

**PRESERVING PROPERTY OR WEALTH (*HIFÚ AL-MÓL*) FROM THE  
*MAQÓØID SHARÔ'AH*' S PERSPECTIVE:**

**AN OVERVIEW**

By:

Professor M.S.Sujimon (PhD)

Rector

Johore Islamic College (MARSAH)

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“God made this blessed righteous *sharĒ’ah* accommodating and convenient and thus won the hearts of human beings and invoked in them love and respect for law. Had they had to act against convenience they could not have honestly fulfilled their obligation”

AbĒ IsĒĒq al-ShĒĒibĒ (d.790H/1388CE)

### **A. Brief Background of the *MaqĒsid al-SharĒ’ah***

There have been a lot of discussions and input about the *MaqĒsid al-SharĒ’ah* among the academia around the globe, whether in the form of presentation in the conference, seminar, training module or university class participations; I am here to share with you what I foresee on the importance of this subject in the context of Islamic finance. In this presentation, I refer to many materials be it from classical books of Islam such as *al-MuwĒfaqĒt* of al-ShĒĒibĒ in Arabic – which Professor Dr. Muhammad Khalid Masud has published in English entitled, *ShĒĒibĒ’s Philosophy of Islamic Law* published by Research Institute 1995 - and other modern books like those of Professor Hashim Kamali, *Principles of Islamic Jurisprudence*, Professor Bernard Weis, *The Search for God’s Law* based on the work of *al-ĒmidĒ*, *al-ĒkĒm fĒ UsĒl al-ĒkĒm* of the University of Utah and others.

The experts of *maqĒsid al-SharĒ’ah* are many, among them are: al-ImĒm al-JuwaynĒ (d.478H/1086CE), Imam al-GhazĒĒ (d.505H/1111CE), al-Imam al-ShĒĒibĒ (d.790H/1388CE), Shah WalĒ AllĒh al-DahlawĒ (d.1175H/1762CE, ImĒm al-ShawkĒnĒ (d.1250H/1834CE), Ibn ‘ĒshĒr (d.1393H/1973CE) and ‘AlĒl al-FĒsĒ (d.1394H/1974CE). Those experts have been able to translate the meaning of principles of Islamic Jurisprudence (*uĒĒl al-fiqh*) in its real sense, because the science of principles of Islamic jurisprudence (*uĒĒl al-fiqh*) is regarded as a method of understanding certain rulings in Islamic law used by classical Muslim jurists. Thus, the real meaning of the objective of Islamic law in is such as that if, *uĒĒl al-fiqh* is, the text (*matn*), the *maqĒlid sharĒ’ah* is the interpretation of such rulings (*sharĒ*).

## B. Fundamental of the *MaqÉÍid al-SharÉ'ah*

The idea of *MaqÉsid al-SharÉ'ah* is taken from *uÍÉl al-fiqh* or also being understood as Islamic legal theory – by the western researchers – a discipline of knowledge, deals with sources of Islamic law or the criteria of validity for the legal rule in Islamic law, in which the major discussion is on the description of the sources and methods of legal reasoning. In order to materialize the execution of Islamic finance, the *maÍlaÍah* or doctrine of expediency (a means of attaining an end), plays an important role. In Islam, *maqÉÍid sharÉ'ah* is not regarded as source of law but rather, it is an art of interpretation of certain new rulings that have not been clearly mentioned in al-Qur'an and as-Sunnah.

Even though so many Muslim scholars have discussed about the *maqÉÍid al-sharÉ'ah*<sup>1</sup>, I chose al-ShÉÍibÉ (d.790H/1388CE), whom I regard as a modern scholar who was able to develop the concept *maqÉÍid shari'ah* based on analogical reasoning (*QiyÉs*), to a very specific discussion of it i.e. wisdom (*'illah*), using the method of identifying ruling (*Íukm*), through which, the last stage is on the suitability (*munÉsabah*) which again is a very focused study. In this context, al-ShÉÍibÉ is regarded as *UÍÉlÉ* expert where he is able to construct a new paradigm on the role of the principles of Islamic Jurisprudence (*uÍÉl al-fiqh*) in the modern context. His new construction of *uÍÉl al-fiqh* later was developed by Ibn 'ÓshÉr (d.1393H/1973CE).

Al-ShÉÍibÉ puts the fundamental framework of *maqÉÍid* to revive some sort of reformation (*iÍÉÍ*) and making the *maqÉÍid* as a bridge of understanding human nature, where its message is, to study the concept of innate character (*fiÍrah*) of mankind be it Muslim or non-Muslim. The most important purpose of the last Prophet of Islam Muhammad in which al-Qur'an says: "*We have not sent you but as a Mercy to the world*" (21:107). The very important objective of Islam including

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<sup>1</sup> The experts of *maqÉsid al-SharÉ'ah* are many, among them are: al-ImÉm al-JuwaynÉ (d.478H/1086CE), Imam al-GhazÉlÉ (d.505H/1111CE), al-Imam al-ShÉÍibÉ (d.790H/1388CE), Shah WalÉ AllÉh al-DahlawÉ (d.1175H/1762CE), ImÉm al-ShawkÉnÉ (d.1250H/1834CE), Ibn 'ÓshÉr (d.1393H/1973CE) and 'AlÉl al-FÉsÉ (d.1394H/1974CE).

Islamic finance is *Raġmah* (Mercy or Compassion), that seek to eliminate prejudice, alleviate hardship and establish justice. The objectives of Islamic law (*maqĒġid al-sharĒ'ah*) also seek to promote cooperation and support within the family and the society at large.

The objective of wisdom (*raġmah*), in the *maqĒġid al-sharĒ'ah* therefore, is most clearly manifested in the realization of *maġlahah* (benefit) in everyday communal life. Thus, ImĒm al-GhazĒġĒ (d. 505 AH/1111CE), for instance, specifies the five objectives of Shari'ah, saying:

ومقصود الشرع من الخلق خمسة: وهو أن يحفظ عليهم دينهم ونفسهم وعقلهم ونسلهم ومالهم؛ فكل ما يتضمن حفظ هذه الأصول الخمسة فهو مصلحة، وكل ما يفوت هذه الأصول فهو مفسدة...

“... and the meaning of the objectives of Islamic law (*shar'*) is human nature i.e. preservation of religion, life, intellect, lineage and property/money. Anything that furthers these five objectives is benefit (*maslahah*), and anything that runs contrary to them is *mafsadah* (destruction/corruption)".Allah says, “ ...



“So set you, O Muhammad, your face towards the religion of pure Islamic monotheism (worship none but Allah Alone) Allah's Islamic monotheism), with which He has created mankind, no change let there be in the religion of Allah Islamic monotheism, that is the straight religion, but most of men know not.”

Thus, the key point is to describe about *maqĒsid al-SharĒ'ah* on how to protect five things, what and why these five factors ought to be preserved. They are as follows:

**C. Five Necessities (*ġarĒriyyĒt al-khams*) of the *MaqĒġid al-SharĒ'ah***

Necessities are matters that worldly and religious life depended upon. Their omission leads to unbearable hardship in this life or punishment in the Hereafter. The Shari'ah (Islamic law) protects and preserves these five necessities as follows:

- (i) **Religion (*dĒn*):** To ensure the establishment of religion, Allah the Almighty has made belief and worship obligatory. To ensure its preservation, the rulings relating to the obligation of learning and conveying the religion were legislated.
- (ii) **Life (*nafs*):** To ensure the preservation of human life, Allah the Almighty has legislated for marriage, healthy eating and living, and forbid the taking of life and laid down punishments for doing so.
- (iii) **Intellect (*'aql*):** Allah has permitted that sound intellect and knowledge be promoted, and forbidden that which corrupts or weakens it, such as alcohol and drugs. He has also imposed preventive punishments so that people stay away from them, because a sound intellect is the basis of the moral responsibility that humans were given.
- (iv) **Lineage (*nasl*):** marriage was legislated for the preservation of lineage, and sex outside marriage was forbidden. Punitive laws were put in place in order to ensure the preservation of lineage and the continuation of human life.
- (v) **Wealth (*mĒl*):** Allah has made it obligatory to support oneself and those under his responsibilities and placed laws to regulate the commerce and transactions between people, in order to ensure fair dealing, economic justice, and to prevent oppression and disputes.

As far as Islamic finance is concerned, the key issue is, how to address preservation, not only the preservation as what we understand, but in a broader sense of the word -- preservation of property, asset, money from the *maqasid shariah's* perspective.

The Arabic word "*al-mĒl*" can be translated as property, asset or wealth. The discussion of "*hifĎ al-mĒl*" or preservation of property, asset, money and wealth from the view point of *maqĒġid al-sharĒ'ah* needs to be further examined in the

context of Islamic finance so as to ensure the objective of Islamic finance is inclusive not exclusive.

Regardless of whom we are, there are three basic things in life that needs to be fulfilled i.e. food, clothing and accommodation. All of these three basic things in life, require money to accomplish and thus should be kept and always be preserved. The *maqasid shari'ah* in this context is to ensure whether or not such money gives *masalih* (benefits) to the community.

#### **D. Classifications of *Maâlâlah* (Benefits) in the *MaqÉÊid al-SharÊ'ah***

The Muslim jurists have classified the entire range of those five necessities which are based on three descending categories of importance: the *daruriyyah* (the essential), the *hajiyyah* (the complementary) and the *tahsiniyyah* (the desirable or the embellishments).

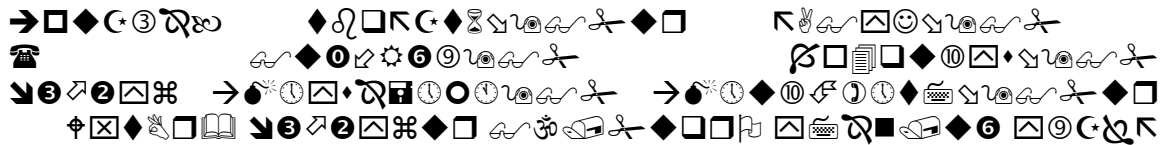
The first category and the essential *masalih* in other words, constitute the all-pervasive central theme of the *maqÉÊid al-sharÊ'ah* and all its laws are in one way or another related to the protection of these benefits.

The second category of benefits, known as the *hajiyyah* or the complementary benefits, are not in themselves a completely independent category. They seek to protect and promote the essential *masalih*, albeit in a secondary capacity. The *hajiyyah* is defined as benefits that seek to remove severity and hardship in cases where such severity and hardship do not pose a threat to the very survival of normal order. In the sphere of Islamic finance, the *maqÉÊid al-sharÊ'ah* validates certain contracts, such as the sale of *salam* and the *ijarah*, (lease and hire). The benefits attained from such contracts may be classified as *hajiyyah*. A complementary *maslahah* is elevated to the rank of the essential *masalih* where it concerns the public at large. However, when there is a plurality of conflicting *masalih* and none appears to be clearly preferable, then the prevention of evil takes priority over the realization of benefit. This is because the *maqÉÊid al-sharÊ'ah* is

more emphatic about the prevention of evil than the realisation of good, as can be seen from the Hadith where the Prophet is reported to have said: “When I order you to do something, do it to the extent of your ability, but when I forbid you from something, then avoid it altogether”.

The third category of *masalih*, known as the *tahsiniyyah*, is in the nature of desirability. They seek to attain refinement and perfection in the customs and conduct of the people, at all levels. The *maqÉlid al-sharÉ‘ah* also encourages the giving of charity to those in need, over and above the obligatory *zakat*. Therefore, this *tahsiniyyah* is a very important category, as it is all-pervasive and relate to all the other *masalih* (benefits).

Speaking of money, asset or property, in general, there are many verses in the Holy Qur’an regarding *mÉl*, money or property in Islam. For example the word “*mÉl*” has been mentioned 80 times in al-Qur’an. The function of property, asset, wealth and money (*mÉl*) in al-Qur’an which says:



“Wealth and children are the adornment of the life of this world, but the good righteous deeds (five compulsory prayers, deeds of Allâh's obedience, good and nice talk, remembrance of Allâh with glorification, praises and thanks, etc.), that last, are better with Your Lord for rewards and better in respect of hope”.(al-Kahf: 46)

Money is a necessity of life. In addition, sound money is a caretaker of life. Islam came with its legislation in consideration of this value that sound money has. The *maqasidi* approach that one encourages to obtain wealth by lawful means, and it guides us to manage it well and directs us to the best way of increasing it. It is indisputable that money is one of the ornaments of life in this world. Money is sought and loved, and Islam does not prevent one from striving and seeking wealth as long as this seeking is done by lawful means.

In reality, money is not sought for itself. Rather, it is sought for the benefits that it can bring about. Money is a means. Money is a medium and it is not an end. Today, money is an effective tool and a helper. All of us need money to bring about benefits, and how we need money to prevent harm, for money is a means of worshipping Allah and establishing His laws. It is a means of righteousness and rectification; it is a means of kindness, connection and solidarity amongst Muslims. It is not permissible for a Muslim to regard money as other than what it really is. It is not permissible to treat money as a god and worship it, and to follow caprice and disregard ones principles. It is forbidden to be negligent and careless in issues of lawful and unlawful and go against the command of Allah and disobey Him. Moreover, everyone will be asked on the Day of Judgment in front of Allah about where and how they acquired their wealth and how they spent it.

It is forbidden for money to be earned by means that are not lawful, such as usury, fraud, gambling, monopoly, cheating, embezzlement, trickery, bribery and theft, in all its type. The same goes for consuming the money of orphans oppressively and transactions involving that which is unlawful, such as selling wine and pork. Also, any lack of proficiency and proper conduct in one’s dealings, and extortion, which is the seizure of another’s money without right and other ways in which money is transferred between people to be possessed and consumed without any consent. Allah says:



“O You who believe (in the Oneness of Allah - Islamic Monotheism), eat of the lawful things that we have provided you with, and be grateful to Allah, if it is indeed He whom you worship” (al-Baqarah:172)

And the Almighty Allah commands the believers as He commands the messengers, says:





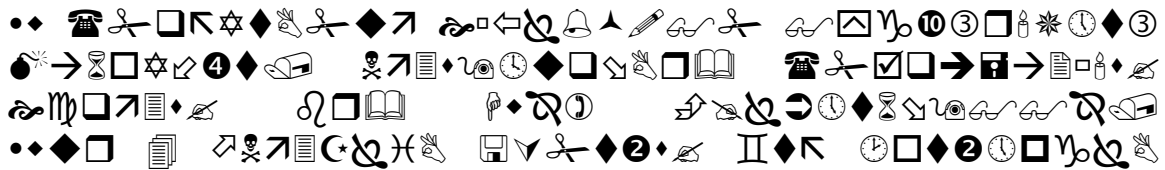
Preservation of money or property falls in the *maqÉlid sharÉ'ah* under the category of that need five things to be preserved i.e. *ÌarÉriyÉt* (essential). This means that every Muslim should be held responsible to preserve money, property and wealth and such wealth and property belonging to others should not to be transgressed and if the act of transgression is ignored it may lead to destruction in the society as a whole. From the point view of the *maqÉlid sharÉ'ah*, in order to preserve property and asset, there are two ways involved i.e. to merge positive measure and negative measure at one time. The positive measure is to guarantee that the property and asset always exist. The negative measure is to protect any elements which transgress and demolish the existence of property and asset which has importance role in life.


**a) Positive Measure to Accomplish the *MaqÉlid SharÉ'ah***

- (i) In order to preserve the property, there are five factors that need to be fulfilled: (i) Property must be legally owned (ii) Money must be persistently circulated in the community (iii) investing the money continuously (iv) Securing prosperity to the community and; (v) transparency of the economy and finance activities.


**(ii) Property must be legally owned**

This objective measure is based on the *maqÉlid sharÉ'ah* which stresses that the money must be spent in accordance with Allah's ordained. Al-Qur'an says:




  
 “O You who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent and do not kill yourselves (nor kill one another). surely, Allah is Most Merciful to you”.<sup>2</sup>

The Prophet is reported to have said that we have been prohibited to sell anything which we do not own and in the hand of the seller. Looking from the viewpoint of Islamic finance, the issue of *qabl* and *taslÊm* is given priority, any item being sold in all transaction. In the aspect of the *maqÊÊd sharÊ’ah*, owning property in a legal manner in normal circumstances is through buying and selling. Thus, its objective, that is, any property owned by someone else cannot be transgressed by anybody because such property has been acquired through legal way. There are so many verses in al-Qur’an which encourage human beings to acquire asset through legal way. In this connection al-Qur’an says:


“Then when the (Jumu’ah) Salat (prayer) is finished, You may disperse through the land, and seek the Bounty of Allâh (by working, etc.), and Remember Allâh much, that You may be successful”.<sup>3</sup>

The Prophet is reported have said;

أَطْيَبُ الْكَسْبِ عَمَلُ الرَّجُلِ بِيَدِهِ وَكُلُّ بَيْعٍ مَبْرُورٍ<sup>4</sup>

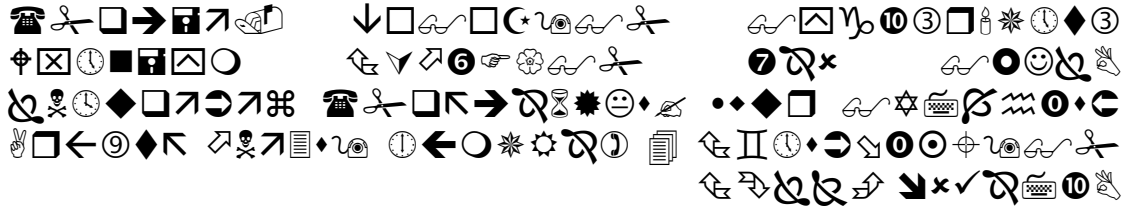
[Meaning: the best effort of is working being done by a person with his hand and all action related to buying and selling done in a good manner.]

What is important according to *maqasid shari’ah* is to own property acquired in legal way as al-Qur’an says in SÊrah al-Baqarah ayat 168:

<sup>2</sup> Al-NisÊ’: 29.

<sup>3</sup> Al-Jumu’ah: 10.

<sup>4</sup> AÍmad Ibn xanbal, *Musnad AÍmad*, 4/141.



“O mankind! eat of that which is lawful and good on the earth, and follow not the footsteps of *Shaitan* (Satan). Verily, He is to you an open enemy”.

If the issue of legal ownership is to be seen from the point of view of *maqÉlid sharÉ‘ah*, it will be able to solve problems in the community e.g. theft, snatch, robbery, bribery, cheating, etc because property which is acquired in illegal way and putting the discipline of the *maqÉlid sharÉ‘ah* as its basis, this will lead to the wrath of Allah and will be punished in the Hereafter. Al-Qur’an says:



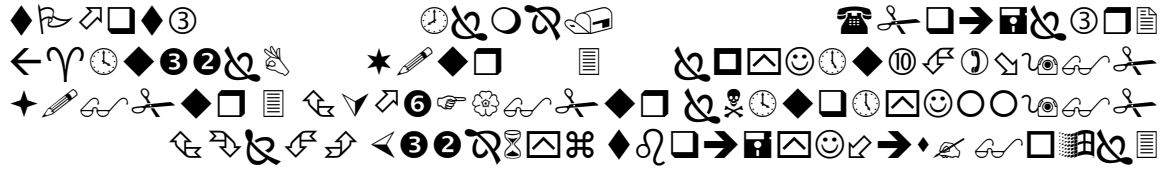
“Verily, those who unjustly eat up the property of orphans, they eat up only a fire into their bellies, and they will be burnt in the blazing fire!”<sup>5</sup>

**(iii) Money to be persistently circulated in the community**

The objective of the *maqÉlid sharÉ‘ah* is always focused upon justice among community and society. Thus, in order to accomplish its objective it is suggested that the majority of the community be involved in economic and finance activities so as to prevent the circulation of money among selected people only. In this regard, al-Qur’an says:



<sup>5</sup> Al-NisÉ’: 10.



“And let not those who covetously withhold of that which Allâh has bestowed on them of his Bounty (Wealth) think that it is good for them (and so they do not pay the obligatory Zakât). Nay, it will be worse for them; the things which they covetously withheld shall be tied to their necks like a collar on the Day of Resurrection and to Allâh belongs the heritage of the heavens and the earth; and Allâh is Well-Acquainted with All that you do”.<sup>6</sup>

The above effort needs to be done to stabilize the institution of *zakat* and *waqf* to help for those needed because this is the objective of preservation of property and asset.

**(iv) Investing the money continuously**

Development of human being’s life is not only limited to fulfill the basic need but also to improve other things. This aspect is required on the upgrading and enriching the resources. Thus, the property which is available, needs to be invested and in the *maqÉlid* point of view, the profit of the investment may be used to upgrade life in the community.

The purpose of investment activities is to create potentiality of capital in order to establish new manufacture. Therefore, all activities in Islamic finance need to be accompanied by many investors through a variety of mechanisms in investment and instruments and these need to be enhanced so that the capital can be benefited by the society effectively. The objective of the *maqÉlid* is to encourage human beings to optimize the existing sources of benefit and availability of capital in order to upgrade human lives by helping others and gives prosperity in the community.

Many verses in al-Qur’an and hadith prohibit human beings from begging without utilizing the availability of capital that he has. It is the strength of any

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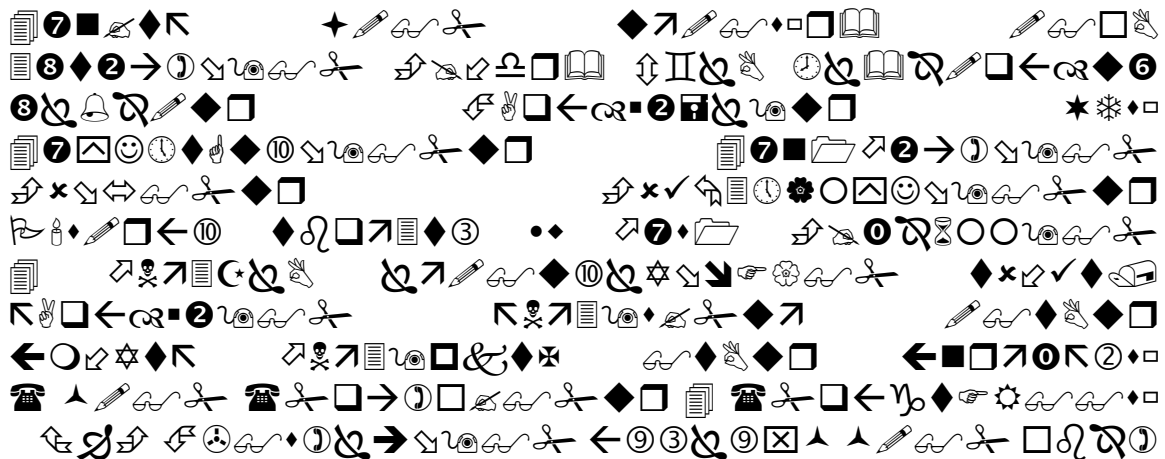
<sup>6</sup> Ól-‘ImrÉn: 180.

society, like commodities, resources or soul which is owned by human beings is to search Allah’s bounty in this world.

**(v) Securing prosperity for the community**

One of the objectives of the *maqalid sharE’ah* is to fulfill essential need in life for every individual in the society. Therefore, prosperity for the whole community needs to be materialized and the availability of the resources needs to be equally distributed to the community.

Al-Qur’an says:



”What Allah gave as booty (Fay’) to his Messenger (Muhammad s.’a.w) from the people of the townships, - it is for Allâh, his Messenger, the kindred (of Messenger Muhammad), the orphans, the poor, and the wayfarer, In order that it may not become a fortune used by the rich among you and whatsoever the Messenger gives you, take it, and whatsoever He forbids you, abstain (from it) , and fear Allah. Verily, Allah is severe in punishment”.<sup>7</sup>

Thus, activities related to Islamic finance cannot be focused on profit only because profit from business activities should also be used to help stabilize economy gap among the community at the same time to promote justice and welfare. The existence of Islamic financial system should function to promote

<sup>7</sup> Al-xashr: 7.

stability among societies and to avoid creating caste in the society or economy class and at the same time to reduce gaps among them. On this basis with the business activities, there will be a lot of micro economics services to be offered by the finance institutions and make the finance institution connected with the problems faced by the community.

#### **(vi) Transparency of the Economy and Finance Activities**

One of the objectives of *maqÉlîd sharÊ'ah* is to promote harmony among mankind and at the same time to avoid any conflict in the society. Squandering and misuse of the resources, creating conflict among the members of the society especially those who are involved in business are prohibited. This is because Islam gives importance to the sincerity the parties involved in business transaction so as to give justice. Thus the *maqÉlîd sharÊ'ah* encourages parties involved in the business to make records in all transactions. Islam has also outlined certain conditions in order that certain contracts to be regarded as valid e.g. *murabahah*, *mudarabah* and *musharakah* contracts. If all conditions have been fulfilled the contracts are regarded as valid. However, if the conditions stated are not obeyed, that contract could be regarded as null and void.

Thus, from the view point of *maqÉlîd sharÊ'ah* relating to Islamic finance it has tied up with conditions which have been regarded as valid and at the same time is to assist the implementation of Islamic economy and promoting economic justice from the property they acquired. In addition to that, the Muslim scholars have prepared the guidelines on how to redistribute asset and property to people as what has been spelt out in the *maqÉlîd sharÊ'ah* relating to Islamic finance and Islamic economy.

#### **b) Negative Measures to Preserve Property and Asset in the *MaqÉlîd***

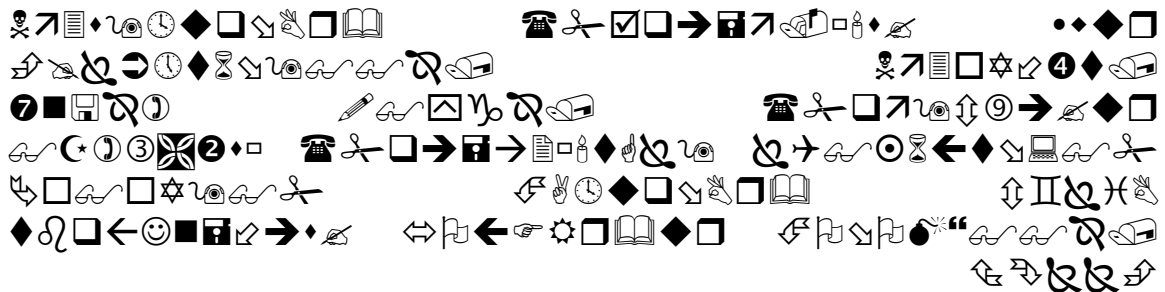
Despite preserving property and asset through positive measures, *maqÉlîd sharÊ'ah* also dictates rulings based on negative measures. This prohibition includes; (i)

Transgressing asset and property belonging to others. (ii) Accumulating asset and property, (iii) Charging Interest. (iv) Stinginess, Lavishness and Squandering (v) Monopoly.

**(i) Transgressing Asset and Property Belonging to Others**

There are a lot Qur’anic verse and hadith of the Prophet which prohibit transgressing asset and property belonging to others.

The Qur’an says:



“And eat up not one another's property unjustly (in any illegal Way e.g. stealing, robbing, deceiving, etc.), nor give bribery to the rulers (judges before presenting Your cases) that You may knowingly eat up a part of the property of others sinfully”.<sup>8</sup>

The Prophet is reported to have said:

لَا يَحِلُّ مَالٌ أَمْرِي إِلَّا بِطَيْبِ نَفْسٍ مِنْهُ

Meaning: It is illegal for someone to take property or asset belonging to others except if such asset or property has been taken from him with his consent.

Thus, if a property is stolen by a thief, such a thief is regarded as greedy and can be prosecuted in the form of discretionary punishment. A greedy person cannot be regarded as a true Muslim believer, he can be regarded as irresponsible person in the society. He definitely refuses to pay zakat and if this occurs, from the *maqâ'id shar'ah* point of view, the needy and the poor who are supposed to receive zakat from that particular person been refrained from receiving such zakat, and the person who refuses to pay zakat, in a broader sense, can be considered taking the

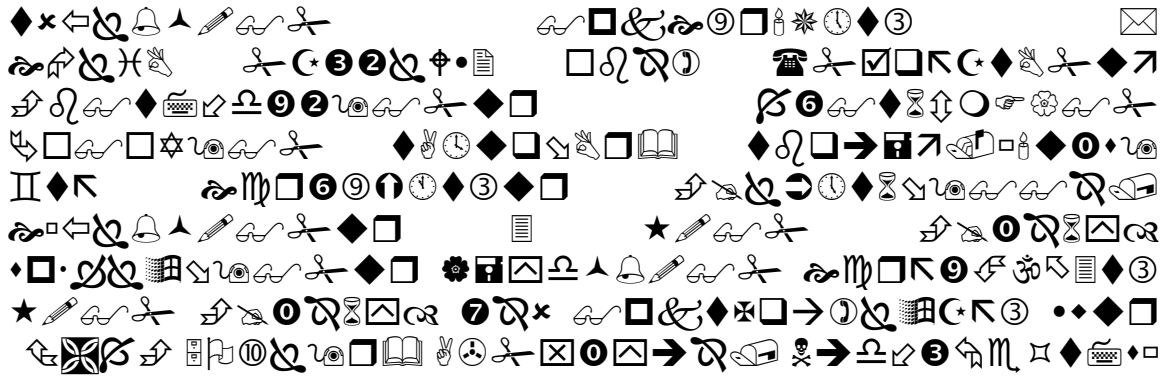
<sup>8</sup> Al-Baqarah: 188.



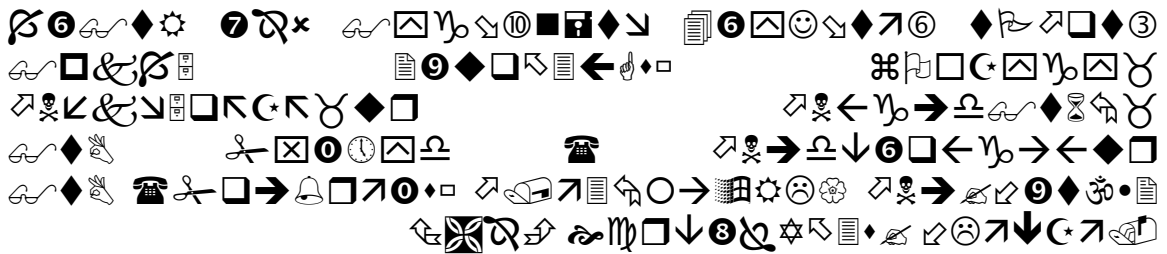
property of others in an illegal way or unjust way, with that, consequently, it may create chaos in the community. The objectives of *maqÉlid sharÉ'ah* as far as preserving property and asset is concerned in this context is to guarantee prosperity of life in the community, therefore if zakat is implemented, it is believed that cases of snatching and robbery at least can be reduced or eliminated.

**(ii) Accumulating Asset and Property**

According to the *maqÉlid sharÉ'ah* it is illegal to accumulate property and asset. In this context, al-Qur'an says:



“O You who believe! Verily, there are many of the (Jewish) rabbis and the (Christian) monks who devour the wealth of mankind In falsehood, and hinder (them) from the Way of Allah (i.e. Allah's Religion of Islamic Monotheism). and those who hoard up gold and silver [Al-Kanz: the money, the Zakat of which has not been paid], and spend it not In the Way of Allah, -announce unto them a painful torment.



“On the Day when that (Al-Kanz: money, gold and silver, etc., the Zakât of which has not been paid) will be heated In the Fire of Hell and with it will be branded their foreheads, their flanks, and their backs, (and it will be said unto them):-"This is the treasure which you hoarded for yourselves, now taste of what you used to hoard."<sup>9</sup>

<sup>9</sup> Al-Tawbah: 34-35.

Accumulating property and asset is prohibited because from the *maqĒlid* point of view this may trigger varieties of negative impact. If money cannot be invested, there will be no prosperity in the society, no productivity and at the same time leads to market instability in terms of price especially if the property is being hoarded. In this context, there is hadith of the Prophet which reports as follow:

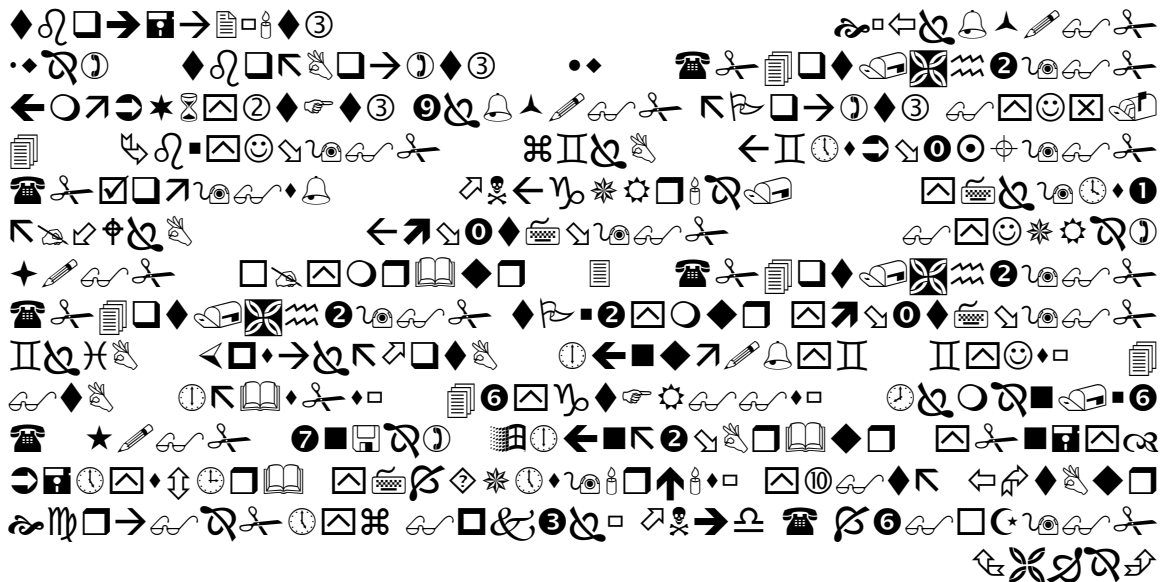
أخبرنا ابن الحسين، قال: أَخْبَرَنَا ابْنُ الْمُذْهَبِ، قَالَ: حَدَّثَنَا أَحْمَدُ بْنُ جَعْفَرٍ، قَالَ: حَدَّثَنَا عَبْدُ اللَّهِ بْنُ أَحْمَدَ، قَالَ: حَدَّثَنِي أَبِي، قَالَ: أَخْبَرَنَا أَبُو سَعِيدٍ، مَوْلَى بَنِي هَاشِمٍ، قَالَ: حَدَّثَنَا الْهَيْثَمُ بْنُ رَافِعٍ الطَّاطِرِيُّ، قَالَ: حَدَّثَنِي أَبُو يَحْيَى رَجُلٌ مِنْ أَهْلِ مَكَّةَ، عَنْ فُرُوحَ، مَوْلَى عَثْمَانَ، أَنَّ عُمَرَ خَرَجَ إِلَى الْمَسْجِدِ، فَرَأَى طَعَامًا مَنثورًا، فَقَالَ: مَا هَذَا الطَّعَامُ؟ فَقَالُوا: طَعَامٌ مَجْلَبٌ إِلَيْنَا، فَقَالَ: بَارَكَ اللَّهُ فِيهِ وَفِيمَنْ جَلَبَهُ، قِيلَ: يَا أَمِيرَ الْمُؤْمِنِينَ، فَإِنَّهُ قَدْ احْتَكَرَ، قَالَ: وَمَنْ احْتَكَرَهُ؟ قَالُوا: فُرُوحُ، مَوْلَى عَثْمَانَ، وَفُلَانٌ مَوْلَى عُمَرَ، فَأَرْسَلْنَا إِلَيْهِمَا فَدَعَاَهُمَا، فَقَالَ: مَا حَمَلَكُمَا عَلَى احْتِكَارِ طَعَامِ الْمُسْلِمِينَ؟ قَالَا: يَا أَمِيرَ الْمُؤْمِنِينَ، نَشْتَرِي بِأَمْوَالِنَا وَنَبِيعُ، فَقَالَ عُمَرُ: سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَنْ احْتَكَرَ عَلَى الْمُسْلِمِينَ طَعَامَهُمْ ضَرَبَهُ اللَّهُ عِزًّا وَجَلًّا بِالْإِفْلَاسِ أَوْ بِجَذَامٍ» فَقَالَ فُرُوحُ عِنْدَ ذَلِكَ: يَا أَمِيرَ الْمُؤْمِنِينَ، أَعَاهَدُ اللَّهَ وَأَعَاهَدُكَ أَنِّي لَا أَعُودُ فِي طَعَامِ أَبْدَاءٍ، وَأَمَّا مَوْلَى عُمَرَ، فَقَالَ: إِنَّمَا نَشْتَرِي بِأَمْوَالِنَا وَنَبِيعُ، قَالَ أَبُو يَحْيَى: فَلَقَدْ رَأَيْتَ مَوْلَى عُمَرَ مَجْذُومًا.

[“... it is reported by AbĒ YaĒyĒ – one of the inhabitants in Mecca – from FarrĒkh, *mawĒĒ of ‘UthmĒn* (b. ‘AffĒn), ‘Umar (b. al-KhaĒĒĒb) is reported when he was walking to the mosque he saw foods are scattered on the street ‘Umar asked his companions, what sort of food is this? They said, that food has been brought to them as such, ‘Umar said, may Allah give him bounty for those who brought that food and that companion is reported to have informed ‘Umar that such food has been hoarded, ‘Umar asked his companions, who hoards that food, they said, FarrĒkh, the *mawĒĒ of ‘UthmĒn* (b. ‘AffĒn) dan the *mawĒĒ of ‘Umar*, ‘Umar asked his companions requesting both of them to be called where they came to see ‘Umar, ‘Umar asked both of them, why are you doing that, they replied, we bought that food using our money and we sell as we like, so ‘Umar said, I used to hear the Prophet said “Tho who hoard commodity, so Allah will make him bankruptcy and leoprasy, then FarrĒkh is reported to have told him, Yes, commander of faith, I promise to Allah and you that I will not be coming back to do such action forever. While the *mawĒĒ of ‘Umar* said that I have bought such commodity and sold. YaĒyĒ is reported to have seen *mawĒĒ of ‘Umar* was a leoprasy]

The wisdom why hoarding commodities is prohibited is because it will decrease demand in the market. If the demand is high and the supply is limited, the price of such commodities will increase and create difficulty among members of community and such action would give benefit for those who are greedy thus the original objective of the *maqÉlid sharÉ'ah* cannot be accomplished. This is the real objective of the *maqÉlid sharÉ'ah*.

**(iii) Charging Interest**

There are a lot of Qur'anic verses and the hadith of the Prophet which prohibit this evil action. For example. al-Qur'an says in al-Baqarah 275 and 276:



“Those who eat riba (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitân (Satan) leading Him to insanity that is because they say: "Trading is Only like Ribâ (usury)," whereas Allah has permitted trading and forbidden Riba (usury). so Whosoever receives an admonition from his Lord and stops eating Riba (usury) shall not be punished for the past; his case is for Allah (to judge); but whoever returns [to Riba (usury)], such are the dwellers of the Fire - they will abide therein.



“... will destroy Riba (usury) and will give increase for deeds of charity, alms, etc. and Allah likes not the disbelievers, sinners.

The collapse of Greece economy recently as we can see as a matter of fact is due to the *ribÉ* (usuary) system arising from loan. It has no clear consequences if it occurs among small scale. But definitely, it demolishes the whole system in the society if usuary is practiced in large scale. In this context, al-Shaykh YËsuf al-QarËwË says in his book *The Lawful and the Prohibited in Islam*:

“Islam permits increase in capital through trade. Referring to this, Allah Almighty says, “O you who believe, do not consume your property among yourselves wrongfully, but let there be trade by mutual consent...” (An-Nisa’: 29) At the same time, Islam blocks the way for anyone who tries to increase his capital through lending on usury or interest (*ribÉ*), whether it is at a low or a high rate, reprimanding the Jews for taking usury, even though they had been prohibited in SËrah al-Baqarah: “O you who believe, fear Allah and give up what remains due to you of interest if you are indeed believers. And if you do not, then be warned of war (against you) by Allah and His Messenger, while if you repent you shall have your capital. Do not do wrong and you shall not be wronged.” (al-Baqarah: 278-279).

The Prophet (peace and blessings be upon him) declared war on usury and those who deal in it; he pointed out its dangers to society, saying, “When usury and fornication appear in a community, the people of that community render themselves deserving of the punishment of Allah.” (Reported by al-Ëkim; AbË Ya’lË has reported something similar on good authority). The wisdom behind the prohibition of interest - The strict prohibition of interest in Islam is a result of its deep concern for the moral, social, and economic welfare of mankind. Muslim scholars have sound arguments explaining the wisdom of this prohibition, and recent studies have confirmed their opinions, with some additions and extensions of their arguments. We confine ourselves to what ImËm al-RËzË says in his *TafsËr* of the Qur’an: First: The taking of interest implies appropriating another person’s property without giving him anything in exchange, because one who lends one dirham for two dirhams gets the extra dirham for nothing. Now, a man’s property is for (the purpose of) fulfilling his needs and it has great sanctity, according to the hadith, “A man’s property is as sacred as his blood.” (Reported by AbË Na’Ëm) This means that taking it from him without giving him something in exchange is

haram. Second: Dependence on interest prevents people from working to earn money, since the person with dirhams can earn an extra dirham through interest, either in advance or at a later date, without working for it. The value of work will consequently be reduced in his estimation, and he will not bother to take the trouble of running a business or risking his money in trade or industry. This will lead to depriving people of benefits, and the business of the world cannot go on without industries, trade and commerce, building and construction, all of which need capital at risk. This, from an economic point of view, is unquestionably a weighty argument. Third: Permitting the taking of interest discourages people from doing good to one another, as is required by Islam. If interest is prohibited in a society, people will lend to each other with good will, expecting back no more than what they have loaned, while if interest is made permissible the needy person will be required to pay back more on loans (than he has borrowed), weakening his feelings of good will and friendliness toward the lender. (This is the moral aspect of the prohibition of interest.) Fourth: The lender is very likely to be wealthy and the borrower poor. If interest is allowed, the rich will exploit the poor, and this is against the spirit of mercy and charity. (This is the social aspect of the prohibition of interest.) (Fakhr al-DĒn al-rĒzĒ, TafsĒr Fakhr al-RĒzĒ, vol. 7, p. 4.) Thus, in a society in which interest is lawful, the strong benefit from the suffering of the weak. As a result, the rich become richer and the poor poorer, creating socio-economic classes in the society separated by wide gulfs. Naturally, this generates envy and hatred among the poor toward the rich, and contempt and callousness among the rich toward the poor. Conflicts arise, the socio-economic fabric is rent, revolutions are born, and social order is threatened. Recent history amply illustrates the dangers to the peace and stability of nations inherent in interest-based economies."<sup>10</sup>

The wisdom of the prohibition of usury is because it is an unjust act. It creates laziness, the money lenders are taking advantage of someone's effort, it creates greediness and stinginess, it manipulates the role of money, because in the *maqĒlid al-sharĒ'ah* money is not a commodity but it is a medium of exchange, it cannot be manipulated just for one's interest.

JĒbir reports that the Prophet is reported to have said:

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<sup>10</sup> Islam On-line Fatwa Bank Link: Global Islamic Finance Centre- <http://gifc.blogspot.com>

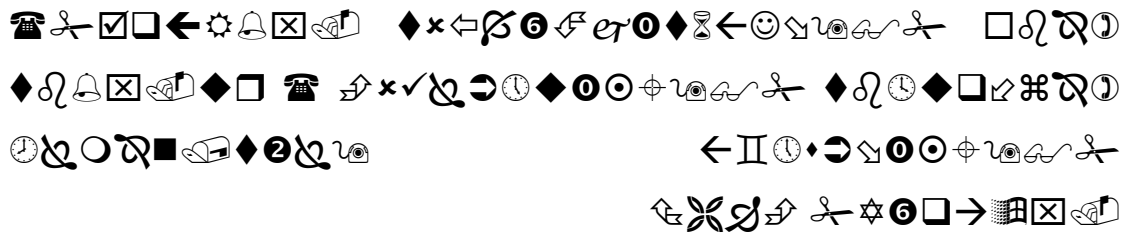
عن جابر قال: لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَكِلَ الرِّبَا، وَمُؤَكِّلَهُ، وَكَاتِبَهُ، وَشَاهِدَيْهِ، وَقَالَ: هُمْ سَوَاءٌ<sup>11</sup>

Allah curse those who are involved in *ribÉ* and interest, the one who eats *ribÉ*, his agents, his writers, his witnesses and the Prophet said, they are similar (in terms of committing sins).

**(iv) Stinginess, Lavishness and Squandering**

*MaqÉlid sharÉ'ah* takes priority of human actions in all aspect of life including the administration of property and asset belonging to him and others. There are three negative values among human beings i.e. stinginess, lavishness and squandering. These negative aspects need to be avoided because such action is regarded as immoral. These negative morales should be stopped.

Al-Qur'an says:



“Verily, spendthrifts are brothers of the *ShayatÉn* (devils), and the *ShaitÉn* (Devil - Satan) is ever ungrateful to his Lord.<sup>12</sup>

**(v) Monopoly**

*MaqÉlid sharÉ'ah* promotes that any activities related to Islamic finance need to be implemented in a healthy manner so as to attain prosperity among community as a whole not only focusing on profit and selfishness. Monopoly is contradicting with the Islamic teaching. It suppresses others' right. Monopoly may create negative aspects.

<sup>11</sup> Muslim, *ØaÁÉÍ* Muslim, 3/1219.

<sup>12</sup> Al-IsrÉ': 27.

## **F. Conclusion: Moving Forward**

From the course of the discussion, it is clear that human being is reminded to be alert on the importance of preserving the wealth, asset, money, property and resources by distributing the money fairly to those deserving especially the less fortunates. It is of the Islamic finance teaching, in fact, to spend money wisely but at the same time to be aware of squandering and lavishness.

It seems very clear that the role of *maqasid sharĒ'ah* in Islamic finance is not only focusing on business that is legal (*ĪalĒl*) but also requires those who are involved in business to have good ethics and preserve the money that have been granted to them to be wisely administered.

All in all, among the objectives of the *maqĒlĒd* is to ensure prosperity among the communities. In order to accomplish this, each and everyone in the society should be encouraged to fulfill the following; Obligation to pay *zakat*, encourage *waqf*, encourage *infaq* gift and donation, allow all types of contract in Islamic finance as long as there is no transgression to Islamic principle, encourage to implement the varieties of contract and economic activities on the community which encourage resource partnership and encourage to accumulate capital or to make money circulates through economic activities.