepted and utilized by all major jurists who validate *qiyās* as a legitimate legal method, discussed in the books of *uṣūl al-fiqh* under the rubric of *qiyās*. Nevertheless, the principles are stated expressly in the text but are limited.[41] In case of *munāsib mulāʿim,* it is subdivided into two: *mulāʿim* and *istidlāl al-mursal*.[42] In the method of *mulāʿim,* the principles are derived vis-à-vis general propositions cum *maqāṣid* of the law. In this case, the innovative part are the conditions to qualify the principles as argued by Ghazali. It is through these rules that an unstable cause rooted in *ḥikmah* qualifies as more stable and falls in line with the rest of the law. The two conditions are: Firstly, the derived principle should confirm with *maqāṣid al-Sharīʿah*, to qualify the principle as *munāsib.* Secondly, the derived principles should not confront the general practices of law, to mean they should be consistent with the rest of the law. The second part of *munāsib mulāʿim* is *istidlāl al-mursal*. The principles are not directly derived from the texts, but are principally identified on the basis of their degree of conformity with the universal propositions of the law and *maqāṣid al-Sharīʿah*. In addition, there are three more conditions to qualify them as *munasab mulāʿim* and prevent them from falling under the rejected category of *Gharīb*; firstly, it ought not be *gharīb*; secondly, not clash with the text and thirdly, not endeavour to modify the implication of the legal text - the general propositions and the principles of the law.[43]

In Ghazalian model, this innovative part devises the mechanism that restricts the irrepressible use of human agency of *ḥikmah* (rational process), for the derivation of the principles by demanding the conditions of *munāsabah* and *mulāʿamah*.[44] The two concepts of *mulāʿim* and *istidlāl al-mursal* are not new in their conceptualization, as shown by al-Ghazali, but in the theorization as a well-defined methodology of extension of law. In this method,[45] al-Ghazali opines, *mulāʿim* is an agreed upon method while as *istidlāl al-mursal* or *maṣlaḥah al-mursalah* are a disputed one, employed by the Maliki school and disputed by Shāfiʿī, majorly**.**

6.3 *Maqāṣid al-Sharī'ah* and the Theory of *Ijtihād* (Discernment of the Basis of Ratio-Legis/ '*Illah*): Shatibi's Scheme of Reconstruction of Legal Theory

Shatibi's interest in *uṣūl al-fiqh* was fashioned by the impression of methodological and philosophical inadequacy of *uṣūl al-fiqh* to cope up with the challenge of legal-cum-social change.[46] Shatibi proposed the concept of *maṣlaḥah* as the essential and common-ground between legal obligations, legal and social change, and the method of legal reasoning. Shatibi acknowledged the traditional classification of *maṣlaḥah* but questioned the limitations levelled against it. The fundamental elements of Shatibi's concept of *maṣlaḥah* are: (1) attention for the necessities of man, (2) the rationality of legal commandments and the responsibility of man, (3) protection from harm, and (4) consistency with the objectives of the law-giver. His elaborations of the concept of *maṣlaḥah* were befitting to his understanding of social-cum-legal change. Regarding the change in human societies, he maintained, changes are fundamentally a product of human needs. When these changes go beyond the provisions of the rules of law or become too complicated for the existing law, a jurist is compelled to examine the law and legal theory as they relate to the changes in question.

Shatibi defines *ijtihād* in terms of the process of legal change, and divides it into four types and arrives at a novel conclusion about the principle of *ijtihād*, as Masud maintains, the relation between Shatibi's legal theory to the problem of adaptability of Islamic legal theory as a response to social change, not drawing on the tool of *murā'at al-khilāf*. In his broader scheme, *ijtihād* offers a method to cater legal change; *maṣlaḥah* gives a basis and direction to change; and the concepts of *bid'ah* and *ta'abbud* defines the limits of social and legal changes.[47] In Shatibi's legal theory, *maqāṣid al-Sharī'ah* is a principal concept through which he attempts to ascertain *maṣlaḥah* as the bedrock of *maqāṣid* theory, and by extension of the law itself. In establishing this premise, he wrestles with two significant questions of the relativity of *maṣlaḥah* and the relationship of *maṣlaḥah* with legal responsibility. Contradicting the implications of theological determinism and relativity of *maṣlaḥah*, he analyses the problem at two levels of the lawgiver and the subject of the law. At the first level, it is the Lawgiver who decides what is *maṣlaḥah*, which is not absolute and is exclusive for all times to come. While at the level two, the objective of the *mukallaf* is to abide by the *maqāṣid al-Sharī'ah* . Hence, he categorizes

the *maqāṣid* into two classes: the intent of the Lawgiver and the intents of the subject of law.[48]

- **Intention of the Law-Giver (*Qaṣd al-Shārī'*):**[49] It consists of four aspects:

1. Higher Objective of Instituting the Law: The purposefulness of God in revealing the law is to safeguard man's interests, both mundane and religious, are divided into three categories: *ḍarurāt*, *ḥājiyyāt* and *taḥsiniyyāt*. The subject matter is *maṣlaḥah,* its meaning, classification, characteristics and nature.

2. Higher Objective of General Intelligibility (*ifhām*) of the *Sharī'ah*: The *Sharī'ah* is comprehensible in its language (the significance of Arabic vis-à-vis the idea of *ummīyyah*). Only in the light of the principles, modes of expressions of the language can the *ummīyyah* status of the holy Qur'ān and Sunnah be understood. And if there is no norm to guide interpretation of the holy Qur'ān, then whatever interpretation is chosen must not be in conflict with any other convention or be foreign to Arab customs. The *Sharī'ah* must not be elitist, but should be comprehensible to laypeople as well. It discusses the semantics of the subject of obligation (*taklīf*), under two sub-categories of *al-dalālah al-aṣlīyyah* (essential meanings) and *ummīyyah* (intelligible to commonality).

3. Higher Objective in Establishing Law to Demand Legal Responsibility (*taklīf*): The law is revealed to demand full obedience from the Muslims. However, adherence would not be feasible unless the requirements of God's law were reasonable given what believers could handle. The question of *taklīf* in reference to *qudrah* (power), *mashaqqah* (hardship) etc. is discussed under this objective.

4. Higher Objective in Recognizing the Propensity of the Subject of Law: Shatibi argues that the upright life cannot be accomplished by indulging in personal caprices and desires. It discusses the natural drives and instincts of the subjects, *huzuz* and *hawa*, with respect to following the law, *ta'abbud*. Under this objective, Shatibi, argues for the universality of the *Sharī'ah*, which is inclusive of all the interests of the seen and the unseen world. Hence, it obligates the submission of humanity before its authority in all respects, to bring happiness of both the worlds.

Objectives of the Legal Subject (*Qaṣd al-Mukallaf*):[50]

Under this category, *qaṣd al-mukallaf,* Shatibi deals with the question of intentions and acts of the legal subject, and establishes the inseparability of the actions from their intentions as the principle; actions holds no *Sharī'ah* value in absence of an intention. This

implies that legal commands must be carried out in conformity with the intents of the Lawgiver. Therefore, the individual's objectives in carrying out the law, based on the three universals - *ḍarurāt, ḥajīyyāt, and taḥsiniyāt*, should be consistent with God's intentions of promoting and maintaining these universals i.e., human interests, that a legal subject would be held accountable for. Thus, the person is God's representative on Earth and represents God in promoting social welfare by confirming His goals. Shatibi believed that he would be breaking the law if he attempted application of the law in a manner not intended by the Lawgiver. On the negative side of the equation, if anybody attempts to achieve the goals other than ones laid down by the law through the stipulated obligations, has actually violated the law.[51] In his framework of *maqāṣid al-Sharī'ah* vis-à-vis traditional *ūṣūli* methodology, Shatibi employed the concept of *maṣlaḥah* to free the Islamic legal theory from the rigidity and limitations with relation to the extension of the law by re-examining and re-stating the conventional premises and inter-play of theology, linguistic rules and logic.[52]

6.4 Redefining the Process and Scope of *Ijtihād*: The Shatibian Model

The conundrum remains how do we find a connect between the *qaṣd* of the Lawgiver and the subject of the law in the issues not determined by the text. This is where the theory of *maqāṣid* comes into play largely, and specifically the sub-category of Shatibi's *maqāṣid* based *ijtihād*, i.e., *ijtihād* rooted in *manāṭ*. For Shatibi, understanding the theory of intentions (*maqāṣid al-Sharī'ah*) in its entirety is an indispensable requirement for exercising *ijtihād* . Still the question remains, in the mechanics of exercising *ijtihad* - where does a *mujtahid* employ the theory of *maqāṣid* to extend the *Sharī'ah* value. In response to this query, Shatibi engages with the theory of *tanqīḥ al-manāṭ*[53] vis-à-vis his theory of *maṣlaḥah*, one of the important methods to discern '*illah* and hence the extension of the *Sharī'ah* value, generally included under the chapter of *masalak al-'illah* in the books of *uṣūl*.

He broadly classifies *ijtihād* into two main categories: that in which *ijtihād* may be needed continuously and that in which *ijtihād* may come to an end. The first form, referred to as *taḥqīq al-manāṭ*, is unanimously practiced by all jurists in their respective fields. It denotes the examination and confirmation of the locus of legal rule. This kind of *ijtihād* can never end because without it, legal regulations are reduced to mere theoretical and mental constructs that have nothing to do with actual application, which renders the law meaningless. *Taḥqīq al-manāṭ* is the process of discerning the essential character of a case and its execution in the external world. The second category of *ijtihād* that may come to an end is further

divided into three categories, the first is known as *tanqīḥ al-manāṭ*, which refers to the identification of the ratio-legis insofar as it is separated from characteristics that are associated with it in the texts. The second category, referred to as *takhrīj al-manāṭ*, also referred as *al-ijtihād al-qiyāsi*, studies the texts to draw out what would otherwise be an unspecified ratio-legis. The third category is an extension of the first major kind, *taḥqīq al-manāṭ*, being more nuanced and precise form of *ijtihād*. Precisely, it relates to the subject of the law vis-à-vis individual and particularized context of the subject. It is the job of a *mujtahid* to examine these particular situations and apply the most appropriate law. This third category seems to be unique in a way that that it finds no place in earlier *uṣūl* works. Shatibi advances a lengthy discussion in support of this category, invoking the Prophetic examples, who provided a variety of responses to the same questions with respect to the context of the questioner.[54]

In the estimate of Masud,[55] because of the dependence of method of legal reasoning on the legal provision, any new case is to be examined with relation to these provisions for their validation or otherwise. The provisions may be implicit or explicit; implicit in form of general rules or absence of any prohibition. It is this nature of these provisions which justify the continuity of *ijtihād* or otherwise. It is explained by showing how the fundamental components of the new case correspond with the basis of the legal provision. These legal bases, called as *manāṭ*, are either explicit or are known through further application of *ijtihād*.

In reference to these *manāṭ*, Shatibi divides *ijtihād* into four categories:

1. *Taḥqīq al-Manāṭ al-ʻĀm*[56] (General Verification of the Basis of the Rule of the *Sharīʻah*).
2. *Taḥqīq al-Manāṭ al-Khāṣ*[57] (Verification of Individualized and Particularized Aspects of the Rule).
3. *Tanqīḥ al-Manāṭ*[58] (Refinement of the Basis of the Rule).
4. *Takhrīj al-Manāṭ*[59] (Deduction of the Basis of the Rule).

Shatibi maintains that in these four categories, the first one, *taḥqīq al-manāṭ al-ʻaām*, is ever continuing, while as the continuity of the rest three, *taḥqīq al-manāṭ al-khāṣ*, *tanqīḥ al-manāṭ* and *takhrīj al-manāṭ*, depends on their need and novelty of the new issues, and this is what justifies the principle of *ijtihād*.[60] While as with reference to the legal material required for *ijtihād*, Shatibi explains three processes of *ijtihād*. First, the process of drawing inferences from the scripted legal material (*nuṣūṣ*), which necessitates the knowledge of Arabic language. Knowing Arabic language primarily, Shatibi

maintains, does not mean knowing the grammar, syntax etc. but the understanding of the Arab usage.[61] The second process of *ijtihād* does not directly concern the legal text but the law, which necessitates the knowledge of *'ilm maqāṣid al-Sharī'ah.* With respect to four categories of *manāṭ*-based *ijtihād*, this process concerns the *taḥqīq al-manāṭ* and *takhrīj al-manāṭ*. The third is the process of deduction and does not require the above-mentioned qualifications. In this process, the verified basis of the rule (*manāṭ*) is applied to the specific case, involving two premises: *taḥaqquq al-manāṭ* (investigation of the basis of the rule) and *taḥakkum* (the judgement). Shatibi explains that the process of deduction involved in this category should be seen distinctly from the method of logicians.[62] Meanwhile, Shatibi rejects any requirement of the science of logic, while as reiterates knowledge of Arabic language and *maqāṣid al-Sharī'ah* as the absolute necessity for exercising *ijtihād* **.**[63] In his scheme of extension of law, Shatibi accentuates the need to integrate the higher objectives (*maqāṣid al-Sharī'ah*) with the bases of legal judgements (*'ilal*) to broaden the scope of *ijtihād* vis-à-vis the proper application of the *Sharī'ah*. Al-Raysuni, while corroborating the same, opines 'if we simply take texts literally or at face value, we restrict their domain and diminish what they have to offer. If, on the other hand, we understand them in light of their bases and objectives, they become an abundant reservoir of aid and guidance: the door to *qiyās* is opened wide, as is the door to *istiṣlāḥ*, and the legal rulings take their natural course in achieving the higher objectives of the Lawgiver by bringing benefits and preventing harm.'[64]

7. Conclusion

In context of overwhelming debates in the field of Islamic legal theory, the engagement of the academic scholarship with the theme of *ijtihād* vis-à-vis the conceptions of *maṣlaḥah* in the pre-modern and modern scholarship, the paper endeavors to analyze the attempts to integrate the theory of *ijtihād* with *maqāṣid al-Sharī'ah* as a stride towards establishing a parallel system of legal thinking to replace the strict *qiyās* based *ijtihād* in the later part of Islamic intellectual history, looking into the contributions of Ghazali and Shatibi. By the 5-6th century A.H, the legal theory had matured to its fullest, the contentions about the legal epistemology and hermeneutical principles had settled, and each methodological school provided an advanced system of inference. So, the scholarly attention thus shifted to methods of reasoning, generally subsumed under the category of *qiyās*. In articulation of this part of legal theory, Ghazali provided some significant insights about ratio-legis, how do we conceptualize it, ascertain it from different sources and extend the legal norm based on the ratio. Ghazali seemingly did not fiddle with the general broader epistemological structure of the traditional *uṣūl*

al-fiqh to replace it with an independent-cum-libertarian *maqāṣid* model of legal philosophy, rather he attempted advancing the concept of *ijtihād*, defining it in broader terms than just being an equivalent of *qiyās* arguing from the reference of *munāsabah-maṣlaḥah* equation, what may be called as the shift from a strict-theory of interpretation towards a soft-theory of interpretation, to bring in more nuances in legal thinking. The attempt was to develop a soft theory of interpretation but not at the cost of his theological (Asharite) position of ethical voluntarism**,** which informs the fundamental assumption of invalidity of human reason to work more autonomously, cementing the textual-literalism in traditional *uṣūl* model. He was more concerned about reviving a broader working space for *ijtihād* than just being a tool of syllogism. Therefore, to address the relevance of *ijtihād* to developing world of Islamic civilization, Ghazali introduced the concept of *maṣlaḥah* in the mode of *ijtihād*-exercising, albeit he is very cautious about not giving a greater role to human reason and hence siding more towards the Shāfi'ī textualism. In his *maqāṣid* based legal theory, Ghazali actually restricted the use of reason by denying textually neutral *maṣlaḥah* an inherently independent epistemological value.

Although Shatibi is an ethical voluntarist too, but his voluntarism is more liberal than the mainstream Ash'arism or that of Ghazali's, standing more towards employing the argument of skepticism against argument of authority of human rational capacity, while not choosing the argument of moral relativism. The general context he lived in, pushed him to revisit the legal theory at large and specifically the concept of *ijtihād* and its underlying assumptions which limited the scope of original legal thinking. Early in his career, Shatibi realized the failure of traditional *uṣūli* model in meaningfully addressing the emerging issues of social change and politico-economic problems. This failure of the *uṣūli* model, he ascribed to the employment of strict text-based analogy (*qiyās*) for extension of law while overlooking the higher objectives of the *Sharī'ah*. So, in his scheme of the extension of law, Shatibi placed the doctrine of *maqāṣid al-Sharī'ah* at the very center of his thesis. To arrive at the legal ruling by deciphering the basis of the legal rule, Shatibi used the *manāṭ*-model, *taḥqīq al-manāṭ*, *tanqīḥ al-manāṭ* and *takhrīj al-manāṭ* vis-a-via his theory of *maṣlaḥah*. Shatibi acknowledged the Ghazalian classification of *maqāṣid* but contested the strict textual orientation of his *maqāṣid* theory; Shatibi proved to be more libertarian in giving the human faculty of reason a share in legal thinking. In the modern era, with the unprecedented assault of colonial modernity on the traditional legal institutions, legal thinking and production of legal knowledge, the process of reformation to reclaim Islamic law started with Muhammad 'Abduh's efforts. This process of reformation engaged a whole lot of *'ulama'*, jurisprudents

and scholars alike including Rashid Rida, ibn Ashur, Jamal al-Din Qasimi, 'Allal al-Fasi, Subhi Mehmasani, Abd al-Wahab Khallaf, Abu Zahra, Mahmud Muhammad Taha etc. to re-envision the Islamic legal theory and the premises of Islamic law, majorly drawing upon the *maqāṣid*/ *maṣlahah* theses of al-Ghazali and al-Shatibi.

Notes and References

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[1] Taha Jabir Al-Alwani, *Source Methodology in Islamic Jurisprudence* (New Delhi: Al Ittehad Publications, 2010), 1.

[2] Abu Zahra, *Uṣūl al-Fiqh* (Dar al-Fikr al-'Arabi, 1985), 3, 7-9.
Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1997), p. 1.

[3] Abu Zahra, *Uṣūl,* 11-12. Kamali, *Principles*, 3.

[4] For a detailed and critical analysis of these developments in the field of legal theory, see Muhammad ibn Idris al-Shāfi'ī, *Al-Risalah*, Tr. Majid Khadduri (United Kingdom: The Islamic Texts Society) 295-310; Mohammad Hashim Kamali, "Issues in the Legal Theory of Uṣūl and the Prospects for Reform", *Islamic Studies*, Vol. 40, No. 1(Spring 2001): 5-23. Mohammad Hashim Kamali, "Methodological Issues in Islamic Jurisprudence", *Arab Law Quarterly*, Vol. 11, No. 1, (1996): 3-33. Dr. Younes Soualhi, "The Uṣūli Thought Between Dynamicity and Rigidity-A Critical Analysis", *Hamdard Islamicus*, Vol. XXIX, No. 3: 57-69. Fazlur Rehman, *Islamic Methodology in History*, (Pakistan: Islamic Research Institute, 1984), 149-191. Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Uṣūl al-Fiqh*, (Cambridge: Cambridge University Press, 1997), 16-35.

[5] Anver Emon, *Islamic Natural Law Theories* (Oxford: Oxford University Press, 2010), 123-146.

[6] *Ijtihād* is 'the total operationalization of jurist's efforts in order to infer, with a degree of probability, the rules of the Sharī'ah from their detailed evidences in the sources.' It also refers to a jurist's employment of all his faculties, either in inferring the rules of the Sharī'ah from the sources or in employing such rules and relating them to a particular situation. (Abu Zahra, *Uṣūl*, 379. Kamali, *Principles*, 367).

[7] Kamali, *Principles*, 379.

[8] Kamali, *Principles*, 379.

[9] Al-Shāfi'ī, *Al-Risalah*, 288-294.

[10] Kamali, *Principles*, 379-380.

[11] Al-Alwani, *Source Methodology*, 36-38.
Lowry states the theory of *bayān*, as the central thesis of *Risālah*, to mean 'the entirety of the law resides in two texts, the Qur'ān and the Sunna, and all legal rules are expressed by one of five possible combinations of those two textual sources. Those combinations are the following:

(i) Qur'ān alone.
(ii) Qur'ān and Sunna together, each expressing the same rule.
(iii) Qur'ān and Sunna together, whereby the Sunna explains what is in the Qur'ān.

(iv) Sunna alone.
(v) Neither, in which case one engages in legal interpretation, *ijtihad.* [see, Joseph Lowry, *Early Islamic Legal Theory: The Risāla of Muhammad ibn Idris al- Shāfi'ī* (Leiden: Brill, 2007), 24.]

[12] Qiyās is defined in terms of the extension of a *Sharī'ah* value from original case (*asl*) - whose *Sharī'ah* value is determined by the primary legal indicants directly, to a new case (*far'*) - whose *Sharī'ah* value is not addressed by the primary legal indicants, by invoking the common effective cause ('*illah*), to establish the legal position (*ḥukm*). A certain legal text governs the original case, and *qiyās* strives to apply the same textual ruling to the new case. The application of *qiyās* is justified by the fact that the original case and the new case share the same effective cause, or *'illah.* Although a rationalist theory, the textual imports of the divine revelation take precedence over the ones reached at by employing human faculty of reason (*rā'y*). Finding a shared *'illah* between the original and the new case is the principal area in which human rational faculty operates in *qiyās*. Once the '*illah* is determined, invoking the principle of analogy requires the ruling of the relevant text be followed without any intervention or change. Generally, the jurist while utilizing *qiyās* pays little attention to the *maqāṣid* aspect of the *Sharī'ah,* the aspect which is in harmony with reason. Hence, any rational approach to the discovery and identification of the *maqāṣid* demands recourse to human intellect and judgement in the assessment of the *ahkām.* (see, Abu Zahra, *Uṣūl*, 218. Kamali, *Principles*, 197-198).

[13] 'Abd al-Wahhab Khallaf, *'Ilm Uṣūl al-Fiqh* (Egypt: Dar al-Fikr al-'Arabi, 1996), 61-62. Kamali, *Principles,* 206-207.
In the books of *usul*, it is generally defined as the quality of the *asl* that is consistent, obvious, and has an appropriate (*munāsib*) link to the legal rule of the text (*ḥukm*). The *'illah* is also known as *sabab*, *manāṭ al-ḥukm* (i.e., the cause/basis of the *ḥukm*), and *amarah al-ḥukm* (sign of the *ḥukm*). (Khallaf, 61-62; Kamali,206-207)

[14] Abu Zahra, *Uṣūl*, 243-245. Kamali, *Principles* 211.

[15] Abu Zahra, *Uṣūl*, 245-246, Kamali, *Principles*, 213-214.

[16] Abu Zahra, *Uṣūl*, 243-244. Wahbah Al-Zuhayli, *Uṣūl al-fiqh al-Islami* (Damascus: Dar al-Fikr, 2015), vol. I, 657. Khallaf, *'Ilm*, 82-83. Hallaq, *Islamic Legal Theories,* 88.

[17] Ahmad Hasan, *Analogical Reasoning in Islamic Jurisprudence: A Study of Juridical Principle of Qiyās* (New Delhi: Adam Publishers and Distributors, 2009), 232-233.

[18] Hallaq, *Islamic Legal Theories,* 83.

[19] Hallaq, *Islamic Legal Theories,* 88-89.

[20] Hallaq, *Islamic Legal Theories,* 88-89.

[21] Al-Zuhayli, *Uṣūl,* vol. I, 642-656. Hallaq, *Islamic Legal Theories,* 90.

[22] Hasan, *Analogical Reasoning,*354.

[23] For a detailed introduction of *maqasid al-Shari'ah* and some debates revolving around it, see Mohamed El-Tahir El-Mesawi, *Maqasid Al-Shari'ah: Meaning, Scope and Ramifications*, Al-Shajarah, ISTAC Journal of Islamic Thought and Civilization, Vol. 25, No. 2, 2020; Yasir S. Ibrahim, 'An Examination of the Modern Discourse on Maqasid al-Shari'a', *The Journal of the Middle East and Africa*, 5:1; Jasser Auda, *Maqasid al-Shari'ah: A Beginner's Guide*, *Maqasid al-Sharī'ah as Philosophy of Islamic Law: A System's Approach* (Washington: IIIT, 2008); Mohammad

Omar Farooq, *Towards Our Reformation From Legalism to Value-Oriented Islamic Law and Jurisprudence* (IIIT, Virginia, 2011); Mohammad Hashim Kamali, 'History and Jurisprudence of the Maqasid: A Critical Appraisal', *American Journal of Islam and Society*, 38, nos. 3-4:8-34.

[24] Joseph Lowry contests the theory of four-source attribution to Shāfi'ī and argues for the theory of *bayan* as the central thesis of *Risalah*, not the four-sources theory. In his view, it is the theory of *bayan* that explains the process of legal interpretation in five hierarchical steps of discerning the law through five modes of Qur'an-Sunnah combinations, which is a two-source based theory. See, Joseph Lowry, *Early Islamic Legal Theory*, 23-46. Joseph Lowry, "Does Shāfi'ī have a Theory of Four Sources of Law?" in *Studies in Islamic Legal Theory*, ed. Bernard G. Weiss, (Leiden: Brill, 2002), 23-50.

[25] Nyazee, *Theories*, 147.

[26] Nyazee, *Theories*, 185-186.

[27] Nyazee, *Theories*, 190.

[28] George Hourani, "A Revised Chronology of Ghazali's Writings", *Journal of the American Oriental Society*, 104 (1984), 289-302.

[29] Wael Hallaq, "Uṣūl al-Fiqh: Beyond Tradition", *Journal of Islamic Studies*, 3:2 (1992), 172-202.

[30] *Munāsib* means that which proceeds the line of human good (*minhāj al-masālih*) in a way that when a rule is attributed to it, it becomes uniform (*intazama*). As an illustration, wine was prohibited for the reason that it disturbs the faculty of reason of man which is the basis of legal obligation. Thus, intoxication is a suitable (*munāsib*) quality for its forbiddance. But if someone argues that it has been forbidden because it produces foam or is preserved in a jar, these qualities cannot be taken as suitable for prohibition. [Abu Hamid Al-Ghazali, *Al-Mūstasfā*, (Cairo, 1937), Vol. II, 77].

[31] Abu Hamid Al-Ghazali, *Shifā al-Ghalīl*, ed. Ahmad al-Kubysi, (Baghdad: Matba'a al-Irshad, 1971), 143.

As an example for this method, the Qur'an forbids wine for its reason of affecting intoxication, henceforth incapacitates the mind, leads to evil behavior and neglect of religious duties (2:219, 4:43, 5:90-91). Even, if the Qur'an had been silent for the rationale of this prohibition, it would have been intelligible to understand the rationale of this prohibition. This is what Ghazali argues as the reasoning on the basis of suitability, which can discern the harm independently of the revelation. Using the agency of *munasabah* and *maqasid al-Shari'ah* (the protection of the integrity of the mind), Ghazali would declare all kinds of intoxicating drinks (not mentioned in the Qur'an) as prohibited for the rationale of intoxication being the sole rational cause of prohibition. (*Al-Mustasfa*, 1:118)

[32] Ghazali, *Shifā*, 159.

[33] Ghazali, *Shifā*, 160.

[34] Ghazali, *Al-Mūstasfā*, Vol. I, 139-140.

[35] Hasan, *Analogical Reasoning*, 253-254.

[36] Hallaq, "Uṣūl al-Fiqh", 172-202.

Opwis notes this difference in these words, 'the main difference between the discussion of *maslaha* in *Shifa* and *al-Mustasfá* is one of approach. In *Shifa*, al-Ghazali starts out with determining the ratio legis to end up with questions of the purposes of the law, whereas in *al-Mustasfa* he first elaborates on the purposes of the law and then explains how to identify these correctly as rationes legis of rulings. Apart from use of technical terminology and

categories, the two treatises also differ in the extent to which decisions based on considerations of *maslaha* constitute valid law.' (Felicitas Opwis, *Maslaha and the Purpose of the Law – Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century*, Leiden, Brill, 2010, 65)

[37] Ghazali, *Shifā,* 142-264.

Munāsib, translated as suitability, is categorized into two sub-categories: the concrete propositions (*haqiqi 'aqli*) and convincing norms (*khayali iqna'i*). *Haqiqi 'aqli* are qualified through an investigative process which determine its convincing case for its convincing propositional value and its suitability (*munāsabah*). While as *khayali iqna'i* during the course of investigation do not qualify the qualities of *haqiqi 'aqli,* but are qualifying the ethical and moral values. With relation to *maqāṣid al-Sharī'ah* , the *haqiqi 'aqli* constitute the *darurāt* and *hajat*, while as *khayali iqna'i* constitute the *tahsinat*. (see, *Shifā,* 172. *Theories,* 212-214).

[38] Ghazali, *Shifā,* 159.

[39] Ghazali, *Shifā,* 158.

[40] Nyazee, *Theories,* 214.

[41] Nyazee, *Theories,* 215.

[42] Ghazali, *Shifā,* 188. Nyazee, *Theories,* 215.

[43] Nyazee, *Theories,* 217-218.

[44] Nyazee, *Theorie,* 216-217.

Anver Emon states the status of the authority of reason in Ghazali's scheme as, 'the *munasabah* both enables and limits the role of reason in al-Ghazali's model of practical reasoning'. (Anver Emon, *Islamic Natural Law Theories*, p. 145).

[45] Ghazali, *Shifā,* 188. Nyazee, *Theories,* 211-212.

[46] Masud, Mohammad Khalid. *Islamic Legal Philosophy-A Study of Abu Ishaq al-Shatibi's Life and Thought*, (Delhi: International Islamic Publishers, 1989), 101.

Al-Shatibi took keen interest in the problems relating to Islamic legal theory and majorly focussed on the legal procedures used by Maliki jurists to address the issue of social change from the reference point of Maliki *uṣūl* theory. One of the legal concepts used, *murā'at al-khilaf*, admits the diversity of opinions as a fact, in terms of the legal device to accommodate the novel social practices. But Shatibi equates using this tool equivalent to negating the very basis of the law and henceforth he puts forward his doctrine of *maqāṣid al-Sharī'ah* as the legal mechanism to engage with the problem of social change. He assessed the traditional legal theory in light of *maqāṣid al-Sharī'ah* to conclude inefficiency of the methods of *qiyās* and consequent use of *murā'at al-khilaf* as well. (see, Masud, *Islamic Legal Philosophy,* 317-319).

[47] Masud, *Islamic Legal Philosophy,* 317-322.

[48] Al-Shatibi, Abu Ishaq. *Al-Muwāfaqāt*, Dar Ibn Hazm, Beirut, 2014, 200-201. Masud, *Islamic Legal Philosophy,* 223-224, 233-234. Ahmad Al-Raysuni, *Imam al-Shatibi's Theory of Higher Objectives and Intents of Islamic Law* (Virginia: International Institute of Islamic Thought, 2006), 107-134. Hallaq, *Islamic Legal Theories,* 181-182.

[49] Al-Shatibi, *Al-Muwāfaqāt*, 201-378. Al-Shatibi, *Al-Muwāfaqāt* 107-128.

[50] Al-Shatibi, *Al-Muwāfaqāt,* 380-440. Al-Shatibi, *Al-Muwāfaqāt,* 128-134.

[51] Hallaq, *Islamic Legal Theories,* 184-185. Al-Raysuni, *Imam al-Shatibi's Theory,* 129-130.

[52] Masud, *Islamic Legal Philosophy:* 289-290.

[53] *Tanqiḥ* literally means to purify, whereas *manāṭ* is another name for '*illah*. *Tanqiḥ al-manāṭ*, in its technical sense, refers to the process of 'connecting the new case to the original case by removing the discrepancy between them' (*ilhāq al-far' bi al-asl bi-ilghā al-fāriq*). The extraction of the *'illah*, or *takhrij al-manāṭ*, comes before *tanqiḥ al-manāṭ* and is the first step examining the identification of the *'illah*. The jurist determines the effective cause in every instance when the text or *ijma* fails to do so by examining the pertinent causes according to the modes of *ijtihād*. If he ends up at concluding multiple causes, he proceeds to the next stage, which is to isolate the correct cause. In *takhrij al-manāṭ*, the jurist is dealing with a circumstance where an *'illah* is not identified; whereas, in *tanqiḥ al-manāṭ*, multiple causes are recognised, and the jurist's role is to choose the appropriate *'illah*. (Abu Zahra, *Uṣūl*, 245-246. Wahbah Al-Zuhayli, *Uṣūl al-fiqh al-Islami*, vol. I, 657-659. Kamali, *Principles,* 213-214).

[54] Al-Shatibi, *Al-Muwāfaqāt*, 674-677. Hallaq, *Islamic Legal Theories,* 199-202.

[55] Masud, *Islamic Legal Philosophy,* 308.

[56] *Taḥqīq al-Manāṭ al-'Aām*: It means to verify the application of rule of law after it has been established by its legal source (*mudrak al-Shar'i*), i.e. the text, consensus and analogy in the subject (*mahal*) of the law by examining its basis in the general sense. Shatibi refers to this type of reasoning 'absolute reasoning by verification of the basis of the rule' (*al-ijtihād al-mutlaq bi taḥqiq al-manāṭ*). Human actions are never abstract; they manifest in specific cases. The obligations of the Sharī'ah are absolute (*mutlaq*) and universal (*umumat*). A Shari'ah rule will not apply to a particular case until it is established if the universal rule covers it. It all relies on *ijtihād* and is the reason for *taḥqiq al-manāṭ al-'Aām* to continue for all times. If it discontinues, the application of rules of the Sharī'ah to human acts will be impossible, for example, the compensation for killing a game in the state of *ihram*. The Qur'an (5:95) mandates equivalent compensation, but defining the species is necessary. Jurists have determined this compensation, such as a ram for a hyena, a goat for a gazelle, a sheep for a deer. (Abu Zahra, *Uṣūl*, 246; Masud, *Islamic Legal Philosophy*, 308-309; Hasan, *Analogical Reasoning*, 356-359).

[57] *Taḥqīq al-Manāṭ al-Khāṣ:* It denotes a specific analysis of the rule's basis, different and refined form of ijtihād than *taḥqiq al-manāṭ al-'Aām.* In this form of *ijtihād*, a jurist emphasizes more on piety (*taqwa*) and wisdom (*hikma*) to discern the good from evil. They examine the *mukallaf* in the light of the guiding lines (*dala'il al-taklīfiyya*) concerning him to make him understand the openings of the devil (*madakhil al-shaytan*), openings of the passion (*madakhil al-hawa*) and immediate pleasure (*huzuz 'ajila*), to protect him against these drives. This personalized approach places responsibility on the jurist to tailor obligations to individuals. This process involves specifying general principles according to individual circumstances, a task typically performed through general verification. For instance, when the Companions asked the Prophet about the best action, he responded based on each person's unique situation and capability. (Hasan, *Analogical Reasoning,* 359-361)

[58] ***Tanqīḥ al-Manāṭ:*** It stands for refinement of '*illah* from other associated qualities, to extend the rule to other related cases. Shatibi, like Ghazali, defines it as identifying a relevant quality mentioned in the rule's text among

other qualities. Jurists refine, distinguish and separate it from irrelevant qualities by exercising *ijtihād*. Unlike *qiyās*, this method relies on literal interpretation of texts, termed *istidlal* or *dalalt al-naṣ* by Hanafis. *Tanqiḥ al-manāṭ* focuses on textual indications rather than identifying the *'illah* itself, but concerns the textual allusions (*dalālāt al-tanbih*) vis-à-vis refinement of the basis of the rule of the Sharī'ah. For example, when a bedouin broke his fast by having intercourse during Ramadan, the Prophet ordered expiation. While the obvious cause was intercourse, other factors like the bedouin's identity, time, month, or the specific woman involved could also be considered as reasons for the rule's application. Hence, this specific rule of expiation can be extended to some other situation with these qualities as the basis of the voidance of fast. (Abu Zahra, *Uṣūl*, 246; Khalid, *Islamic Legal Philosophy*, 309; Hasan, *Analogical Reasoning*, 361-365)

[59] *Takhrīj al-Manāṭ:* It involves inferring the basis of a rule from text where the *'illah* isn't explicitly stated. Jurists, through reasoning and deliberation, derive this basis (*manat*), termed by Ghazali as *al-ijtihād al-qiyāsi*. Some jurists use *takhrij al-manāṭ* and *munāsabah* interchangeably to mean determination of '*illah* by the quality of suitability in itself, not by text or any other source. For example, intoxication is the rationale for prohibiting wine as well as date-wine (*nabidh*). In the same way, the sale of wheat in exchange of wheat at an unequal rate is unlawful and treated as usury. (Abu Zahra, *Uṣūl*, 245-246; Hasan, *Analogical Reasoning*, 365-366)

[60] Masud, *Islamic Legal Philosophy,* 308-310.
Al-Shatibi, *Al-Muwāfaqāt*, 674-677.

[61] Al-Shatibi, *Al-Muwāfaqāt*, 707.

[62] Al-Shatibi, *Al-Muwāfaqāt,* 708-709.

[63] Masud, *Islamic Legal Philosophy,* 309-311.

[64] Al-Raysuni, *Imam al-Shatibi's Theory,* 333-334.
Ascertaining the foundational ground for *maqāṣid*-based *ijtihād*, al-Raysuni in his analysis and extension of Shatibi enumerates four maxims and lays the ground for further investigation in the field. These referred methods were employed by various jurisprudents of the past and al-Raysuni explains them by citing examples from the *fiqh* literature and appropriation of various positions with respect to higher objectives of the Sharī'ah , the maxims are:

i. Texts and rulings are inseparable from their objectives.
ii. Combining general principles and evidence applicable to specific cases.
iii. Realizing benefit and avoiding harm.
iv. Cogitation over outcomes. (see, Al-Raysuni, *Imam al-Shatibi's Theory,* 336-362.)