



UPHOLDING *MASALIH* (BENEFITS/PUBLIC INTERESTS)

IN THE ISLAMIC SCHOOLS
OF *FIQH* (DOCTRINE/
JURISPRUDENCE)

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The topics covered in this paper are:

- *Masalih* (benefits/public interests); how they are treated in the Shariah texts and defined by the ‘ulama (scholars), and
- The schools of Islamic *fiqh* (doctrine/jurisprudence).

A number of other topics closely related to these also have a bearing on *masalih* today and in this connection we intend to discuss *masalih* in the contemporary schools of *fiqh* and examine the dialectic between the two. In doing so, our aim will be to cast some light on the roles of the different schools in modern times, their influence on the Shariah and their activities in the national and supranational contexts. In doing so we shall consider the subject from various different angles, including religious observance, productivity, culture, *furudh al ‘ain* (obligations binding upon the individual) and *furudh al kifayah* (obligations binding



upon the community as a whole). At the same time, we shall endeavour to explain the vital importance of protecting and upholding *masalih* from the *fiqh* point of view since they are an essential part of the Shariah and the Sunnah of Allah, the Most High. Moreover, they are also fundamental to the precepts of the *din* (Faith), as well as an essential condition of *ijtihad* (interpretative judgement), since *ijtihad* rulings are derived through a process of deduction based on religious, rational and humanitarian criteria.

We pray that Allah – Glory be to Him, the Almighty – will send someone to revive our fortunes and our Islamic *fiqh* for the benefit of our *Ummah* (Nation) and the world. He is the One Who Hears and answers our prayers. May praise be to Allah, the Lord and Cherisher of the Worlds.

Topic 1: *Masalih* and their significance

Enormous importance is attached to *masalih* in the Shariah texts and the writings of the *ahl al ‘ilm* (“people of knowledge” – i.e. leading Islamic scholars).

Masalih in the Shariah texts

Masalih are frequently referred to in the Shariah texts, either explicitly or by implication, as in the following verses in the Holy Qur’an: “But Allah knows the man who means corruption (*mufsid*) from the man who means good (*muslih*)” (*Al Baqarah*, 220), and “But Allah loveth not corruption” (*Al Baqarah*, 205)¹. Great importance has been attached to them in Shariah and Islamic discourse over the ages, during which time they have been defined, categorized, inferred, derived and deduced to provide the principles for legal rulings.

There are texts which can be clearly understood to explicitly promote *masalih*, such as the Qur’anic verses we have just quoted. The first of these draws a clear distinction between the man who spreads corruption and the

¹ Other examples include: “...I only desire (your) betterment to the best of my power...” (*Hud*, 88) since betterment is the opposite of corruption, this means leading people to a state of “betterment” which will result in their *maslaha*, whether it involves leading them out of a state of corruption to a state of *maslaha*, or from a lesser state of *maslaha* to a greater state of *maslaha*), and “...for Allah loves not those who spread corruption” (*Al Qasas*, 77).



man who promotes good, while the second is a clear denunciation of corruption and – by implicit contrast – indicates a love of *masalih*.

There are numerous less explicit Shariah texts which either hint at the importance of *masalih*, contain rulings which promote them or affirm certain categories of them by inference¹.

The importance attached to *masalih* is further demonstrated in the Sunnah in its interpretation of those texts in the Qur'an which deal with the subject².

***Masalih* in the writings of Islamic scholars**

Islamic scholars have approached *masalih* in numerous different ways, reflecting the fact that there are a wide range of views on the subject. Broadly speaking, they can be put into five categories:

Category 1: Explicit opinions of leading Islamic authorities. There are several examples of these. It is reported that Imam Malik paid little attention to the conceptual aspect in the section on acts of worship, “unlike the section on customs/habits, which focused on the concept that was rationally appropriate. Here he elaborated on the definitions of the meanings of *masalih*, while recognising the need to ensure that they were compatible with what was intended by the Legislator [i.e. Allah]”.³ It is also reported that Imam Ibrahim al Nakh'iy believed that “reason-based” Shariah rulings include *masalih* relating to the well-being of the *Ummah*. In his view they are based on firm foundations and solid criteria taken from the Book and the Sunnah and have been enacted in law to enable people to regulate their lives. He maintained that human reason is capable of recognising them for what they are and understanding their benefits; however, this is because their source is the Shariah and not because the human mind has deduced them through a process of independent reasoning. Allah's rulings have goals; that is to say, wisdom and *masalih*

¹ Such as the *masalih* of safeguarding the Faith, the mind and the soul.

² Such as the Sunnah texts dealing with *sair* (conduct) *rifaq* (gentleness) and *takhfif* (mitigation), which are also confirmed by Qur'anic text.

³ Al Shatibi: *Al I'tisam*, Dar al Kutub al 'Ilmiyyah, Beirut, 1st impression, 1408 AH (1988), 2/366.



that are in our interests as human beings¹. Al Baidhawi says: “Shariah laws are designed to uphold *masalih*”², while al Sarkhasi says: “The Shariah allows us to engage in *mubahat* (permitted activities) with the aim of deriving benefit”³.

Category 2: *Usul* (“roots”) of the schools of *fiqh* and the way they understand Shariah rulings and interpret texts, as well as their approach to *ijtihad*, *ifta’* (giving formal legal opinions) and judicial issues. These *usul* include the source of *masalih* from a Shariah point of view. Al Shafi’i maintained that it was permissible to adopt *masalih* based on the Shariah “as a whole” (i.e. in principle), even if they are not based on specific elements of it⁴.

Al Ghazali observed that “applicability to the situation is in the same class as necessities or needs..... Our view is that adopting *masalih* is acceptable if it is compatible with Shariah practice, but that it is unacceptable if it is incompatible with Shariah rules”⁵. He noted that “every concept for which it is appropriate to give a ruling – and which has existed in an unbroken, continuous form in the Shariah rulingson the basis of the Qur’an, the Sunnah or *ijma’* (consensus) – is acceptable, even if it cannot be attributed to a specific source”⁶.

It has been said that specific *waqayi’* (situations) are infinite, while specific *usul* are finite and that the finite is incompatible with the infinite. “Therefore another approach is needed in order to establish rulings in the specific category; that is, the adoption of *masalih* based on Shariah situations and *maqasid* (intentions) in a general sense of principle, even if they are not based on a specific *asl* (singular of *usul*)”⁷. Ibn Burhan is quoted as saying: “‘If *masalih* are compatible with one of the Shariah’s

1 Al Hajawi: *Al Fikr al Sami*, 1/318.

2 Al Baidhawi: *Sharh al Minhaj*; commentary on al Isfahani’s ‘Ilm al Usul, 2/795.

3 Al Sarkhasi: *Usul*, 2/140.

4 Al Zanjani: *Takhrij al Furu’ ‘ala’l Usul*, P. 278.

5 Al Ghazali: *Shifa’ al Ghalil*, Maktabat al Irshad, Baghdad, 1390 AH (1971), P. 209.

6 Al Ghazali: *Al Mankhul*, P. 364.

7 Al Zanjani: *Takhrij al Furu’ ‘ala’l Usul*, P. 279.



general *usul*, or a specific *asl*, it is permissible to derive rulings. If not, then not.' Attributing this in *al Wajiz* to al Shafi'i, Ibn Burhan says it is an optional right and compares it to his pronouncement on taking back a divorced woman, with the comment that it is not permissible to copulate with her, because the 'iddah (prescribed period or waiting) was enacted into law to ensure that the uterus was left idle, while copulation would cause it to be active. So if we ruled (copulation) as permissible during the *iddah*, it would mean a meeting of two opposites.....and two opposites cannot meet"¹.

Category 3: The different *furu'* ("branches") of the schools of *fiqh*. Despite the priority they generally give to upholding the public interest, there are notable differences regarding those aspects of *masalih* on which the *furu'* decisions are based. An example of *furu'* is the 'iddah, which we mentioned above. Al Ghazali states al Shafi'i as saying that the 'iddah is so that the uterus can be left idle, while copulation renders it active, which is in conflict with the intention of the 'iddah. This view does not need to be supported by evidence from a specific *asl*, because the *usul* of the Shariah in general support it².

Category 4: The fact that there still *are* schools of *fiqh* today. Their continued existence in the Islamic world and their active contributions to judicial affairs, *ifta'* and life in general are clear evidence that they are qualified to represent Shariah *masalih*. If they rejected people's *masalih* and acted against their needs, they would not continue to exist. These schools are recognised as qualified to uphold the public interest, despite the differences between them. It is said that the Hanafi school is generally the broadest and most tolerant, as well as the easiest one for the skilled *mujtahid* (practitioner of *ijtihad*) to extrapolate from because its reasoning is based on philosophical principles, particularly with regard to *mu'amalat* (dealings and transactions between people) designed to promote the *masalih* of mankind. Hanafis are short on revealed sources and Traditions, since it is their practice to use *qiyas* (analogy) and apply it extensively in cases apart from those involving *hudud* (a class of definitive Shariah

¹ Al Zarkashi: *Al Bahr al Muhit*, Ministry of Awqaf, Kuwait, 2nd Impression, 1413 AH (1992), 2/77.

² Al Ghazali: *Al Mankhul*, P. 361.



punishment), *kaffarah* (expiation) and similar situations in which there are clear Shariah rulings¹, as is characteristic of other sects which aim to promote *masalih*, such as the Dhahiri school, which bases its *masalih*-related rulings on textual evidence, commonly agreed positions or *usul* such as *ijma'* (consensus) and *istishab* (presumption of continuity)².

Category 5: The influence of the schools of *fiqh* on the social environment, administration and international politics. These schools play a significant role in legislation, politics, education and culture. Here we shall examine the central role they have played in promoting development and prosperity.

We could also add a sixth category – the schools of *fiqh* in the modern age. The schools of *fiqh* have succeeded in keeping abreast of the demands of the modern age, both in the performance of their institutions and in terms of their *ijtihad* and *ifta'* contributions in a number of eastern and western countries to present-day issues such as citizenship, coexistence and interfaith dialogue. In doing so they have demonstrated their continued commitment to upholding *masalih* in the world of today.

To sum up, *masalih* is a subject that is high on the agenda of the *ahl al 'ilm*. It is always at the forefront of their minds when they deliver Shariah opinions, engage in *ijtihad* or issue judicial rulings, and it is a major topic in discussions and debates and in their relations with the political authority, civil society and the outside world, as well as in areas such as private worship and the performance of *furudh al 'ain*.

Topic 2: The schools of Islamic *fiqh* (doctrine/jurisprudence)

The term “schools of Islamic *fiqh* (doctrine/jurisprudence)” encompasses the *furu'* (“branches”) and *usul* (“roots”), as well as the rules and concepts adopted by the founders and followers of the different schools, and their different approaches to exegesis, interpretation and

¹ Al Hajawi: *Al Fikr al Sami*, 1/356.

² See my doctoral thesis; Part 3, entitled *Al Dalil 'inda'l Dhahiriyyah*.



ijtihad (interpretative judgement). The schools vary considerably in the size of their following, their characteristics, their histories and the contributions they have made to culture and civilization.

Over the course of our history there have been numerous schools of Islamic *fiqh*. Some have produced extensive works of scholarship, others have been less productive; some have been short-lived; some have been highly influential, others have been less so. They include the Four Schools of *Fiqh* [Hanafi, Hanbali, Shafi'i and Maliki], the Dhahiris, Ibadhis, Zaidis and Ja'faris, as well as some minor sects whose *fiqh* has not been accorded the status of a school with large numbers of pupils, followers and volumes of scholarly works. These include the *fiqh* of Imam al Awza'iy, al Layth bin Sa'd and Sufyan bin 'Uyainah.

The *fiqh* of these schools was derived from Islamic texts, *ijma'* (consensus) and *ijtihad*, though their terminology varied, as did their sources and the volume of their material. Consequently, the *ahl al 'ilm* broke the sources down into separate categories which enabled the salient features of each school to be identified, as well as its general approach to extrapolating from the *usul* and the evidence and the way in which it applied *ijtihad* to legal and other issues.

It is generally recognised that these schools base their *fiqh* on the Qur'an, the Sunnah and *ijma'*, that they apply *qiyas* (analogy), *istihsan* (equity) and *istishab* (presumption of continuity), that they take account of custom and the actual situation on the ground, and that they adopt various combinations of *juz'iyat* ("partialities" or means of reaching the goals of the Shariah) through a process of inductive reasoning in order to arrive at a definitive position on the *kulliyat* ("totalities" or goals of the Shariah). They also take account of "priorities and congenialities", make comparisons, uphold the *maqasid* (goals) of the Shariah, the *masalih* (interests/benefits) of mankind and the Will of Allah, Glory be to Him.

The disparity between the sources used by the different schools is reflected in their rulings. One school might lean strongly towards textual evidence, the Traditions, the Sayings of the Prophet and *istishab*, so that it would be classed as a "textual", "*salafi*" (based on the rulings of the



“worthy forebears”) or “revelatory” school, while another might be more inclined towards theory, deductive reasoning and *qiyas*, in which case it would be described as being in the *ra’iy* (opinion), speculative, reformist *ijtihad* and *maqasid* category.

In reality, these classifications are only valid insofar as they describe “prevailing tendencies” and they should not be understood to mean that a particular school is excessively biased in one direction or other. For example, while they may be more inclined to rely on texts and revealed scriptures, the “people of revelation” do not exclude the validity of deductive reasoning and *maqasid*. At the same time, the “people of speculation and opinion” also rely on texts, areas of consensus and narrated reports, even if their school is more inclined towards *qiyas*, *masalih* and *maqasid*.

This is true of the historical schools of *fiqh* such as the Madinah School (the “School of *Hadith*”, or “School of Revelation”), the Iraq School (the “School of Opinion and Speculation”) and other early¹ and modern² schools of *fiqh* whose approaches to *ijtihad* and treatment of evidence vary according to the views of their leading scholars, their historical circumstances and their social, human and cultural environments.

Shariah *masalih* have always been fundamental to the schools of Islamic *fiqh* and that is why they have continued to provide the general guiding principles for the way those schools understand and interpret texts, apply *ijtihad* and react to events in the world around them.

However, there have also been considerable variations in the way in which these schools have depended upon *masalih*, as well as the contexts and terminology in which the *masalih* are expressed. The processes of reasoning involved are highly complex. However, our intention here is to examine what these schools’ *masalih* are and see how their leading scholars have presented them – an approach we could call “the dialectic of *masalih* and the schools of *fiqh*”.

¹ Like the Egyptian School, the Qairouan School, the Fez School, etc.

² Like the modern Indian school of *fiqh* and the European school of *fiqh*, which represent a range of *ijtihad* trends.



Topic 3: The dialectic of *masalih* and the schools of Islamic *fiqh*

There is an inseparable and ongoing relationship between *masalih* and the schools of *fiqh*, despite the variations in approach and interpretation we referred to above. That relationship has been determined by the character of the schools themselves. Some of the main factors include:

- Pronouncements endorsing *masalih* by the *fiqh* scholars attached to the various schools, whether they regard *masalih* as merely a word that trips off the tongue or as one of the principles of their deductive reasoning. The concept of *masalih* is expressed in a wide range of terms, including: *al maslahah al mursalah*, *al istislah*, *al ijma' al mabniy 'ala'l maslahah*, *al istihsan al mabniy 'ala'l maslahah*, *qa'idat jalb al masalih wa dar'u'l mafasid*, and *qa'idat tasarruf al ra'iy 'ala'l ra'iyah manut bi'l maslahah*. Other schools take a more “close-up” view of *masalih* and see them as the basis for their *fatwas* and rulings, or as a universally applicable and categorical Shariah reality with legal force.
- The Shariah material used by those schools. The schools rely on textual injunctions, Shariah rulings, inferences and interpretations as a means of determining the authenticity of the *masalih* endorsed by them (based on the degree of authenticity of the texts concerned and the rulings they contain). By relying on these texts and rulings, the schools are in fact basing their opinions on the *masalih* they comprise and the benefits they indicate, which determine their status as *khair* (good/well-being) for mankind.
- The extent to which those schools engage with the realities of daily life reflects their commitment to people's *masalih* and well-being. If they failed to do so, they would wither away. It is this factor that demonstrates a capacity for renewal and revival based on the practice of upholding *masalih* in both their human and denominational contexts.

If we take the above factors into consideration we can conclude that Shariah *masalih* are central to the schools of *fiqh*. They account for a large part of their body of knowledge and are a distinctive feature of their *ijtihad*.



Upholding *masalih* in contemporary schools of *fiqh*

The modern schools of *fiqh* are an extension of the earlier ones and play a similar role in teaching religious doctrine, issuing *fatwas* and practising *ijtihad*, while instilling a commitment to the Shariah among members of the public and promoting the values of the Faith in their daily lives.

Among the contemporary schools the promotion and upholding of *masalih* has assumed an even wider range of forms and expressions. In this connection, two elements merit particular consideration:

Firstly: Functional *fiqh* performance. By this I mean the function of the schools of *fiqh* in educating the public, explaining *fiqh* rulings, practising *ijtihad*, issuing *fatwas* and decisions, and proposing solutions to problems on a *fiqh* basis. Some examples would include explaining how a modern Muslim should worship, deal with other people and organise his social and family affairs in situations such as the regular prayer on an aeroplane, performing the *tawaf* (circumambulation of the Ka'aba in Mecca) on the upper floors of the Grand Mosque, permissible foods in Western countries, and eating the meat of machine-slaughtered and electrically stunned animals. Other rulings relevant to modern-day practice cover matters such as purchase and sale procedures, marriage by fax, internet, telephone etc., attesting marriage contracts and registering them at official government departments, the rules governing political, civic, economic, technological and military activities in non-Muslim countries, cultural integration in those countries, etc.

The “functional performance” of the schools of *fiqh* – particularly the modern ones – is highly significant where Shariah *masalih* and *maqasid* are concerned, since the *masalih* in this category provide one of the main points of reference for dealing with contemporary developments and legal situations. The following example – attesting and registering marriage contracts at official government departments – will suffice: here the procedures of attestation and registration are required because of the *masalih* they entail, which include the *maslaha* (singular of *masalih*) of safeguarding the family's lineage and honour, the *maslaha* of family and social stability, and the *maslaha* of preventing trickery and suspicious and corrupt behaviour and safeguarding public and private rights. In the distant



past marriage contracts were concluded in an open, informal and transparent manner without there being a need for anything to be put in writing or registered with a court, municipality or ministry, since in those days people would not generally dare to deny something that was true and, in any case, they all knew each other. However, these days there is a lot more confusion and many people are inclined to deny the truth or resort to trickery, with the result that attestation is regarded as a necessary means of protecting rights and preventing wrongdoing.

Secondly: Islamic and human functional performance in general. By this I mean the function the schools of *fiqh* are able to perform in Islamic and human life in general. This element is much broader than the first, which is only relevant in an Islamic context (acts of worship, dealings between Muslims, Muslim family affairs etc.) and does not apply to human life as a whole.

In addition to their role in reconciling the different denominations and promoting Islamic unity, the schools are also engaged in issues such as citizenship, coexistence between Muslims and non-Muslims, sustainable development, improving the environment and promoting food and water security, economic self-sufficiency and data protection, as well as the security of the citizen and society, human rights and ethical values.

The principles of *masalih* are highly applicable in all these areas and provide the modern schools with a proper Shariah framework that will enable them to perform the above functions in an effective and proper manner.

We hope that our modern schools will continue to interact in a positive manner with the world around them and join with others in decision-making and contributing to their countries' development, while at the same time helping to reconcile disparate doctrinal positions and attitudes.

A proper approach to upholding *masalih* in the modern schools of *fiqh*

Masalih and the modern schools of *fiqh* are engaged in a dialectical interaction. The link between the two is growing ever stronger with the rising volume of religious, cultural and geographical contacts between



different nations, together with the direct and indirect material, moral and practical consequences of those contacts.

A proper approach to the concept of *masalih*

In the Religion of Allah the Most High, Shariah *masalih* are a reality established through textual injunction, *ijma'* (consensus) and deductive reasoning. They are what Allah the Most High desires from mankind – His wish being that mankind should worship Him, obey His commands and comply with His prohibitions, and act in such a way as will bring them benefits in this world and the Hereafter. The views of the 'ulama (scholars) on the nature of *masalih* are very similar, if not identical. They agree that *masalih* exist in this world and the next and that they are designed to safeguard man's Faith, mind, intellect, lineage and property, and they also agree that *masalih* exist at varying levels – some resulting from specific rulings while others are based on general principles.

Sometimes there are contradictions between *masalih* when they are applied to a particular action or situation. In such cases, it is necessary to remove those contradictions by subjecting the instances in which they occur to *tarjih* (giving preponderance to one position over another) and *ikhthiyar* (exercising options) in accordance with established rules, principles and procedures.

Masalih may be characterised by their “immutability, comprehensibility, precision and continuity”¹. They have an intrinsic quality which all 'ulama and *fuqaha* are agreed upon, even if they may differ over the means by which they should be achieved.

In a nutshell, *masalih* are designed to:

- Instil the meaning of worship in people's minds, souls and daily lives²
- Produce benefits for people and protect them from harm in this world and the next.

¹ Ibn al Khawja: *Mohammed al Tahir bin 'Ashur wa Kitabuhu Maqasid al Shari'ah al Islamiyyah*, 2/136.

² See my book *Al Ijtihad al Maqasidi*, P.43.



They are identified and achieved through a combination of sources, *tarjih*, comparison and conciliation, entailing an approach which involves opting for what is possible and what should be given priority while taking account of actual circumstances.

One example of these *masalih* is the question of citizenship when a Muslim is living in a non-Muslim, non-Arab society. Specific issues here include religious observance (in accordance with his right to religious freedom), his family affairs (in the light of the citizenship laws), and his intellectual identity (in the light of his cultural and educational background and as guaranteed by the laws of the country in which he is a resident). In practice, these rights and benefits may not be entirely problem-free. He may encounter hostility, disrespect, ridicule or provocation from the host community. However, he will try as far as possible to live according to the Shariah of Islam, while seeking to avoid problems or confrontation. When he is unable to observe certain specific precepts because of his situation, he will no longer be under an obligation (from a Shariah point of view) to do so.

A proper approach to the modern schools of *fiqh*

The modern schools of *fiqh* are an “extension” of the established schools that have existed throughout Islam’s history. They share the same knowledge of Islam, its rulings, its teachings and its principles of *ijtihad*, and they adopt the same approach to everyday life and to proposing solutions to its problems. Culturally, both the traditional and modern schools have always championed progress and material and spiritual development at home and abroad.

Like their predecessors, today’s schools of *fiqh* are committed to keeping pace with the demands of the modern age, yet without sacrificing their adherence to the Shariah and their commitment to its textual injunctions and *ijtihad* rulings.

Throughout their history these schools have regarded *masalih* as being in tune with human nature and as vital tools for satisfying man’s physical, spiritual and intellectual needs. In following the “middle way” they are in line with Allah’s Straight Path and Right Guidance.



Constants in the modern schools of *fiqh*

The constants are the Islamic Faith, its meanings, its rulings, its guidance and its *maqasid*. These are immutable in every time, place and situation. Every reputable school has an extensive body of knowledge and a sound, realistic approach to establishing and upholding the Islamic religion and involving its adherents in the life of the community.

More specifically, these constant elements include:

- Categorical creedal, Shariah/legal, cultural and moral truths which form an essential part of the Faith and may not be denied or abrogated.
- An approach which recognises the need for *ijtihad* and the Shariah requirement of *furudh al kifayah* (obligations binding upon the community as a whole), such as the creation of educational, media, judicial and *ifta'* institutions. These include the establishment of reputable schools of *fiqh* to provide guidance for the community in such areas as “useful” knowledge, authentic *ijtihad*, high literature and social solidarity and cohesion.
- Rules and instruments of *ijtihad*, including principles for deriving or deducing *masalih*.

The approach adopted by our modern schools of *fiqh* is consistent with these constant elements, which endow them with their focus, legitimacy, stability and capacity for revival and renewal and ensure that they remain true to the rules, principles and traditions of the Faith.

Variables in the modern schools of *fiqh*

The variables include terminology, institutional and organisational systems, operating methods, approaches to dealing with contemporary human, social and psychological situations, the use of modern technology and telecommunications, analysing and comparing situations, diagnosing common factors in human societies and cultures, etc. Generally speaking, these variables cover anything that is relevant to a specific time, place or circumstance and is not governed by a “constant”.



Our modern schools (particularly those based in countries outside the Islamic world, such as Western Europe, the Americas, China, Australia and Japan) must necessarily comply with the principles of *fiqh* legitimacy. While they should act in accordance with historical precedent and the textual injunctions, principles and *maqasid* of the Islamic Shariah, they should also take local conditions into account to ensure that their approach provides the best possible framework for tackling the problems in the regions where they are based and produces the best and most beneficial results for the local inhabitants. This is why their *fiqh* is described as *fiqh al buldan* (country *fiqh*) or *fiqh al amsar* (regional *fiqh*) and the local *fuqaha* (*fiqh* scholars) are referred to as *fuqaha al buldan* or *fuqaha al amsar* – as *fuqaha* of the Iraqi region, for example, or *fuqaha* of the regions of the Hejaz, Syria or Yemen. This links the local *fiqh* directly to the region in which it was produced and indicates its relationship with the relevant place, time and local circumstances.

Constants and variables in Shariah *masalih*

The *masalih* constants are the established truths based on – and extrapolated directly from – Shariah textual injunctions and *ijma'*. They also include Shariah positions which are definitive, long-established, moderate, balanced, just, free from prejudice or bias and compatible with human nature and what the normal human intellect regards as reasonable.

Among other *masalih* constants are acts of worship - the manner of which has remained unchanged whatever the time, place or circumstance - and the essential features of family and social organisation and human interaction; these may include expressions of intention to conclude a contract of marriage or sale, where the intention is a constant, while the situation, context or form of contract may be variable and may consist of no more than a spoken word or a gesture.

Also variable in Shariah *masalih* are the means that may be adopted to produce the best and most appropriate results. Examples of these may include ways of structuring and regulating civil, social and administrative organisations in order to promote harmony between members of the community, economic progress, material prosperity, spiritual development and institutional and administrative efficiency.



Other variables include the revitalisation of the Faith through applying the Shariah and *masalih* principles to present-day situations. This requires not only a proper understanding of the situation concerned and the applicable Shariah ruling; what is also needed is an understanding of modern knowledge and science and the realities of everyday life in the world of today.

A proper approach to the dialectic between *masalih* and the modern schools of *fiqh*

This dialectic concerns the relationship between *masalih* and the contemporary schools of *fiqh*. In essence, *masalih* provide the cornerstone and foundation of these schools and the way they interpret and apply the Shariah, while the schools of *fiqh* define and promote *masalih*, with regard to both their Islamic content (rulings, *furu'*, *masa'il* – or propositions – *fatwas*, decisions etc.) and the methodological, institutional and practical features which characterise these schools and their approach to religious, humanitarian, educational, cultural and other issues.

Today the modern schools of *fiqh* are called upon to apply the *maqasid* of the Shariah and the *masalih* of mankind in a studied, just and balanced manner so that they can form an effective framework for determining how we – as human beings – should worship and carry out our functions as members of society.

The different categories of “upholding *masalih*” in the modern schools of *fiqh*

These categories include:

Worship and human and material development.

This category covers acts of worship and human productivity in the sense of land development and the development of human resources and man’s material, spiritual and cultural assets. It also applies to the way people coexist, interact and exchange ideas, material and cultural benefits, etc.

The areas covered by this category offer the modern schools of *fiqh* considerable scope to contribute to the well-being of the human race through the application of Islamic principles, particularly *ijtihad*.



***Furud al ‘ain* (obligations binding upon the individual) and *furud al kifayah* (obligations binding upon the community as a whole).**

This category covers the two classes of *furudh* (obligations) ordained by the Shariah as binding upon Muslims, whether as individuals or in a collective capacity. As we all know, Islamic *fiqh* deals with what are referred to as *furudh al ‘ain* – that is, obligations that apply to every individual Muslim (such as the regular prayer, fasting in the month of Ramadhan, paying the zakat, performing the ‘Umrah, etc.) – and *furudh al kifayah*.

The latter class of obligations – i.e. *furudh al kifayah* – are incumbent upon the *Ummah* (Islamic Nation) and the State; they are also individually binding upon certain groups, organisations and authorities. If these groups perform their obligations, they cease to be binding on the rest of the Muslim community, while if they fail to do so, the whole community becomes liable and culpable as long as it fails to make sufficient effort to perform them. Examples of *furudh al kifayah* include the Funeral Prayer, relief aid, performing the roles of imam, judge and mufti, teaching, technological studies, military service, economics, industry and engagement in civic, environmental, political and other activities and duties.

Our modern schools of *fiqh* are required to play an active and positive role in their approach to both these categories of *furudh*. They should concern themselves with every aspect of them and provide opinions, rulings and *fatwas* on the obligations that are incumbent upon Muslims today in the light of the Shariah *masalih* and *maqasid*. They have a vital part to play in educating the public and contributing to a wide range of fields such as the media, administration, politics, citizenship, interfaith and interdenominational dialogue, etc.

In this connection, established and recognised *masalih* offer an ideal Shariah frame of reference.

And success is from Allah. And may the Blessings of Allah be upon our Prophet Muhammad and upon his Family and Companions.