



THE CONCEPT OF ISLAMIC MAXIMS AS SHARĪ'AH MAXIMS

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ABSTRACT

The concept of Sharī'ah Maxims is a derivative from the detailed study of Islamic jurisprudence (Fiqh), in the technique of defined statements. These principles are such general doctrines that infect not the law or its origin but are such a scheme that the jurists assume to find the solution of problems in the light of Islamic Law. These maxims are shaped as golden words that can be seen, or induced and instigated with any philosophy, race, and temperament. Like all Islamic teachings tending and relating the flawless compatibility with nature and its objectives. Expert Muslim jurists with gorgeous Islamic knowledge of AL-Qur'an, Al-Hadith, Al-Fiqh, Quranic, Hadith and Fiqh Sciences, had formulated these pinpoints. In such a credential mode that not only Monotheistic Religions somewhat each cultured human ideology or thought can deal with it. The purpose of imparting these maxims was in fact to convey the tough fictional rules to common performance. Not only have to connect these rules keyed rather making preferably effective in life.

INTRODUCTION

Sharī'ah Maxims (Legal Maxims) are such leading principles and regulations in the light of which legal scholars and academic philosophers explore the permissible commands of the enduring issues. One deducted legal rule doesn't cover up all the situations and matters underneath but its maximum states.

The assumption of laws is just by the Qur'ān and the Noble statements of the Holy Prophet Muhammad (PBUH), or the Ijm'a (Consensus of Opinion), Ijtihad and Qias (Analogy) which are deduced from these sources of the Sharī'ah.

These Maxims are the idioms of the legal discipline that make easy to understand the ideology behind. As the other fundamental and branched rules of Islamic Jurisprudence are directly or indirectly figure out from the Qur'ān and Sunah, similarly these Legal explanations are constructed from the main sources of sharī'ah.

DISCUSSIONS

1.2: Concept to Sharī'ah Maxims

1.2.1: Precursory Ideas

1.2.2: Proficiency of Sharī'ah Maxims

1.2.3: Position of Sharī'ah Maxims in Ijtihād

1.2.4: Classification of Sharī'ah Maxims

1.2.5: Contemporary Ideas

1.2.1.1: **Ḍawābit:**

Precursory this term “Ḍawābit” is used to explain the statements which are particular themes, subject specified and secondary after Qawā'id for their comprehensiveness.¹

Difference between Qawā'id and Ḍawābit: The term Qawā'id is broad and is a collection of branches of many subjects, while the term Ḍawābit is not so wide it is merely a collection of branches of a single subject. **For Example:** Fasting and Pilgrimage are the two different subjects.²

These are also the derivatives of Islamic Jurisprudence to provide directions to the jurists for certain issues. Although their scope of application, works at lesser degree as compared to Qawā'id or Sharī'ah Maxims.

Famous Jurist Ibn-Nujaim wrote a book named as: “**Al-Fawā'id al-zaniyyah fi fiqh al-hanfiyyah**”. In which he mentioned about 500 Ḍawābit and the problems derived from these Ḍawābit. While in his most famous book **Al-Ashbāh wal-Nazā'ir**, he described the seven Arts, the second one of which is “Ḍawābit”. He elucidates Ḍawābit along with the problems which included or excluded from these. The chapter of Ḍawābit here is a rich source of information, especially for scholars and jurists.³

He entitled this Art as “**Al-Fawā'id**”, which deals with one by one discussion of each subject in the perspective of Islamic Jurisprudence from Cleanliness to Obligations (Inheritance).⁴

Example: Cleanliness as described by Ibn-E-Nujym:

Compulsory obligations in this regard are of two folds.

First fold of **9 compulsory stipulations:** A person must have following conditions:

- 1) By faith a Muslim
- 2) By age an adult/Mature
- 3) By sense Rational/Wise
- 4) By position needs obligatory ablution
- 5) Required clean water is available
- 6) Water is in access
- 7) A state of no menstruation
- 8) A state of no post natal bleeding/Nifaas
- 9) Enough time to perform ablution steps.

Also second fold of **4 compulsory stipulations:** including, a) Clean water, b) A state in which all worship obligations are fulfilled, c) & d) No sign of being unfit for performance of cleanliness mental and physical.⁵

For further Study:

1: Kamali, Moḥammad Hashim, **Qawā'id Al-Fiqh**, page 1

2: Ibn-E-Nujym, **Al-Ashbāh wal-Nazā'ir**, page 162.

3: Ibid. page 20-21.....4: Ibid. page 161-294.....5: Ibid. page 163.

1.2.1.2: **Furūq:**

The judicial techniques through which, closely resembling facts and figures are legally ordained.

Technical description: In the Fiqhī perspective the term Furūq is referred as Al-Furūq and more precisely it is 'Ilm Al-Furūq. A subject of Fiqh, which deals with “The crucial elements of the cases (which share certain common respects) that lead to these cases to be treated distinctly and given different legal rulings.”⁷

The attribute of relativity is consolidating in most of the routine affairs along with the slight differences of realm of actual happening. Such is the case of Furūq where that slight but non negligible difference of matters is judged. Understanding, situations and happenings with deeper eye, open vision and broad mind. Which are definitely the traits of a talented scholar, jurist and Fiqhī.

For Example: The routine commands are going to be specific at certain issues that are not the difference of appearances but the occurrence of incident differently. Like:

1) **Silence of a maiden** is considered as **yes**, while generally speech is necessary

to show yes, silence conveys no sense.⁸

2) **Remarriage** by a widow or divorced woman have to utter yes, a low shyness.

3) **Rambling sheep** have to be owned instead a drifting camel. Because a sheep needs protection and food urgent. ⁹

For further Study:

6: **Furūq:** In Arabic it is from the origin: F+R+Q, giving the sense of, to differ, to clear, to differentiate between any two opposite forces or characteristics, like: good and bad, pious and evil, major and minor, luxury and compulsory, sweet and sour, true and false etc.

While as a legal practice it works to show the difference between: {**Al-'urf al-qawli** & **Al-'urf al-fa'li**}, {**ḥaḍanah** & **wilāyah**}, {**shahādah** & **riwāyah**}, {**ijārah** & **bay'**}. These terms narrate opposite meanings with same sort of activity or somewhat provide a

relative sense along with their particular separate meanings. The above mentioned words are pertaining relative opposite sense, as: {Oral tradition & Gesture Tradition}, {Imprisonment & guardianship}, {evidence statement & ordinary statement}, {temporarily obtained & gained with full rights}, respectively. (Citation: 'Aṭīyyah, Jamāl-u-din, **Al-Tajdyd al-Fiqhī**, page 131, First Edition, Cairo: Maṭba'at al-Madīnah, 1407-08A.H./1987A.D.).

7: Al-Nadwī, Abul Hasan 'Ali, **Al-Qawā'id al-Fiqhiyyah: Mafhūmuhā, Nash'atuhā, Taṭawwuruhā**, Fourth Edition, Damascus, Dār al-Qalam, 1418-19A.H./1998A.D.

8: Elgariani, Fawazy Shaban, **Al-Qawā'id al-Fiqhiyyah (Islamic Legal Maxims): Concept, Functions, History, Classification and Application to Contemporary Medical Issues**, page 88, PhD. Research Dissertation, University of Exeter, United Kingdom, 1433-34A.H./2012A.D.

9: Al-Shāf'āī, Muḥammad bin Idrīs, Abū Abdullāh, **Al-Om**, page 66, Volume 4, Second Edition, Beirut: Dār al-Ma'ārifah, 1392-93A.H./1973A.D.

1.2.1.3: Al-Ashbāh wal-Nazā'ir:

The endeavor of predict elucidations to newly born issues, considering pre-existing resembling problems.

'Ilm Al-Ashbāh wal-Nazā'ir¹⁰: A discipline of Islamic Fiqh, which is time to time variously defined.

Earlier perceptions: Al-Sywtī & Ibn-E-Nujym, entitled their books as: **Al-Ashbāh wal-Nazā'ir**, this expression depicts: "The legal rulings of the various situations of one single subject, which are scattered in the different chapters of Fiqh". **For Example:** The rulings of different situations of: a blind, a disbeliever, a threatened person and a slave, etc.¹¹

Ibn-E-Nujym in his book **Al-Ashbāh wal-Nazā'ir**, mentioned its sixth section with the same title. He renamed this section as Al-Furūq as well. In the old traditions Al-Ashbāh wal-Nazā'ir is considered as a Fiqhī genera, which is either a combined expression for **Ḍawābit and Furūq**, while Qawā'id as one of its discipline or alternative term. This term is introduced for the first time by Second caliph of Islam, Ḥaḍrat Umar Farooq (Mercy to him), in one of his official letters to one of his provincial chief justice of state.¹²

In the section of Al-Ashbāh wal-Nazā'ir¹³, Ibn-E-Nujym portrayed 7 subdivisions entitled as: Kitab-u-Ṣalāt, Kitab-u-Zakāt, Kitab-u-Ṣawm, Kitab-ul-Hajj, Kitab-un-Nikah, Kitab-u-Ṭ-Talaq, & Kitab-ul-'ATAq. **Kitab-u-Ṣawm:** 14 *Intention of twice ṣawm in a single day considered for just one ṣawm in a day.

*Intention of twice Hajj in a single year considered as one by himself, one by helper.

*Slight salt tasting in ṣawm must be returned with penalty, while more eating no return.

*Engulfing sesame in ṣawm must be returned with penalty, while it's chewing no return.

Later Inspection: "The knowledge of the issues those are alike in appearance and legal ruling, and of those alike in appearance, but different in the legal ruling."¹⁵

E.g.: Slight tasting of salt is beneficial so charged and chewing sesame make it negligible instead intake.

For further Study:

10: **Ashbāh:** plural of **Shabīh**, meaning a reflection of actual presence or alike and so on, similarly the term **Nazā'ir:** plural form of **Naẓīr**, meaning an example of the existing one or alike. So, both words are very closer in meaning and depicting almost the same sense. **E.g.:** A mirror image, a photograph and a dummy etc.

11: 'Aṭīyyah, **Al-Tajdyd al-Fiqhī**, page 52.

12: In most of Fiqhī and Qawā'id literature described and quoted. **Ḥaḍrat 'Mr bin al-Khaṭṭāb** (mercy to him) prescribed to Ḥaḍrat Abu Mosā Ash'ari (mercy to him). In an official letter which is still available in its original text. From the words of Ḥaḍrat Umr (mercy to him): "...for unanticipated issues, first consult (**Al-Ashbāh wal-Amthal**), the corresponding examples of such issues, from Al-Qur'an and Al-Sunah,..."

13: Ibn-E-Nujym, **Al-Ashbāh wal-Nazā'ir**, pages 408-410.

14: Ibid. page 409.

15: Elgariani, **Al-Qawā'id al-Fiqhiyyah (Islamic Legal Maxims)**, page 84.

1.2.1.4: Maqāṣd-E-Sharī'ah:

A policy of preserving: Human rights, Dignity, values, relations, discipline, harmony and life worth.

By Imam Ghazālī: He says:

"Infect public interest (Maṣlḥt) is, in gaining benefit and avoiding harm and these are the objectives of Sharī'ah for human beings,...these objectives involve 5 securities: **Faith, Life, Wisdom, Generation and Money.**"¹⁶

By Imam Shaṭṭbī: He says:

"The purpose of Sharī'ah orders is to protect the public interests, which are three as, 1: **Requirements** 2: **Demands** 3: **Extravagances.**"¹⁷ Moreover, he states that: "The basic motive of Sharī'ah Giver, (Shār'¹⁸), in Sharī'ah commands is the establishment of the benefit of life and life after death."¹⁹

By Dr. Whbh Zuḥylī: He says:

"The aims and purposes kept by the Sharī'ah Giver, in all the orders, are objectives of Sharī'ah."²⁰

Categorization of Maqāṣd-E-Sharī'ah 21: The existing categorization of Sharī'ah objectives, as: **Universal Objectives:** The entire objectives, which widely spread in all or major chapters of Sharī'ah commands are collectively referred as Universal or General Objectives of Sharī'ah. Including: Requirements, Demands and Extravagances, all together.

Particular Objectives: The objectives relevant to anyone of the chapters or subjects of Sharī'ah. Like: Financial Transactions, Judiciary and Family life concerns.

Fractional Objectives: The objectives asked or stipulated by the Sharī'ah Giver from each and every Sharī'ah command. **E.g.:** Purpose behind compulsory worship 5daily prayers, Ramḍān fasting and Alms. Similarly, the motive behind prohibition of wine, gambling and non-legal sexual associations (Zinā), Etc.

For further Study:

16: Ghazālī, Muḥammad bin Muḥammad bin Muḥammad, Abu Ḥamid, Ḥujat-ul-Islam, **Al-Mustafā fi 'Im-ul-Uṣwī**, page 286-287, Volume 1, dār-ul-fikr, Beirut, Lebanon.

17: Shaṭḥbī, Ibrahīm bin Mwsā, Abu Ishaq, **Al-Muwafiqat fi Uṣwī Al-Sharī'ah**, page 8, Volume 2, dar-ul-Fikr Al-'Arabī, Egypt.....19. Same source as reference 17, page 37, Volume 2.

18: **Shār'**: Sharī'ah Giver, the term associated with, THE ALMIGHTY CREATOR and The Holy Prophet Muhammad (صلى الله عليه وآله وسلم). In terms for supply and apply of Sharī'ah Commands.

20: Zuḥylī, Whbah, Dr., **Uṣwī Al-Fihq al-Islamī**, page 1017, Volume 2, Dar-ul-Fikr, Damascus: Syria, 1417-18A.H/1997A.D.

21: Auda, Jasser, **Maqasid Al-Shariah as Philosophy of Islamic Law**, page 5, The International Institute of Islamic Thought London: Washington, 1427-28A.H/2007A.D.

1.2.2: Proficiency of Sharī'ah Maxims:

Implication of the point of view Sharī'ah envisions, in judicial activity as well as social performances.

1.2.2.1: Role of Sharī'ah Maxims in Islamic Jurisprudence:

The Mejelle commission²², described in their report as:

“Their (Sharī'ah Maxims) use is great for the acquisition of the precepts of the fiqh and those, who have studied them possess knowledge of the precepts and the reasons for them, and the other officials can have recourse to them in every case.”²³

*The main function of these adages in Fiqh becomes to classify the isolated cases with their shared sense. **For Example:** A single maxim can work for 30 different cases. ²⁴

*Helpful to know the logic and reason for an action in some critical situation legally accepted or denied.

For Example: Imam Ghazālī explains the question asked to him. About the ship with passengers which was about to sink. Cured by dropping down few of them. The action was defined totally ill-legal. **Because:** No guarantee to dissipate a life can save other life. Sins cannot be justified though ends well.²⁵

1.2.2.2: Role of Sharī'ah Maxims in Social Matters:

The Mejelle commission stipulates as:

“By (Sharī'ah Maxims) a man can make his affairs conform, as nearly as possible, to Sharī'ah Law.”²⁶

*Social regards with moral pledge: **Universal legal maxims** predict: plan, passion, and pursuit perfection.

Stance, attitude, affection, devotion and authenticity prescribed in individual and social transactions.

*Custom as an evidence of Sharī'ah: in food, clothing, marriage and other family affairs.

The manner Sharī'ah deals and its maxims reveal the trend, tendency and capacity of treating issues. This makes obvious that there is no still, stagnant or stationary ruling. In spite it, aspires variety of challenges.

For further Study:

22: **The Mejelle commission:** Who put forward a report to his magnificence, **The Sultan of Turkish Ottoman kingdom**, on 18 Dhīl-Hajj, 1285A.H/1st April, 1869A.D.

23: Tyser, C.R. and others, **Al- Majalla Al-Aḥkam Al-Adaliyyah:** (The Ottoman Courts Manul (Hanafi)), an English Translation as **The Mejelle**, Lahore: All Pakistan Legal Decisions, 1386-87A.H/1967A.D.

24: Al-Zarqā, **Al-Madkhal al-Fiqhī al-'Ām**, page 967, Volume 2 & **Sharḥ Al-Qawā'id Al-Fiqhiyyah**, page 166-174, Second Edition, Damascus: Dār al-Qalam, 1409-10A.H/1989A.D.

25: Al-Ghazālī, Abw Ḥamid, Imam **Al-Mustafā min 'Im Al-Uṣwī**, (On Legal theory of Muslim Jurisprudence), Volume 1, Beirut: 1368A.H/1948-49A.D.

26: Tyser, C.R. and others, **The Mejelle, (Al-Majalla Al-Aḥkam Al-Adaliyyah).**

1.2.3: Position of Sharī'ah Maxims in Ijtihād:

Sharī'ah Maxims and Ijtihad both are the derivatives of divine Islamic sources Al-Qur'ān and Al-Ḥdyth.

Ijtihād: From Arabic origin: J+H+D. Its factual meaning is: Utmost attempt, Extreme effort and struggle.

Technically Ijtihād is defined as: “استفراغ الوسع”²⁷

Similarly Ijtihād, is defined as: “To exhaust your capacity to discover Sharī'ah ruling about a new

situation in the light of the Qur'an and Sunnah." 28

Example: Haḍrat Ali (Mercy to him) decided the matter of 4men killed by a line's attack, trapped to prey. Ijtihād and Sharī'ah maxims are the helping tools and directions to solve newly growing issues. By virtue of expert jurists, who exert their intellectual efforts to arrive at the hidden logic. The proposal Ijtihād provides must not deviate but have a matching with true sources.

In present times a number of issues are being processed and resulted in this way. Including: Globalization, Women role, Clash of sectarians in Muslim nations and Muslim communities in non-believer countries.29

Collaboration: Ijtihād is considered necessary and is appreciated from the emergence of Islam, its peak times and ever after. It seems that Ijtihād and Sharī'ah Maxims are serving in a close association. This coherence is predicted by the old and latest scholars. In the words of Imam Al-Sywtī, he says:

"Recognize, Al-Ashbāh wal-Nazā'ir, where maxims are personified, as an excellent art. A way to learn the Fiqhī thought and reasoning which enables an apprentice's erudition talent polished. making him a competent jurist, who extract ruling to emerging issues."30

In the words of newly rising talent: "The employment of these maxims while exercising Ijtihād had been an important tool of the Jurists to extract legal rulings."31

For further Study:

27: **Istafrāgh:** by meaning it is to Enervate, Exhaust and Fatigue. **Wus':** by meaning it is talent or tendency.

This reference involves following Citation: Al-Shayrazi, Abi Ishaq Ibrahim bin Ali bin Yousaf, Imam, **Al-Lam' fi Uswl Al-Fiqh**, page 129, Volume 1, Dār-ul-Kutab Al-'Ilmiyah, Beirut, Lebanon.

28: Ghazi, Maḥmūd Aḥmed, **Mhadrat-E-Fiqh**, page 283.

29: Special Report, on a workshop entitled **Ijtihad: Reinterpreting Islamic Principles for the Twenty-first Century**, by the United States Institute of Peace and the Center for the Study of Islam and Democracy, Washington, DC, US, 1424-25A.H./2004A.D.

30: Al-Sywtī, Jalāl-u-Din, **Al-Ashbāh wal-Nazā'ir**, page 6, First Edition, Beirut, Dār ul-Kutb al-'Ilmiyah, 1403-04A.H/1983A.D.

31: Pakeeza, Shahzadi, **Role of al-Qawā'id al-Fiqhiyya (Islamic Legal Maxims) in ijtiḥād**, page 43, Peshawar Islamicus, Volume 5, Issue 2, 1435-36A.H/2014A.D.

1.2.4: Classification of Sharī'ah Maxims:

Categorizing Sharī'ah Maxims regarding different parameters like formation, acceptance and application.

1.2.4.1: Formation of Sharī'ah Maxims: 32

Extensiveness: A Sharī'ah Maxim is comprehensive. **E.g.:** Universal or leading maxims.

Estimated: A maxim is covering its defined particulars and innovative resemblances. **E.g.:** undividable considered as whole: divorce declared, Hajj practiced, Ḥad implemented.

Established: A maxim has to be time- honored. **E.g.:** Harm must be eradicated: not allowed as revenge.

Elaborated: A maxim must be intricate. **E.g.:** prohibition can be removed with tragedy or even necessity.

1.2.4.2: Origin of Sharī'ah Maxims: For their originating source two categories are prescribed. 33

From the real text: The maxims framed from the statements of the Holy Qur'an and treasured Sunnah.

E.g.: From Al-Qur'an: "وان ليس للانسان الا ما سعى" 34

"And that the human being attains only what he strives for."35

Another translation: "And that there is not for man except that [good] for which he strives."36 Maxim based on this statement expresses the standard of achievement from The Almighty to human status.37

E.g.: From Al-Ḥadyth:

حدثنا احمد بن يونس، حدثنا ابن ابي ذئب، عن مخلد بن خفاف، عن عروة، عن عائشه، رضى الله عنها- قالت

قال رسول الله صلى الله عليه وسلم: " الخراج بالضمنان" 38

The noble saying of the Holy Prophet (صلى الله عليه وسلم): "Accountability escort profit." The maxim is perceived in the same wording. Placed in, "trade and sale" chapter. Means: good and bad have its price.

For further Study:

32: Al-Rūgī, Muhammad, **Nazariyyat al-Taḳ'īd al-Fiqhī wa-Atharuhā fi Ikhtilāf al-Fuḡhaha**, page 60-68, Damascus, Dār-ul-Qalam, 1418-19A.H/1998A.D.

33: This reference includes following citations a & b

a: Al-Būrnū, Muḥammad Ṣidqī, **Mawsū'at Al-Qawā'id Al-Fiqhiyyah**, page 36-43, Beirut, Mu'assasat Al-Risālah, 1416-17A.H/1996A.D.

b: Al-Baḥusayn, Ya'qūb, **Al-Qawā'id Al-Fiqhiyyah: Al-Mabādi', Al-Muḡawwimāt, Al-Masādir, Al-Dalīliyyah, Al-Tatawwur**, page 192, Riyadh, Maktabat al-Rushad, 1426-27A.H/2006A.D.

34: **An-Najm** 53, Verse 39.

35: Itani, Talal, **QURAN ENGLISH TRANSLATION**, Clear Easy to Read Modern English, page 202, ClearQuran, Dallas, Beirut.

36: **THE NOBLE QUR'AN**, Surah **An-Najm** [53:39]-Al-Qur'an al-Kareem- <http://quran.com/53/39>.

37: Al-Rūgī, **Nazariyyat al-Taḳīd al-Fiqhī**, page 89.

38: This reference includes following citations a & b

a: Abu Dawood, **Sunan Abu Dawood**, Book 24 "Wages" (Kitab-ul-Ijarah), page 3508, Volume 4, Ḥadyth 3501- 3503. b: Tirmadhī, Imam, **Jami' At-Tirmadhī**, Book12 "Business", Volume 2, Ḥadyth 1285, 1286.

From Jurist's academic efforts like, Ijmā'39 and Ijthād (Qyās40, Maṣālah41, and Istiṣhāb42):

From Ijmā': "One judicial analysis will not be cancelled by some other interpretation." This maxim is ascribed from a statement of second Khalip of Islam Ḥadrat Umr (mercy to him), agreed by companions.43

From Qyās: "The thing illegal to take also illegal to give." **E.g.:** Usury, Bribery, Magic (Black art), etc.44

From Maṣālah: "That intends something illegal is illegal." **E.g.:** Grapes trade for the purpose of wine. 45

From Istiṣhāb: "The state which originally holds persists." **E.g.:** Fasting retains until sunset is doubted.46

1.2.4.3: Classes of Sharī'ah Maxims:

From the Jurists agreed upon and branching trend 47:

Normative Sharī'ah Maxims: Accepted by all jurists of various schools of thought. In Arabic termed as: "Al-Qawā'id al-Fiqhiyyah al-Asliyyah". These are also called as Leading Mottos or Universal Maxims. **E.g.:** 5 leading mottos, which cover the maximum branching range.

Non-Normative Sharī'ah Maxims: Accepted by majority of jurists from all schools of thought. These axioms are also with highest range of branching but relatively low as compared to the Universal axioms. **E.g.:** "The decisions taken by the state heads must ensure public interest."

Ḍawābit or Controller Sharī'ah Maxims: Accepted by particular jurists and schools of thought. These maxims cover a relatively very low branching in comparison with normative and non-normative maxims. **E.g.:** "The conditioned punishment by sinners must be contented urgently."

For further Study:

39: **Ijmā':** acceptance by the majority (Literally). Technically: "The acceptance of an opinion by legally most authentic persons, of the Ummah's of The Final Prophet (صلى الله عليه وسلم), on a matter under consideration."

40: **Qyās:** Equivalence, considering accordingly (literally). Technically: "On the basis of a similar value among two issues, one of which is authentically defined previously and other will be decided by it." **E.g.:** Wine, is prohibited by the real text because of its intoxication, so another product having the same effect will be considered as prohibited.

41: **Maṣālah:** "For the sack of public interest and necessity deducing the solutions of incoming occurrences."

42: **Istiṣhāb:** Consistent/ Persistent. "The order previously proved, persistent and accepted to re-implement."

The above mentioned references 39, 40, 41 & 42 involve following citations a & b.

a: Byḍā'ī, Abdullah bin 'Umr bin Muḥammad, Naṣir-u-din, **Minhaj-ul-Waṣool ila-al uṣwl ma' Al-ibhaj**, Dār-ul-kutb Al-'Imyah, Beirut, 1404-05A.H/1984A.D.

b: Shabṭbī, Ibrahim bin Mwsā, Abu Ishāq, **Almwafiqāt fi Uṣwl Al-Sharī'ah**, dār-ul-Fikr Al-'rbī, Egypt.

43: Zakariyah, Luqmān, **Application of Legal Maxims in Islamic Criminal Law** with special Reference to Sharī'ah Law in Northern Nigeria (1999-2007), a PhD. Dissertation submitted to the "University of Wales", Lampeter, UK, 1430-31A.H./2009A.D.

44: Al-Rugī, **Nazariyyat al-Taḳīd al-Fiqhī**, page 125.

45: Ibid. page 145.

46: Ibid. page 140.

47: **Al-Qawā'id Al-Fiqhiyyah**, Legal Maxims of Islamic Jurisprudence, A Translated Compilation, page 4-7, Islamic University of North America (Mishkâh), Islamic Studies: English Program, 1434-35A.H/2013A.D.

1.2.5: Contemporary Ideas:

Sharī'ah maxims are well authorized, speculative, conceptual, summarized and abstract generalizations. These provide an extensive view of Fiqhī contemplation. A traditionally acknowledged vision accepted by the majority of Jurists. Emerge the sense and steam of various schools of thought on a broad spectrum. In this way the beauty of Islamic Ideology predicts in which seasonal and regional variations fuse.

1.2.5.1: By Contemporary Jurists:

At present scenario descriptions in this perspective provided by contemporary jurists. Present a clearer concept to recognize and realize this sort of Fiqhī deliberation.

By Muḥammad Al-Rūgī: He ascribes Qā'idah technically as:

"It has to be widespread, to the point, uninterrupted, constant, persistent and conceptual valid theoretically expressed." 48

The Universal maxims accomplish the described extents entirely. Other maxims follow the track to varied level. However, in common majority of axioms cover most of these trends. Sharī'ah maxims characterize and exemplify intact Sharī'ah matters rather than just describing judicial affairs.

By Ya'qūb Al-Bāḥusayn: He elaborated the term Qā'idah as:

“A Maxim should be a Sharī'ah command, expressed in a precise unconditional form, which have to fulfill, Al-tajrīd, al-'Umūm.”⁴⁹

A specific statement prescribed to explain the Sharī'ah dominion at a certain instant. Articulate in special and positive manner. Is the nature and design of a Sharī'ah Maxim while Tajrīd and 'Umūm are rulings to frame a maxim. Where, **Tajrīd** is abstract, conceptual or non-figurative and **'Umūm** stands for general. **E.g.:** A maxim: “Islām prevents people to source damage to their own selves or anyone else.”⁵⁰ These highly precious words are carried from the Holy saying of The Final Prophet (صلى الله عليه وسلم). In the words, reported by Al-Khudrī 51 “Lā ḍarar wa lā dirār fi Al-Islām” or as: “لا ضرر ولا ضرار في الاسلام”.⁵² This fabulous expression involves all the treasures of wonders which can minimize today's anxiety, pain and hazard. It has the potential where there it holds vanishes all fear and tear. From all walks of existing life which may belong to any sphere or any frame of reference.

For further Study:

48: Al-Rūgī, **Nazariyyat al-Taḡ'id al-Fiqhī**, page 60.

49: Al-Bāḥusayn, **Al-Qawā'id Al-Fiqhiyyah**, page 173-174.

50: Ibid. page 171....51: Ḥaḍrt Abū Sa'id Al-Khudrī (mercy to him).

52: This reference involves following citation a & b:

a: Al-Nyshoporī, Muhammad Ibn 'Abdullāh Abū 'Abdullah, Al-Hākim, **Al-Mustadrak 'Alā As-Sahīhiyyn**, Beirut, Lebanon: Dār Al-Kutb Al-'Immiyyah Press, Volume 4, First Edition, 1411A.H/1990A.D.

b: Adh-Dhahabī, Muḥammad Ibn Aḥmed Ibn 'Uthmān Ibn Qiyāz, **Talkhīṣ Al-Mustadrak 'Alā Aṣ-Ṣahīh** **iiyyn**, chapter: “Bargains” 2345.

1.2.5.2: By Legal Theories:

At much broader canvas of World empires. The legal framework is also consolidated by variety of newly emerging ideas, philosophies and judicial tools. In this rapidly turning face of societies innovative walks are ideal demand. To meet the erupted cognitive approach more elucidated techniques are formulated.

An-Nazariyyah Al-Fiqhiyyah:

These are the modern official, executive and authentic presumptions of Islamic Jurisprudence (Fiqh).

Technically: “A conceptual and theoretical approach in which intellectuals, principles, and disciplines are collectively portrayed into a single frame.”⁵³

The most influencing manner in derivation from Sharī'ah sources is to expose their real spirit. Instead merely rules prediction. These judicial calculations are casing as 54:

- Theory of necessity (Nazariyyāt Al-ḍarūrah)
- Theory of contract (Nazariyyāt Al-'aqd)
- Theory of ownership (Nazariyyāt Al-milkiyyah)

Nazariyyah is wide in range while some Qawā'id are so extensive covering all the three types of Nazariyyāt. **E.g.:** A maxim “Confidence is not cancelled due to uncertainty.”⁵⁵

In this legal framework an idea is considered more precisely and analytically. Previously the various dispersed ideas of Qawā'id, Ḍawābit and Furūq are now lined with a sequence as form of Nazariyyāt. This efficient organization makes easy the consultation process in ongoing and upcoming situations. 56

Most probably the “Theory of contract” is considered by the researchers from past times to present.

1.2.5.3: By Practical Significance

Turkish jurists, who compiled in 1285-93A.H /1869-76A.D. the most remarkable Ottoman civil code: “**Al-Majalla al-Aḥkam al-Adliyyah**”. It was structured with 16 segments/Books and 1851 articles. Here **Sharī'ah Maims** and most preferably the section of Economic transactions are well integrated. 57

For Example: Book 1. Sale of Mejelle Manual comprises chapter 1, The Contract of Sale, and so on.

For further Study:

53: Al-Rūgī, **Nazariyyat al-Taḡ'id al-Fiqhī**, page 54.

54: Kamalī, Moḥammad Hashim, **Qawā'id Al-Fiqh**, The Legal Maims of Islamic Law, page 5, Aml: The association of Muslim Lawyers UK.

55: Shubayr, Muḥammad, **Al-Qawā'id Al-Kulliyyah wa Al-Dawābit Al-Fiqhiyyah**, page 26, Second Edition, Amman: Dār al-Nafā'is, 1427-28A.H./2007A.D.

56: Kamalī, Mohammad Hashim, **Sharī'ah Law**, An Introduction, Foundations of Islām, page 157, ONEWORLD Oxford, 1429-30A.H./2008A.D.

57: Kamalī, **Sharī'ah Law & Qawā'id Al-Fiqh**, page 160 & page 7.

Conclusion

The life mannerisms of pious people, who gained highest prestige and ranks from, THE ALL PRAISEWORTHY, are the Prophets. They come to show HIS fear and mercy to the Mankind. Their way is so well furnished to be convinced. Such pathway which remains in constant use followed by the guiding stars and adopted by the common ones. This splendid path leading the rational advancement is termed as **Shari'ah**.

The allegation of Islam is fully experienced from its origin. The academics and logical brain bearing people are discovering its secrets. The rational, analytical, and critical fame of Muslim world is eternal. Their situation knowing approach to predict the way out from crisis is gifted. Where others frustrate their eternal divine source makes forward thinking possible. In this light, to hold the crucial and decisive circumstances becomes possible. The axioms, **Shari'ah Maxims** bordered in this regard as short words statements triggering the admirers and stirring the hidden and opponents. So, these focused expertise enhancing tools of Islamic jurisprudence are vital for specialists and others. The efficiency of these instruments is pledge for wide range of life activities. The branched principles of each maxim are also handling with voluminous existing associations. For instance, these maxims implement in worship, personal and family affairs, financial transactions, educational perceptions, medical perspectives, and judiciary etc.

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Alhamdulillah, Thanks and Gratitude to Allah Subhanahu wa ta'ala WHO gifted the strength to complete this task.

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- [2] 2: Ibn-E-Nujym, Al-Ashbāh wal-Nazā'ir, page 162.
- [3] 3: Ibid. page 20-21.
- [4] 4: Ibid. page 161-294.
- [5] 5: Ibid. page 163.
- [6] **Furūq**: In Arabic it is from the origin: F+R+Q, giving the sense of, to differ, to clear, to differentiate between any two opposite forces or characteristics, like: good and bad, pious and evil, major and minor, luxury and compulsory, sweet and sour, true and false etc. While as a legal practice it works to show the difference between: {Al-'urf al-qawli & Al-'urf al-fa'li}, {ḥaḍanah & wilāyah}, {shahādah & riwāyah}, {ijārah & bay'}. These terms narrate opposite meanings with same sort of activity or somewhat provide a relative sense along with their particular separate meanings. The above mentioned words are pertaining relative opposite sense, as: {Oral tradition & Gesture Tradition}, {Imprisonment & guardianship}, {evidence statement & ordinary statement}, {temporarily obtained & gained with full rights}, respectively. (Citation: 'Atiyyah, Jamāl-u-din, Al-Tajdyd al-Fiqhī, page 131, First Edition, Cairo: Maṭba'at al-Madinah, 1407-08A.H/1987A.D.).
- [7] Al-Nadwi, Abul Hasan 'Ali, Al-Qawā'id al-Fiqhiyyah: Mafhūmūhā, Nash'atuhā, Taṭawwuruhā, Fourth Edition, Damascus, Dār al-Qalam, 1418-19A.H./1998A.D.
- [8] Elgariani, Fawazy Shaban, Al-Qawā'id al-Fiqhiyyah (Islamic Legal Maxims): Concept, Functions, History, Classification and Application to Contemporary Medical Issues, page 88, PhD. Research Dissertation, University of Exeter, United Kingdom, 1433-34A.H./2012A.D.
- [9] Al-Shāfi'āi, Muḥammad bin Idrīs, Abū Abdullāh, Al-Om, page 66, Volume 4, Second Edition, Beirut: Dār al-Ma'ārifah, 1392-93A.H./1973A.D.
- [10] Ashbāh: plural of Shabih, meaning a reflection of actual presence or alike and so on, similarly the term Nazā'ir: plural form of Nazīr, meaning an example of the existing one or alike. So, both words are very closer in meaning and depicting almost the same sense. E.g.: A mirror image, a photograph and a dummy etc.
- [11] 'Atiyyah, Al-Tajdyd al-Fiqhī, page 52.
- [12] In most of Fiqhī and Qawā'id literature descried and quoted. Haḍrat 'Mr bin al-Khattāb (mercy to him) prescribed to Haḍrat Abu Mosā Ash'ari (mercy to him). In an official letter which is still available in its original text. From the words of Haḍrat Umr (mercy to him): "...for unanticipated issues, first consult (Al-Ashbāh wal-Amthal), the corresponding examples of such issues, from Al-Qur'an and Al-Sunah..."
- [13] Ibn-E-Nujym, Al-Ashbāh wal-Nazā'ir, pages 408-410.
- [14] Ibid. page 409.
- [15] Elgariani, Al-Qawā'id al-Fiqhiyyah (Islamic Legal Maxims), page 84
- [16] Ghazālī, Muḥammad bin Muḥammad bin Muḥammad, Abu Ḥamid, Hujat-ul-Islam, Al-Mustafā fi 'Im-ul-Uswl, page 286-287, Volume 1, dār-ul-fikr, Beirut, Lebanon.
- [17] Shaṭḭbi, Ibrahim bin Mwsā, Abu Ishaq, Al-Muwafiqat fi Uswl Al-Shari'ah, page 8, Volume 2, dar-ul-Fikr Al-'Arabi, Egypt
- [18] **Shar'**: Shari'ah Giver, the term associated with, THE ALMIGHTY CREATOR and The Holy Prophet Muhammad (ﷺ). In terms for supply and apply of Shari'ah Commands.
- [19] Same source as reference 17, page 37, Volume 2.
- [20] Zuhylī, Whbah, Dr., Uswl Al-Fihq al-Islamī, page 1017, Volume 2, Dar-ul-Fikr, Damascus: Syria, 1417-18A.H./1997A.D.
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- [26] Tyser, C.R. and others, **The Mejelle**, (**Al-Majalla Al-Ahkam Al-Adaliyyah**).
- [27] **Istafrah**: by meaning it is to Enervate, Exhaust and Fatigue. **Wus’**: by meaning it is talent or tendency. This reference involves following Citation: Al-Shayrazi, Abi Ishaq Ibrahim bin Ali bin Yousaf, Imam, **Al-Lam’ fi Uswl Al-Fiqh**, page 129, Volume 1, Dār-ul-Kutab Al-‘Ilmiyyah, Beirut, Lebanon.
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- [32] Interpretation 32: Al-Rūgī, Muhammad, **Nazariyyat al-Taḳ‘id al-Fiqhī wa-Atharuhā fi Ikhtilāf al-Fuqhahā**, page 60-68, Damascus, Dār-ul-Qalam, 1418-19A.H./1998A.D.
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- [36] 34: **An-Najm** 53, Verse 39.
- [37] 35: Itani, Talal, **QURAN ENGLISH TRANSLATION**, Clear Easy to Read Modern English, page 202, ClearQuran, Dallas, Beirut.
- [38] 36: **THE NOBLE QUR’AN**, Surah **An-Najm** [53:39]-Al-Qur’an al-Kareem- <http://quran.com/53/39>.
- [39] 37: Al-Rūgī, **Nazariyyat al-Taḳ‘id al-Fiqhī**, page 89.
- [40] 38: This reference includes following citations a & b
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- [42] b: Tirmadhī, Imam, **Jami’ At-Tirmadhī**, Book12 “Business”, Volume 2, Hadyth 1285, 1286.
- [43] 39: **Ijmā’**: acceptance by the majority (Literally). Technically: “The acceptance of an opinion by legally most authentic persons, of the Ummah’s of The Final Prophet (ﷺ), on a matter under consideration.”
- [44] 40: **Qyās**: Equivalence, considering accordingly (literally). Technically: “On the basis of a similar value among two issues, one of which is authentically defined previously and other will be decided by it.” E.g.: Wine, is prohibited by the real text because of its intoxication, so another product having the same effect will be considered as prohibited.
- [45] 41: **Maṣālah**: “For the sack of public interest and necessity deducing the solutions of incoming occurrences.”
- [46] 42: **Istishāb**: Consistent/ Persistent. “The order previously proved, persistent and accepted to re-implement.”
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- [51] 45: Ibid. page 145.
- [52] 46: Ibid. page 140.
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- [62] 54: Kamālī, Muḥammad Hashim, **Qawā‘id Al-Fiqh**, The Legal Maims of Islamic Law, page 5, Aml: The association of Muslim Lawyers UK.
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