

**AN ASSESSMENT OF THE OBJECTIVES OF ISLAMIC LAW
(*MAQASID AL-SHARI'AH*) IN THE PRESERVATION OF THE
FIVE ESSENTIAL VALUES (NECESSITIES)
(*MAQASID AL-SHARI'AH*)**

BY

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DECLARATION

I hereby declare that the work in this thesis entitled: “AN ASSESSMENT OF THE OBJECTIVES OF ISLAMIC LAW {MAQASID AL-SHARI’AH} IN THE PRESERVATION OF THE FIVE ESSENTIAL VALUES” has been performed by me in the department of Islamic law under the supervision of Dr. M. B. Uthman and Prof. Ibrahim Ahmad Aliyu. The information derived from the literatures has been duly acknowledged in the text and a list of references provided. No part of this work has been presented for another degree or diploma at any institution.

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CERTIFICATION

This thesis entitled: ASSESSMENT OF THE OBJECTIVES OF ISLAMIC LAW {MAQASID AL-SHARI'AH} IN THE PRESERVATION OF THE FIVE ESSENTIAL VALUES by ABBAS TIJANI ABDUL-QADIR meets the regulations governing the award of the Degree of Master of laws of Ahmadu Bello University, Zaria; and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This study is dedicated to my late father who strove earnestly to educate me and encouraged me to pursue this course assiduously to the end before he passed on in the same month of Ramadan that this thesis was completed; which corresponds to the first Friday of August, 2011. May his humble soul rest in perfect peace and may the Almighty Allah, the Creator and Sustainer of the Universe, in His infinite mercy, reward him abundantly and admit him to Jannatu al-Firdaus, the abode of bliss and felicity in the life of eternity.

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ABSTRACT

It is undisputable fact that nowadays, the Muslim world in particular has realized the dire need to write, translate and produce many books and articles on the topic of *maqasid* due to its importance in addressing and solving modern issues challenging the Muslim *Ummah*. It is in this regard that this topic entitled “Assessment of the Objectives of Islamic Law {*Maqasid Al-Shari’ah*} in the Preservation of the five Essential Values” was chosen. This research topic was made somehow comprehensive in assessing and analyzing the five essential values, the way they have been protected and preserved punitively and affirmatively in relation to Islamic law of *maqasid*, was dealt with after the introduction of this knowledge and its historical development. This work also revealed the wisdom behind many criminal penalties and other injunctions in Islamic law. The methodology of this research is mostly doctrinal. Some other issues related to the field of *maqasid* and *masalih* which are always raised by the Islamic jurists and scholars, like whether *maslaha*, as a tool of *maqasid al-Shari’ah*, should be accepted, rejected in totality or accepted with conditions; whether the doctrine of *maslaha* should be regarded as a source of Islamic law or not; whether *maslaha* can serve as a tool of dynamism and modernism in Islamic philosophy were extensively treated in the conclusion chapter of the research. The researcher finally went to explore the facts that a comprehensive and objective approach to modern Islamic issues should be adopted, and not an atomistic view and rigidity on literal meanings of the text; and that Islamic law is *maqasid*-oriented, flexible and workable in every community, epoch and in all ramifications of human endeavor. All these were critically surveyed, analyzed and given a finishing touch. Finally, some suggestions were offered and recommendations proffered that would go a long way to solving the already stated problems and challenges in the areas of *masalih* and *maqasid al-Shari’ah*.

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ABBREVIATIONS

A.S	Alaihis-Salam {May Peace be on him}
R.A	Radiyallahu ‘Anhu, ‘Anha, ‘Anhum, ‘Anhuma {May Allah be pleased with him, her, them, both of them}
S.A.W.	Sallallahu Allaihi wa Sallam {May the Blessings and Peace of Allah be upon Him}
e.g	for example
etc	and so forth
i.e.	that is
viz	namely

GLOSSARY

WORDS

MEANING

'adl/qist	justice
Adaat	customs and social matters
Ahkam {sing. Hukm}	rules and regulations
Ahl al-dhimma	covenanted non-Muslim subjects living in an Islamic state
Ahl al-Ra'y	the rationalists
Ahl-Hadith	the traditionists
Al-'ird	the honour
Al-hiyal al-fiqhiyyah	juridical tricks
Al-hudud	the prescribed fixed penalties
Al-Istiqra	induction
Al-Jizyah	a tax collected by the Imam from the covenanted non-Muslims for security purposes
Al-Juzi'yaaat	partial rulings
Al-Kulliyyaat	the universals
Al-masalih al-'aammah	public interest
Al-mu'tabar	accredited
Al-mukallaf	competent matured Muslim or subject
Al-nasl	the family lineage
Al-qadhif	slandorous accusation
Al-wasf al-munasib	the appropriate element
Amarah	sign or indication
Aza'im	strict laws of Shari'ah
Bay' bil-wafa	sales subject to redemption
Bay'ah	oath of allegiance

Bayt al-mal	public treasury
Dalalah al-haliyyah	instantaneous indication
Dalalah al-makaniyyah	local induced indication
Dalalah al-zamaniyyah	temporal indication
Dalalatan qat' iyyah	a definitive indication
Dalil	authority or proof
Daman al-dark	police assurance of safety
Dar' al-Mafasid	warding off evils
Daruriyyaat	necessities
Dawawin	statistical register and salary system of public officers and soldiers
Dilalat an-nass	implication of the scripts
Din	religion
Dini	relating to religion or hereafter
Diyah	blood money
Dunyawiy	relating to this world
Faraa'id	the fixed entitlement in inheritance/obligations
Fatawa	Islamic legal opinions
Fiqh	jurisprudence
Fitnah	anarchy/sedition
Gharar	uncertainty
Ghasb	unlawful arbitrariness/usurpation
Hajiyyaat	needs, complementary, desirables
Halal	lawful
Haqiqiyyah	genuine
Haqq	right
Haram	unlawful
Hikma	wisdom
Hikmatu al-Tashri'	wisdom behind the rules of Shari'ah
Hima	protective zone

Hirz	fortified place
I'tibar	validity
Iddah	waiting period of the wife
Ijma'	consensus
Ijtihad	juridical reasoning
Ikhtilal	disruption
Illatul-hukm	reason for the rule of Shari'ah
'Imran	developing civilization on earth
Indibaat	consistency or exactness
Indibat	consistency
'Ismatud-dam	sanctity of blood
Istislah	achieving benefits
Istisna'	contract of manufacture
Jahiliyyah	period of ignorance {i.e.before Islam}
Jalb al-Masalih	obtaining benefits
Janibul-'adam	negative defensive aspect
Janibul-wujud	positive compelling aspect
Jinayaat	criminal aspects of the law
Juz' iyyah	particular
Kaffaraat	expiation or penances
Kathir al-ghalib	common preponderant
Khalaf	successors
Khalq	creation
Kulfah	inconvenience
Kulliyy	general or public
Kulliyyaat	universals
Ma'al	consequential upon the act
Ma'qulah	rational
Madhahib	schools of Islamic law
Mafhum an-nass	indication of the text
Mafsadah	harm, evil, or mischief

Mahjur	interdicted
Mahzuraat	forbidden things
Mal	wealth
Maqasid {sing. Maqsid}	purposes, intents
Maqasid al-Shari'ah	the objectives of the Islamic law
Masalih {sing. Maslaha}	benefits
Mu'allafatu qulubuhum	those who are weak in faith and are inclined towards faith.
Mu'amalat	human dealings or civil transactions
Mu'tabarah	valid
Mufti	a scholar who gives Islamic legal opinions
Muhafazah	preservation
Mujtahidun	independent jurists
Mulgha	invalid
Munasabah	appropriateness
Munasabah	propriety considerations
Munasabatu al-hukm	the suitability of the law of Shari'ah
Muqaddaraat	specific injunction of the Shari'ah
Muqaddima	prerequisite
Musaqaat	irrigation
Muzara'ah	temporal sharecropping contract
Nafs	life
Nahb	looting
Nass sarih	direct declaration
Nisab az-Zakat	the minimum value which if stolen by the thief he or she will be amputated
Nusus {sing. nass}	texts
Qalil al-nadir	limited and rare
Qaraa'in	indications/signs

Qasamah	oath taking procedure to verify murder where strong circumstantial evidence is the only available proof
Qasd	intended
Qat'iyyah	certainty
Qiraad	money lending/partnership
Qisas	just retaliation
Qiyas sahih	sound analogy
Quwwa	effectiveness
Ra'y	personal opinion
Rajm	a capital punishment of stoning till death giving to a married person who commits adultery
Rukhas	concessions
Sabab	potential cause
Sadd al-dhari'ah	blocking the means that lead to <i>haram</i>
Salaf	predecessors
Salah	goodness
Salam	forward buying/sale
Shahadat az-Zur	perjury
Shubha	a great suspicion
Shura	public consultation
Ta'addi	proving tort
Ta'lil	ratiocination
Ta'zir	discretionary punishment by either the Imam or the Judge
Tahrif	heresy
Tahsiniyyaat	embellishments, luxuries
Takalif	legal obligations
Takmiliyyaat	supplementary
Tamathul	parallel evaluation

Tashri'	legislation
Tazkiyah	purification of the soul
Ummah	nation
Umumul-balwa	general necessity
Wadi'ah	deposit
Wahmiyyah/tawahhum	specious or conjecture
Waliy	guardian
Zanni	probable
Zanniyyah	uncertainty
Zuhuur	clarity
Zulm	injustice