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 Sharī‘ah 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‘ite four-source theory and employment of relatively more utilitarian tool, maṣlahah. Hence, the paper investigates the concepts of munāsabah and taḥaq al-manāṭ vis-à-vis maqāṣid 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. 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, *usul al-fiqh* states the rational procedures of legal reasoning such as *qiyaṣ* (analogical reasoning), *istihsan* (juristic preference) etc. and the linguistic rules for interpretation of the text (*dalālāt*) and inference making 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, *usul 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. The pre-modern models of *usul 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 *qiyaṣ*, discouraged the usage of more nuanced and utilitarian tools like *istihsan* 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 *taqlid* vis-à-vis the controversial idea of the ‘closure of the gate of *ijtihād*’. 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 *usul al-fiqh* to translate the revelation into the general well-being of humanity was halted. Hence, a call for reform in the *usul* 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. 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. *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*.

In this process, the textual evidences of the holy Qurʿān 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 (*zāhīr*) of the holy Qurʿān and the Hadīth using the principles of the general (*ʾām*) and specific (*khās*), the absolute and the qualified, and other considerations as appropriate. The mujtahid may turn to the actual (*fi ʾlī*) and tacitly endorsed (*taqrīrī*) Sunnah if there is no manifest text available, including the holy Qurʿān and the verbal Sunnah. If no, the judgement is grounded in *ijm̲āʾ* 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 Qurʿān, the hadith, or the *ijm̲āʾ* for a precedent that has an *ʿillah* identical to that of the *fur* (i.e., the situation for which a resolution is required).

Henceforth, the principle of *qiyās* is employed to determine the necessary ruling. In the Shāfiʿīte methodology, the jurist first examines the *nusūs* of the Qurʿān, 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 (*zāhīr*) text. If he comes across a general manifest text, he must decide whether it may be made specific using hadith or *qiyās*. 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 Qurʿān 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-barāʾah al-aṣliyyah*). This process takes place realizing the norms that govern the conflict of evidence (*al-taʿāruz 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.\textsuperscript{10} It is an expression of the theory of bayān, summarized in five steps moving from naṣ to ijtihād (qiyās).\textsuperscript{11}

Regarding the principal of qiyās,\textsuperscript{12} the most significant of all the conditions is effective reason (‘illah).\textsuperscript{13} The effective reason for a ruling may be expressly stated, hinted at by the text, or established by consensus (ijmā‘). There is no room for debate when the ‘illah is specifically mentioned in the primary source material. Only when the ‘illah is not mentioned in the sources do differences of opinion occur,\textsuperscript{14} and hence consensus is invoked to determine the ‘illah. In absence of explicitly declared ‘illah, ijtihād is the sole method exercised to determine it. The jurist thus considers the characteristic of the aḏl qualified as appropriate (munāsib) is identified as the ‘illah. 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 ‘illah) and taḥqīq al-manāṭ (ascertaining the ‘illah). This process of inquiry is generally tantamount to what is meant by some scholars of uṣūl as al-ṣabr wa al-taqṣīm (elimination of the improper and assignment of the proper ‘illah 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).\textsuperscript{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 munāsahab, manāṭ and maqāṣid al-Sharī‘ah 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 Shari‘ah pointing towards its relevance to changing contexts. Henceforth, in this uṣūl 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-Şarī‘ah and acts as the pre-modern foundational sources for the modern uṣūl 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 (*mašlahah*); 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 *uṣūlī* 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 *uṣūlī* 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 *münāsabah* and *manāt* models. Consequently, the reception of this debate in modern times is evolving into a reformatory model and distinct method of interpretation and extension of Islamic law, other than the imperial traditional *qiyyās*-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 usūl theory and reform project. The study develops the argument by locating ijtihād-qiyyās equation in traditional usūl theory, investigates the identification of ratio-legis as the most important debate in usūlī scholarship vis-a-vis munāsabah and taḥqīq al-manāṭ 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 Shari‘ah rulings are causal (mu‘allal) in their nature, both the directive and the legal cause (‘illah) share the Shari‘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 (sahih/ asl) and probable (zanniyah/ mutawahimmah/ istinbāṭ). The valid methods are further subdivided into nas (the text) and ijmā‘ (consensus), and the nas 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. The probable methods are classified into five: munāsabah (suitability), shabāh (resemblance), tārd (co-extensiveness), dawrān (rotation) and ṣabr wa taqṣīm (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 fil ‘illah, while others treat it as another category under probable methods of masālik al-‘illah. The usūlīs acknowledge the variety of modes of legal reasoning, some of which fall under the umbrella-word qiyyās and others discussed under debatable categories like istidlāl, istihsān, and istislāh. The discernment of ‘illah or hikmah is core concern of these methods in a process towards establishing Shari‘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 maslahah, 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 (gharib). 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. 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 (maqsūd) 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 (darūrat), 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 (ḥājiyyāt), 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, tawsī’a) enhances the application of the maqāsid.

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. 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 (tanjīḥ 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-nāṣ), reasoning by literal interpretation (istidlāl) and analogy.
6.2 *Maqāṣid al-Sharī'ah* 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-hadīth* 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-fuqahā‘*, 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-hadīth* focused on the literal interpretation of the texts. The model of *ahl al-hadīth* was championed by the four-source theory of al-Shāfi‘ī. In the process, the legal theory of al-Shāfi‘ī dominated the school of *ahl al-hadīth*. 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 bypassing 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.

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‘ī *uṣūl*-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. 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 mašlahah 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/ʿIlāl theory and maps the evolution of his thought process; while as Tahdhīb al-Ūṣūl was lost.28 For the project of stating an interpretative theory, he argues in two of his seminal works/Shifā al-Ghalīl ʿī Bayān al-Shubh wa al-Mukhayyal wa Masālik al-Taʿlīl and al-Mūstasfā min ʿIlm al-Ūṣūl, the last one being one of the most important works of the/ūṣūl studies ever. Mapping the progression in legal theory of Ghazali, Hallaq opines existence of substantial differences on the theory of/taʿlīl and other aspects of his/ʿIlāl 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 (maʾna) evidently intelligible to the intellect (maʿqil zāhirān filʿaql), that can be established clearly against the opponent by logical reasoning for the attribute of unreasonableness in his expression.31 The suitable reason (al-maʿāni al-munāṣibah) are those which point to the various aspects of public interest (mašāliḥ) and to their emblems. The word mašlahah is ambiguous since it can mean both seeking benefit (jalb manfaʿāh) and avoiding harm (dafʿ 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 (dīnī) and worldly (dunyāwī), and within each category there are two dimensions of acquisition (taḥṣīl) and preservation (ībqā). A thing’s discontinuity (inqitāʿ) is harm, and its preservation (ībqā) 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’
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(riʿāyah al-maqāṣid) includes preservation (ibqāʾ), avoidance of harm (daʿfʿ al-qawāṭiʿ) 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. 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 Sharīʿah. He continues that it is undeniable that the objectives of the Sharīʿah encompass the preservation of life, reason, offspring, property and religion. In Shifā, Ghazali distinguishes maṣlahah 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 maṣlahah with munāsib in al-Mūstasfā. He remarks:

Originally maṣlahah 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 maṣlahah we mean preservation of the objectives of the Sharīʿah, and the objectives of the Sharīʿah are five-fold. Anything which involves preservation of these five principles (uṣūl khamsah) is maṣlahah, and that which causes the loss of these principles is mafṣadah, and removing it is maṣlahah. When we apply the phrase almaʿna al-mukhil waʾl munāsib in the chapter of qiyās, we mean by it this kind.

Ghazali is not confusing maṣlahah with munāsabah. He clearly differentiates them by stating a sort of ambiguity attached to maṣlahah. In al-Mūstasfā, he reveals the kernel of maṣlahah 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. 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 maṣlahah and riʿāyah al-maqāṣid under the category of munāsabah, adopting maṣlahah as a formally acceptable premise. On the other hand, in al-Mūstasfā he drops reason as an important factor in defining maṣlahah 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.
In the methodological part of his theory, the major thesis for discernment and extension of the law is the method of munāsabah. The concept of munāsabah is equated with the broader concept of maslaḥah, to mean accomplishing the good (jalb al-manfa‘ah) and repulsion of evil (daf‘ al-madarrā). Munāsabah as a method advocates reasoning from general principles of law and is subdivided into two authentic processes of extension of law, munāsib mu‘athir and munāsib mulā‘im, and a disputed one – gharīb. Munāsib mu‘athir is the principle stated explicitly in the text, employed through qiyās al-ma‘āni and qiyās al-‘illah. 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. In case of munāsib mulā‘im, it is subdivided into two: mulā‘im and istidlāl al-mursal. In the method of mulā‘im, 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 hikmah 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-Shari‘ah, 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 mulā‘im 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-Shari‘ah. In addition, there are three more conditions to qualify them as munasab mulā‘im 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.

In Ghazalian model, this innovative part devises the mechanism that restricts the irressible use of human agency of hikmah (rational process), for the derivation of the principles by demanding the conditions of munāsabah and mulā‘amah. The two concepts of mulā‘im 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, al-Ghazali opines, mulā‘im is an agreed upon method while as istidlāl al-mursal or maslaḥah al-mursalah are a disputed one, employed by the Maliki school and disputed by Shāfi‘i, majorly.
6.3 Maqāṣid al-Sharī‘ah and the Theory of Ijtihād (Discernment of the Basis of Ratio-Legis/‘Ilah): Shatibi’s Scheme of Reconstruction of Legal Theory

Shatibi’s interest in usūl al-fiqh was fashioned by the impression of methodological and philosophical inadequacy of usūl al-fiqh to cope up with the challenge of legal-cum-social change.66 Shatibi proposed the concept of maṣlahah 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 maṣlahah but questioned the limitations levelled against it. The fundamental elements of Shatibi’s concept of maṣlahah 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 maṣlahah 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; maṣlahah gives a basis and direction to change; and the concepts of bid‘ah and ta‘abbud defines the limits of social and legal changes.67 In Shatibi’s legal theory, maqāṣid al-Sharī‘ah is a principal concept through which he attempts to ascertain maṣlahah 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 *maqāsid* 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: *darurāt*, *ḥājiyyāt* and *taḥsiniyyāt*. The subject matter is *maṣlaḥah*, its meaning, classification, characteristics and nature.

  2. Higher Objective of General Intelligibility (*ifḥām*) 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’an and Sunnah be understood. And if there is no norm to guide interpretation of the holy Qur’an, 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, *qāṣd 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 - *darurāt*, *hajīyyāt*, 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.

In his framework of *maqāsid al-Sharī‘ah* vis-à-vis traditional *ūṣūlī* methodology, Shatibi employed the concept of *mašlāḥah* 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.

### 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 *maqāsid* comes into play largely, and specifically the sub-category of Shatibi's *maqāsid* based *ijtihād*, i.e., *ijtihād* rooted in *manāṭ*. For Shatibi, understanding the theory of intentions (*maqāsid al-Sharī‘ah*) in its entirety is an indispensable requirement for exercising *ijtihād*. Still the question remains, in the mechanics of exercising *ijtiḥad* - where does a *mujtahid* employ the theory of *maqāsid* to extend the *Sharī‘ah* value. In response to this query, Shatibi engages with the theory of *taqāq al-manāṭ* vis-à-vis his theory of *mašlāḥah*, 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 *uṣāl*.

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-qiyaṣī, 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, tahqīq 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-‘Ām56 (General Verification of the Basis of the Rule of the Sharī‘ah).

Shatibi maintains that in these four categories, the first one, tahqīq al-manāṭ al-‘ām, is ever continuing, while as the continuity of the rest three, tahqīq 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 (nusūṣ), 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.\textsuperscript{61} The second process of \textit{ijtihād} does not directly concern the legal text but the law, which necessitates the knowledge of \textit{‘ilm maqāsid al-Sharī‘ah}. With respect to four categories of \textit{manāṭ}-based \textit{ijtihād}, this process concerns the \textit{tahqīq al-manāt} and \textit{takhrīj al-manāt}. The third is the process of deduction and does not require the above-mentioned qualifications. In this process, the verified basis of the rule (\textit{manāṭ}) is applied to the specific case, involving two premises: \textit{taḥqīq al-manāt} (investigation of the basis of the rule) and \textit{taḥkākum} (the judgement). Shatibi explains that the process of deduction involved in this category should be seen distinctly from the method of logicians.\textsuperscript{62} Meanwhile, Shatibi rejects any requirement of the science of logic, while as reiterates knowledge of Arabic language and \textit{maqāsid al-Sharī‘ah} as the absolute necessity for exercising \textit{ijtihād}.\textsuperscript{63} In his scheme of extension of law, Shatibi accentuates the need to integrate the higher objectives (\textit{maqāsid al-Sharī‘ah}) with the bases of legal judgements (\textit{‘ilal}) to broaden the scope of \textit{ijtihād} vis-à-vis the proper application of the \textit{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 \textit{qiyās} is opened wide, as is the door to \textit{istiślāh}, and the legal rulings take their natural course in achieving the higher objectives of the Lawgiver by bringing benefits and preventing harm.’\textsuperscript{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 \textit{ijtihād} vis-à-vis the conceptions of \textit{maslahah} in the pre-modern and modern scholarship, the paper endeavors to analyze the attempts to integrate the theory of \textit{ijtihād} with \textit{maqāsid al-Sharī‘ah} as a stride towards establishing a parallel system of legal thinking to replace the strict \textit{qiyās} based \textit{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 \textit{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 \textit{uşūl}
al-fiqh to replace it with an independent-cum-libertarian maqāsid 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-mašlahah 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 usūl 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 mašlahah 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‘i textualism. In his maqāsid based legal theory, Ghazali actually restricted the use of reason by denying textually neutral mašlahah 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 usūlī model in meaningfully addressing the emerging issues of social change and politico-economic problems. This failure of the usūlī 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 maqāsid 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 manāt-model, taḥqīq al-manāt, tanqīḥ al-manāt and takhrīj al-manāt vis-a-via his theory of mašlahah. Shatibi acknowledged the Ghazalian classification of maqāsid but contested the strict textual orientation of his maqāsid 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
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and scholars alike including Rashid Rida, ibn Ashur, Jamal al-Din Qasimi, ‘Allal al-Fasi, Subhi Mehmansani, Abd al-Wahab Khalilaf, Abu Zahra, Mahmud Muhammad Taha etc. to re-envision the Islamic legal theory and the premises of Islamic law, majorly drawing upon the maqāṣid maḥlahah theses of al-Ghazali and al-Shatibi.

Notes and References

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.
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 Idrīs al-Shāfi‘ī (Leiden: Brill, 2007), 24.]

Qiyās is defined in terms of the extension of a Shari‘ah value from original case (asl) - whose Shari‘ah value is determined by the primary legal indicants directly, to a new case (far) - whose Shari‘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 maqāsid aspect of the Shari‘ah, the aspect which is in harmony with reason. Hence, any rational approach to the discovery and identification of the maqāsid demands recourse to human intellect and judgement in the assessment of the ahkām. (see, Abu Zahra, Uṣūl, 218. Kamali, Principles, 197-198).


In the books of usul, it is generally defined as the quality of the asl that is consistent, obvious, and has an appropriate (munāṣib) link to the legal rule of the text (ḥukm). The ‘illah is also known as sabab, manāt al-ḥukm (i.e., the cause/basis of the ḥukm), and amarah al-ḥukm (sign of the ḥukm). (Khallaf, 61-62; Kamali,206-207)

Abu Zahra, Uṣūl, 243-245. Kamali, Principles 211.


Hallaq, Islamic Legal Theories, 83.

Hallaq, Islamic Legal Theories, 88-89.

Hallaq, Islamic Legal Theories, 88-89.


Hasan, Analogical Reasoning, 354.


...


Nyazee, *Theories*, 147.


Munāṣib means that which proceeds the line of human good (mithāl al-masāliḥ) 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 (munāṣib) 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].


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 munasaḥah 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)

Ghazali, *Shifā*, 159.


Opwis notes this difference in these words, ‘the main difference between the discussion of *maslaha* in *Shifa* and *al-Mustasfa* 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)


*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, *Shifâ*, 172. *Theories*, 212-214).

38 Ghazali, *Shifâ*, 159.

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).


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).

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52 Masud, Islamic Legal Philosophy: 289-290.
53 Ṭanqīḥ literally means to purify, whereas ṭanāṯ is another name for ‘iṣlah. Ṭanqīḥ al-ṭanāṯ, in its technical sense, refers to the process of ‘connecting the new case to the original case by removing the discrepancy between them’ (iḥāq al-far’ bi al-ṣal bi-ṭanqīḥ al-fāriq). The extraction of the ‘iṣlah, or ṭanqīḥ al-ṭanāṯ, comes before ṭanqīḥ al-ṭanāṯ and is the first step examining the identification of the ‘iṣlah. The jurist determines the effective cause in every instance when the text or ijmāʿ fails to do so by examining the pertinent causes according to the modes of Ḥijāra. If he ends up at concluding multiple causes, he proceeds to the next stage, which is to isolate the correct cause. In ṭanqīḥ al-ṭanāṯ, the jurist is dealing with a circumstance where an ‘iṣlah is not identified; whereas, in ṭanqīḥ al-ṭanāṯ, multiple causes are recognised, and the jurist’s role is to choose the appropriate ‘iṣlah. (Abu Zahra, Ṭṣūl, 245-246. Wāḥbah Al-Zahayli, Ṭṣūl al-ṣāḥī al-Ṭṣūl al-Ṭṣūl al-Ṭṣūl, vol. I, 657-659. Kamali, Principles, 213-214).
55 Masud, Islamic Legal Philosophy, 308.
56 Ṭaḥqīq al-Ṭanāṯ: It means to verify the application of rule of law after it has been established by its legal source (mudrak al-Ṭṣūl), i.e. the text, consensus and analogy in the subject (muhāf). The Šāhī means to verify the application of the rule’s text among the specific cases. The obligations of the Šari‘ah are absolute (mutlaq) and universal (ummāt). A Šari‘ah rule will not apply to a particular case until it is established if the universal rule covers it. It all relies on Ḥijāra and is the reason for ṭaḥqīq al-ṭanāṯ to continue for all times. If it discontinues, the application of rules of the Šari‘ah to human acts will be impossible, for example, the compensation for killing a game in the state of ṣaḥām. 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, Ṭṣūl, 246; Masud, Islamic Legal Philosophy, 308-309; Hasan, Analogical Reasoning, 356-359).
57 Ṭaḥqīq al-Ṭanāṯ: It denotes a specific analysis of the rule’s basis, different and refined form of Ĥijāra than ṭaḥqīq al-ṭanāṯ al-Ṭṣūl al-Ṭṣūl. In this form of Ĥijāra, a jurist emphasizes more on pietà (taqwa) and wisdom (ḥikmah) to discern the good from evil. They examine the mukallaf in the light of the guiding lines (du’a il-ṭalāf) concerning him to make him understand the openings of the devil (madakhi al-ṭalāf), openings of the passion (madakhi al-ṭalāf) and immediate pleasure (ḥuzuz ‘ajil), 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 Ṭanqīḥ al-Ṭanāṯ: It stands for refinement of ‘iṣlah from other associated qualities, to extend the rule to other related cases. Šāhī, 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 *qiyyās*, this method relies on literal interpretation of texts, termed *istidlal* or *dālalt al-纳斯* by Hanafis. *Tanqīḥ al-Manāṭ* focuses on textual indications rather than identifying the ‘illah itself, but concerns the textual allusions (ِdālālāt al-tānbīḥ) vis-à-vis refinement of the basis of the rule of the Shari`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-qiyyāsī*. Some jurists use *takhrīj 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 (nabīd). 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.
64 Masud, *Islamic Legal Philosophy*, 309-311.

Ascertaining the foundational ground for *maqāsid*-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 Shari`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.